

LATIN LAWYER REFERENCE ELECTRICITY PROJECTS & REGULATION 2019

Mexico

Horacio M De Uriarte, Aisha Calderón
and Enrique Fajer
Mijares, Angoitia, Cortés y Fuentes SC

AUGUST 2019

1 What are the principal power sources in your jurisdiction?

According to official statistics, published by Mexico's Ministry of Energy (SENER), approximately 80 per cent of the energy is generated by conventional sources, of which 60 per cent corresponds to gasoil and 20 per cent to natural gas.

Following hydrocarbon sources, renewables sources are now second in energy generation in Mexico. According to the Clean Energy Progress Report prepared by SENER for 2018, electricity generation from Clean Energy sources reached 24.12 per cent (40,499.01GWh) of the total generation in Mexico.

2 What are the current trends affecting the energy mix in your jurisdiction?

The Energy Reform of 2013 intended to incentivise renewable and clean energy projects by opening the industry to private investors. The legal framework created by the Energy Reform created mechanisms to promote the energy transition in Mexico, such as long-term auctions, the creation of the wholesale electricity market (WEM) and clean energy certificates (CELS) markets. The Energy Reform transformed the Mexican electric industry to a mixed industry where private companies coexist with state-owned companies in a competitive market, where different products, such as electricity, capacity and CELs can be traded among different participants.

The implementation of the Energy Reform allowed Mexico to reduce its energy dependence on hydrocarbon sources by increasing the installed capacity of renewable projects. Within a short period, the implementation of the reform has allowed an increase in the installed capacity of renewable energies, of 27.71 per cent during the first semester of 2018, with respect to the same period of 2017.

Mexico had elections in 2018 where a new political party (Movimiento de Regeneración Nacional) won the presidency and the absolute majority in Congress. Although the new administration has not modified the legal framework of the Energy Reform, it has expressed scepticism for renewable energies and the participation of private investors in the electricity industry. As an example of this new attitude, the Administration cancelled the 2018 long-term and middle-term auctions carried out by the National Centre of Energy Control (CENACE).

3 What are the current forecasts for electricity demand in your jurisdiction?

According to official statistics published by SENER for the National Electricity Grid Development Programme 2018–2032 (PRODESEN), the maximum integrated demand of the National Interconnected System forecasts an average annual growth of 3.2 per cent between 2018 and 2032. According to such estimations, the regions with higher growth rates, in its maximum integrated demand, will be the Peninsular region (3.9 per cent), the Mulegé region (3.8 per cent) and Baja California Sur (region 3.7 per cent).

4 Is there an open electricity market in your jurisdiction? Are any activities in the electricity market reserved for the government only? Are private entities allowed to build and operate power plants and transmission and distribution lines?

As described above, in 2013 in Mexico implemented an Energy Reform, which has (with regard to the electricity industry) precisely as an objective (i) to open certain industry activities to private investment, (ii) to promote the development of clean energy projects, (iii) to develop and expand the National Electricity System, and (iv) to create a competitive electricity market in which public utilities and private companies can carry out transactions among themselves.

According to the Electric Industry Law, the “electrical industry” comprises the following activities: (i) planning and control of the National Electrical System (ii) generation, transmission, distribution and commercialisation of electricity, and (iii) operation of the WEM.

The constitutional reform maintained the planning and control of the National Electric System, as well as the public transmission and distribution service, as strategic areas, reason why the State maintains its control, as well as the ownership of the transmission and distribution lines, without prejudice to the fact that it may enter into contracts with private entities under the terms established in the Electric Industry Law. The operation of the WEM also remains under control of the state, through CENACE.

The Energy Reform allowed private entities to carry out generation and commercialisation activities in the electric industry. For this purpose, the legal framework allows private entities to develop, construct and operate power plants in Mexico (provided that the projects and sponsors comply with the legal requirements and duly obtain the required governmental authorisations). The National Electricity Grid is operated under the “open and non-discriminatory access” principle, that allows any power plants (from private entities or public utilities) to interconnect their corresponding projects to the grid, provided that the legal and technical requirements are fulfilled and, if necessary, that any additional works are undertaken by the sponsor.

