



MEXICO'S THIRD AUCTION: STRONG MARKET RESPONSE TO THE NEW REGIME

On November 22, 2017, CENACE (the Mexican National Energy Control Center), announced the winners of its third auction for long-term power purchase agreements (PPAs) for clean energy production. 16 projects (out of 46), won tenders for the sale of electricity, capacity and clean energy certificates (CECs), with an emphasis on solar (55.35% of electricity) and wind projects (46.65% of electricity), and with an average bid price of USD20.57 per MWh.¹

In this auction, the Mexican Government introduced a regime intended to modernize the Mexican energy market. Under the new regime, the PPAs awarded in each auction will be administered by a clearinghouse, which will be the counterparty to each PPA and act as an intermediary between a group of offtakers and a group of generators. In addition to collecting all payments from the offtakers, the clearinghouse will also (i) administer the so-called "safety nets" – guarantees provided by the offtakers to backstop their payment obligations (cash collateral, performance bonds and a reserve fund)- and (ii) have the ability to conduct bids to replace any defaulting offtaker.

Below are some of the key features of this new regime and the new form of PPA:

- **PPAs Portfolio – Shared Risk Philosophy.** Unlike the first two auctions, where CFE Suministrador acted as the sole offtaker, the third auction contemplates a pool of various offtakers (Comisión Federal de Electricidad Suministro Básico (CFE Suministrador), Iberdrola Clientes and

Menkent (CEMEX)) who will ratably share the risk of non-performance by all generators of the third auction portfolio. Those generators, on the other hand, will ratably share the risk of payment default by all offtakers of the same portfolio.

For the PPAs awarded during the third auction, CFE Suministrador will offtake more than 90% of the products awarded. Potential financiers should consider, however, that CFE Suministrador has the ability to assign, without the developers' prior consents, all of its rights and obligations under its PPAs to any other offtaker of the portfolio and to any other offtaker that is an "*Entidad Responsable de Carga.*"

- **Risk Mitigants for Generator's – "Safety Nets".** The new regime introduced some new features which aim to mitigate the risk of having a pool of offtakers different from CFE Suministrador. The new form of PPA requires each offtaker to provide (i) a payment guarantee to backstop a portion of its payment obligations based on such offtaker's short-term exposure, which is determined based on such offtaker's creditworthiness and

(ii) to fund a reserve account based on its long-term exposure, which is determined pursuant to a formula. On a daily basis, the clearinghouse will assess the short-term and long-term exposure of each offtaker, and any increase in such exposure will result in an increase in the collateral required to be provided by such offtaker.

The foregoing regime does not apply, however, to CFE Suministrador, which is only required to provide the same performance bonds that it was required to provide in the first two auctions.²

- **Termination Regime and Replacement of Defaulting Offtakers.** The termination regime has been adjusted and tailored to the new structure. Under the new termination regime, the clearinghouse is entitled to replace any defaulting offtaker (other than CFE Suministrador) and, if a replacement offtaker is selected, the defaulting offtakers will be required to pay a contractual penalty which will be passed through to the generators. For CFE Suministrador, the termination regime set forth in the previous two auctions remains the same.³

¹ See Appendix 1 for the full list of companies awarded as generators in the third auction.

² For further information with respect to the performance bonds required to be delivered by CFE Suministrador, see: (i) "First Power Auction under Mexico's New Power Regime: Cautious Optimism for International Investors" and (ii) "Mexico's Second Auction: PPA Features and Bankability Considerations".

³ For further information with respect to the termination trust required to be established, see the following briefings (i) "First Power Auction under Mexico's New Power Regime: Cautious Optimism for International Investors" and (ii) "Mexico's Second Auction: PPA Features and Bankability Considerations".

- **CFE no longer joint and several.**
Finally, one of the most noteworthy changes included in the new PPA is

that CFE will no longer be jointly and severally liable with CFE Suministrador. Potential financiers will need to give

particular consideration to this issue given the weight of CFE Suministrador in the third auction portfolio.

Appendix 1

Companies Awarded as Generators during the Third Auction

	Name of Generator	Type of Power	CELS	Electricity (MWh)	Capacity (MWh)
1.	X-Elio Energy	Solar	483,727	435,354	10
2.	Neoen	Solar	770,864	616,692	—
3.	Compañía de Electricidad los Ramones	CCGT	—	—	500
4.	Canadian Solar	Solar	247,220	206,017	—
5.	Canadian Solar	Solar	265,095	235,640	—
6.	Canadian Solar	Solar	252,511	210,426	—
7.	Engie	Wind	391,805	362,935	31
8.	Engie	Solar	302,332	280,055	—
9.	Engie	Solar	524,997	486,313	—
10.	Engie	Solar	434,486	379,603	—
11.	Enel	Wind	373,016	373,017	—
12.	Enel	Wind	357,031	357,032	—
13.	Enel	Wind	510,680	510,680	—
14.	Enel	Wind	848,883	848,883	—
15.	Mitsui & Trina Solar	Solar	189,928	189,928	—
16.	Energia Renovable del Istmo	Wind	—	--	52

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