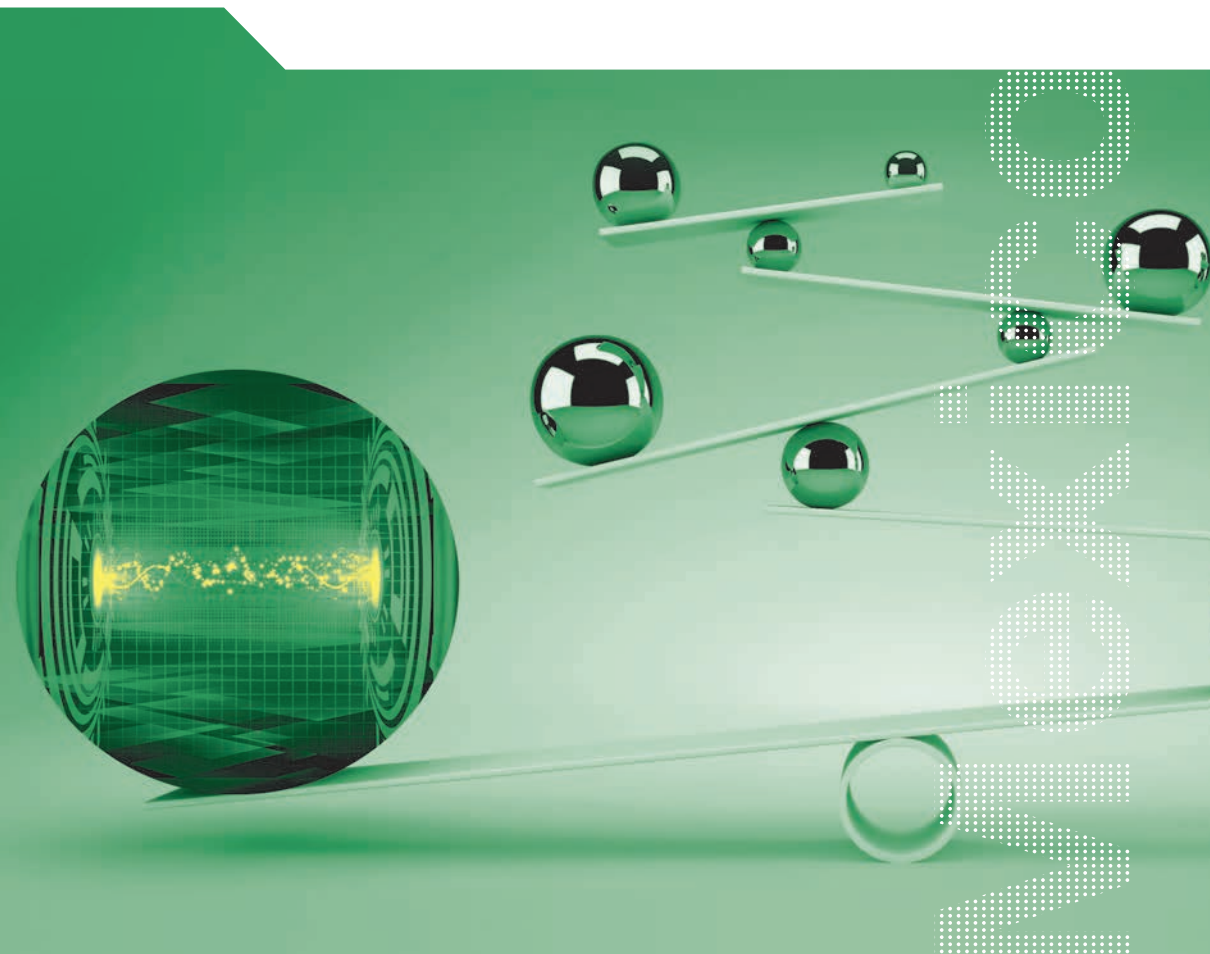




The Governance of Regulators

# Driving Performance at Mexico's Energy Regulatory Commission





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## *Foreword*

Regulators help ensure access to and quality of public utilities, facilitate investment and protect market neutrality. Good internal and external governance of regulators is crucial to ensure that they fulfil these functions and perform effectively. Internal governance includes organisational structures, behaviour, accountability, business processes, reporting and performance management, while external governance entails the roles, relationships and distribution of powers and responsibilities with other government and non-government institutions. The OECD has developed an innovative framework that supports good external and internal governance by helping regulators assess functions, practices and behaviour, and identify drivers of performance.

The framework has been applied to the regulatory governance of Mexico's energy sector at a critical moment, following a structural reform launched in 2013 that has opened up the energy sector and overhauled the roles and functions of its regulatory institutions. This review focuses on the internal governance of Mexico's Agency for Safety, Energy and Environment (ASEA) and has been conducted in parallel to the reviews of the National Hydrocarbons Commission (CNH) and the Energy Regulatory Commission (CRE). The review follows a review of the external governance of the energy sector (*Driving Performance of Mexico's Energy Regulators*), released in January 2017. That review noted the need to enhance institutions and processes that, upstream, strengthen role clarity, co-ordination and planning in a new and complex institutional context, and, downstream, instate accountability for agreed objectives and results. Taken together, these four reviews constitute a comprehensive body of work on the good regulatory governance of Mexico's energy sector. They identify synergies, joint solutions and the building blocks of an ecosystem for the good regulatory governance of a key economic sector.

This review finds that it is critical to enhance internal governance systems across the three regulators to ensure that they are fully equipped to support the implementation of the energy reform. It puts forth a series of recommendations to activate an integrated system of energy regulators and support organisational change within ASEA and the other regulators. These

include the creation of an Energy Regulators Group (ERG) to implement joint work, co-ordinate, and share information. The ERG could support a co-ordinated collective review of financial sources and needs beyond 2019, and establish an integrated energy regulators' career service, including staff exchanges and shared recruitment mechanisms, and a joint risk management register. There are also opportunities for synergies in ICT and online platforms, for example for data submission by regulated entities, as well as in harmonising and co-ordinating indicators related to core activities.

Synergies and joint actions need to build on specific reforms within each regulator. The review finds that the CRE has successfully realigned its organisation and processes to respond to a number of demands related to the implementation of the energy reform. As implementation of the reform unfolds and matures, the review recommends putting greater emphasis on strategic planning to facilitate the delivery of short- and long-term objectives. The review also recommends that CRE put in place processes to align the organisation with the delivery of these strategic objectives, including processes that enable it to measure and communicate progress in meeting strategic objectives to key stakeholders over time.

This report is part of the OECD work programme on the governance of regulators and regulatory policy led by the OECD Network of Economic Regulators and the OECD Regulatory Policy Committee with the support of the Regulatory Policy Division of the OECD Directorate of Public Governance. The Directorate's mission is to help government at all levels design and implement strategic, evidence-based and innovative policies. The goal is to support countries in building better government systems and implementing policies at both national and regional level that lead to sustainable economic and social development.

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## *Table of contents*

<b>Executive summary</b> .....	11
<b>Assessment and recommendations</b> .....	15
<i>Chapter 1. Methodology</i> .....	49
Analytical framework.....	50
Performance indicators.....	53
Approach.....	53
References.....	56
<i>Chapter 2. Sector context</i> .....	57
Institutions.....	58
Institutional and regulatory reform of the energy sector.....	62
References.....	69
<i>Chapter 3. Internal governance of the energy regulatory commission</i> .....	71
Role and objectives.....	72
Input.....	89
Process.....	96
Output and outcome.....	108
References.....	110

## Tables

1.1. Criteria for assessing regulators' own performance framework .....	52
3.1. CRE's workforce profile as at March 2017.....	94
3.2. CRE's staff training for the period 2014-16 (MXN).....	95

## Figures

1. CRE's expenditure for the period 2012 to 2016 (MXN million).....	24
2. CRE's workforce for the period 2012 to 2016 .....	24
3. Input-process-output-outcome framework for performance indicators.....	45
1.1. The OECD's Best Practice Principles on the Governance of Regulators .	52
1.2. Input-process-output-outcome framework for performance indicators....	55
2.1. Timeline for the implementation of the energy reform .....	66
2.2. Areas of influence and legal status of energy sector institutional actors, post-2013 .....	68
3.1. CRE's jurisdiction in the hydrocarbons and electricity sectors.....	73
3.2. Summary of CRE's regulatory programme for hydrocarbons .....	85
3.3. CRE's expenditure for the period 2012 to 2016 (MXN million) .....	92
3.4. CRE's total, professional and supporting workforce for the period 2012 to 2016.....	93
3.5. CRE's internal structure .....	101
3.6. CRE's internal process for developing regulation.....	105

## Acronyms and abbreviations

<b>ASEA</b>	Agency for Safety, Energy and Environment ( <i>Agencia de Seguridad, Energía y Ambiente</i> )
<b>CCSE</b>	Co-ordination Council for the Energy Sector ( <i>Consejo de coordinación del Sector Energético, CCSE</i> )
<b>CEL</b>	Clean Energy Certificate ( <i>Certificado de Energía Limpia</i> )
<b>CIDE</b>	Centre for research and teaching in economics, (Centro de Investigación y Docencia Económicas)
<b>CENACE</b>	National Center for the Control of Energy ( <i>Centro Nacional de Control de Energía</i> )
<b>CENAGAS</b>	National Centre for Natural Gas Control ( <i>Centro Nacional de Control del Gas Natural</i> )
<b>CFE</b>	Federal Electricity Commission ( <i>Comisión Federal de Electricidad</i> )
<b>CNH</b>	National Hydrocarbons Commission ( <i>Comisión Nacional de Hidrocarburos</i> )
<b>CNIH</b>	National Centre for Hydrocarbon Information ( <i>Centro Nacional de Información de Hidrocarburos</i> )
<b>CNMC</b>	National Commission of Markets and Competition ( <i>Comisión Nacional de los Mercados y la Competencia</i> )
<b>COFECE</b>	Federal Economic Competition Commission ( <i>Comisión Federal de Competencia Económica</i> )
<b>COFEMER</b>	Federal Commission for Regulatory Improvement ( <i>Comisión Federal de Mejora Regulatoria</i> )
<b>CRE</b>	Energy Regulatory Commission ( <i>Comisión Reguladora de Energía</i> )
<b>DFO</b>	Official Gazette ( <i>Diario Oficial de la Federación</i> )
<b>ERG</b>	Energy Regulators’ Group
<b>ERCS</b>	Integrated Energy Regulators’ Career Service

<b>FMP</b>	Petroleum Fund for Stabilisation and Development of Mexico ( <i>Fondo Mexicano del Petróleo para la Estabilización y Desarrollo</i> )
<b>LFPA</b>	Federal Law of Administrative Procedure ( <i>Ley Federal de Procedimiento Administrativo</i> )
<b>LORCME</b>	Law of the Coordinated Energy Regulators ( <i>Ley de los Órganos Reguladores Coordinados en Materia Energética</i> )
<b>MIR</b>	Performance evaluation matrix ( <i>Matriz de Indicadores para Resultados</i> )
<b>MXN</b>	Mexican Peso
<b>NEB</b>	National Energy Board (Canada)
<b>OFGEM</b>	Office of Gas and Electricity Markets
<b>OIC</b>	Internal Audit Office ( <i>Órgano Interno de Control</i> )
<b>PEMEX</b>	Mexican Petroleum ( <i>Petróleos Mexicanos</i> )
<b>PROFECO</b>	Federal Consumer Protection Agency ( <i>Procuraduría Federal del Consumidor</i> )
<b>RIA</b>	Regulatory Impact Assessment
<b>SE</b>	Ministry of Economy ( <i>Secretaría de Economía</i> )
<b>SEMARNAT</b>	Ministry of the Environment and Natural Resources ( <i>Secretaría de Medio Ambiente y Recursos Naturales</i> )
<b>SEMS</b>	Safety and Environmental Management Systems
<b>SENER</b>	Ministry of Energy ( <i>Secretaría de Energía</i> )
<b>SFP</b>	Ministry of Public Administration ( <i>Secretaría de la Función Pública</i> )
<b>SHCP</b>	Ministry of Finance and Public Credit ( <i>Secretaría de Hacienda y Crédito Público</i> )
<b>SIRETRAC</b>	Statistical Record of Commercial Transactions System ( <i>Sistema del Registro Estadístico de Transacciones Comerciales</i> )
<b>SCJN</b>	Supreme Court of Justice of the Nation ( <i>Suprema Corte de Justicia de la Nación</i> )
<b>STPS</b>	Ministry of Labour and Social Affairs ( <i>Secretaría de Trabajo y Previsión Social</i> )
<b>WICS</b>	Water Industry Commission for Scotland

## Executive summary

Mexico's Energy Regulatory Commission (CRE) is responsible for regulating the mid-stream and downstream elements of hydrocarbon markets, as well as the entire electricity value chain. While CRE is primarily an economic regulator, it also has regulatory responsibility for issuing and ensuring compliance with permits and determining quality and measurement standards.

Following the energy reform that substantially increased CRE's responsibilities, CRE has been able to swiftly realign its organisation and processes to focus on implementing key aspects of the reform. In focusing on implementation, CRE has not placed sufficient emphasis on internal processes such as planning and resources and performance management. It is paramount that the regulator addresses these challenges to ensure its effective working over the long-term. The CRE should also take advantage of the synergies and joint solutions offered by the establishment of an integrated energy regulators' system with the two other regulators overseeing the energy sector, the Agency for Safety, Energy and Environment (ASEA) and the National Hydrocarbon Commission (CNH).

### Role and objectives of the regulator

The energy reform created additional regulatory responsibilities for CRE in hydrocarbons and electricity. The reform also provided CRE with a new status as a co-ordinated energy regulator with technical, operational and managerial autonomy and the ability to generate income to carry out its regulatory responsibilities.

Fully occupied with implementing the reform, CRE has not yet developed a strategic plan. Greater emphasis will need to be placed on setting and implementing strategic objectives, while pursuing the implementation of the reform. This is particularly important given the recent decision to bring forward the liberalisation of the downstream gasoline and diesel markets, which is dependent on co-ordination among CRE, the Ministry of Finance and Public Credit (SCHP), the Federal Economic Competition Commission (COFECE) and the Federal Consumer Protection Agency (PROFECO).