The reform created and implemented a WEM in which the different participants may carry out transactions, to sale and purchase electricity, capacity (potencia) and associated products, in a free, competitive market. This platform allows the participants to sell or buy the products through financial bilateral transactions or in the spot market. Power purchase agreements (PPAs) can be freely negotiated and entered among the different private participants. However, the transmission of the financial rights of the products, traded through the agreements, must be carried out through the WEM to maintain a balance of supply and demand.

In addition, the law implemented different mechanisms to incentivise the generation and consumption of clean energy. An example is the implementation of a market of CELs. The CELs are certificates issued by the CRE, that are credited to clean energy generators (one CEL for each MW/h of clean energy generated). Large-scale consumers or users of electricity are obliged to acquire certain amount of CELs, based on the percentage of non-clean electricity consumed each year. This mechanism allowed the formation of a platform where any person (regardless of whether they are participants of the electric industry) may trade such CELs. The weighted average price, during 2018, was US\$19–US\$23 for CEL.

In addition to such mechanisms, the electric industry regulation provides that CENACE, as the WEM operator, must carry out long-term auctions, where a portfolio of clean energy generators offers electricity, capacity or CELs to a portfolio of large-scale users. The winners of these auctions must execute a 15-year PPA to sell or purchase the contracted products at the agreed price. This mechanism was implemented from 2015 to 2017 and the 2017 long-term auction Mexico set a world record for the lowest price for solar energy (US\$17.77) (source: CENACE).

5 What types of market participants may operate in the market? Must they provide payment guarantees to back their obligations in the market? What type of security is acceptable?

The market participants that may operate and carry out transactions in the market are the following: (i) generators, (ii) basic service suppliers, (iii) qualified suppliers, (iv) last resource suppliers, (v) marketers and (vi) qualified users.

Generators represent power plants interconnected to the National Electricity Grid in the WEM, to sell the products with other market participants, through PPAs.

Basic service suppliers represent (i) load points of basic supply users and (ii) exempt generators (ie, power plants with an installed capacity of up to 0.5MW, including distributed generators), in the market. Basic service suppliers must supply 100 per cent of the demand of the represented basic supply users. Basic service suppliers may enter into PPAs with other market participants, in regulated final rates scheme.

Qualified suppliers represent (i) load points of qualified users that are not directly market participants and (ii) exempt generators, in the WEM. Qualified suppliers must supply 100 per cent of the demand of the represented qualified users. Qualified suppliers may enter into PPAs with other market participants, in a competitive market.

Marketers do not represent any asset in the WEM but can carry out marketing activities in a free market scheme. These participants may enter into PPAs with the different market participants to sell and purchase any product in the market.

Qualified users that are market participants represent their own load points in the Market and may directly acquire the electric supply for their load points. Hence, qualified users may also enter into PPAs with other market participants in a free market scheme.

To participate in the market, the participants must comply with several legal, financial and technical requirements. Also, as a requirement to become a market participant, each candidate must place a guarantee in the form of a standby letter of credit in favour of CENACE.

6 What is the role and function of the regulator? Would you describe the regulator as being independent?

The CRE is the regulator of the Mexican electricity market. CRE is the authority in charge of promoting the efficient development of the industry through the promotion of competition in the sector, protecting the interests of the users, propitiating national coverage and attending to the reliability, stability and safety principles of the electric industry. For its part, the CRE is responsible for promoting the efficient development of electricity generation, transmission and distribution services (both for public service and those that are not part of the public service), as well as the commercialisation of electricity.

The Energy Reform converted the CRE into an entity of the centralised federal public administration, with the character of a coordinated regulatory entity in energy matters. Such coordinated bodies were granted technical, operational and management autonomy, and have their own legal personality and capacity to dispose of the revenue that they receive in connection with the services that they provide.

CRE is composed by seven commissioners and takes decisions by majority vote. The legal structure of the CRE aims to guarantee the independence of the decisions and operation of this body.

