

New Secondary Laws for the Electricity Sector (Part One)

On February 4, 2025, President Claudia Sheinbaum presented to the Senate the initiative with draft Decree issuing eight secondary laws and reforming three more related to the energy sector, which are part of the secondary legislation derived from last year's constitutional reforms to Articles 25, 27 and 28.¹ With respect to the electricity industry, the package includes the initiative with a draft Decree enacting the new Electricity Sector Act ("LSE" for its acronym in Spanish), as well as the State-Owned Company, Federal Electricity Commission Act; the Energy Planning and Transition Act; the National Energy Commission Act and the Geothermal Act (the "Draft Decree").

In this first installment of this two-part article, we address the main aspects of the LSE, with which the Electric Industry Law ("LIE" for its acronym in Spanish) would be repealed and, therefore, become the substantive law of the electricity sector in Mexico.

- Electricity Sector Act.

The LSE has the purpose of preserving the Nation's energy security and self-sufficiency, as well as ensuring the efficiency, quality, continuity, accessibility, safety, reliability and sustainability of the National Electric System ("SEN" for its acronym in Spanish) and the electricity sector as a whole. In addition, it recognizes the prevalence of the State, specifically the State-Owned Company, the Federal Electricity Commission ("CFE" for its acronym in Spanish) in the activities of the electricity sector to guarantee the guiding principles that govern the electricity industry.

With respect to private parties, the way in which they can participate in the activities of the electricity sector that are not exclusive to the State is restructured, with the aim of ensuring that electricity is provided to the population at the lowest possible price. The Act also promotes the sustainable development of the electricity sector with social, economic and environmental responsibility, involving the public, social and private sectors, while promoting actions in the area of Energy Justice, the use of clean energy sources, decarbonization and the energy transition.

In general terms, the LSE represents an important change in the way in which the State and private parties participate and relate to the electricity industry, introducing new mechanisms for private investment in electricity generation, while at the same time the State exercises greater participation and control over the industry, with the intention of guaranteeing the guiding principles enshrined in the LSE, based on the premise that the electricity sector is considered to be of public utility.

As part of the amendments proposed by the LSE, the following aspects that we consider relevant are presented:

¹ Initiative with Draft Decree enacting the State-Owned Company, Federal Electricity Commission; the State-Owned Company, Petróleos Mexicanos Act; the Electricity Sector Act; the Hydrocarbons Sector Act; the Energy Planning and Transition Act; the Biofuels Act; the Geothermal Energy Act; and the National Energy Commission Act; the Geothermal Energy Act and the National Energy Commission Act; Amendments to several provisions of the Mexican Petroleum Fund for Stabilization and Development Act and Amendments, Additions and Repeals of several provisions of the Income on Hydrocarbons Act and of the Organic Act of the Federal Public Administration.

• Elimination of Contracts and Restriction of Auxiliary Services

The LSE eliminates the concept of Electricity Coverage Contracts with Physical Delivery Commitment entered into between a Basic Services Supplier and a Generator (previously contemplated in the LIE) and restricts the possibility for the National Energy Control Center (“**CENACE**” for its acronym in Spanish) to enter into contracts with third parties for the provision of auxiliary services for the operation of the Wholesale Electricity Market (“**MEM**” for its acronym in Spanish).

• Electricity Generation Schemes under the LSE

The LSE establishes a series of electric generation schemes that represent new alternatives, which are more permissive and will simplify the regulatory burden for the participation of the private sector in this link of the electricity sector chain. Pursuant to the LSE, the generation of electric energy may be carried out by:

1. The State (mainly by the CFE);
2. Private parties independently; or
3. Private parties together with the State under mixed investment schemes.

In turn, the modes of generating electric power contemplated in the LSE include:

- **Distributed Generation.** In connection with this scheme, the maximum limit currently established in the LIE with respect to Distributed Generation is expanded from 0.5 MW to 0.7 MW. It is not required to obtain a generation permit from the National Energy Commission (“**CNE**”).
- **Self-consumption.** The concept of Isolated Supply contemplated in the LIE is replaced by that of Self-consumption. This scheme is defined as the production of a Power Plant with a capacity equal to or greater than 0.7 MW to meet the permit holder's own on-site needs.²

The self-consumption scheme can be isolated or interconnected to the SEN. In the latter case, the Power Plant can feed its surpluses to the SEN and sell them exclusively to the CFE.

- **Generation for the MEM.** Generation for the MEM is considered to be the production of electric energy and Associated Products of a Power Plant with a capacity equal to or greater than 0.7 MW that is destined for commercialization in the MEM and requires a generation permit granted by the CNE.