### ***Key recommendations***

- Create an Energy Regulators' Group, a collegial body that would bring together the three agencies to implement joint work, share information and facilitate co-ordination.
- Ensure that the three agencies, including CRE, have in place three to five-year operational plans for achieving their long-term strategic objectives.
- Establish a formal co-ordination mechanism among SHCP, COFECE, CRE and PROFECO.

### **Input**

CRE's financial and human resources have increased substantially over a short period of time. Despite a 163% increase in staff between 2012 and 2016, CRE has not yet established job descriptions setting out the specific professional and technical requirements for each position within CRE.

The Energy Reform also envisages that CRE transition towards financial independence with the implementation of a funding model based on recovering costs through fees levied on industry. A Trust Fund has been established to enable excess funds from one year to be kept to cover future spending needs. However, the implementation of this funding model does not appear to have provided CRE with increased financial autonomy in practice, as in addition to a cap set out in legislation, the amount of funds collected from fees that is transferred into the Trust Fund is decided on a yearly basis by the SHCP.

### ***Key recommendations***

- Bring the energy regulators together to collectively review financial resources and needs, establish an integrated energy regulators' career service (ERCS), mutualise digital resources and develop data-analytical capacity.
- Strengthen the recruitment process and incentives to retain personnel.
- Reward staff reporting on internal and external risks.

## Process

CRE's decision-making body is its Governing Council, which is composed of seven Commissioners (CRE currently has six), one of whom serves as the President Commissioner. All meetings of the Governing Council are publicly broadcast. Meetings between Commissioners and industry are held at CRE's premises with at least two Commissioners present, and are recorded.

Commissioners also participate in the development of regulation in Commissioner working groups, which were established to distribute the workload associated with implementing the reform. Separate working groups were established on electricity, natural gas and petroleum. Furthermore, Commissioners also work directly with staff in the development of specific regulation.

The regulation that CRE develops is subject to the Federal Commission for Regulatory Improvement (COFEMER) process, which requires CRE to prepare regulatory impact analyses and submit regulation to a public consultation process. While CRE has a Regulatory Performance Evaluation Committee that is tasked with reviewing its regulation, it has not yet developed processes for the *ex post* review of regulation (these processes are currently being developed). However, CRE does review its regulatory approach, and is currently in the process of reviewing its approach to tariff regulation and making it consistent across hydrocarbon markets.

### ***Key recommendations***

- Create a joint risk management strategy for the energy sector as well as aligned processes to improve regulatory quality, such as a harmonised framework for systematic stakeholder engagement.
- Assess and review internal governance arrangements in light of changes to agency objectives and activities brought about by the Energy Reform.
- Put in place arrangements to allow the Governing Council to focus on CRE's strategy and the delivery of the long-term goals in CRE's operational plan.
- Consider whether the tariff-setting processes should be opened to public consultation, and whether sufficient consultation is taking place for processes under other regulations that CRE has already issued.

## Output and outcome

CRE collects a large amount of data from the regulated industry in order to carry out its regulatory responsibilities, some of which include making information available to the public (such as information on gasoline and diesel prices). This data could be useful for assessing how CRE performs. However, in the absence of an operational plan and strategic objectives, CRE does not yet have a framework for measuring its performance. CRE is accountable to Congress, and does prepare an annual report, but it does not have a regular obligation to report on its performance.

### *Key recommendations*

- Set organisational performance indicators, when possible in collaboration with the other energy regulators, and regularly report on these to the CCSE.
- Set organisational performance indicators to measure and track the agency's effectiveness in implementing the strategic goals and activities in the operational plan.



## Assessment and recommendations

This assessment focuses on the internal governance arrangements of the Energy Regulatory Commission (*Comisión Reguladora de Energía*, CRE). It is the result of a review of the agency led in parallel with reviews of Mexico's National Hydrocarbons Commission (*Comisión Nacional de Hidrocarburos*, CNH) and the Agency for Safety, Energy and Environment (*Agencia de Seguridad, Energía y Ambiente*, ASEA). The assessment and recommendations on the external governance of the three agencies are presented in *Driving Performance of Mexico's Energy Regulators* (OECD, 2017), focusing on co-ordination and relations with other federal actors and sector stakeholders. The internal governance reviews of CNH and ASEA are presented in separate reports.

The review of the internal governance of the three regulatory agencies has highlighted a number of common challenges and opportunities for synergies and joint solutions through the establishment of an integrated energy regulators' system, in addition to actions specific to each regulatory agency. Building on these synergies, shared challenges and joint solutions between the three regulators of Mexico's energy sector, the recommendations are structured as follows: first, recommendations for the integrated energy regulators' system that are common to CRE, CNH and ASEA, and second, recommendations that are specific to CRE.

### Role and objectives of the regulator

**CRE was initially responsible for regulating private sector involvement in hydrocarbon and electricity markets.** CRE was established in 1993 with the objective of regulating new private investment (through permits which determine the scope of technical and economic regulation) in electricity generation in the context alongside the vertically integrated state-owned electricity provider, Federal Electricity Commission (*Comisión Federal de Electricidad*, CFE). Since 1993, CRE's roles and functions gradually expanded to include the regulation of gas transportation, distribution and storage facilities alongside those operated by Mexican Petroleum (*Petróleos Mexicanos*, PEMEX), also a state-owned vertically

integrated provider of hydrocarbons (oil, petroleum products, LPG, and Natural Gas). CRE also had the responsibility of determining prices for first hand sales (FHS) of the natural and liquid petroleum gas sold by PEMEX within Mexico.

**Changes to the Mexican Constitution in December 2013 and the passage of a number of laws in August 2014 (the Energy Reform) made wide ranging reforms to Mexico’s energy markets and substantially increased CRE’s regulatory responsibilities.** The Energy Reform sought to open up markets that were previously the domain of CFE and PEMEX to competition, and as a result substantially increased CRE’s responsibilities. In hydrocarbons, CRE is responsible for issuing new permits and determining tariffs for parts of the supply chain that were previously self-regulated by PEMEX, providing access to PEMEX’s infrastructure, and transitioning hydrocarbon markets through a process of liberalisation. It was also provided with the responsibility of determining the official Mexican standards regarding fuel quality and measurement. In electricity, CRE received the responsibility to issue new permits, develop regulation, determine electricity tariffs including for CFE’s electricity network and the new independent system operator, to monitor the wholesale electricity market, and design a clean energy certificate (*Certificado de Energía Limpia*, CEL) system.

**CRE has swiftly realigned its organisation and processes to focus on implementing the Energy Reform.** CRE went through an initial phase of establishing internal procedures and approaches to operating which resulted in CRE issuing a regulation that set out its internal organisational structure (*Reglamento Interno*, Internal Statute). CRE also established advisory councils through which it could consult with industry, government and experts on the development of regulation. Since the implementation of the Energy Reform, the number of permits that CRE has issued and is responsible for administering has increased substantially from 1,159 to 21,183 (as at February 2017). Amongst other things, it has issued regulations required to implement the Energy Reform, set quality standards for petroleum, established the rules for clean energy certificates, made decisions on electricity distribution and transmission network and independent ISO tariffs, designed and implemented the electricity grid code, and taken up responsibility for monitoring the electricity wholesale market.

**CRE’s heavy workload will continue with the Mexican Government’s decision to accelerate the liberalisation of Mexico gasoline and diesel markets from the beginning of 2017 to 2018.** One of CRE’s new responsibilities arising from the Energy Reform was to liberalise Mexico’s downstream gasoline and diesel markets by 2018, facilitating the introduction of competition throughout the value chain that was previously entirely owned and operated by PEMEX. Legislation was passed (the annual

Revenue Law Initiative) in late 2016 that moved this requirement forward to the beginning of 2017. As a result, CRE has needed to quickly realign its resources internally to prioritise this part of the Energy Reform.

**The liberalisation of gasoline and diesel markets envisages close co-ordination between three government agencies to monitor the state of competition and tailor the regulatory arrangements accordingly.** The process for the progressive liberalisation of gasoline and diesel prices in geographic regions in Mexico, administered jointly involvement of the Ministry of Finance (SHCP) (responsible for setting maximum prices for gasoline and diesel for regions not yet liberalised or where prices changes do not reflect competed market conditions); the Federal Economic Competition Commission (COFECE) (in investigating whether conditions for competition are insufficient and should be re-regulated); CRE (in setting the calendar for public price liberalisation, conducting open season processes to provide access to PEMEX's storage and transportation infrastructure, and managing a product price information system to track prices in each geographic area); and the Federal Consumer Protection Agency (*Procuraduría Federal del Consumidor*, PROFECO) (in ensuring that service stations are providing consumers with full gallons of gasoline and diesel).

**CRE has made substantial inroads in implementing the Energy Reform, but this emphasis on implementation has meant that it has not been able to place sufficient emphasis on strategic planning.** CRE has an internal planning and evaluation unit (UPE) that is responsible for planning and performance assessment. CRE plans and manages its work programme using its "Regulatory Program" which is a comprehensive list of all of the decisions that the UPE expects to be put to the Governing Council for a vote that year. However, CRE has not yet gone through a process of reflecting on the new expanded mandate that it has as a result of the reform to define a strategic plan including medium and long-term goals. It has also yet to put in place procedures to evaluate CRE's performance and gauge the impact of its decision making on the sectors that it regulates or to link its strategic planning to funding and resources.

**CRE has transitioned from operating as a de-concentrated organisation linked to the Energy Ministry to being an agency provided with Ministerial level autonomy, and now has the opportunity to focus on putting into place practices that will consolidate becoming an independent regulator.** The Energy Reforms also included the Law of the Coordinated Energy Regulators (*Ley de los Órganos Reguladores Coordinados en Materia Energética*, LORCME), that provides for both CRE and CNH to have technical, operational and managerial autonomy, and also the ability to generate income to deliver their roles and functions. Within this autonomy CRE co-ordinates with SENER and other bodies

responsible for implementing the Energy Reform through the Coordination Council for the Energy Sector (*Consejo de coordinación del Sector Energético*, CCSE) in regards to energy policy.

**As set out in *Being an Independent Regulator* (OECD, 2016), institutional design alone does not make a regulator independent, it needs to be translated into practice throughout the life of the regulatory agency.** In particular, regulators need to have the capacity and capability to effectively and actively engage with all stakeholders, including ministries (who develop policy), governments (that approve policies and evaluate their performance), regulated industry (which needs to comply with the regulator’s decisions), and citizens (who are the ultimate beneficiaries of the actions of governments and regulators). They must also have robust internal processes for decision making.

This involves the implementation of the operational plan, translating it into practice, linking it to internal planning, budgeting and HR practices, developing indicators of the effectiveness of the implementation of the operational plan that can be communicated to key stakeholders (executive, legislative, industry and the public) to evidence the robustness of regulatory delivery, sector performance and the effectiveness of regulatory policy. All of this is supported by the capability of the agency to put in place processes to ensure that it has the staff and budget needed to have the capacity to deliver independently and without external interference.

### ***Proposed recommendations for the integrated energy regulators’ system***

- ***Set up the Energy Regulators’ Group (ERG) – a collegial body that brings together the three energy regulators for the purpose of implementing joint work, co-ordination and information sharing in the area of governance of the agencies.*** The ERG would be created and its agenda would be set by the three regulatory agencies of the energy sector. Its work would be supported by working groups as necessary (e.g. a working group to set up a shared human resource policy and mechanisms, to align sector Key Performance Indicators (KPIs), or to align and simplify licensing procedures), which could be dissolved once the assigned task is delivered. The presidency of the ERG could rotate between the three agencies, with each regulator responsible for ensuring the secretariat of the committee during their “mandate”. This mechanism, under the ownership of the regulators, would be an essential tool for the correct functioning of the integrated energy regulators’ system.

- **Ensure that the three agencies have in place three to five-year operational plans, including budget and resources, to achieve their long-term strategic objectives.** The plans should consider sequencing and phasing activities in line with formal obligations, and include milestones and budget information. This plan should be developed internally, involving the leadership team (agency heads, commissioners, heads of units) and staff, in workshops that could be facilitated by an external expert. The operational plans could be shared with other federal entities through the Co-ordination Council for the Energy Sector (Consejo de Coordinación del Sector Energético, CCSE).
- **Conduct a mid-term review of the operational plans based on the experience of the first years of implementation.** These reviews could be conducted by the regulatory agencies themselves with external support as necessary. The reviews could be used to identify any necessary modifications to the current operational plan as well as to assess the relevance and alignment of the agencies’ mandated roles and objectives.

