

New regulations relating to cross-participation in the Hydrocarbon Sector are published

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On February 27, 2024, the Energy Regulatory Commission ("CRE") published in the Federal Official Gazette, the resolution number A/047/2022 whereby the General Administrative Provisions that establish the procedure and requirements for the authorization of cross participation, the methodology for the analysis of its effects on competition, market efficiency and effective open access and, interpret for administrative purposes, the cross participation foreseen in the second and third paragraphs of article 83 of the Hydrocarbons Law (the "New Regulations") were issued, and which repeal the provisions previously in force and that were published in the Official Gazette of the Federation on March 3, 2016 under resolution number A/005/2016 (the "Previous Regulations").

For context, the Previous Regulations deemed as "cross-participation" when a person or entity, directly or indirectly, has a controlling equity interest in two types of entities: (i) end users, producers or marketers of hydrocarbons, oil, and petrochemicals that use transportation or storage services through open access pipelines; and (ii) permit holders for the transportation and storage of hydrocarbons, oil, and petrochemicals subject to open access, when both controlled entities belong to the same economic group – a group of persons or entities that have related commercial and financial interests, and coordinate their activities to achieve a determined common objective.

In contrast, the New Regulations establish, among other new provisions: (a) a broader definition of the concept of "use of transport and storage services" that includes the obtaining of any direct or indirect economic benefit, which triggers cross-participation situations for various entities in the sector, as would be end users of hydrocarbons even if they do not contract transportation or storage directly; (b) provisions regulating the procedure for obtaining a cross-participation authorization, with respect to deadlines, the process of admission for processing and the resolution thereof - which requires the Federal Economic Competition Commission's prior favorable opinion -, as well as for modifications to cross-participation resolutions previously obtained; (c) measures that the CRE may impose on a particular entity, when it authorizes the cross-participation thereof, such as: (1) limits on equity participation, (2) strict legal, functional, operational and/or accounting separation between the permitted activities, (3) limits on the reservation of transportation or storage capacity; and (4) other measures with the purpose or effect of preventing cross-participation from undermining the principle of open access for the contracting of pipeline transportation and storage services, in order to prevent cross-participation from affecting competition, market efficiency and/or effective open access; and (d) that in case of non-compliance with the regulatory measures, CRE may revoke the resolution that approved cross-participation and may apply the corresponding penalties for breach of cross-participation obligations.

For those entities that fall under a cross-participation scenario in terms of the provisions established in the New Regulations and that had not previously been required an approval from CRE, a term of 60 business days as of their entry into force is granted to submit the corresponding cross-shareholding authorization applications to CRE. Proceedings initiated prior to the entry into force of the New Regulations will continue to be processed in accordance with the Previous Regulations.

The New Regulations entered into force on February 28, 2024; the 60-day term referred in the above paragraph elapses on May 24, 2024.

To consult the full text (in Spanish) of the New Regulations, [access here](#).

If the New Regulations affect you in your rights, they may be challenged through an amparo lawsuit (constitutional review), as well as other applicable means of defense.

For any question or comment regarding the New Regulations, you may contact our expert team in Energy and Infrastructure.

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