7 Is there an open market for off-takers in your jurisdiction or are there restrictions on the sale of electricity?

As described above, the WEM allows large-scale off-takers (qualified users, which must be loads of at least 1MW) to directly or indirectly buy electricity and products. The governmental utility Federal Electricity Commission (CFE), through its suppliers, is the predominant off-taker in the current market.

However, to participate directly in the WEM, qualified users must meet certain consumption criteria (annual consumption of 20GWh and cumulated demand of 5MW, with each load being of at least 1MW); else, qualified users must acquire products through a qualified supplier.

8 If the sale of power is to a public utility as off-taker, are such entity's payment obligations backed-up or guaranteed by the government?

The public utility, CFE Suministrador de Servicios Básicos (CFE SSB), a subsidiary of the CFE, does not have the full faith and credit of the Mexican government when acting as an off-taker. As mentioned above, the WEM is an open market and CFE SSB is allowed to participate. Any procurement by such entity must be carried out in accordance with its public procurement regulations (as a general rule, carrying out public tenders); however, as an exception, it is allowed to buy products in the WEM and in public auctions carried out by the grid manager, CENACE. In both cases, CFE SSB must provide guarantees to secure its payment obligations. However, in the case of public auctions carried out by CENACE, CFE SSB benefits from a preferential treatment when it comes to guarantees, as the guarantees it must provide must cover only half the amount that needs to be covered by other off-takers.

9 Does the market have an independent system operator? If so, what are the ISO's tasks and duties?

Yes, CENACE, a national entity, is the independent system operator. CENACE is a decentralised agency of the federal public administration that is linked to the SENER, although it has its own legal status and assets. The tasks and duties of CENACE consist of exercising the operational control of the National Electricity Grid, operating the WEM, ensuring open and equal access to the National Transmission Grid and the general distribution grids, and propose the expansion and modernisation of the National Transmission Grid and the general distribution grids that correspond to the WEM.

10 How are electricity rates set and what cost components affect such rates?

Regulated rates are those referring to the services of transmission, distribution, operation of basic suppliers, operation of CENACE, and related services not included in the WEM. These rates are set by the CRE and consider, among others, the following components: (i) for basic supply, generation costs, sales of energy and capacity, and variable market rates; (ii) for transmission services, cost of exploitation (salaries and employment benefits, fuels, maintenance, materials, taxes and office expenses) and cost of assets (depreciation, rentability of assets, interests and capacity payments); (iii) for distribution, costs of exploitation (salaries and employment benefits, maintenance, materials and office expenses) and costs of capital (depreciation and rentability of assets); and (iv) for operation of CENACE, required income based on operation and maintenance costs (including costs for operating the WEM), various incomes, and expenses; while for related services, the methodology is yet to be issued.

11 What approvals are required to build and operate a power project? Are these easy to obtain? Please describe the salient features of the relevant licence conditions and the grounds for revocation. What levels of fines can be imposed for failure to comply?

To build and operate a power project in Mexico, the sponsor must secure several governmental authorisations on environmental, energy, regulatory and social matters, from federal, state and local jurisdiction, as applicable.

The relevant environmental governmental authorisations are the environmental impact authorisation and, if forestry vegetation is removed or affected, a forestry land use change authorisation. Failure to comply with the terms and conditions set forth in such authorisations or carrying out activities that were not included in the scope of such authorisation, may result in the revocation thereof, as well as in the imposition of administrative fines.

From the energy regulation perspective, the sponsors must secure a generation permit issued by CRE to generate electricity in a power plant with an installed capacity of more than 0.5MW. On the other hand, in order to feed the electricity generated by a power plant into the National Electricity Grid, the sponsor must be authorised an interconnection by CENACE, as the grid operator and manager. Once the interconnection studies are concluded and the sponsor has placed the corresponding

interconnection guarantee in favour of CENACE, as per instruction of CENACE, the sponsor must enter into an interconnection agreement with CFE Transmisión or CFE Distribución, as applicable, as these entities own and operate the transmission and distribution grids. In general terms, the generation permit and the interconnection agreement can be revoked and terminated, respectively, if the sponsor fails to comply with the conditions set forth therein, including, but not limited to, reaching the construction and operation milestones on time. In addition, failure by the sponsor to conclude the interconnection works on time and as required by CENACE may result in the enforcement of the interconnection guarantee.

