

Energy Alert

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Terms for the Separation of Federal Electricity Commission

On January 11, 2015, Mexico's Ministry of Energy (SENER) published the general terms for the separation of the Federal Electricity Commission (CFE) in the *Federal Official Gazette* (the "Terms"). This action was taken pursuant to the 2013 constitutional mandate, as well as the provisions set forth in the Electricity Industry Act (*Ley de la Industria Eléctrica*) and the Law of the Federal Electricity Commission (*Ley de la Comisión Federal de Electricidad*), which state that SENER must provide the terms and conditions for the legal separation of the CFE.

The Terms set forth the terms and conditions for the horizontal and vertical separation of CFE's activities, which are identified as generation, transmission, distribution, basic supply, commercialization (other than for basic supply) and provision of raw materials. Pursuant to the Terms, these activities must be carried out independently and through productive subsidiary entities ("subsidiaries"), affiliate entities ("affiliates") or any other business entity contemplated by the Law of the Federal Electricity Commission.

Importantly, the Terms require that the CFE's workers' rights remain unaffected even in light of these changes.

Overview of Entities Identified in the Terms

To accomplish the above-referenced legal separation, the CFE shall create the following subsidiaries, affiliates or entities:

Generation Entities

- The CFE shall create at least six generation subsidiaries, affiliates or entities and may create additional entities to guarantee the efficient operation of generation activities.
- These entities shall adhere to competition and free-market regulations.
- Generation entities may not disclose to any other CFE generation or commercialization entities, or to any other individual or entity that carries out generation or commercialization activities, information related to the operation, planning, maintenance and marketing strategy of the Power Plants they are in charge of, unless:
 - the disclosure is made in accordance with the guidelines for the transmission of privileged information set forth in Article 10 of the Electricity Industry Act, or
 - the disclosure of information is made to the general public without affecting competition and through a website in which the information will be available to the public for a period of at least three years.

Transmission Subsidiaries

- The CFE shall create at least one transmission subsidiary that may partner, or enter into agreements, with other subsidiaries, affiliates or individuals to carry out the financing, installation, maintenance, operation, management and expansion of infrastructure necessary to provide electricity transmission services.
- Transmission subsidiaries may not participate directly or indirectly in generation, distribution, commercialization or provision of raw materials, unless such activities fall within the scope of the exceptions contemplated by the Terms.
- Transmission entities and the CFE may not disclose to any other CFE generation or commercialization entities, or to any other individual or entity that carries out generation or commercialization activities, information related to the operation, planning and maintenance of its networks, unless:
 - the disclosure is made in accordance with the guidelines for the transmission of privileged information set forth in Article 10 of the Electricity Industry Act, or
 - the disclosure of information is made to the general public without affecting competition and through a website in which the information will be available to the public for a period of at least three years.
- The CFE may also create, or participate in, an affiliate to partner with, or enter into agreements directly with, the State, to carry out the financing, installation, maintenance, management, operation and expansion of infrastructure necessary to provide electricity transmission services.

Distribution Subsidiaries

- The CFE shall create at least one distribution subsidiary that may partner, or enter into agreements, with other subsidiaries, affiliates or individuals to carry out the financing, installation, maintenance, management, operation, expansion and other activities related to the development of infrastructure necessary to provide electricity distribution services.
- Distribution entities and the CFE may not disclose to any other CFE generation or commercialization entities, or to any other individual or entity that carries out generation or commercialization activities, information related to the operation, planning and maintenance of its networks, unless:
 - the disclosure is made in accordance with the guidelines for the transmission of privileged information set forth in Article 10 of the Electricity Industry Act, or
 - the disclosure of information is made to the general public without affecting competition and through a website in which the information will be available to the public for a period of at least three years.
- Distribution subsidiaries shall have a business unit for each of the CFE's 16 regional departments in charge of providing electricity distribution services.

Basic Supply Entities

- Basic supply entities may not participate directly or indirectly in generation, transmission, distribution or commercialization activities, unless such activities fall within the scope of the exceptions contemplated by the Terms.
- The CFE shall create at least one entity to provide basic supply services to basic supply users.

Commercialization (Other Than for Basic Supply) Affiliates

- The CFE shall create as many commercialization affiliates as necessary (or any number of business entities contemplated by the Law of the Federal Electricity Commission) to carry out commercialization activities that are different than basic supply.
- Pursuant to the Terms, commercialization activities different than basic supply are qualified supply, last recourse supply and commercialization activities not related to basic supply.
- Commercialization affiliates that carry out commercialization activities different from basic supply may not participate directly or indirectly in generation, transmission, distribution, basic supply or provision of basic goods activities, unless such activities fall within the scope of the exceptions contemplated by the Terms.

Affiliates for the Provision of Raw Materials

- The CFE shall create as many affiliates for the provision of raw materials as necessary (or any number of business entities contemplated by the Law of the Federal Electricity Commission) to carry out provision of raw materials.
- Affiliates that carry out provision of raw materials may not participate within Mexican territory, directly or indirectly, in generation, transmission, distribution or commercialization of electricity activities.

This legal separation will bring a profound and much-needed change to the CFE. The fragmentation creates competition for each new subsidiary, affiliate or entity created by the CFE and ensures their complete independence by prohibiting coordination or disclosure of information; every CFE entity will compete on equal terms. The separation will certainly encourage transparency and efficiency within Mexico's electricity sector.

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