

The Reform of the Energy Sector in Mexico: Opening Doors for Private participation

The energy sector in Mexico is mainly constituted by the oil and electric power industries. For over 70 years, any activity regarding these industries was reserved exclusively for the Mexican State through the State-owned companies Pemex (Mexican Petroleum/Oil) and CFE (Federal Commission of Electricity). The participation of private entities into the energy sector was limited to service contracts (monetary payment) for the oil industry and to Independent Power Producers (IPP's) in the electric power industry.

On one hand, the service contracts were awarded according to the public procurement procedure in Mexican laws, and they were granted for services such as transportation, distribution or storage of oil. On the other hand, the IPP's were independent producers that could generate electrical energy on their own, however, such energy had to be sold exclusively to CFE (Federal Commission of Electricity), rejecting the possibility for the IPP's to sell such energy to third parties. Even though the electric power generated by IPP's could be exported, upon approval of the Secretary of Energy, all the activities regarding the public service of electric power in Mexico were reserved to CFE.

On December 2013, this regime changed dramatically. Federal Congress approved the amendments of Articles 25, 27 and 28 of the Mexican Constitution, which state the regulation of the energy sector. There was a wide variety of opinions among different sectors; government, education, private industry, and NGO's. But, the decision was taken and the market in the energy sector had been opened for the private sector: Congress has a deadline of April 2014 to enact the Regulatory Laws that will fully regulate the energy sector, due to the characteristic of non-self-application of the Constitution.

The reformed Constitution establishes the following main points:

Regarding the oil industry:

- 1) Private entities will be able to participate in the exploration and extraction of oil through service contracts, share utility or share production contracts, or licenses. This means that private companies will be able to invest in those two activities that were reserved only for the State, and also in those other activities where they already have participation; transportation, distribution and storage of oil. The new contractual regime will be deeply regulated in the Regulatory Laws, but the private entities will not have any ownership over the hydrocarbons in any kind of contract. Regarding the share utility or production contracts, the State will share utilities, but not the products.

- 2) The State will “allocate” certain projects exclusively to Pemex, but in those other projects, Pemex has two options: 1) to compete with private entities for the award of the project through the public procurement procedures or; 2) to associate with private entities for the allocated projects, or for the award of projects.

Regarding the electric power industry:

- 1) The State will be in charge of the planning, control, transportation and distribution of electrical energy, opening the market of generation, commercialization and supplying of electrical energy for private entities. Even though transportation and distribution of electrical energy is reserved for the State, private entities will be able to use these transportation and distribution channels for their activities, with the regulatory aspects stipulated in the Regulatory Laws.

In general:

- 1) The hydrocarbons (oil, natural gas, fossil minerals, etc.) will keep being property of the State, and the State will not grant concessions or any kind of ownership over such products.
- 2) Pemex and CFE are still State-owned entities. However, they will become Productive Companies of the State, which will compete with private companies in the award of projects.
- 3) The new institutions in charge of the regulation of the energy sector, including supervision over Pemex and CFE, will be the Secretary of Energy through the National Commission of Hydrocarbons, Regulatory Commission of Energy and the National Center of Control of Energy. Their attributions and obligations will be fully described on the new Regulatory Laws.

The energy reform is just beginning. The Articles of the Constitution were amended, but that is not enough to fully know the game and the players. Once the Regulatory Laws are enacted, we will have the full regulation of the energy sector. But, what can be said is that the energy sector in Mexico is living an important transition. Private investment is now allowed in the sector, and competition among Pemex, CFE and private investors about to start. No one knows if the reform will succeed, but the energy sector in Mexico definitely needs a change. Mexico is searching for cheaper costs of energy in order to obtain cheaper final products. The participation of private investment in Mexico may be a way to provide such opportunity to become actors in the global market, and Mexico expects to compete under different circumstances.

The energy reform will not only impact energy companies investing in Mexico. This reform is clearly an opportunity for construction companies to obtain, or expand, construction projects in Mexico. One of the main purposes of the reform is to modernize the infrastructure used for the exploitation of hydrocarbons, and the production of energy. Then, construction companies will have the possibility to jointly work with energy companies, including the Productive Companies of the State (Pemex and CFE), in the construction and development of such infrastructure. The projects in the energy sector will be expanded tremendously; opening the doors for private investment in any part of the chain of production of energy. Consequently, construction projects will represent a substantial percentage of the total amount of projects that will take place in the country.