Infrastructure projects in Mexico must secure several regulatory permits depending on their specifications and location. Among others, the construction of power plants requires zoning and construction licences that are issued, as a general rule, by the local authorities. Also, in case that national water bodies are affected through the construction or operation of a power plant or in case that historical vestiges or archaeological items are found in the project site, additional requirements and permits may apply to such project.

On the other hand, to protect the rights of indigenous communities in Mexico, as a requirement to build power plants, a social impact assessment must be conducted. If SENER concludes that the project will impact indigenous communities, it may require that an indigenous consultation is carried out. This process may take several months, since each of the affected communities must agree on the mitigation and social measures that must be undertaken and reach agreement in regard to the features of project. As long as the indigenous consultation continues, the construction of the project must remain suspended.

12 Is the government or the ISO conducting public auctions to award long-term power purchase agreements to public and private offtakers? Are the auctions open to any source of power, or are they focused on specific sources and technologies?

CENACE, as the entity in charge of the operation of the WEM, must conduct at least one public auction each year to award long-term PPAs. Both public and private off-takers are allowed to participate in these auctions, while only private clean energy generators may participate in these auctions, as sellers. Starting on 2015, CENACE successfully conducted these public auctions and awarded several long-term PPAs.

Mexico's new federal administration cancelled the 2018 auction and has not called an auction for 2019, even when the statutory provision under which CENACE is mandated to conduct the public auctions is still in force.

13 What percentage of the country's power output comes from renewable power sources and does your jurisdiction have any specific targets or milestones for renewable energy projects?

According to the First Semester 2018 Clean Energy Progress Report prepared by SENER, electricity generation from Clean Energy reached 24.12 per cent (40,499.01GWh) of the total generation in Mexico. The first half of 2018 registered an increase in installed capacity of 11.84 per cent and clean energy generation of 27.71 per cent, compared to the first half of 2017.

By ratifying the Paris Agreement, Mexico acquired an international commitment to reduce its greenhouse gas emissions from the industrial sector. To this end, it incorporated into the Climate Change Law, as well as into the Energy Transition Law, goals consisting of at least 35 per cent of the energy generated in Mexico coming from clean energy sources by the year 2024 and reaching at least 50 per cent by 2030.

14 Is there a different regulatory regime for renewable energy projects? Are there any government programmes that foster the development of these projects?

There is no different regime for renewable energy projects under the current law. Nevertheless, the law has created mechanisms to foster the development of energy generation projects. For example, only clean energy generators may participate in the long-term auctions.

In addition, the Energy Reform created the CELs mechanism. As briefly described above, the CRE credits generators with one CEL for each MW/h of clean energy generated. Large-scale users must acquire certain amount of CELs each year. CELs can be freely traded through a platform operated by the CRE (S-CEL). The weighted average price of CELs is approximately US\$19–US\$23.

Due to the above, this mechanism incentivises the generation of clean energy (through the issuance of CELs) and disincentivises the consumption of non-clean energy, by increasing the cost of each MW/h.

In addition, the applicable law provides tax incentives for the construction of renewable projects, as described in the response to the following question.

15 Are there any tax incentives for power projects and, in particular, for renewable power projects?

The Income Tax Law provides for a 100 per cent deduction of investments in machinery and equipment for generation from renewable sources or from efficient electricity cogeneration systems. In this sense, any investment in solar panels or wind turbines, for example, is 100 per cent deductible for income tax purposes from the year in which it is made, complying with the corresponding requirements.

On the other hand, companies that generate energy can adhere to the Sector Promotion Programme (PROSEC) for Sector I (Electrical Industry). Under PROSEC, different machinery used for energy production may be imported with lower (or exempt) import tariffs than those that would apply without the PROSEC.

Additionally, according to the Federal Duties Law, the issuance or modification of a permit for the generation of energy based on renewable sources is exempt from the payment of duties. The amount to be paid for the issuance of permits for the generation of energy from conventional sources during 2019, ranges from US\$6,000 to US\$48,000, depending on the installed capacity of the project.