Mixed Development Schemes. Power Plants developed jointly by the State and private parties must be done through one of the following schemes: (i) Long-term production; (ii) Mixed investment, and (iii) any other scheme provided for in the applicable legislation.

- I** Long-term production: this is a scheme for the development of generation projects that is subject to the binding planning of the electric sector in which it must be established that the State does not contribute capital for the development of the project and the CFE must exclusively acquire all the electric energy and Associated Products produced.
- II** Mixed Investment: this is a scheme for the development of generation projects in which CFE must have a direct or indirect participation in the project of at least 54%; CFE may (but is not obligated to) acquire the electric energy and Associated Products produced; and the Power Plants that are subject to contracts entered into under this mode may commercialize the capacity to third parties subject to the terms of the corresponding contracts.

² A simplified procedure is established for interconnected self-consumption in Power Plants with a capacity between 0.7 MW and 20 MW.

- **Cogeneration.** It is provided that the electricity generation permit may be issued for Cogeneration. The capacity of the permit must be solely for the power that can be obtained using the thermal energy not used in the associated industrial processes.

- **Transmission and Distribution Public Service.**

Regarding the Public Service of Transmission and Distribution, the LSE establishes that such services are an exclusive strategic area of the State (the LIE considered them to be of social interest and public order), and therefore these activities have preference over any other activity that implies the use of the surface and subsoil of the land subject to them. In this sense, it is determined that the properties necessary for the installation of the National Transmission Network and the General Distribution Networks are subject to legal easement. The possibility contemplated in the LIE to enter into partnerships or contracts for the purpose of financing, installing, maintaining, managing, and operating infrastructure to provide these public services is eliminated.

- **Basic Supply**

It is important to point out that the LSE states that Basic Supply can only be provided by the CFE, considering that the people must be provided with electricity at the lowest possible price. In this regard, the possibility in the LIE of having different Basic Service Suppliers other than the CFE is eliminated (although technically and economically it was not very feasible for another Basic Service Supplier other than the CFE to enter the industry, it is a right/scheme contemplated in the LIE).

Also, unlike the provisions of the LIE, CFE may enter into Electricity Coverage Contracts (i) directly with any generator, or (ii) through competitive mechanisms carried out by CENACE (the LIE provides that Basic Service Suppliers must purchase energy and Associated Products through auctions to ensure the best possible prices and conditions).

- **Prevalence of the State in Generation and Commercialization**

The LSE incorporates the term prevalence regarding the relevance that the State will have in the electricity industry compared to private parties. Prevalence is defined as the preference of the State over private parties in generation and commercialization activities, since it is responsible for guaranteeing the reliability, safety, continuity and accessibility of the public electricity service.

In this regard, it is determined that the binding planning of the electricity sector must guarantee that private parties do not prevail over the State. Likewise, the LSE establishes that the State must maintain at least 54% of the average energy fed into the SEN in a calendar year. The aforementioned provisions may negatively affect the participation of private parties in the industry, since there could be a preference for the dispatch of state-owned power plants over those owned by private parties, in order to reach the aforementioned percentage.

- **Energy Storage**

One of the most important elements in the reliable development of the SEN and any other electricity system in the world, is the correct and orderly integration of Energy Storage Systems ("SAE" for its acronym in Spanish) into the electrical system. In the particular case of Mexico, to date there are no clear and precise rules that allow the integration of such SAE to the SEN. The LSE, without going into technical or operational details, establishes the possibility for the SENER to issue the terms, conditions and modalities under which the SAE may participate in the electricity industry, as well as to legislate regarding their integration.

• Surface Use and Occupancy

One of the most important changes to be considered with the LSE is the regulation of land use and occupation. The wording proposed in the Draft Decree establishes a series of provisions to which both the CFE and private individuals must adhere in order to acquire any personal or real right or to purchase a certain land area for the development and operation of projects intended not only for the transmission but also for the generation of electric energy.

Pursuant to the current text, the land occupation or appropriation or the creation of easements are necessary for the construction of Public Transmission Service Infrastructure Projects and Power Plants through the use of (i) a geothermal deposit, (ii) hydraulic resources, or (iii) any other. With this last inclusion, the CFE or any private party that intends to acquire any real estate right to develop, build and operate a Power Plant - regardless of its characteristics and location (as is the case with the LIE)- must be subject to the provisions contained in the LSE, including those related to the contractual structure to be entered into, the establishment of the amount of the consideration,³ as well as certain formalities that must be followed for the contractual agreement to be fully effective.