**Box 1. Management committees and periodicity of reporting mechanisms at the National Energy Board of Canada and the Water Industry Commission for Scotland**

The National Energy Board of Canada has set up a number of internal committees that deal with different management issues and adapt their meeting and reporting schedules to the themes and issues covered, as presented in the following table:

Name	Chair	Participants	Meeting cadence	Intent	Benefit
Senior Management Committee (SMC)	COO	COO, EVPs, CFO, Chief of Staff and Secretary	A short stand-up most days; a longer, agenda-driven meeting bi-weekly	Prioritise issue resolution approach for the day and raise new strategic issues, ensure issues are being addressed and that the NEB is aligned in its approach to those issues.	<ul style="list-style-type: none"> <li>• Prioritised issue resolution approach for the day</li> <li>• Greater transparency and alignment across the NEB</li> <li>• Provide advice &amp; recommendations to CEO/DH</li> </ul>
Senior Management Committee Plus (SMC+)	COO	COO, EVPs, CFO, Chief of Staff & Secretary PLUS VPs, PLs, AGCs	Ad hoc basis	To provide clear direction, consistent messaging and align actions toward achieving the Strategic Outcome & Core Responsibilities.	<ul style="list-style-type: none"> <li>• Greater transparency and alignment across the NEB</li> <li>• Provide advice &amp; recommendations to CEO/DH</li> </ul>

**Box 1. Management committees and periodicity of reporting mechanisms at the National Energy Board of Canada and the Water Industry Commission for Scotland (cont.)**

<b>Name</b>	<b>Chair</b>	<b>Participants</b>	<b>Meeting cadence</b>	<b>Intent</b>	<b>Benefit</b>
Resource Management Committee (RMC)	CFO	CFO, EVPs, VPs, AGCs and Secretary	Monthly or more frequently as needed (ad hoc)	To discuss and plan BU financial and human resource allocations and provide opportunity to discuss constraints and needs. Provide COO with information to decide how to manage NEB resources.	<ul style="list-style-type: none"> <li>• Greater transparency and alignment across the NEB</li> <li>• Provide advice and recommendations to COO</li> </ul>
Data Management Committee (DMC)	CFO	CFO, EVPs, Director Regulatory Information & Analysis	Monthly or more frequently as needed (ad hoc)	Responsible for the strategy, rules, policies, procedures, roles and responsibilities that guide overall management of the NEB's data; provides the guidance to ensure that data is accurate and consistently captured, complete, available and secure; provides advice on technical data requirements and capabilities of the NEB; and identifies and escalates risks and resolutions related to system functionality and data activities.	<ul style="list-style-type: none"> <li>• Ensures the standardisation and consistency of NEB data collection, storage and management supporting the availability and usage by all internal and external stakeholders.</li> <li>• Provide advice and recommendations to COO</li> </ul>
Chair Board Business Committee	Chair of the Board	Chair of the Board, COO, EVP Law, Secretary	Weekly	Determine the agenda for the weekly and quarterly Board Member meetings.	<ul style="list-style-type: none"> <li>• Ensure materials presented to the BMs are sufficiently prepared, researched and appropriate for presentation.</li> </ul>

**Box 1. Management committees and periodicity of reporting mechanisms at the National Energy Board of Canada and the Water Industry Commission for Scotland (cont.)**

Name	Chair	Participants	Meeting cadence	Intent	Benefit
Executive Management Committee (EMC)	A VP on a rotational basis	All VPs, AGCs, Assistant Secretary	Bi-weekly	A forum for Business Unit Management to share information and best practices, co-ordinate activities, and identify/manage issues of strategic importance.	<ul style="list-style-type: none"> <li>Honest exchange of ideas and consideration of different perspectives to allow individual VPs to incorporate an enterprise-first perspective into decisions.</li> <li>EMC is not a decision- or recommendation-making body</li> </ul>

To ensure flexibility and responsiveness of reporting, the Water Industry Commission for Scotland (WICS) has also introduced differentiated reporting timeframes depending on the nature of the activity; administration of the non-household retail market is under constant review as actions may be taken quickly, financial reporting is done monthly, an update to members of the WICS is done every two weeks, and monthly meetings are held with Scottish Water and other stakeholders.

*Source:* Information provided by the Water Industry Commission for Scotland and the National Energy Board of Canada, February 2017.

***Proposed recommendations for CRE:***

- ***Develop annual plans to implement the operational plan.*** CRE's UPE should develop annual plans that set out the activities that CRE intends to undertake in that year in order to implement the medium and long-term goals which are set out in the operational plan. CRE should also put into place arrangements to ensure that the work plans of its units are aligned with these annual plans.

**Box 2. OFGEM's corporate strategy and annual forward work programme**

OFGEM's corporate strategy, in light of its statutory duties sets out, amongst other things, its mission, its outcomes, the approach it will take to regulation to deliver these objectives, and its priority activities for making a difference to consumers (OFGEM 2014). It has also separately published regulatory stances, which are principles that it had regard to in developing policy within the confines of its statutory duties (OFGEM 2016a). These regulatory stances are:

### Box 2. OFGEM’s corporate strategy and annual forward work programme (*cont.*)

- Promoting effective competition to deliver for consumers
- Driving value in monopoly activities through competition and incentive regulation
- Supporting innovation in technologies, systems and business models
- Managing risk for efficient and sustainable energy
- Protecting the interests of consumers in vulnerable situations.

In the context of its corporate strategy, OFGEM establishes an annual forward work programme. OFGEM initially publishes a draft forward work programme, and then seeks submissions on this work programme, which it then considers in finalising the forward work programme (for example, OFGEM’s draft Forward Work Programme for 2017-18 was released for consultation on 19 December 2016, with submissions due on 15 February 2017, and the final work programme was due to be released in March 2017 (OFGEM, 2016b).

The draft forward work programme for 2017-18 sets out key initiatives, within which the draft forward work programme identifies specific pieces of work which OFGEM considers will deliver the greatest benefit to consumers given its resources. The initiatives in OFGEM’s draft forward work programme for 2017-18 are (OFGEM 2016b):

- Enabling a better functioning retail market
- Facilitating the energy transition
- Learning from the first RIIO framework and setting RIIO-2 up for success
- Introducing competition in monopoly areas
- Becoming an authoritative source of quality analysis.

The Forward Work Programme also sets out OFGEM’s budget for the period, and includes regulatory and e-serve performance indicators and deliverables for each of the pieces of work under the initiatives.

*Source:* OFGEM (2014), “Our Strategy”, [https://www.ofgem.gov.uk/sites/default/files/docs/2014/12/corporate\\_strategy\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2014/12/corporate_strategy_0.pdf) (accessed 4 April 2017); OFGEM (2016a), “OFGEM’s regulatory stances”, <https://www.ofgem.gov.uk/publications-and-updates/ofgems-regulatory-stances> (accessed 4 April 2017), OFGEM (2016), “Forward Work Programme 2017-18”, [https://www.ofgem.gov.uk/system/files/docs/2016/12/draft\\_forward\\_work\\_programme\\_2017-18.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/12/draft_forward_work_programme_2017-18.pdf) (accessed 4 April 2017).

- ***Communicate CRE’s progress in delivering its annual plan.*** While the UPE develops, updates and circulates the current Regulatory Program to senior staff and the Governing Council, the Regulatory Program does not include all of CRE’s activities and is not linked to CRE’s annual plan. The UPE should consider revising the



Regulatory Program so that it is comprehensive and reflects all of the activities it intends to undertake in order to deliver the annual plan (and as a result incorporates all of CRE's activities). Regular updates on CRE's progress in implementing its operational plan could be made publically available, and discussed at CRE's existing Advisory Council to provide stakeholders with guidance on CRE's delivery of its operational plan. There should also be a process for reprioritising if additional work comes in or if unexpected events occur.

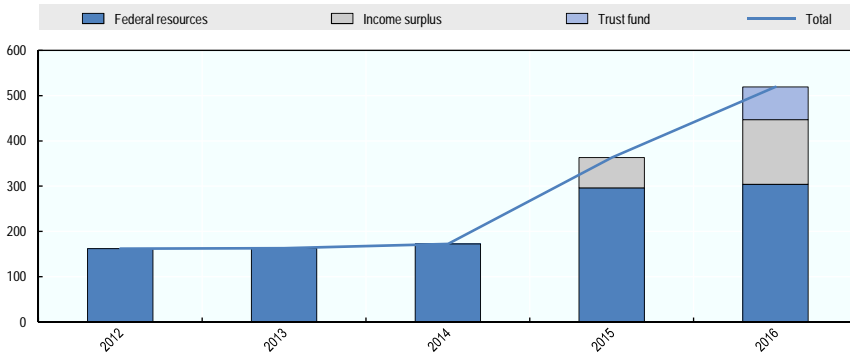
- ***Establish a formal co-ordination mechanism between SHCP, COFECE, CRE and PROFECO to support the successful implementation of the liberalisation of Mexico's downstream gasoline and diesel markets.*** CRE is responsible for providing information to each of these agencies, and a formal co-ordination mechanism would facilitate joint planning of the process and establishment of information sharing protocols for the exchange of information. This would facilitate the timely transfer of information, for example where price information collected by CRE indicates that there is market conduct that needs to be investigated. This could be established in a similar manner to the way in which CRE established its current agreement with PROFECO for sharing responsibility for addressing electricity complaints between the agencies.

## Input

**Commensurate with the substantial increase in functions and responsibilities from the Energy Reform, CRE's financial and human resources have increased significantly over a short period of time.** As Figure 1 shows, CRE's total budget increased by 221% between 2012 and 2016, with the sharpest increase occurring between 2014 and 2016 (201%). As shown in Figure 2 CRE's workforce has also increased substantially by 163% over the period, with a 119% per cent increase between 2014 and 2016.

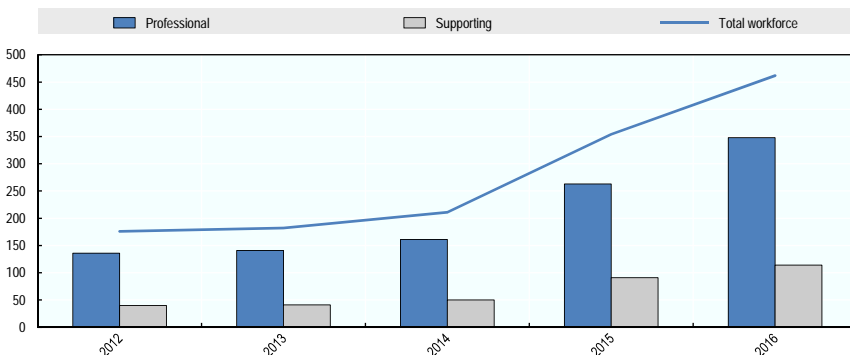
**As a result of these increases, CRE is progressively approaching the level of resourcing that it estimates it needs to implement the Energy Reform and carry out its on-going functions.** CRE estimated that it would require 650 staff to carry out the reform, and the current number of staff approved by SHCP is 500. As at January 2017, CRE has 452 staff.

Figure 1. CRE's expenditure for the period 2012 to 2016 (MXN million)



Source: Information provided by CRE.

Figure 2. CRE's workforce for the period 2012 to 2016



Source: Information provided by CRE

**CRE is moving toward being funded entirely from fees and duties collected from industry by 2019.** In addition to the technical, operational and managerial autonomy provided for in the LORCME, it also includes budgetary provisions that set out that the co-ordinated energy agencies can collect revenue from regulated businesses to perform their functions, and that revenue collected in excess of their budget would be placed into a Trust Fund up to a limit of three times the annual budget of the regulatory agency (additional revenues would be transferred to the Federal Treasury).

**De jure, the Energy Reform has provided CRE with a degree of financial autonomy.** However the implementation of this new funding model has not fully achieved this outcome in practice. The Ministry of Finance (SHCP) collects CRE's income from fees and duties, and splits this income between the Federal Government, CRE's operational expenses and

the Trust Fund (rather than allowing the Trust Fund to build up to the cap with any additional resources then being transferred to the Federal government). While income from fees and duties in 2016 was MXN 1 036 million, in 2016 CRE received less than this. In fact CRE received MXN 447 million (from Federal revenues, fees and duties), with an additional MXN 200 million allocated to the Trust Fund. In addition, the balance of CRE's Trust Fund in 2016 was MXN 441.1 million, substantially below the cap provided for in the LORCME (around MXN 1 100 million, based on CRE's 2016 budget).

**CRE's internal procedures for putting together budget proposals for SHCP are not yet linked to CRE's unit of planning and evaluation.** In particular, CRE's approach to developing its annual budget proposal involves the internal finance unit working directly with the individual units within CRE to determine what their budgetary needs are in the following budget period. This is then developed by the finance unit as the starting point of the budget proposal that is sent to SHCP. In the absence of an operational or strategic plan, these budget proposals are also currently not linked to CRE's medium and long-term goals and objectives.

**CRE has been provided with large numbers of temporary positions to enable it to deliver its mandate.** While CRE has increased its staff quickly, it has done so without established recruitment procedures or having established its regulatory career service. In October 2016, CRE was granted 142 positions by the SHCP, and during the period between 16 October and 1 November 2016, CRE filled 116 of these positions. CRE's current process for staff recruitment involves advertising vacancies through informal partnerships with universities which advertise on their websites. While this is a good initiative in itself, there needs to be a more comprehensive process based on an assessment of the skills and experience needed by the organisation now and in the future. Vacancies are not published on the federal government job database because CRE has not yet established its Regulatory Service Career System. The selection process does not involve a selection panel, but there are interviews with heads of units and direct supervisor.

**While CRE is facing competition for its staff from the private and public sector, there appear to be opportunities to improve staff retention by providing further non-salary incentives.** CRE does not have a particular strategy for recruiting and retaining talent, it does however seek to provide competitive salaries within the confines of the government salary scales. It also finds it challenging to attract specific expertise, and is currently looking for professionals that have the skills and experience required conduct tariff setting among other activities.