Moreover, projects are allowed to depreciate for tax purposes up to 100 per cent of the machinery and equipment acquired for the generation of renewable energy. This incentive is of application when the machinery and equipment are operated or used during a minimum of five years immediately following the year in which the deduction is claimed. If the project fails to use the machinery or equipment during at least five years, it must pay, if applicable, a tax on the difference between the amount depreciated in accordance with the accelerated depreciation option and the amount that should have been deducted in each year if the 100 per cent deduction had not been applied.

Finally, under the Mexican Income Tax Law, as a general rule the deduction of interest deriving from loans granted to Mexican entities by its foreign related parties is limited when the total amount of interest-bearing debts exceeds the stockholders' equity of the Mexican entity on a 3:1 ratio. This notwithstanding, debts assumed for, among others, the generation of electric power, are not considered for computing the excess amount of debt compared to the aforementioned 3:1 ratio and, thus, are not limited by thin capitalisation rules.

16 Are there any investment vehicles or structures that permit the maximisation of investment in a power company, such as tax equity, master limited partnerships, real estate investment trusts (REITs) or yield cost?

There are none.

17 Are there any governmental subsidies, benefits (other than tax-related) or incentives for investment in power projects and, in particular, renewable power projects?

As described above, the Energy Reform implemented mechanisms such as the CELs market and the public auctions, where renewable projects are benefitted.

18 Are there any capital controls or other regulations in your jurisdiction that prevent investors from repatriating investments in a power project?

No. There are no capital controls in Mexico that prevent investors from repatriating investments made in power projects.

19 Is there a market for emission reduction certificates or clean energy certificates in your jurisdiction?

As described above, the Energy Reform created a CELs market, that intends to foster the clean energy generation and to reduce the consumption of electricity from non-clean energy sources by increasing its cost.

To do so, CENACE submits monthly generation and consumption reports to CRE. Based on the reports, CRE credits to the clean energy generators a CEL for each MWh of clean energy generated in the corresponding period.

On the other hand, the large-scale users that are obligated participants under the law, must comply with the CEL Requirements (ie, the acquisition of CELs in a certain proportion, which is determined by SENER for each year, with respect to the total consumption of electric energy from sources that are not considered clean energies). By 2019, the CEL Requirements are 5.8 per cent of the total non-clean energy consumption of each loading point of the corresponding obligated participant. The CEL Requirements is published on an annual basis by SENER (as from 2018) and must be gradually increased.

This creates a market for CELs, which can be exchanged through contracts, in the CEL market or through annual settlements.

In the event that a party with the obligation to acquire CELs fails to comply with its obligation to do so, an administrative sanction may be imposed, consisting of a fine equivalent to between six and up to 50 Update Measure Units (approximately US\$4.30), for each MWh of non-compliance.

The price of the CEL is determined by the market, in which any public or private person may participate without the need to be a market participant. By the end of 2018, the average price per CEL was between US\$19 and US\$23. The more the CEL requirement increases, the greater the demand and, therefore, the average price per CEL.

20 Which renewable power sources have been most successful in your jurisdiction and what is the medium to long-term outlook for them?

According to the Clean Energy Progress Report issued by SENER for the first half of 2018, the most important renewable source is hydro with a 16.55 per cent of the total installed capacity in Mexico. Following hydro, the second source of renewable energy is wind, with 5.74 per cent of the total installed capacity.

The installed capacity of solar sources has drastically increased in the last years. In 2018 the solar installed capacity increased in 257.28 per cent with respect to 2017. Cogeneration increased in 64.47 per cent in the same period.

Provided that the new administration continues implementing and fostering the private investment in renewable energies, the trend, which began with the implementation of the Energy Reform, will continue, increasing the installed capacity of renewable energies.

21 Are there any non-regulatory factors that affect the development and financing of power projects in your jurisdiction, such as social, environmental, political or security concerns or rights of third parties?

As described above, infrastructure projects from the energy sector must comply with certain obligations on social matters. If SENER evaluates the social impact assessment and concludes that the construction of the power plant will potentially affect indigenous communities or social rights, then a prior consultation must be carried out.