Unlike the provisions of the LSE, the LIE considers that the regulation to acquire this type of real estate rights applies solely and exclusively to projects related to the Public Transmission Service, as well as to Power Plants that have a specific location.

• Social Impact and Sustainable Development

The LSE eliminates the concept of the social impact assessment and replaces it with the Social Impact Statement of the Energy Sector. This Statement is defined as the document issued by SENER, based on studies, which describes the significant and potential social impact of a work or activity in a community, analyzing positive and negative effects, and proposing strategies to maximize benefits, mitigate impacts and guarantee social sustainability with a participatory, gender-based approach, and respect for human rights. Additionally, it is established that the general administrative provisions issued under the LSE must define the annual investment amount of the social management plans. In general, the LSE determines certain particularities and obligations related to the Social Impact Statement that are provided for in general administrative provisions issued under the LIE.

• Clean Energy Certificates

Contrary to the provisions of the LIE and its associated general administrative provisions, under the LSE, the granting of Clean Energy Certificates to Power Plants does not depend on ownership or the date of commencement of commercial operation. Therefore, Clean Energy Certificates will be granted to those Clean Power Plants that began operations prior to the entry into force of the LIE. This will have an adverse economic effect on those Power Plants that are entitled to such certificates under the LIE, as the supply of these certificates will be altered.

In addition, the LSE establishes that the Clean Energy Certificates will be valid for 30 months from the date they are granted.

³ The compensation, terms, and conditions for the use, enjoyment, or impact on the land, water, assets, or rights necessary for the Public Transmission Service and Power Plants through the utilization of a geothermal reservoir, hydraulic resource, or any other, in accordance with applicable provisions, must be negotiated and agreed upon within the instruments regulated by the Institute of Administration and Appraisals of National Assets, the National Commission of Protected Natural Areas, or the National Water Commission, as applicable. These negotiations must take place between the owners or holders of such land, assets, or rights, including real, ejidal, or communal rights, and the individuals or entities interested in carrying out such activities. In the case of private property, acquisition may also be agreed upon.

•New Guiding Principles

Throughout the LSE, new guiding principles can be identified that industry participants must observe in the course of their activities. Some of the principles that will have the greatest impact on the sector are the following:

- **Accessibility.** A principle that guarantees that there are no obstacles, limitations or difficulties that prevent equitable, continuous and timely access to the Electricity Supply, ensuring its availability to all users under fair and non-discriminatory conditions.
- **Energy Justice.** Actions or strategies aimed at reducing Energy Poverty, social and gender inequalities in energy use and promoting regional development and shared prosperity through access to reliable, affordable, safe and clean energy and energy infrastructure to meet basic needs, reducing impacts on health and the environment. It also includes the expansion of spaces for inclusive participation, mainly of indigenous peoples, in the local production chains of energy projects.
- **Sustainability.** A set of actions to maintain human, economic and natural resources in a sustainable and responsible manner, manage their interdependence and impact on the environment and populations, and incorporate institutional changes that guarantee a balance between economic activities, environmental protection and social welfare in the short, medium and long term.

• Sanctions

The LSE establishes a substantial increase in the fines to be imposed; specifically, there are increases in which the amount of the fines that are established in the LIE are tripled.

• Transitory Articles

- The LSE will come into force the day after its publication in the Federal Official Gazette.
- The LSE determines that the LIE and other provisions that are contrary to the LSE are repealed.
- Upon the entry into force of the LSE, all permits, instruments or administrative acts granted under the Public Electricity Service Act ("LSPEE" for its acronym in Spanish), continue to be effective until the expiration of their term. Additionally, the SENER must encourage the holders of permits under the LSPEE to migrate to the concepts contained in the LSE through strategies or programs that include administrative simplification and technical streamlining.
- The contracts and other instruments derived from them that have been entered into with the state-owned productive enterprises and their subsidiaries under the LIE must be transferred to the CFE and will continue to be governed by the terms established in the legal acts and other provisions emanating from the LIE, and insofar as they do not conflict with the foregoing, by the provisions of the LSE.
- The Terms for the Strict Legal Separation of the CFE are repealed.

It is important to note that, as of the date of publication of this document, the above analyzed LSE initiative is still subject to the corresponding legislative procedure, and therefore may be subject to additional changes and adjustments.

In the second installment, we will address issues related to the rest of the secondary laws proposed, namely the State-Owned Company, Federal Electricity Commission Act; the Planning and Energy Transition Act; the National Energy Commission Act and the Geothermal Act, which complement the regulatory framework of the electricity sector and strengthen the main guidelines and proposals established in the LSE.

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