### ***Proposed recommendations for the Integrated Energy Regulators' System***

- ***Strengthen internal management practices to ensure that they are effectively used to align resources with the roles, objectives and deliverables of an integrated energy regulators' system beyond the current federal government requirement.*** The three regulators are subject to the financial management and planning requirements of the federal government. These requirements include obligations to develop indicators to track budget execution and reporting on risks. These requirements are welcome and useful. The three regulatory agencies can further enhance their internal systems to ensure that these reporting obligations become effective management tools. This could include the development of an internal set of indicators to track the use of resources to meet objectives beyond those reported to the SHCP. This could provide the basis for developing a result-based budget system (when it makes sense and it is feasible) which more clearly links objectives, resource needs and budget allocations.
- ***Reward staff reporting on internal and external risks.*** Federal requirements also extend to internal reporting on risks. As recommended below, regulators should go beyond this requirement to embed risk management in their operations. An internal culture of sound risk management should also translate into soft and hard incentives to report on emerging and possible risks within each agency and in the relation of each agency with the regulated sector. This could include rewarding staff (rather than punishing them) for reporting internal and external risks, and the development of a strategy to support a risk management culture.
- ***Conduct a co-ordinated collective review of financial sources and needs beyond 2019.*** An integrated energy regulators' system can provide unique opportunities to identify overall funding needs over the medium to long-term. The objective should be to clearly link missions and activities, related costs and revenue sources, based on a cost recovery mechanism. The three regulators should assess current and future sources of funding in a co-ordinated fashion to identify:
  - **needs over the long-term**, for example over a three to five-year planning horizon, also identifying possible synergies for collective funding sources if relevant (for example, through the National Information Centre on Hydrocarbons/CNIH that could serve as a platform for sharing critical information with industry against a fee-for-service that would recover the costs of the platform);

- **cumulative costs for the regulated entities** of the fees and duties that regulated entities would need to pay, i.e. revenue sources outside the federal budget, to optimise revenue sources and minimise burden on the regulated sector;
- **a streamlined Trust Fund management system**, in co-ordination with the SHCP, to ensure that Trust Funds (already in place for CNH and CRE, and foreseen for ASEA) provides adequate and timely cash flows to finance the operational and investment needs of the three regulatory agencies. The Trust Fund management system might require redesigning the inflow and outflow mechanisms of the Trust Fund to align it with the budgetary requirements of the three regulators and the costs that the regulators need to meet to carry out their missions and activities. As a stopgap, there could be the need to ensure that the three regulators can borrow short-term to meet financial requirements before they can access Trust Fund resources if they become fully funded through their own resources. A streamlined Trust Fund management system should also include a review of the relevance and feasibility of the current cap on the Trust Fund in view of the agencies becoming fully financially autonomous. The management of the Trust Fund should be adequately resourced with appropriate expertise and supported by adequate regulation if it is to become the main conduit for the regulators’ funding.
- ***Establish an integrated energy regulators’ career service (ERCS).*** There are significant opportunities to develop an integrated ERCS common to the three regulators, which can be greater than the sum of its parts. The proposed ERCS would provide opportunities to attract and retain talent more easily by offering opportunities for mobility and career development across the three agencies. It would also facilitate the sharing of knowledge, experience and skills across the three regulators (and more easily fill temporary needs for certain skills and requirements in one of the regulators, for instance). It would equally create economies of scale for the establishment of common systems like workforce planning, competency frameworks, graduate programmes and the like. Each regulator would retain control on recruitment decisions, performance assessment and the identification of specific competencies and skills. The ERCS could include:
  - Common mechanisms/procedures for advertising positions
  - That all new starts attend a week-long technical regulation course

- A common set of regulatory skills to be identified jointly by the three regulators (in addition to those specific to each agency)
- Opportunities for joint induction programmes for new recruits (for example on regulatory skills)
- A common graduate recruitment system with exchanges across regulators
- Common gender and diversity policy across the regulators
- Comparable career systems to facilitate movement across the three agencies
- Common salary scales.

### Box 3. Recruitment processes at Spain’s National Authority for Market and Competition

First introduced to hire junior technical positions in December 2016 after several years of “hiring freeze,” the selection process at Spain’s National Authority for Markets and Competition (*Comisión Nacional de los Mercados y la Competencia*, CNMC) follows the principles of transparency, merit and non-discrimination. The principles and steps of the process are published in Spain’s Official Gazette as well as in the CNMC’s and the Spanish Public Administration.

For technical positions, three different profiles are defined: scientific-technical, legal, and economic. The selection process consists of two phases:

- In phase one, applicants have to pass:
  - Tests aimed at measuring: general capabilities (verbal, abstract and numeric reasoning), level of English and basic knowledge of regulation and competition principles. Applicants have to pass each one of these tests to move to the following exercise.
  - A practical written exercise followed by a public oral presentation. The practical exercise will be different for each one of the profiles defined. Applicants can obtain a maximum of 40 points in this exercise, and must get at least 20 to pass to phase two.
- In phase two, the curricula of the applicants are assessed:
  - University and specialised education: maximum of 18 points, considering grades earned in university studies, post grade studies, and other qualifications.
  - Professional experience: maximum of 12 points.
  - Personal interview: maximum of 10 points.

### Box 3. Recruitment processes at Spain’s National Authority for Market and Competition (*cont.*)

The selection process is under the responsibility of a selection board. The selection board is composed of six senior staff members of CNMC and includes experts in the different areas of knowledge.

All the phases of the process can be followed through CNMC’s website and applicants may challenge the final decision in courts if they consider that the process has not been developed according to the principles and procedures published in the Official Gazette.

Other recruitment processes in the CNMC, as well as internal promotions, are subject to the same principles of transparency, merit and non-discrimination. In the case of directors and heads of unit positions, the Council of the CNMC adopts the final decision.

*Source:* Information provided by the CNMC.

- ***Sequence the implementation of the energy regulators’ career service (ERCS) and develop internal capabilities for designing and implementing it.*** The ERCS does not need to be overly complicated or burdensome. In fact, if it is built relying on lean-management principles, it can comprise only a few relatively simple steps which can be augmented progressively, as needs evolve. A key priority should be the establishment of an open and transparent recruitment system with processes for advertising positions, screening applications, assessing candidates (for instance through assessment centres) and taking final recruitment decisions. Creating pools of qualified candidates from the recruitment processes would further increase efficiencies. Developing a competency framework would enhance the recruitment process through the prioritisation of skills needs as well as potential recruitment needs. It is also very important that diversity be addressed in recruitment. The absence of women, as well as of minorities, in the leadership team and at other levels in these organisations will hamper the results of the reform, given that important talent pools will not have been tapped.
- ***Ensure that the recruitment strategy emphasises diversity.*** If the regulators do not proactively tap into all talent pools, they are not likely to attract a diverse, vibrant and competitive workforce.
- ***Mutualise digital resources and develop data analytical capability.*** Digitalisation provides significant opportunities to deliver on priorities and actions quicker and simpler, but it requires internal capabilities to develop and manage digital processes. Also on digitalisation, there are opportunities to mutualise some of the

capabilities of the three regulators by, for example, developing common (and compatible) solutions and potentially having a shared group of IT specialists and relying on off-the-shelf solutions. IT expertise should be complemented by capacity for using digitalisation to read and manage data in order to facilitate the delivery of core activities (and truly make digitalisation a means to an end).

### *Proposed recommendations for CRE:*

- ***Strengthen the recruitment process and incentives to retain personnel.*** Develop a competitive recruitment process able to attract and retain staff, building on the recommended regulatory service career system, including a prospective number of future job posts needed and periodic performance evaluations alongside promotion procedures. Senior management positions should be advertised publicly and assessed through the use of independent evaluation panels and the use of assessment centres to attract diverse talent with different experiences. Include in the strategy a dedicated recruitment process for young professionals and recent graduates, with clear career paths and opportunities for development, to diversify the recruitment sources alongside mid-career and senior officials with experience in the industry.

#### **Box 4. OFGEM’s graduate development programme**

OFGEM has a graduate programme (which is currently being conducted in conjunction with the UK water regulator, The Water Services Regulation Authority, OFWAT).

The graduate programme offers training on presentation skills, project management, and an introduction to OFGEM’s management development programme. Graduates are also provided with the opportunity to go on rotation in the different divisions within OFGEM.

Graduates are supported by a line manager and mentor. There are also graduate programme co-ordinators that meet with graduates on a monthly basis to gauge their progress in light of their objectives and assist them in identifying their development needs.

Graduates are provided with 18-month fixed-term contracts, after which permanent positions may be offered depending on their performance and the availability of positions.

*Source:* Information provided by OFGEM, OFGEM (2017), OFGEM graduate development programme, <https://www.ofgem.gov.uk/careers/ofgem-graduate-development-programme> (accessed 4 April 2017).



- ***Align the performance evaluation and development processes to the operational and annual plan.*** Linking performance evaluation and development processes to the operational plan would better align resources to the annual plan, and thus to CRE’s strategic objectives. Under such an approach, the performance and rewarding of staff would be linked to the extent to which they contributed to CRE achieving the activities in the annual plan, and consequently to CRE achieving its medium and long-term objectives. For example, in light of CRE’s role in facilitating competition and addressing market power in electricity and hydrocarbons markets, this process could align staff to achieve these outcomes and reward them for effectively challenging regulated industry in carrying out their role.
- ***Align internal budgeting processes with the operational plan.*** The UPE should be brought into the annual budget determination process to ensure that it is aligned with CRE’s activities as set out in the annual plan. Linking the internal budgeting process to the unit of planning and evaluation and to the operational plan once it is developed will enable CRE to ensure that it has sufficient funding for the activities that it needs to undertake in order to achieve its medium term goals and deliver its operational plan.
- ***Conduct strategic workforce planning.*** Strategic workforce planning involves identifying the needs of the organisation in terms of numbers and skills in the medium-term consistent with the objectives that are sought to be achieved in the operational plan. This function could be undertaken by the finance and human resources unit, and it would also account for the capacity of the organisation to recruit, orient and train new staff, and use this information to inform the operational plan. This strategic workforce planning would then inform the discussions with SHCP about future resourcing needs, and could avoid bunching human resources together in a manner which poses a challenge for the organisation to absorb.
- ***Consider additional non-salary incentives to attract and retain staff and build internal capacity.*** Measures could include:
  - Staff exchanges with other economic regulators. For example, as CRE is currently seeking to obtain expertise in tariff setting, this expertise may be available within other economic regulators which are in the process of completing their regulatory price setting processes (with some economic regulators, tariff setting processes have regular timeframes). Such exchanges could also be a reward for well-performing staff to work in an area in

which CRE needs expertise, and bring that expertise back to implement at CRE at the end of the exchange period. The staff exchange programme at the CNMC is a good example of sharing expertise between regulators. This is set out in further detail in the OECD report on the internal governance of CNH.

- CRE should continue to pursue establishing arrangements to partner with the *Centro de Investigación y Docencia Económicas* (CIDE) to provide staff with access to the diploma in energy policy. CRE could consider extending assistance for other related qualifications in engineering, economics and law together in exchange for recipients to remain at CRE for a number of years after conducting their studies (recipients who leave early would need to repay a portion of the studies assistance provided).

#### **Box 5. Support for staff to complete further education at OFGEM**

OFGEM provides support for staff to complete further education. To seek support for further education, staff must develop a business case setting out the benefits to the staff member, their team and OFGEM's objectives. This application is then assessed by their manager in line with a number of factors, the final decision being made by the Managing Director / Partner. Relevant factors that managers consider when assessing an application include:

- The available budget
- Organisational priorities (e.g. if the organisation has a need for environmental experts, priority will be given to those courses)
- Relevance to current role or future aspirations
- Relevance to OFGEM's business
- Ability of the applicant to complete the course
- Ability of the applicant to manage their own workload.

Further education is not completely subsidised by OFGEM, and applicants are required to contribute to the cost of their course in proportion to the relevance of the individual's role and the wider benefit to the organisation. Beyond contributing to the cost of the course, OFGEM provides differing levels of support for exam fees, membership of professional bodies, course materials, and relevant computer software costs. It also provides study leave in accordance with the type of qualification and to attend exams.

However, support for further education is provided on the basis that the employee continues to work at OFGEM for a period of two years following completion of their study. Employees that leave before this period are required to repay costs for course above 3 000 GBP on the basis of a sliding scale. This sliding scale provides for staff to repay:

### Box 5. Support for staff to complete further education at OFGEM (*cont.*)

- 100% of the cost paid to date if they leave during the course
- 75% of the cost paid to date if they leave within one year of completing the course; and
- 50% of the cost paid to date if their leave within two years of completing the course.

Additionally, staff who receive support are required to provide a presentation on their studies to their team annually. Further, OFGEM seeks to reward staff that transfer the knowledge they have obtained through further studies that add value to their role or the team by providing scope for their manager to consider nominating them for advancement within their salary band.

*Source:* Information provided by OFGEM.

- Flexible working hour systems that enable staff a degree of flexibility to better align their work hours with their personal responsibilities.

### Box 6. Flexible working arrangements at the CNMC

The work schedule at the CNMC is established by resolution of its president, in accordance with general provisions for Spanish administration. The present regulation provides a large degree of flexibility that is highly appreciated by the staff.

General rules are as follows:

- Working hours: 37.5 per week.
- Of which 27.5 hours per week must be worked from 9:00 to 14:30 hours, from Monday to Friday (mandatory presence time).
- The remaining 10 hours per week can be worked, at the personal election of the staff, at any time from 7:30 to 9:00 and from 14:30 to 19:00 hours, also from Monday to Friday (flexible presence time).
- Summer schedule: from 16 June to 15 September the working schedule is of 32.5 hours per week, respecting in any case the mandatory presence time.

Further measures for personal and professional life conciliation include:

- People with children under 12 years or other family responsibilities (such as being in charge of elderly persons) are entitled to reduce the mandatory presence time 1 hour per day (increasing therefore the flexible presence time).

**Box 6. Flexible working arrangements at the CNMC (cont.)**

- In some specific cases (being in charge or persons with disabilities) flexibility increases by 2 hours per day.
- For directive staff and some specific positions general rules do not apply and the degree of flexibility is lower.

This flexible work schedule is highly appreciated by CNMC staff, and around 25% of them (namely parents with children under 12) benefit from the additional conciliation measures.

Furthermore, in 2015 and 2016 a pilot teleworking programme was conducted. This pilot programme allows participant staff to work part time from home (three days per week at CNMC premises and two days at home). Its results are still under assessment.

*Source:* Information provided by the CNMC.

- In addition to engaging external consultants to complete parts of projects, they could also be engaged to transfer their skills to staff at CRE. For example, while CRE engaged external expertise to assist with its first electricity distribution tariff process, they could have also been engaged to transfer knowledge to CRE staff, particularly given that CRE will need to move from making tariff determinations for electricity in this transitory period to establishing the regulatory approach that will apply on an on-going basis thereafter.

## Process

### *Decision-making processes*

**The Governing Council is responsible for CRE’s decision making, and is composed of seven Commissioners (CRE currently has six), one of which serves as the President Commissioner.** Commissioners are nominated by the President of Mexico and the decision to appoint is made by the Senate. In particular, the President of Mexico nominates a shortlist of candidates to the Senate, who then votes for the candidates after testing them at a Senate hearing. Commissioners have seven-year terms which can be extended once. CRE does not have a CEO, and this role is in effect taken by the President Commissioner. Amongst other things, the role of the President Commissioner is set out in the LORCME and includes implementing the resolutions made by the Governing Council, implementing and monitoring the implementation of internal policies, proposing the appointment of the Executive Secretary, appointing CRE’s staff (aside from the personal staff of the other Commissioners), formulating CRE’s budget and reporting on CRE’s performance.