The indigenous consultation process may take several months, since all parties involved (ie, the affected communities, governmental entities and the sponsor) must agree on the final terms and mitigation measures.

Due to the above, this process may affect the financing of the projects since, on the one hand, the construction of the project can only start once the indigenous consultation has concluded and, on the other hand, the mitigation and social measures may result extremely costly for the project.

22 Are subsurface rights separate from land rights? If so, what factors must a project take into consideration in determining whether an owner of subsurface rights could create issues for a project?

Under Mexican law, all subsurface rights belong to the Mexican Nation. However, they are not a factor that may affect the development of a project.

23 How are wheeling tariffs set and are there any differences based on the power source and technology used? Is there a postage-stamp wheeling tariff in your jurisdiction?

CRE is the body in charge of determining transmission and distribution tariffs. The transmission rates determined by the CRE for the period 2016–2018 consider the following:

The charge is made through the postage stamp modality (porteo estampilla), which is determined based on the injections or extractions made by users of the grid, weighted by the level of voltage, depending on whether the users are generators or users.

Due to the above, the rates are divided into two blocks according to the voltage level (voltage greater than or equal to 220kV and less than 220kV).

The generators will assume 30 per cent of the wheeling charges, while the users and consumers will be charged with the remaining 70 per cent.

24 Are there any open access rules for transmission? If so, how is access determined? Are there private transmission lines to which open-access rules don't apply?

As mentioned above, CENACE, as the operator must grant all generators (both state utilities and private companies) an open non-discriminatory access to the National Electricity Grid.

Open access means that any power plant or loading point attempting to connect to the grid will have the right to do so under conditions that are not unduly discriminatory, where technically feasible, and provided that CENACE's interconnection or connection requirements are fulfilled.

Non-discriminatory access implies that a party interested in connecting to the grid should be treated in the same way as any other party under the same conditions (ie, it should not be given priority in contracting, confirming or allocating interconnection capacity under criteria other than those provided in the applicable legal provisions).

25 Are cross-border power exchanges regulated?

Yes. Cross-border power exchanges are regulated in Mexico. These exchanges must be carried out through interconnection links for import and export of electricity.

The market participants may offer in the day-ahead market (Mercado del Día de Adelanto) the import and exports, to trade the electricity in the WEM. Power plants and loading points located outside Mexico, but interconnected to the National Electricity Grid, may be represented by market participants in the modality of Generator and Supplier, respectively, to carry out transactions in the WEM with other market participants.

CENACE will manage the imports and exports of electricity for the isolated supply (Abasto Aislado) to maintain the balance of electricity.

26 Are merchant power projects financeable in your jurisdiction?

Yes. Financing has been secured with the participation of development banks, as commercial banks are reluctant to undertake alone this risk until there is not more historical data and transactions of this type to be able to analyse them and make forecasts.

27 What are the biggest obstacles in obtaining debt financing for renewable power projects?

Given that income from energy projects comes from PPAs, the biggest obstacle in obtaining financing for the development thereof, is to secure a solid power purchase agreement with off-takers that have sufficient financial capacity to comply with its payment obligations for the term of validity of the PPA.

28 What are currently the most significant obstacles to the growth of the electricity market in your jurisdiction?

The new federal administration has been reluctant towards renewable energy sources and the participation of private investors in the electric industry. According to public statements, the SENER intends to take back the control of the activities of the electric industry, through the CFE, to guarantee Mexican "energy sovereignty". In order to do so, SENER has instructed CENACE to cancel the 2018 public auction to award long-term auction PPAs and it is highly likely that CENACE will not call further public auctions. In addition, in April 2019, CFE bought about 4.9 million tons of coal to generate electricity in its power plants.

So far, this administration has not changed or amended the legal framework of the electricity industry that was enacted under the Energy Reform. Moreover, the PRODESEN (published by the SENER under the new administration), provides that the open and non-discriminatory access to the grid will continue in force. Also, the PRODESEN sets forth that the regulations shall guarantee a free, competitive market under fairness and equal conditions among private participants and state utilities. Furthermore, this programme includes, as a priority action, the increase in the installed capacity of renewable sources.

