

Mexico – CRE Fixes Maximum LP Gas Prices After SENER Issues Emergency Guideline

By Francisco Mendez and Claudia Ramos

After a brief review before the Federal Regulatory Improvement Commission (Comisión Nacional de Mejora Regulatoria, "CONAMER"), on July 28, 2021, the Ministry of Energy (Secretaría de Energía, "SENER") published in the Federal Official Gazette (Diario Oficial de la Federación, "DOF") an Emergency Guideline for the Welfare of Liquefied Petroleum Gas Consumers (the "Guideline") urging the Energy Regulatory Commission (*Comisión Reguladora de Energía*, "CRE") to set a maximum price regulation for the sale of liquefied petroleum gas ("LP Gas") to end users.

In compliance with SENER's Guideline, the CRE approved the draft regulation during a special session on July 29, and on the same day, the resulting regulation A/024/2021 was published in the DOF (the "Regulation"). The Regulation establishes a methodology to calculate the maximum prices in sales to consumers. The Regulation will be in force for a period of six months and could be extended for six more. During this time, an infringing seller could lose their permit if they do not comply with using the current maximum price, which will be published weekly.

The Regulation lays out a methodology to fix the prices by considering the cost of the gas molecules, importation, transportation, storage and the return on the investment. The costs of transport and storage will vary according to the local data in 145 regions, in which the country will be divided. This division was previously used in 2017, before the liberalization of the LP Gas markets.

This is not the only measure being taken to control LP Gas prices. In fact, a few weeks ago, given the constant increase in the LP Gas prices, President Andrés Manuel López Obrador announced the creation of a subsidiary company of PEMEX called "*Gas Bienestar*" to sell LP Gas at affordable prices to Mexican low-income families. According to his declaration, the company should start operations within two months.

However, the Guideline and the Regulation do not contemplate that, in accordance with Article 86 of the Mexican Hydrocarbons Law, CRE lacks the power to issue a regulatory methodology on a maximum price for LP Gas without the Federal Economic Competition Commission (Comisión Federal de Competencia

Francisco Mendez

Houston
+1 713 238 2740

Mexico City
+52 55 9156 3700

[jmendez@mayerbrown.com](mailto:fmendez@mayerbrown.com)

Claudia Ramos

Mexico City
+52 55 9156 3668

cramos@mayerbrown.com

Economica “COFECE”) first having a determination that there would be no effective conditions for competition in the sector; this has not happened.¹

In this regard, on May 31, 2021, COFECE published in the DOF an extract of the announcement by which the COFECE initiated an investigation *ex officio* in order to determine whether there are effective competition conditions in the distribution of LP Gas not linked to the system of nationwide pipelines. The investigation is being carried out under file number DC-001-2021, and it is not expected to conclude until the end of 2021. This situation was [publicly communicated](#) by COFECE itself, which exhorted the CRE to respect the current regulations.

Previously, during the fiscal years of 2017 to 2019, the National Congress established in the Federal Revenue Law (“LIF”) the CRE’s power to provisionally regulate the price of LP Gas to the public as a temporary measure. Meanwhile, COFECE determines the procedure for declaring effective competition conditions. However, the CRE price-fixing power was not included in the 2020 LIF, which means that the executive branch must wait for COFECE to conclude the process for the declaration of effective competition conditions.

We expect that the Guideline and the Regulation will follow the fate of most of the regulations published by the current administration in the energy sector; the private sector will likely initiate a legal battle to seek to have such regulations overruled.

Endnote

¹ Article 86 of the Hydrocarbons Law establishes that the CRE may issue general rules regarding the considerations, prices and rates in the hydrocarbons sector with the exception of the public sale of LP Gas, gasoline and diesel. In addition, the CRE or the permit holders can request that COFECE evaluate the existence of effective competition conditions and, if appropriate, issue the corresponding declaration, which could ultimately lead to a regulation of a maximum price.

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