SME on the disappearance of the Energy Regulatory Commission

On 1 September this year, the LXVI Legislature of the Congress of the Union was installed in Ordinary Session. The ruling coalition "Seguimos Haciendo Historia" ('Let's Keep Making History'), which promotes the Fourth Transformation (4T), made up of the Morena, Green Ecologist and Labour parties, has a qualified majority of more than two thirds of the Chamber of Deputies, which will allow them to approve the 20 constitutional reform initiatives of outgoing President Andrés Manuel López Obrador (AMLO), which he colloquially christened "Plan C". This new correlation of forces in parliament is the result of the resounding electoral victory of the ruling coalition in the federal elections of 2 June, which resulted in the election of Dr. Claudia Sheinbaum, who, as of 1 October, will be the first female President of Mexico in 200 years of republican life.

In the context of the approval of "Plan C", the Constitutional Points Commission of the Chamber of Deputies has already issued a ruling in favour of the constitutional reform that would eliminate seven autonomous bodies, including the Energy Regulatory Commission (CRE).

The CRE was created in 1993 by the former neoliberal president Carlos Salinas de Gortari in order to operate the deregulation and liberalisation of the electricity sector by encouraging indiscriminate investment by national and foreign private capital.

This Commission played a key role in the privatisation of the sector. Its function was to grant generation permits to individuals in various modalities such as: Independent Power Production (IPP), cogeneration and self-supply, facilitating private participation in the electricity sector under perversely advantageous conditions. The Federal Electricity Commission (CFE), the public company in the sector, assumed most of the financial risk of private investments while, by buying energy in bulk from the corporations, it guaranteed high revenues for the private sector through long-term payment commitments at fixed prices, whether or not their electricity was sold.

After the imposition of Enrique Peña Nieto's privatisation reform in December 2013, the CRE expanded its functions and was charged with implementing the new wholesale electricity market, promoting electricity auctions and prioritising private investment focused on clean energy production.

Upon coming to power, AMLO proposed the recovery of Mexico's energy sovereignty by rescuing the sector's public companies, the CFE and Petróleos Mexicanos (PEMEX). During his mandate, he implemented administrative measures, public policies and enacted a new Electricity Industry Law (2021) with the aim of reversing the privatisation process of the sector, stopping the opening of the national electricity market and strengthening the presence of the CFE.

However, it was unable to legally consolidate this policy in the face of opposition from the judiciary, specifically the Supreme Court of Justice of the Nation, which invalidated its new Electricity Industry Law and granted amparo against it to the foreign corporations that challenged it in court.

So AMLO unsuccessfully attempted a constitutional reform that would give unassailable legality to his sectoral public policy through a nationalist constitutional reform. However, this was rejected by the Congress of the Union as it did not have a qualified majority. Hence, AMLO's "Plan C" consisted of winning not only the presidency of the Republic in 2024 with Dr. Claudia Sheinbaum, but also a qualified majority in Congress to pass his 20 constitutional reforms.

Today, the 4T has the optimal conditions to make these changes move forward. How far will it go? It remains to be seen, what is certain is that the ruling that eliminates the CRE, approved in Commissions, establishes:

Article 28, as amended, shall read as follows:

"The Federal Executive Branch, through the agency in charge of conducting the country's energy policy, will have powers to carry out technical and economic regulation, as well as the power to impose sanctions in energy and hydrocarbon matters, under the terms determined by law.

According to the opinion of the Constitutional Points Commission, the functions of the CRE will be assumed by the Ministry of Energy (SENER), as the head of the sector. The disappearance of this commission does not in itself cancel private investment in the energy sector; however, it strengthens the Mexican state's steering role in the sector.

AMLO proposed in his attempt at constitutional reform (2021) a scheme of public-private participation in electricity generation with state stewardship. 54% for the CFE and 46% for the private sector.

All indications are that the 4T under the new political conditions will be able, without reservations, to pass it as formulated by AMLO or even go further. Dr. Claudia Sheinbaum is expected to give a strong push to the energy transition to clean energy.

The disappearance of the CRE represents a hard blow to the neoliberals and their privatisation policies. There will be no turning back despite their now futile legal challenges, despite the scandalous media criticism from corporations and international capitalists who lament the end of the plundering of our country.

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Mexico City, 2 September 2024.