**CRE has also made use of working groups to distribute the workload associated with implementing the Energy Reform.** The LORCME provides for CRE to establish Commissioner working groups, and it has made use of Commissioner working groups to assist with the delivery of CRE's workload. For example, to implement the Energy Reform, CRE created Commissioner working groups on Electricity, Natural Gas and on Petroleum.

**Commissioners also take a more direct role in the delivery of specific projects or programmes of work.** In addition to working groups, Commissioners also participate in the development of regulation according to their interest in these issues, in conjunction with staff. Staff keep Commissioners up to date on these projects as they are developed, and Commissioners can keep up to date on the progress of projects by requesting an information note from the Executive Secretary, or by requesting meetings with staff directly. Once finalised, this Commissioner submits the regulation to the Governing Council for decision.

### *Accountability and transparency*

**The LORCME imposes a number of transparency conditions on the operation of CRE's Governing Council.** In particular all meetings of the Governing Council are broadcast on the Internet (aside for when confidential information is discussed), and Commissioners are restricted from taking part in decision making where they have a conflict of interest. Further, all meetings between Commissioners and industry must be held at CRE's offices, at least two Commissioners must be present, a meeting record must be prepared and the meeting must be recorded. Beyond these transparency conditions, the LORCME includes pre and post-employment restrictions on Commissioners, and requires that CRE establish its own code of conduct.

**While CRE prepares its own annual report, there is no on-going obligation for CRE to report its performance to Congress.** This is in contrast to the Energy Minister, who has an annual obligation to report to Congress after SENER has developed its annual report to explain SENER's activities during the year. However, CRE's President Commissioner can be requested to appear before Congress to provide information on its activities at any time. CRE can be audited by two government audit bodies — the Superior Audit Office that reports directly to Congress, as well as the Ministry of Public Administration that reports to the President of Mexico. In addition, CRE has its own internal audit office that has powers to inspect and audit CRE's staff.

### *Internal organisational management*

**CRE's organisational structure is set out in regulation known as the Internal Statute.** In addition to setting out the role of the Governing Council, President Commissioner and Executive Secretary, the Internal Statute also defines each of the units and divisions within CRE, and provides the heads of those divisions and units with specific responsibilities.

**CRE is currently in the process of restructuring internally as it has recently approved a new Internal Statute.** CRE sought to consolidate its internal statute to align the organisation in terms of the markets that it regulates (Natural Gas, LPG, Petroleum, and Electricity), reducing the number of units and general co-ordinations from 15 to 8. In the current structure, the large number of transversal units and industry segment specific areas created circumstances where Commissioners would be in the position of needing to reconcile the differing opinion of the different units, rather than considering one consolidated position from staff. Furthermore, CRE considers that its previous organisational structure was fragmented, made challenging for the transversal units (such as the economic analysis unit) to prioritise their work, and dispersed the responsibility for different parts of the permitting process between different teams.

### *Regulatory quality tools, stakeholder engagement*

**While CRE has a Regulatory Performance Evaluation Committee it does not yet have established procedures for reviewing its regulation.** CRE has not yet developed an overall approach or strategy for reviewing its regulation because it is implementing new functions or updating existing regulations in light of the Energy Reform.

**However, with additional tariff setting responsibilities arising from the Energy Reform, CRE is in the process of reviewing its approach to tariff setting across different markets.** In particular, CRE has recognised that there would be merit in conducting a broad review of its current approach to hydrocarbons tariffs setting to streamline it with a view to having a consistent approach across the different products for which it has regulatory responsibility. As part of this review, it is also looking to review relevant international approaches to tariff setting, make its approach to setting depreciation profiles consistent, and revisit the data requirements that regulated businesses provide with a view to considering strengthened auditing requirements and facilitating the comparison of costs between different regulated businesses. The UPE is in the process of developing a methodology and criteria to review the impact of regulation that it has issued.

**While new and amended regulation that CRE develops is subject to the COFMER consultation process, other decisions that CRE makes do not involve public consultation.** In particular, the current processes for the determination of tariffs only establish a relationship between the regulated business and CRE, where there would appear to be scope for stakeholders whose interests are affected to be involved (users, consumers, government, and other regulated businesses).

**CRE has conducted risk analysis, but this is not part of an ongoing regular process of monitoring, refining, and updating risks and undertaking mitigating action.** In late 2016, CRE went through a risk analysis process with the heads of unit. However, this process was not part of an on-going regular process of conducting and reviewing risks facing the organisation. Such a process would be more focused once CRE establishes an operational plan that sets out its medium and long-term goals.

### *Proposed recommendations for the Integrated Energy Regulators' System*

- **Consider the creation of a joint risk management strategy for the energy sector where the three agencies can share information from their own measures to address risks and to have a platform that allows synergies within the Integrated System of the Energy Regulators.** The strategy may consider, amongst others, elements such as setting clear governance and responsibilities on the management of the strategy, having a score to address the most imperative issues, measures and ways to address the aforementioned risks and specific guidance to elaborate the risk matrix. The topics could be discussed in the Energy Regulators' Group.

#### **Box 7. Risk Management Strategy in the Water Industry Commission for Scotland**

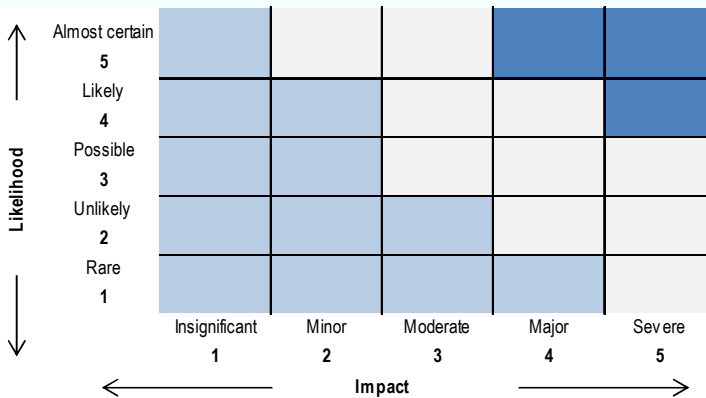
The Water Industry Commission for Scotland has a risk management strategy ran by a dedicated Audit and Risk Committee that meets regularly to discuss new or emerging issues and risks and their evaluation, decisions required and by whom, mitigating actions, actions owners, timescales and review points, ownership of new risks, and, review of the current controls in place. The risk management strategy clearly defines the level of responsibility of the workforce of the regulator vis-à-vis the issues and risks.

Responsibility	Board	Audit and Risk Committee	Directors and senior management	Employees
Set policy and appetite	✓			
Assess risk	✓	✓	✓	✓
Treat risk			✓	✓
Monitor and report	✓	✓	✓	✓

**Box 7. Risk Management Strategy in the Water Industry  
Commission for Scotland (cont.)**

The strategy considers risks from four different key areas: political (meeting the expectations of public officials and customers including fixing charge caps), market (facilitating a competitive framework), operational (efficiently delivering objectives in line with financial guidelines and budgets, required legal and regulatory compliance, focusing on developing people within the organisation) and, thought expansion (monitoring and participating in national and international innovation to deliver new methods to customers).

The risk is monitored by using a colour coding system to assign importance to different risks using the following colour risk ratings; red/high (unacceptable level of risk which requires urgent action), yellow/medium (level of risk which requires actions and active monitoring), green/low (acceptable risk based on the effective operation of relevant controls).



Three types of scores are considered for each identified risk:

- Each risk is assigned a Gross Risk score which evaluates the level of risk that would exist if no controls were being applied.
- The Target Risk score is the level of risk that is considered achievable if all controls are implemented and operating effectively.
- The Current Risk score is the assessment of the risk given existing controls prior to any planned improvements or actions.

While some risks, such as the loss of offices or key computer systems, may not change significantly over time others, such as those associated with the Strategic Review of Charges, may change significantly over time. It is therefore important to review the assessment of all of the above scores as even the Gross score of a risk may change. The strategy comes with a risk scoring guidance for personnel and a risk framework to be filled out.

Source: Information provided by the Water Industry Commission for Scotland (February 2017).



- ***Assess the digitalisation needs of each regulator.*** Evaluate where possible matches and ICT sharing processes can be made in order to reduce costs and share knowledge (i.e. service platforms for data analytics and talent management). Particular focus should be given to the most immediate needs aimed at exploring ways to automate internal management processes.
- ***Seek to have an aligned process within the integrated energy regulators' system to improve regulatory quality.*** The three agencies should harmonise their rule-making process including the framework for stakeholder engagement (apart from the compulsory consultation process done for regulatory impact assessments by COFEMER) based on the forthcoming OECD Best Practice Principles on Stakeholder Engagement; preparing forward planning agendas for upcoming regulation or updates to better inform the regulated sector, and conducting *ex post* evaluation to verify that the intended objectives of regulation issued are being met. The synergies would enhance the benefits of a harmonised process while decreasing the transaction costs involved in designing and implementing these mechanisms.
- ***Assess and review the internal governance arrangements in light of changes to agency objectives and activities brought about by the reform.*** Particular attention should be given to assessing roles and responsibilities for decision making and day-to-day management of the agencies, as well as to the necessary continuity and stability of these functions.

### ***Proposed recommendations for CRE:***

- ***Put in place arrangements to facilitate the Governing Council to place additional focus on CRE's strategy and the delivery of the long-term goals in CRE's operational plan.*** This should involve reviewing of the factors that have led to more direct involvement in the past peak initial period of delivering the Energy Reform; the steps that could be put in place to empower staff to deliver all projects and regulations more independently and for the Governing Council to review, challenge and consider the strategic implications of the regulations and decisions put to them for decision. This could involve:
  - Continuing to invest in the capability of staff, including continuing to seek to build on international best practices through exchanges and collaboration. For example, in

preparation for taking on responsibility for its new role in monitoring the wholesale electricity market, CRE's staff attended specific training, seminars, and workshops facilitated by experts on electricity market-monitoring. CRE's staff participated in job shadows at organisations in other jurisdictions currently undertaking market monitoring roles. While the level of engagement and training may not need to be at the same level for the ongoing roles and functions in which CRE already has expertise, such a systematic approach of seeking out best practise and delivering that where needed should be continued.

- More clearly defining the working relationship between staff and Commissioners that are assigned responsibility for regulations and other decisions. This could include establishing clear processes for providing Commissioners with project plans and keeping them up to date with the key milestones through the delivery of the project leading up to the point at which the project is put to the Governing Council for decision.
- Ensuring that there are sufficient delegations in place so that the decisions put in front of the Governing Council are substantive rather than administrative in nature, such as for simple permits. This could also include the consideration of streamlining of some administrative functions (for example, currently in order to conduct an inspection of retail service station staff, by requiring the signature of all of the members of the Governing Council).
- Bolstering the capacity of the Governing Council to understand the strategic implications of regulations and decisions put to them for decision by staff by establishing a new position (which could have a legal background and knowledge of CRE's regulatory processes). This position would provide advice on processes, the risk of challenge, or other points arising from Board papers. They would review all Board papers ahead of meetings and attend the meetings themselves. This position would be a resource for the Commissioners to test the robustness of the decisions that are being put to them for decision independent from staff.

### Box 8. The Secretary of the Council, a supportive body to Council work and decisions

The Council of the CNMC is the collegiate body responsible for the adoption of all substantive decisions related to its regulatory or competition policy functions.

To perform these functions, it is assisted by the Secretary of the Council that performs different tasks, namely:

- Providing administrative support to the Council.
- Advising in law to the Council and ensuring the legality of all its decisions.
- Acting as Secretary in the Council meetings.

The holder of the position of Secretary of the Council has to be a civil servant expert in law and leads a body of about 50 people. This body includes the Legal Advisory Unit that can be consulted to ensure the legal robustness of Council decisions and is formed by 10 experts.

*Source:* Information provided by the CNMC.

- Establish an internal challenge function for significant regulations or determinations whereby a senior staff member takes the role of “devil’s advocate” in taking the contrary position to that being recommended by staff to the Governing Council. This process helps highlight to the team and senior staff the weaknesses in the current recommended position, and can be used to bolster those parts of the decisions in advance of the Governing Council making the final decision.
- ***Consider whether the tariff setting processes should be opened to public consultation, and whether sufficient consultation is taking place for processes that occur under other regulations that CRE has already issued.*** Where the regulator is making decisions with a broad impact that affects the interests of a number of stakeholders, consultation to gauge the views of stakeholders on the decision improves the robustness of the regulator’s decision making. For example, CRE makes tariff determinations for electricity and hydrocarbons infrastructure that affects the interests of stakeholders beyond the permit holder. In other jurisdictions, regulators make these decisions in open processes where the business plan of the regulated business and the regulator’s draft decision are made publicly available, and the views of stakeholders are incorporated into the regulator’s decisions making through public consultation.

- ***Link the current review of hydrocarbon tariff setting methodologies with the process to establish the tariff setting arrangements that will apply for electricity beyond the current transitional period.*** In light of the need to develop methodologies for developing electricity tariffs beyond the transitional period, there would be merit in seeking to align the two processes of reviewing CRE’s current methodologies in order to set hydrocarbon tariffs and to further establish CRE’s permanent methodologies for setting electricity tariffs. CRE is currently looking at how other regulators determine tariffs and this would likely be of benefit both to hydrocarbons and electricity – particularly in the area of seeking to link tariffs to the outputs that customers demand.

### Box 9. OFGEM’s approach to linking revenues to outputs

OFGEM has a framework for price regulation called regulation equals innovation outputs plus incentives (RIIO), which it has applied in electricity transmission, gas distribution and electricity distribution.

An important element of the RIIO framework is linking the revenues granted to the regulated business to outputs that OFGEM expects the regulated business to deliver. For example, for its electricity distribution price control for the 2015-2023 regulatory period (RIIO-ED1), OFGEM defined six primary output categories; including:

- Safety
- Environment
- Customer satisfaction
- Connections
- Social obligations
- Reliability and availability.

