

Energy Industry Group Newsletter



New preliminary draft to limit modifications and transfers of electricity generation permits

On October 5th, 2020, the Energy Regulatory Commission ("CRE") once again submitted before the National Commission for Regulatory Improvement ("CONAMER") a draft of the Agreement that modifies the General Administrative Provisions that established the terms to request an authorization for the modification or transfer of permits for the generation of electricity or electricity supply, contained in resolution number RES/390/2017 (the "Preliminary Draft").

Currently, the Preliminary Draft is available for comments from the general public on the CONAMER website, which can be accessed [here](#) (in Spanish):

The Preliminary Draft replaces and modifies the different one sent by CRE to CONAMER in February 2020, which gave rise to file number 65/0006/130220.

From the Preliminary Draft, the following stands out:

- » The Ninth General Provision, section I, subsection e), numeral i), which allowed the modification of permits granted pursuant to the LSPEE, for the purpose of including new members as self-supplied partners, different from those previously authorized in the permit, is repealed.
- » Modification of permits granted pursuant to the

LSPEE, on persons authorized as beneficiaries of electricity for load centers that have entered into a supply contract under the Electricity Industry Law ("LIE") is prohibited.

- » In the case of permits granted under the LSPEE, in the event of a merger or spin-off of self-supplied partners, new load centers may not be included.
- » Modification of generation permits will be prohibited in the case of registration of load centers that have entered into a basic supply contract under the LIE.

According to the Preliminary Draft Considerations, the main justification for carrying out the modifications that concern us is that if the generation permits continue to be modified, the nature and purpose of the permits granted pursuant to the LSPEE would continue to be distorted, in accordance with the provisions of the "Request for Information" of the Federal Electricity Commission of October 2019.

Notwithstanding that the Preliminary Draft indicates that the foregoing would not affect acquired rights, if it is approved, multiple rights would be affected, mainly in the case of requests for modification of permits that have already been submitted to the CRE and that to

the date has not been resolved by said Commission.

If the Preliminary Draft is published in the Federal Official Gazette or if it starts being applied, it may impact different participants in the electricity industry, and especially for those who participate or intend to participate in generation permits in the form of self-supply and cogeneration granted under the LSPEE.

It is relevant to consider that companies affected by the fact that the CRE has not resolved any request of modification of permits, as well as those who suffer damages due to the application of the Preliminary Draft (if approved and published), may be able to file an amparo lawsuit that allows them to safeguard their rights. That is, both generators and consumer partners, as well as end users who were already seeking alternatives for electricity supply through said legacy generation schemes, are able to file this kind of amparo lawsuits.

Finally, it should be noted that when submitting this Preliminary Draft, the CRE included the request for exemption from the Regulatory Impact Analysis thereof, establishing that the proposed regulation would not generate additional compliance costs to the pre-existing ones, a situation that shall be analyzed and qualified by CONAMER.

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