

Energy Regulatory Commission publishes new provisions regarding electricity generation permit applications and obligations

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On March 30, 2022, the Energy Regulatory Commission (the "Commission") published in the Official Gazette of the Federation the resolution number A/006/2022 issuing the "General Administrative Provisions that establish the terms to submit the information related to the corporate purpose, legal, technical and financial capacity, as well as the description of the project, and the application form for the Electricity Generation Permits" (the "General Provisions"), which repeals the previous regulations regarding the requirements for obtaining electricity generation permits issued on April 8, 2015 under the resolution number RES/182/2015.

As provided under the repealed regulations, the General Provisions set forth the requirements to apply for an electricity generation permit before the Commission. However, they include far stricter requirements than the previous regulations.

In addition, they incorporate the procedure that the Commission must follow to evaluate the granting of electricity generation permits (replicating what the Regulations of the Electricity Industry Law provides in this regard) and sets forth a new chapter regarding additional obligations that must be complied with by holders of electricity generation permits.

A. Requirements to apply for a permit

The General Provisions include additional requirements to those provided in the previous regulation, and modify pre-existing requirements, for purposes of requesting an electricity generation permit, including by adding more detail of the information requirements, as described below:

1. Project Schedule.- With respect to the requirement to provide a project schedule for the project in question, the General Provisions require more detail of the different stages, as described next:

- a. Development activities: activities necessary to start construction, including obtainment of governmental permits.
- b. Pre-construction: preliminary activities related to civil engineering, design and procurement.
- c. Construction: construction and installation of the plant period, detailing civil, electrical and mechanical works, as well as works related to evacuation lines and substations.
- d. Performance Tests: pre-operative and operation tests in accordance with the Interconnection and Connection Manual.
- e. Commercial operation: date as of which the National Center for Energy Control issues the Declaration of Commercial Operation of the Power Plant.

Particularly item "e." above entails a change in relation to the previous requirements, as market and CRE's practice was that for purposes of the energy generation permit, the power plant would be deemed in commercial operation when it started testing, and the start of this stage was not subject to compliance before the National Center for Energy Control of all requirements to operate in the Wholesale Electricity Market.

2. Corporate Structure.- An applicant of an electricity generation permit must provide a series of requirements related to its capital stock structure, such as, among others:

- a. Diagram of the shareholding structure of the applicant.
- b. The name of each direct and indirect partner, party, associate or shareholder, up to the level of natural persons, as well as their tax identification registry showing that each of the partners or shareholders has a Mexican taxpayers identification number.

- c. A description of the several types of shares or equity quotas of the applicant and the participation percentages thereof.
- d. If the applicant does not have any link with another company and does not have any other type of permit, it must attest it in writing or indicate what other permits in the sector the applicant and its partners or shareholders have, also indicating the economic interest group to which it belongs, other types of control and relationships between partners, shareholders or associates. Finally, if the participant's shares have been conveyed to a trust or the financing of the power plant is through a trust, the information of the parties and characteristics of such trust agreement must be provided, including a copy of such agreement.

Regarding item "b." above, it must be noted that the General Provisions do not include an express exception regarding foreign partners or shareholders who do not have a permanent establishment for tax purposes in Mexico, and thus, do not have a Mexican taxpayers identification number.

3. Project characteristics.- The description of the project must contain, among others, the following:

- a. Location, installed capacity, type of classification under which it will be interconnected to the National Electric System and interconnection studies (in the name of the applicant).
- b. Type of technology (providing technical data sheets of the equipment associated with the generation) and when applicable, the primary and secondary fuel, their calorific value, consumption, cost, data of the supplier and transporter or distributor of such fuels, if applicable, as well as their current permit granted by the Commission, in addition to the documents to demonstrate that the activities are carried out under strict legal separation.
- c. In case of having a storage system, details of such system.

4. Financial capacity.- Regarding the applicant's financial capacity, the following must be provided:

- a. Detailed business plan that includes the amount of the investment with a breakdown of development, construction, operation and maintenance costs, internal rate of return, capital flows, total projected income, and financing amounts and interest rate.
- b. Proof of the financial capacity of the applicant or of the business group to which it belongs, by means of a financing program containing a general financing plan, general description of capital contributions and/or general description of the financing credit plan, as well as audited financial statements for at least the two years prior to the date of application for the permit and letters of intent.

With respect to item "b." above, it should be noted that there is no express exception to submit audited financial statements for the last two years for newly incorporated special purpose vehicles.

5. Technical capacity.- The applicant must accredit, directly or through its corporate group, that it has technical resources and materials of its own or contracted with third parties to carry out the different stages of the project, as well as experience in the design, construction and operation of generation projects with similar characteristics to the object of the permit.

In this case, there is no exception for isolated supply projects where the holder of the permit must be the end user or an affiliate within its corporate group.

6. Isolated supply.- For isolated supply projects, permits will be of a specific nature and only for generation purposes when an interconnection contract is not required. For the description of own needs, the application must detail, in addition to the other applicable requirements, the following:

- a. The type of supplier for energy shortages, if applicable.
- b. Information of the load panels and the load centers.
- c. Single-line diagram.

The limitation above regarding not requiring an interconnection agreement aligns with the recent amendment to the regulations in matters of isolated supply (for more information, access our client alert [here](#)).

B. Permitholders' obligations

As mentioned above, the General Provisions include a new chapter relating to obligations borne by permit holders, including the following:

1. Delivering to the Commission every 60 business days, progress reports of the different stages of the project schedule, including right of way agreements and photos.
2. Communicate to the Commission the commercial operation of the power plant within 15 business days, which must coincide with the project schedule and the Declaration of Commercial Operation issued by the National Center of Energy Control.
3. Once the project starts operations, provide to the Commission information that support the amount of the investment actually made.
4. Provide the contracts entered between the permit holder and the fuel suppliers, transporters or distributors, as well as all those documents that demonstrate the possible commercial alliance between them.
5. Report to CRE the results of the performance tests once this stage concludes.
6. Within 90 business days following the granting of the permit, submit to the Commission certain documentation related to due control within the organization, including organization and procedures manual, code of conduct, periodic control and surveillance procedures, and human resources and non-discrimination policies.
7. Report to the Commission of any changes in the shareholding structure or business plan must be informed to CRE.

For more detail, the General Provisions may be consulted [here](#).

The General Provisions became effective the day after their publication. However, applications for energy generation permits that were in process prior to such entry into force will be processed in accordance with the previous regulation.

The General Provisions do not establish whether the additional obligations imposed on permit holders will be applicable only as of their entry into force, i.e., for persons who obtain their permits under these new regulations, but the Commission could consider that such obligations are applicable to all permit holders (except for those of the legacy regime, which are subject to the Public Electricity Service Law and its derived regime).

If you deem that the modification to the regulations regarding application for energy generation permits could have an adverse effect, the General Provisions may be challenged through the applicable means of defense, including the amparo proceeding.

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