OFGEM develops indicators against which the regulated firms are required to report their performance to enable OFGEM to track the delivery of outputs over time.

OFGEM incentivises the delivery of outputs using a number of different mechanisms specific to the output. In the case of the safety output for RIIO-ED1, regulated businesses are expected to comply with legal obligations, and failure to comply results in enforcement action. For the reliability and availability output among other measures, financial rewards and penalties are attached to the targets set in the interruptions incentive scheme. OFGEM incentivises customer service by attaching financial rewards and penalties to a customer satisfaction survey, complaints metric, and a stakeholder engagement and consumer vulnerability incentive.

*Source:* OFGEM (2017), “Guide to the RIIO-ED1 Electricity Distribution Price Control”, [https://www.ofgem.gov.uk/system/files/docs/2017/01/guide\\_to\\_riioed1.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/01/guide_to_riioed1.pdf) (accessed 3 April 2017); OFGEM (2013), “Price Controls Explained”, <https://www.ofgem.gov.uk/ofgem-publications/64003/pricecontrolsexplainedmarch13web.pdf> (accessed 3 April 2017).

## Output and outcome

**CRE collects a large amount of information from regulated industry in order to undertake its regulatory responsibilities, which in some circumstances involves making data accessible to the public.** CRE receives information from industry in the process of conducting its activities, including, for example:

- ongoing reporting requirements in permits,
- verification visits,
- electricity wholesale market monitoring, and
- tariff reviews.

**In addition, CRE has the responsibility of establishing systems to collect information from industry for the purpose of monitoring industry activity.** For example, as a result of the accelerated liberalisation of the gasoline and diesel markets, CRE has recently obtained the responsibility of developing an information system that will make gasoline price information publicly available. CRE is also in the process of establishing a Statistical Record of Commercial Transactions System (*Sistema del Registro Estadístico de Transacciones Comerciales*, SIRETRAC) to determine who holds how much of each type of product (petroleum, natural gas and LPG) so as to determine the lawful origin of fuels.

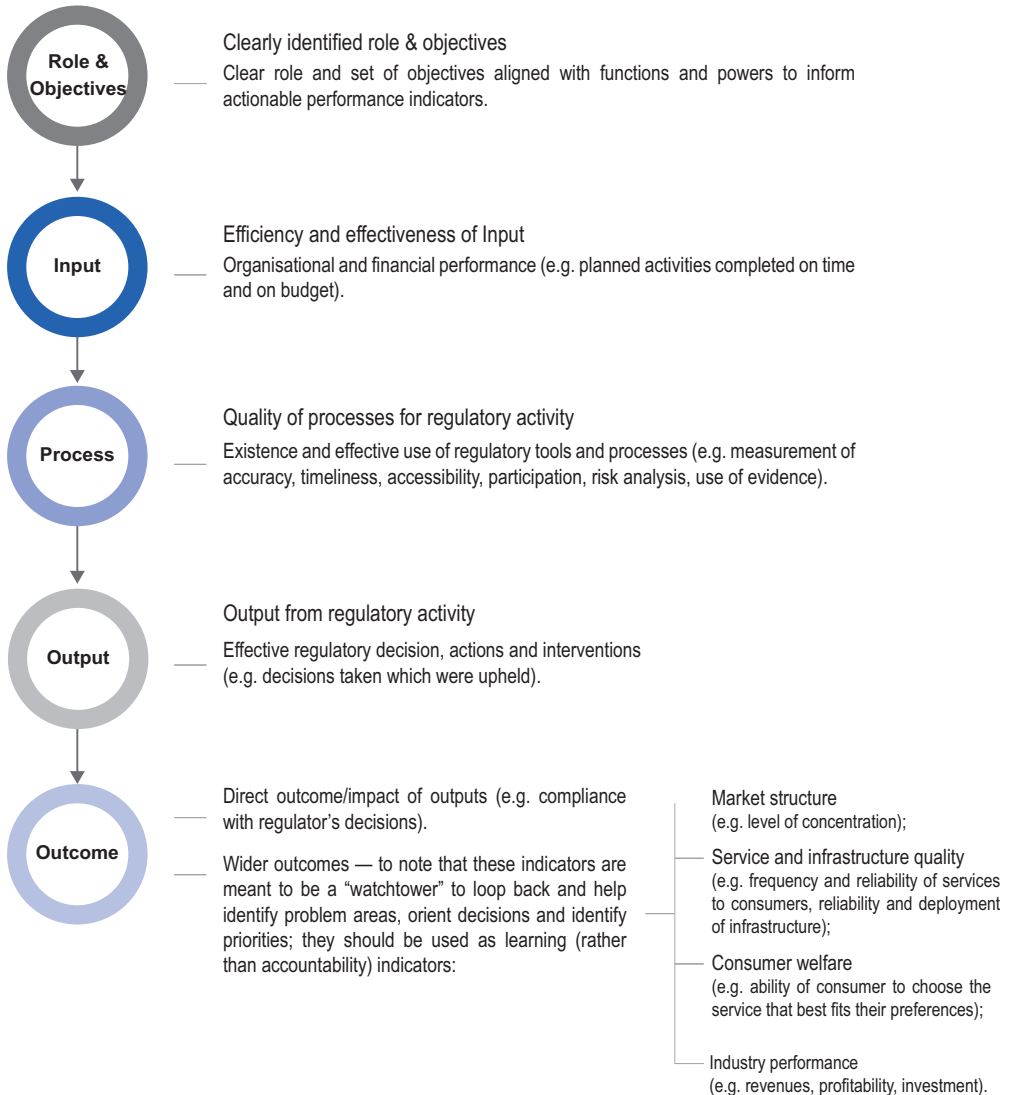
**CRE is currently developing a global strategy to collect, process, and distribute information for internal and external use.** CRE is also in the process of developing performance indicators for the periodic monitoring of the regulated sectors.

**CRE is committed to developing a set of indicators to measure its performance, and some action has been taken in this direction.** CRE has developed draft quantitative measures for measuring its own performance as part of the matrix of indicators that it reports to SHCP on a quarterly basis.

**There is no regular accountability mechanism for CRE beyond the regular reporting of a set of key performance indicators to track the extent to which funds have been used to effectively deliver its roles and functions.** CRE does prepare an annual report setting out its activities and achievements each year. Unlike SENER, it does not have a regular obligation to report on its performance (whether it be its internal performance or that of the energy markets) to Congress.

### ***Proposed recommendations for the Integrated Energy Regulators' System***

- ***Set organisational performance indicators to measure and track the Agency's effectiveness of implementing the strategic goals and activities in the operational plan.*** These should be led by the staff within each of the regulators responsible for designing and implementing the operational and annual plans, and involve collaboration with each of the units within the Agency. The indicators should:
  - **measure** the organisations' inputs and processes through critical dimensions such as quality, efficiency and timeliness;
  - **assess the impact** of delivery of outputs (for example, permits granted, open seasons, inspections) on outcomes (for example, new entry in markets, market concentration ratios for each of the hydrocarbon markets, capacity made available by third parties in open seasons, amount of investment in infrastructure required to supply midstream and downstream markets, and compliance with regulatory obligations).
- ***Consider the process that will be used to evaluate performance at the start of the process.*** In particular, consideration should be given to the data and information that will need to be collected in order to have the evidence needed to measure performance for each of the indicators. Where possible, these measures would be prepared with information that the agencies already collect from regulated industry and elsewhere. The OECD's input-process-output-outcome framework for performance indicators (see Figure 3) should be used to develop these measures.

Figure 3. **Input-process-output-outcome framework for performance indicators**

*Notes:* This framework was proposed in the initial methodology for the performance assessment framework for economic regulators (PAFER) discussed with the OECD Network of Economic Regulators (NER). It has been refined to reflect feedback from NER members and the experience of other regulators in assessing their own performance.

*Source:* OECD (2015), *Driving Performance at Colombia's Communications Regulator*, Figure 3.3 (updated in 2017), OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264232945-en>.

**Box 10. Measuring organisational and policy performance: the National Energy Board's departmental results framework (Canada) and OFGEM's Retail Market Review Framework (United Kingdom)**

**The National Energy Board's Departmental Results Framework**

The National Energy Board (NEB) measures its effectiveness in delivering its mandate using a Departmental Results Framework (DRF). Within the DRF, the NEB links its core responsibilities with outcomes, to which it attaches indicators that seek to demonstrate its performance in delivering its mandate. The DRF provides information that the NEB uses to refine the approach that it takes to delivering its mandate over time.

The NEB has also established a Performance Measurement Evaluation Committee (PMEC). The PMEC, composed of senior NEB officials and its CEO, reviews the DRF and presents the results to the board quarterly. The DRF performance report for the third quarter of 2016 sets out departmental results and indicators for a number of aggregate areas (for example, safety and environment oversight). For each of these sections, the DRF also sets out the NEB's programmes performance. For each of these programs, the outcomes that the NEB is seeking to achieve are linked to a performance indicator and target. Additionally, the intent of the measure, and the results and actions that the NEB proposed to undertake in light of its performance are also set out.

**OFGEM's Retail Market Review Framework**

OFGEM commenced a review of the electricity retail market in 2010 due to concerns that there were barriers to effective consumer engagement including the complexity of tariff options, poor quality of information provided to consumers and low levels of trust in energy suppliers (OFGEM, 2017a). The retail market review (RMR) was finalised in August 2013, and as part of that review OFGEM included a number of proposals to improve consumer engagement and competition in the electricity retail market.

OFGEM established a RMR evaluation framework to assess the effectiveness of its policies on consumer engagement and competition in the electricity market. OFGEM developed a theoretical framework setting out its expected outcomes of the policy and indicators to measure the impact. These outcomes and indicators were linked to three thematic areas of the reform: building trust, improving understanding, and simplifying tariff choices. OFGEM's evaluation approach included a number of techniques to determine the impact of its policies on the market, including bespoke consumer research, a time series study, descriptive monitoring, holistic context (putting findings into context with wider market monitoring and assessment), and process assessment (understanding how third parties had implemented its reforms) (OFGEM, 2014).



**Box 10. Measuring organisational and policy performance: the National Energy Board's departmental results framework (Canada) and OFGEM's Retail Market Review Framework (United Kingdom) (cont.)**

OFGEM intends to conduct annual surveys looking at the impact of these policies. So far, OFGEM has commissioned two surveys looking at the impact of its policies which cover 6 000 energy consumers. OFGEM's 2014 survey created a baseline of consumer attitudes and behaviour, while the 2015 survey looked at changes over time. (TNS BRMB, 2015)

*Source:* National Energy Board (2016), "Performance Report", Q3 report, March 2017; OFGEM (2015), "Retail Market Review: A proposed way forward", <https://www.ofgem.gov.uk/ofgem-publications/85836/retailmarketreviewmonitoringandevaluatingtheimpactofthenewrules.pdf> (accessed 4 April 2017); (OFGEM, 2017a), "Retail Market Review", <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/retail-market-review> (accessed 4 April 2017); TNS BRMB (2015), "Retail Market Review 2015 Survey Report", [https://www.ofgem.gov.uk/sites/default/files/docs/ofgem\\_rmr\\_survey\\_2015\\_report\\_published.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/ofgem_rmr_survey_2015_report_published.pdf) (accessed 4 April 2017).

- ***Where relevant, the regulators should collaborate in developing performance indicators.*** While the diversity of the mandates of regulators means that there is no "one-size-fits-all" approach to developing indicators (particularly with regard to output and outcome), there would be merit in ensuring that the indicators that are related to the core responsibilities of each regulator are harmonised and co-ordinated so that the performance activities of one regulator does not conflict with the performance activities of the other. Additionally, there are some common elements of the process and input stages (for example, organisational and financial performance, existence and effective use of tools and regulatory processes) for which indicators could be developed collaboratively. Common indicators of organisational performance would facilitate comparison of the effectiveness of internal processes across agencies, facilitating the identification of alternative more effective internal processes. The regulators should use the ERG as the forum for co-ordinating development of these indicators.

- ***Establish a common platform for providing information to stakeholders about the performance of the energy sector.*** The overall indicators that the regulators use as a watchtower for assessing the performance of the sector should also be made available externally to enable all stakeholders to track the performance of the energy sector. A single source of information on the performance of the energy sector would ensure that all stakeholders had a common data set from which they could form conclusions about sector performance, the effectiveness of regulation, and upcoming issues. This could be developed through the ERG.
- ***The agencies should report regularly to the CCSE, the ordinary Energy Committees of the two chambers of Congress, the Special Commission of the Coordinated Energy Regulators.*** The content of reporting should be tailored to the specific mandate of the committee, for instance reporting could focus on sector performance for both the CCSE and Special Commission for the Coordinated Energy Regulators (given its mandate to oversee the implementation of the Energy Reform). In contrast, reporting to the two committees in congress could focus on both the sector performance and the internal functioning of the energy regulators given Congress role' determining the Federal budget and the Senate's role in making appointment decisions for Commissioners at CRE and CNH.

## Chapter 1

### Methodology

*Measuring regulatory performance is challenging; starting with defining what to measure, dealing with confounding factors, attributing outcomes to interventions and coping with the lack of data and information. This chapter describes the methodology developed by the OECD to help regulators address these challenges through a Performance Assessment Framework for Economic Regulators (PAFER), which informs this review. The chapter first presents some of the work conducted by the OECD on measuring regulatory performance. It then describes the key features of the PAFER and presents a typology of performance indicators to measure input, process, output and outcome. It finally provides an overview of the approach and practical steps undertaken for developing this review.*

## Analytical framework

The analytical framework that informs this review draws on the work conducted by the OECD on measuring regulatory performance and the governance of economic regulators. OECD countries and regulators have recognised the need for measuring regulatory performance. Information on regulatory performance is necessary to better target scarce resources and improve the overall performance of regulatory policies and regulators. However, measuring regulatory performance can prove challenging. Some of these challenges include:

- *What to measure*: evaluation systems require an assessment of how inputs have influenced outputs and outcomes. In the case of regulatory policy, the inputs can focus on: i) overall programmes intended to promote a systemic improvement of regulatory quality; ii) the application of specific practices intended to improve regulation, or, iii) changes in the design of specific regulations.
- *Confounding factors*: there is a myriad of contingent issues which have an impact on the outcomes in society that regulation is intended to affect. These issues can be as simple as a change in the weather, or as complicated as the last financial crisis. Accordingly, it is difficult to establish a direct causal relationship between the adoption of better regulation practices and specific improvements to the welfare outcomes that are sought in the economy.
- *Lack of data and information*: countries tend to lack data and methodologies to identify if regulatory practices are being undertaken correctly and what impact these practices may be having on the real economy.