In conclusion, the actions and public statements do not entirely coincide with the PRODESEN and with the current applicable law. This causes an environment of uncertainty that might affect the private investors and participants of the electric industry in Mexico.

29 What are the biggest growth areas in the electricity market in your jurisdiction?

In our experience, energy generation through renewable sources is the area that is growing the most in the electricity market in Mexico. This resulted from the fostering of renewable energy projects that derived from the Energy Reform and the implementation of an open market.

30 Please describe any recent trends observed in your jurisdiction affecting the structuring of investments and financings in power projects.

There are two. As mentioned already, the open market is formed by mainly two types of markets: merchant projects and long and middle-term PPAs, each facing a different obstacle.

Regarding merchant projects, both sponsors and financing institutions are yet struggling to undertake the risk of the market being new, and thus not having enough historical data to base their forecasts on or anticipate the way the market will behave.

As for long and middle term PPAs, the focus of sponsors was on CENACE's auctions. However, the new federal government has decided to put the brake to the energy market that resulted from the Energy Reform. In the electricity sector, this resulted in the cancellation of the public auctions carried out by CENACE for the sale of electricity, power and CELs, as mentioned above. Private generators have now to find mechanisms to make their projects bankable, while also economically attractive. In our view, bankability is strongly dependant on the creditworthiness of the off-takers or having a corporate PPA to hedge the risk. However, most highly creditworthy off-takers and large off-takers are already committed to a PPA, mainly from grandfathered projects. Thus, generators are struggling with setting up structures where second-rate or smaller off-takers are acceptable to the financing institutions. These structures include engaging directly with the off-takers, when they are qualified users that can participate in the market, or engaging indirectly when qualified users are not market participants, and thus, a supplier must act as a broker. In the latter case, generators are struggling with finding suppliers that are deemed creditworthy in order to make the structure bankable, as well as with devising a security structure where the banks feel comfortable enough.

31 How actively involved are foreign and local development banks and multilateral agencies in the financing of power projects in your jurisdiction? Are there any non-traditional sources of financing available to project sponsors?

The electric industry market in Mexico does not limit or restrict foreign investment. Therefore, it is highly common that foreign development banks and international agencies participate in the financing of power projects.

Regarding non-traditional sources, project bonds are becoming more common.

32 Are debt offerings on the capital markets becoming a more common tool in your jurisdiction to refinance construction financing?

Yes, as mentioned above, project bonds are becoming more common mostly to cross-border offering, which allow sponsors to tap the international markets and to obtain more attractive interest rates.

33 Are power purchase agreements in your jurisdiction denominated in local currency or US dollars?

They are denominated in both, local and US currency, even in long-term auction PPAs. This may be dependant on whether the financing of the project is secured in MX pesos or in US dollars, although ultimately, it can also be affected by commercial reasons such as the agreement with the off-takers or the financing structure of the project.

34 Are there regulatory limitations on foreign investment in, or control of, electric generation, transmission or distribution assets?

There is no regulatory limitation on foreign investment or control of electric generation assets. However, as per a constitutional level provision, the public services of transmission and distribution as well as the planning of the National Electricity Grid are reserved to the Mexican Government. The state, through the CFE, is the exclusive owner and controller of the National Transmission Grid and the General Distribution Grids, as well as any electrical substation that is part of the National Electricity Grid. Notwithstanding, the Mexican government and CFE are allowed to enter into contracts (awarded through public procurement processes) for private parties to provide, as subcontractors, the public services of transmission and distribution.

35 How active in your jurisdiction is the M&A market for power assets?

Highly active; we would say 50/50 when compared to financings. Also, it is common and many transactions include a first stage of M&A and a second stage of financing.

36 What are the most common dispute resolution mechanisms under local law-governed power purchase agreements in your jurisdiction?

The most common dispute resolution mechanism under PPAs entered in Mexico, is arbitration; this is even present in the long-term auction PPAs, that were awarded by CENACE in the public auctions. A number of PPAs include an additional dispute resolution mechanism consisting of an independent expert regarding disputes related to technical matters.