The *OECD Framework for Regulatory Policy Evaluation* starts addressing these challenges through an input-process output-outcome logic, which breaks down the regulatory process into a sequence of discrete steps. The input-process-output-outcome logic is flexible and can be applied both to evaluate practices to improve regulatory policy in general, and also to evaluate regulatory policy in specific sectors, based on the identification of relevant strategic objectives. It can be tailored to economic regulators by taking into consideration the conditions that support the performance of economic regulators.

### Box 1.1. The input-process-output-outcome logic sequence

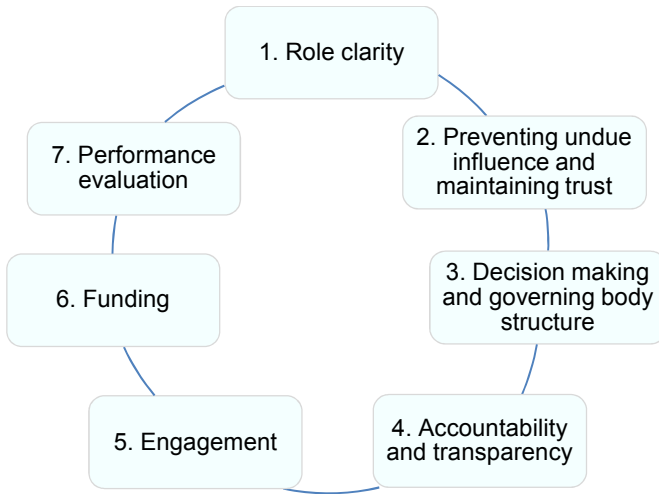
- Step I. Input: indicators include for example the budget and staff of the regulatory oversight body.
- Step II. Process: indicators assess whether formal requirements for good regulatory practices are in place. This includes requirements for objective-setting, consultation, evidence-based analysis, administrative simplification, risk assessments and aligning regulatory changes internationally.
- Step III. Output: indicators provide information on whether the good regulatory practices have actually been implemented.
- Step IV. Impact of design on outcome (also referred to as intermediate outcome): indicators assess whether good regulatory practices contributed to an improvement in the quality of regulations. It therefore attempts to make a causal link between the design of regulatory policy and outcomes.
- Step V. Strategic outcomes: indicators assess whether the desired outcomes of regulatory policy have been achieved, both in terms of regulatory quality and in terms of regulatory outcomes.

Source: OECD (2014a), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264214453-en>.

The *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* (OECD, 2014b) identifies some of the conditions that support the performance of economic regulators. They recognise the importance of assessing how a regulator is directed, controlled, resourced and held to account, in order to improve the overall effectiveness of regulators and promote growth and investment, including by supporting competition. Moreover, they acknowledge the positive impact of the regulator’s own internal process—how the regulator manages resources and what processes the regulator puts in place to regulate a given sector or market—on outcomes (Figure 1.1).

The two frameworks are brought together into a Performance Assessment Framework for Economic Regulators that structures the drivers of performance along the input-process-output-outcome framework (Table 1.1).

Figure 1.1. The OECD's Best Practice Principles on the Governance of Regulators



Source: Adapted from OECD (2014b), *OECD Best Practice Principles for Regulatory Policy, The Governance of Regulators*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264209015-en>.

Table 1.1. Criteria for assessing regulators’ own performance framework

References	Strategic objectives	Input	Process	Output and outcome
Best Practice Principles for the Governance of Regulators	Role clarity	Funding	Maintaining trust and preventing undue influence Decision making and governing body structure Accountability and transparency Engagement	Performance evaluation
Institutional, organisational and monitoring drivers	Objectives and targets Functions and powers	Budgeting and financial management Human resources management	Strategy, leadership and co-ordination Institutional structure Management systems and operating processes Relations and interfaces with Government bodies, regulated entities and other key stakeholders Regulatory management tools	Performance standards and indicators Performance processes and reports Feedback or outside evidence on performance

## Performance indicators

For regulators, performance indicators need to fit the purpose of performance assessment, which is a systematic, analytical evaluation of the regulator’s activities, with the purpose of seeking reliability and usability of the regulator’s activities. Performance assessment is neither an audit, which judges how employees and managers complete their mission, nor a control, which puts emphasis on compliance with standards (OECD, 2004).

Accordingly, performance indicators need to assess the efficient and effective use of a regulator’s inputs, the quality of regulatory processes and identify outputs and some direct outcomes that can be attributed to the regulator’s interventions. Wider outcomes should serve as a “watchtower”, which provides the information the regulator can use to identify problem areas, orient decisions and identify priorities (Figure 1.2 below).

## Approach

The analytical framework presented above informed the data collection and the analysis presented in this report. The present report follows a first phase in the review of Mexico’s energy regulators that focused on the external governance elements of the Agency for Safety and Environment (ASEA), the National Hydrocarbons Commission (CNH) and CRE (OECD, 2017), and looks at the internal governance arrangements of CRE in the following areas:

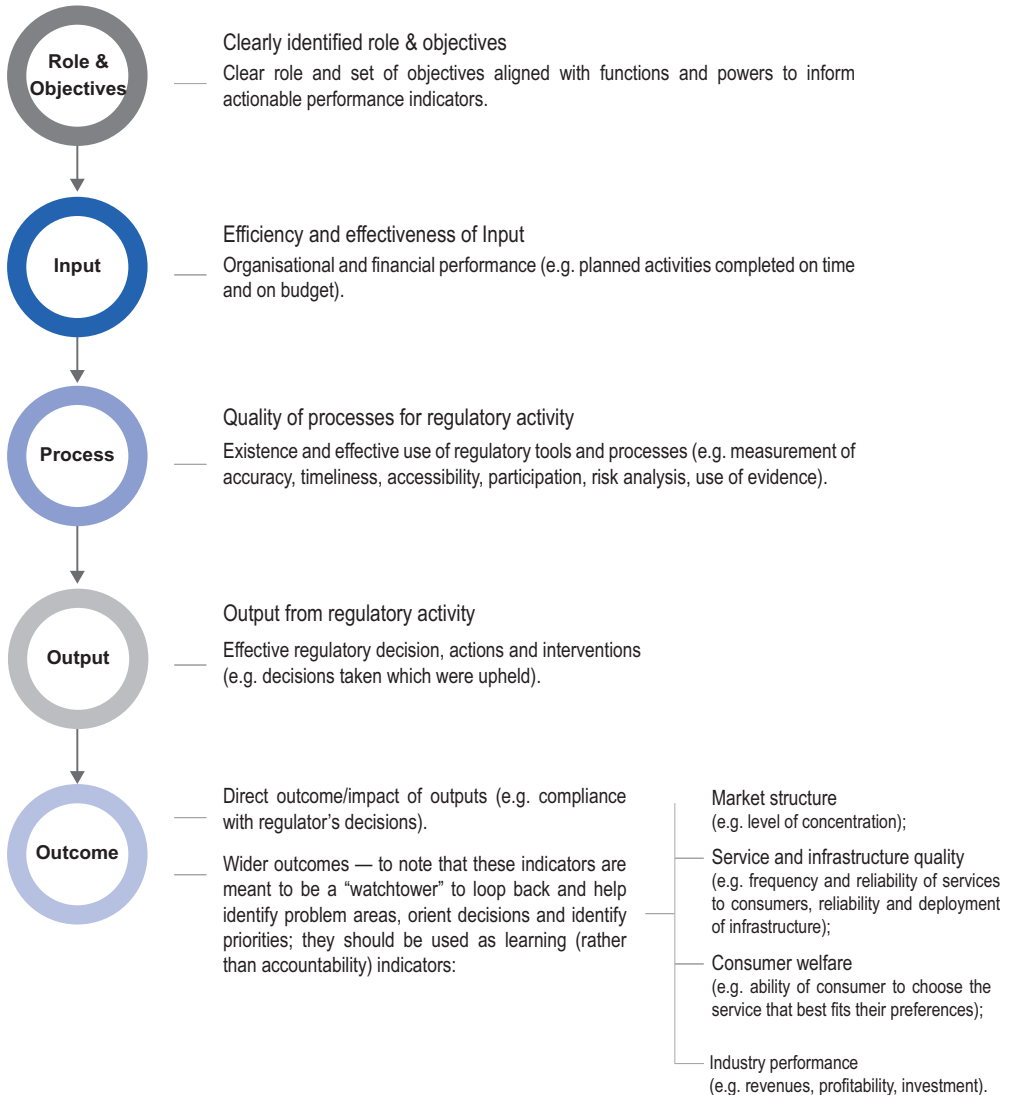
- **Strategic objectives:** to identify the existence of a set of clearly identified objectives, targets, or goals that are aligned with the regulator’s functions and powers, and which can inform the development of actionable performance indicators;
- **Input:** to determine the extent to which the regulator’s funding and staffing are aligned with the regulator’s objectives, targets or goals, and the regulator’s ability to manage financial and human resources autonomously and effectively;
- **Process:** to assess the extent to which processes and the organisational management support the regulator’s performance;
- **Output and outcome:** to identify the existence of a systematic assessment of the performance of the regulated entities, the impact of the regulator’s decisions and activities, and the extent to which these measurements are used appropriately.

Data informing the analysis presented in this report was collected via a questionnaire, a fact-finding mission and a peer mission to Mexico:

- **Questionnaire and desk review:** CRE completed a detailed questionnaire which informed a desk review by the OECD Secretariat, including a review of existing legislation and CRE documents, collecting information on the de jure functioning of the agency and informing the basis of the fact-finding mission. This questionnaire was tailored to CRE, based on the methodology already applied by the OECD to Colombia's Communications Regulation Commission (OECD 2015a), and Latvia's Public Utilities Commission (OECD, 2016b).
- **Fact-finding mission:** the mission was conducted by the OECD Secretariat staff on 22-26 August 2016 in Mexico City. Information collected during this mission was used to clarify the OECD's understanding of CRE's internal and external governance in preparation for the peer mission.
- **Peer mission:** the mission took place on 21-24 February 2017 in Mexico City and included peer reviewers in addition to OECD Secretariat staff. This mission included three teams working in parallel on three reviews of the internal governance arrangements of the energy regulators: ASEA, CNH and CRE. By doing so, teams were not only able to identify initial recommendations specific to the separate regulators but also to identify important synergies and joint solutions for the three regulators in discussions with key stakeholders.

During the fact-finding and peer missions, the team met with CRE and CNH's President Commissioners, Commissioners from CRE and CNH's Governing Council, ASEA's leadership team and staff across the three institutions. A list of other agencies and institutions met for the work on the external governance of the regulators can be found in *Driving Performance of Mexico's Energy Regulators* (OECD, 2017).



Figure 1.2. **Input-process-output-outcome framework for performance indicators**

*Notes:* This framework was proposed in the initial methodology for the performance assessment framework for economic regulators (PAFER) discussed with the OECD Network of Economic Regulators (NER). It has been refined to reflect feedback from NER members and the experience of other regulators in assessing their own performance.

*Source:* OECD (2015), *Driving Performance at Colombia's Communications Regulator*, Figure 3.3 (updated in 2017), OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264232945-en>.

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## *Chapter 2*

### **Sector context**

*This chapter describes the main features of Mexico's Federal institutional set-up and regulatory framework. It provides an overview of the energy sector reform in 2013 and ensuing institutional sector transformations.*

The government of Mexico introduced a major transformation of the country's energy sector. The reform restructured the oil and gas industry in order not only to increase investment and government revenue for the benefit of all Mexicans but also to lead on environmental issues by embedding clean energy targets in legislation. It opened access to the country's hydrocarbon resources to national and foreign, public and private entities, thus ending the monopoly of the state-owned oil company *Petróleos Mexicanos* (PEMEX). Equally important, the national energy system was fully opened up to private participation in order to reduce electricity costs, facilitate the transition to renewable sources of energy and extend electricity coverage. Corresponding significant modifications were made to the institutional framework with regard to sector regulation, including a modification of the constitution of the United States of Mexico and the promulgation of several primary and secondary laws. This new institutional framework strengthened existing regulators and created new ones, and introduced important changes in the functions and powers of different federal entities.

## Institutions

The Constitution of the United States of Mexico divides the Supreme Power of the Mexican federation into three branches: Legislative, with a bicameral Congress, Executive, with a directly elected president, and Judiciary. Mexico is composed of thirty-two federal entities including Mexico City; each one has its own constitution, congress, judiciary and executive power, the latter exercised by a governor. The constitution states that the right to initiate laws and decrees belongs to: the president of Mexico, the deputies and senators to Congress and the state legislatures (OECD, 2014).

### *Executive*

Within the executive branch, several institutions intervene at different stages of the regulatory cycle. They include:

- The Office of the President of the Republic (*Oficina de la Presidencia de la República*). It supports the President in the exercise of his functions and monitors and periodically evaluates public policies, with the aim of contributing to decision making by the Executive.
- Federal line ministries (*Secretarías*). They are the core entities of the Federal Executive and are responsible for putting forward national public policies in their area of competence. Ministries are

entitled to propose bills, enact regulation, decrees and agreements, among other legal instruments. The Ministry of Finance (*Secretaría de Hacienda y Crédito Público*, SHCP) leads the effort of preparing and monitoring of the National Development Plan (*Plan Nacional de Desarrollo*) which sets out the overarching development objectives of the administration.