Mexican courts tend to present an administrative backlog and, hence, a judicial process may take several months. In addition, due to the technical and specific nature of laws and regulations in the electricity industry, parties wish to avoid risking that their case is analysed by a judge who does not have sufficient expertise and technical knowledge to resolve a dispute derived from a PPA.



Horacio M De Uriarte

Mijares, Angoitia, Cortés y Fuentes SC

Horacio focuses his practice on the legal and regulatory aspects of energy and infrastructure projects. He has participated in natural gas pipelines, LNG terminals, conventional power plants, wind energy, photovoltaic and toll road projects. As well, he has advised both lenders and borrowers in project finance facilities.

Horacio is considered one of the five leading lawyers in energy and natural resources practice area in Mexico by *Chambers and Partners*. His practice is recommended by clients that highlight his team's "enormous experience and ability to both identify and mitigate risks for clients in this area".

As part of his M&A experience, Horacio has participated in cross-border transactions in a wide variety of sectors, including transactions in highly regulated industries such as the infrastructure and energy industries.



Aisha Calderón

Mijares, Angoitia, Cortés y Fuentes SC

Aisha joined our Mijares, Angoitia, Cortés y Fuentes in 2010, where she works in the energy practice group, focusing on electricity and environmental matters.

She has participated in multiple renewable energy projects, including wind farms, solar farms and hydro-electric power stations, from their development, financing, start-up and to their operation, and especially with regards to permit-related matters, project agreements and power purchase agreements. She has wide experience advising electricity firms in connection with their day-to-day operations and their participation in the Wholesale Electricity Market.

She has also collaborated in several mergers and acquisitions, bond and securities issuance transactions, and project finance transactions, among others, with regards to their energy, environmental, real estate and regulatory aspects.



Enrique Fajer

Mijares, Angoitia, Cortés y Fuentes SC

Enrique has been part of the energy practice group since 2013, when he joined Mijares, Angoitia, Cortés y Fuentes.

Enrique has broad experience in the energy sector, particularly in Mexico's electrical industry and its complex regulation. He has advised several clients in numerous consultations related to the regulation applicable to electric power projects and, especially, with consultations related to the operation of the Wholesale Electricity Market and secondary markets. He has

experience in infrastructure public auction processes, as well as in CENACE's long-term auctions.

Enrique has specialised in providing legal advice in the development of renewable energy projects, including obtaining governmental authorisations and in the negotiation of power purchase, supply and construction agreements. Additionally, he has collaborated in several project finance transactions, advising both lenders and developers.

MIJARES ANGOITIA CORTES Y FUENTES

Clients come to our firm to find solutions for highly complex business operations and critical legal challenges. We have earned their loyalty by exceeding their expectations and take great satisfaction in seeing them thrive.

Building on a strong legacy of 25 years of forward-thinking, we know exactly where we want to go and are building a firm that embraces change and finds opportunities in today's challenging legal markets.

Firmly embedded in Mexico's business community, our lawyers understand and anticipate client needs and the context of every case or transaction.

Our team

Based in Mexico City, our firm consists of a fully integrated and fast-growing team of business lawyers, accountants and professionals offering a wide range of legal services. Our team is comprised of 15 partners, three of counsel and over 90 qualified professionals.

Global reach

A significant part of our business has a cross-border element to it, and the firm's international connections are key to its success.

We maintain privileged relationships with top-tier domestic and international law firms in the world's most important markets and financial centres.

In addition, our firm is a founding member of Affinitas, a closely knitted team of top tier law firms in the countries of the Pacific Alliance.

Furthermore, our firm is the exclusive member of Taxand in Mexico, the world's largest independent tax organisation with more than 400 tax partners and over 2,000 tax advisers in 48 countries.

Javier Barros Sierra 540,
4th Floor,
Santa Fe,
Park Plaza I,
Álvaro Obregón Delegation,
CP 01210,
Mexico City.
Tel: +52 (55) 5201-7400
Fax: + 52 (55) 5520-1065

Horacio M De Uriarte
hdueriarte@macf.com.mx

Aisha Calderón
acalderon@macf.com.mx

Enrique Fajer
esfajer@macf.com.mx

www.macf.com.mx/