- Ministry of Interior (*Secretaría de Gobernación*). It promotes the political development of the country and contributes to relations between the executive federal power and other entities. While all ministries are hierarchically equal, the Ministry of Interior co-ordinates the actions of the Federal Public Administration, its centralised and para-statal entities. The Ministry administers the Official Gazette (*Diario Oficial de la Federación*, DFO) where all laws and regulations are published.
- Legal Counsel of the Federal Executive (*Consejería Jurídica del Ejecutivo Federal*). It reviews and validates all decrees, agreements and other legal instruments that are submitted for consideration of the President, as well as those initiated by the President before they are presented to Congress. It evaluates coherence of the proposals with the Constitution and existing legislation.
- Federal Commission for Regulatory Improvement (COFEMER). It is responsible for driving forth the regulatory quality and improvement agenda in Mexico, established as the regulatory oversight body by the Federal Law of Administrative Procedure in 1994. All federal ministries and agencies are obliged to submit their regulatory proposals and corresponding RIA for consideration of COFEMER.
- Independent federal regulators. These are autonomous entities whose independence is enshrined in the constitution, with powers ranging from emitting regulation, setting tariffs, enforcing regulation and applying sanctions. The 2013 constitutional reform established the Federal Institute of Telecommunications (IFETEL) and the Federal Commission for Economic Competition (COFEC) as constitutionally independent regulators.
- Coordinated Energy Regulators. These are entities with technical, financial and managerial independence that, like the former category, are Ministry level institutions whose budgets are approved by Congress and who submit their draft regulations directly to COFEMER. The 2013 reform transformed the National Hydrocarbons Commission (CNH) and Energy Regulatory

Commission (CRE) – that had previously been attached to the Ministry of Energy – into Coordinated Energy Regulators.

- Deconcentrated bodies. These include regulators that have technical independence but with differing degrees of administrative or financial autonomy from federal line ministries. They have generally been created either through laws or decrees with a sector-specific mandates. As specialised entities of the federal government their jurisdiction applies at federal, regional and state levels. In the energy sector, ASEA, CENACE and CENAGAS are deconcentrated entities with technical and managerial independence.

### ***Legislature***

The federal legislative power in Mexico is vested in a General Congress composed by the Chamber of Deputies and the Senate. The Congress is formed by a Chamber of Deputies made up of 500 deputies and the Senate which hosts 128 senators and has as its main purpose the analysis, discussion and issuance of laws. The Chamber of Deputies approves the federal budget and supervises the Superior Audit Office that verifies its execution.

### ***Judiciary***

The Federal Judiciary Power in Mexico is vested in the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación – SCJN*), the Electoral Tribunal (*Tribunal Electoral*), the collegiate courts (*Tribunales Colegiados de Circuito*) and unitary circuit courts (*Tribunales Unitarios de Circuito*) and the district courts (*Juzgados de Distrito*). The administration, supervision, and discipline of the Judiciary of the Federation, except for the Supreme Court and the Electoral Tribunal, rely on the Federal Judiciary Council (*Consejo de la Judicatura Federal*).

The SCJN has final appellate jurisdiction over all state and federal courts. Below the SCJN are the circuit courts, which are divided into single-judge circuit courts and collegiate circuit courts. The Federal Judiciary oversees a broader range of cases, and thus holds more judicial power than do the judiciaries at the state level (OECD, 2014).

### ***Supreme audit institutions***

- Office of the General Prosecutor (*Procuraduría General de la República*). Part of the Executive branch of government, it is responsible for the investigation and prosecution of federal crime. The Attorney General heads the Federal Public Ministry (*Ministerio*

*Público de la Federación*). A reform of the Attorney General’s Office plans to transform it into the General Prosecutor of the Republic (*Fiscalía General de la República*) that will act as a constitutionally independent body.

- Ministry of Public Administration (*Secretaría de Función Pública, SFP*). It establishes the normative framework for the control and audit of federal funds, supervises the implementation of existing norms and can, upon request, audit federal institutions. The Ministry counts with detached units (*Órganos internos de control*) in all federal entities that oversee the use of resources and report to the Ministry.
- Superior Audit Office (*Auditoría Superior de la Federación*). It has the power to carry out external audits of the three branches of government as well as of the constitutionally independent bodies and states and municipalities. It verifies the fulfilment of government policy and programme objectives, and examines the level of performance of public entities and the correct management of income and expenditure. It is a technical body of the Chamber of Deputies and supports it in its role of monitoring the Federal Public Treasury.

### Box 2.1. Structural reform in Mexico

In 2012, Mexico’s newly elected government embarked on a bold package of structural reforms aimed at helping the country break away from three decades of slow growth and low productivity, as well as the high levels of poverty and inequality that have hampered the quality of life of its citizens. The foundations for these goals were laid in the 13 Presidential decisions for Mexico, contained in President Enrique Peña Nieto’s Message to the Nation upon taking office on 1 December in the National Palace. These were further developed in the 95 commitments of the Pact for Mexico (*Pacto por México*), signed by the leaders of the main political parties.

Each of the reforms is wide-ranging in scope, and addresses the main challenges in their respective sectors. They include: a labour reform that substantially increased the flexibility of hiring; a reform of “*amparos*” that made the legal system more efficient and fair; the introduction of a national code of criminal procedure; a wide-ranging educational reform that introduced clearer standards for teachers and schools; a fiscal reform that improved the efficiency of the tax system, raised the revenue ratio and strengthened the fiscal responsibility

### Box 2.1. Structural reform in Mexico (*cont.*)

framework; an economy-wide competition reform; reforms to the financial, telecom and energy sectors that have opened long-closed sectors to competition and strengthened the powers of regulators; and a reform of the political system to allow politicians to be re-elected, giving them a longer-term perspective on policy. This impressive policy effort, which makes Mexico the top reformer in the OECD over the past two years, deserves acclaim.

If fully implemented, these reforms could increase annual trend per capita GDP growth by as much as one percentage point over the next ten years, with the energy reforms having the most front-loaded effects, and the education reforms more lasting effects in the years to come. From now on, the main challenge is to ensure full implementation of these reforms and progress further in areas that have not yet been tackled, and that are key to ensure success of the current package.

Source: OECD (2013), *Getting It Right: Strategic Agenda for Reforms in Mexico*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264190320-en>.

## Institutional and regulatory reform of the energy sector

### *Market reform*

Prior to the 2013 reform, the energy industry in Mexico was characterised by limited private sector involvement. Activities in hydrocarbons, such as extraction and sale of oil and gas, were the sole responsibility of PEMEX. PEMEX's sole responsibility for the hydrocarbons sector was set out in Mexico's constitution. (Seelke et al., 2015) Mexico's oil production has decreased steadily over the past decade, due to natural production declines in the country's largest oilfields as well as a lack of investment in the sector. Despite this, Mexico has remained one of the largest producers of oil and related products in the world, and the fourth largest in the Americas after the United States, Canada and Venezuela. The hydrocarbon sector carries much weight in the country's economy in all respects: in 2014, earnings from the oil sector represented 30% of government income and 11% of export earnings (EIA, 2015). In 2013, fiscal revenue from non-renewable natural resources represented 8% of GDP (OECD, 2015b).

For natural gas, PEMEX had a monopoly over the entire supply chain until 1995, when part of the market was opened. This enabled private firms to enter the downstream gas market (in the transport, storage and importing of natural gas) (OECD, 2004).



### Box 2.2. Summary of current trends in Mexico’s energy sector

- Mexico’s Energy Reform (*Reforma Energética*), initiated in 2013, is transforming the country’s oil, gas and electricity sectors. A new regulatory and institutional framework has brought an end to long-standing monopolies, opening competition in all aspects of oil and gas supply, and power generation. Private investors can now participate, alongside PEMEX and CFE, the two large state-owned enterprises, in a wide range of the energy industry value chain, attracting capital and technology to areas that are in need of renewal.
- Total energy demand in Mexico has grown by a quarter since 2000 and electricity consumption by half, but per-capita energy use is still less than 40% of the OECD average, leaving scope for further growth. The energy mix is dominated by oil and gas, with oil accounting for around half of the total – a share higher even than that in the highly oil-dependent Middle East.
- Oil has traditionally played a major role as a fuel for power generation, but it is rapidly losing ground to natural gas, whose cost advantage has been reinforced by the shale gas boom in the United States. Non-fossil fuelled generation, primarily from hydropower and nuclear, currently accounts for one-fifth of the total. Wind power has gained a foothold, with capacity of around 3 GW in 2015; but this remains far below its potential. The market for solar PV is nascent, but is expected to grow rapidly: the first two auctions for new long-term power supply, held in 2016, demonstrated private sector willingness to invest in new solar and wind capacity.
- Mexico’s long-standing position as one of the world’s major oil producers and exporters has weakened in recent years, with oil production declining by over 1 mb/d since 2004. This fall in output is linked to a shortfall in the funds available to PEMEX for capital expenditure to slow declines in mature fields or to develop new ones. A combination of limited refining capacities and rising demand means that Mexico is a net importer of oil products. Natural gas output has also been in decline (most of the production is associated with oil) and imports now meet almost 50% of gas demand.
- Sustainability and climate change considerations are prominent in Mexico’s energy policy. Mexico was among the first nations to submit a climate pledge in the run-up to COP21, and was among the countries that pushed hardest for a climate change agreement in Paris. It has legislated to adopt a binding climate target: the second country in the world to do so. With institutional changes that help promote clean energy, Mexico is embarked on a course towards a considerably more sustainable and efficient energy system in the future.

Source: IEA (2016), *Mexico Energy Outlook*, IEA, Paris, <http://dx.doi.org/10.1787/9789264266896-en>.

Similar to the hydrocarbons sector, prior to 2013, the electricity sector was primarily operated by a state-owned entity, the Federal Electricity Commission (CFE).<sup>\*</sup> Reforms to Mexican energy legislation enacted in 1992 had enabled private companies to obtain permits to generate electricity and as a result, there was private sector involvement in electricity generation in Mexico even prior to the 2013 reform. However, the electricity network (both the transmission and distribution networks) were owned and operated by CFE (OECD, 2004).

The 2013 reforms were designed inter alia to increase investment in the hydrocarbons sector with the objective of increasing oil production, as well as to place downward pressure on electricity prices (Mexican Presidency, 2013). Greater use of markets in the hydrocarbons and electricity sectors, combined with strengthened independent regulation, were used to achieve this objective. As such, PEMEX's monopoly was ended, opening the country's hydrocarbons resources for exploration and production also by private and foreign entities, in rounds of bidding administered by CNH. However, the reforms make clear Mexico's ownership of hydrocarbons (SENER 2014). In the electricity sector, as a result of the reform, private companies are able to participate in power generation and sell to the new Mexican wholesale market independently of CFE (SENER, 2014). While the reforms reinforce the transmission and distribution of electricity as "exclusive and strategic state activities" in the Mexican constitution, CFE may contract with private firms to reinforce its electricity network (SENER, 2014).

### ***Institutional and regulatory reform***

Prior to the reform, sector policy was set by SENER and activities were regulated by the Ministry, CNH and CRE, and in some instances by states or PEMEX itself. The reform introduced very significant changes to this institutional set-up enacted by a reform of the Mexican Constitution and the subsequent promulgation of 21 federal laws and 24 secondary laws (*reglamentos*). The changes included:

- Strengthening existing energy regulators into ministry level independent agencies, that regulate the participation of public and private companies: CNH and CRE (the Coordinated Regulators of the Energy Sector);

\*. Until 1999, Central Light and Power also supplied electricity (Center for Energy Economics and *Instituto Tecnológico y de Estudios Superiores de Monterrey*, 2013).

- Creation of a new regulatory agency responsible for regulating and enforcing industrial safety and environmental protection throughout the hydrocarbons value chain: ASEA;
- Granting responsibilities linked to the hydrocarbons sector to the Ministry of the Environment and Natural resources (*Secretaría de Medio Ambiente y Recursos Naturales*, SEMARNAT) with the attachment of ASEA to the Ministry;
- Creation of new decentralised agencies that operate the electricity and gas markets: National Center for the Control of Energy (*Centro Nacional de Control de Energía*, CENACE), and the National Center for the Control of Natural Gas (*Centro Nacional de Control del Gas Natural*, CENAGAS);
- Creation of two state productive enterprises that compete and can associate with private companies (previous monopolies): *Petróleos Mexicanos* (PEMEX) and Federal Electricity Commission (Comisión federal de Electricidad, CFE);
- Creation of federal fund to manage, distribute and invest revenue from hydrocarbons activities: Petroleum Fund for Stabilisation and Development Of Mexico (*Fondo Mexicano del Petróleo para la Estabilización y Desarrollo*, FMP);
- Creation of the National Center for Hydrocarbon Information (*Centro Nacional de Información de Hidrocarburos*, CNIH) to manage national data and information on hydrocarbons, a function previously carried out by PEMEX. CNIH is integrated in the structure of CNH.

Following the reform, SENER continues to set policy for the energy sector. Main regulatory functions for the sector are now held by CNH as the “upstream regulator” and CRE as the “midstream and downstream regulator” in hydrocarbons and the electric power regulator, with ASEA holding responsibilities for safety and protection throughout the hydrocarbons value-chain.

Figure 2.1. **Timeline for the implementation of the energy reform**

**2013**

**Dec.**

- **Constitutional reform of Mexico's energy sector**



• Reform of the constitution of Mexico

**2014**

**Aug.**

- **Promulgation of a set of laws relative to the implementation of the energy reform**



- **Round 0: assignment of areas of exploitation to PEMEX by SENER and CNH**

- Hydrocarbons Act
- Electrical Industry Act
- The Co-ordinated Energy Regulators Act
- PEMEX Act
- Fedecal Electricity Commission Act
- ASEA Act
- Geothermal Energy Act
- Hydrocarbons Revenue Act
- Petroleum Fund for Stabilisation and Development of Mexico Act

**Oct.**

- **Publication of ASEA reglamento interno**

**Nov.**

- **CNH issues guidelines for oil & gas bidding rounds**

**Nov.-Dec.**

- **Definition of internal structure and functioning of ASEA, CNH and CRE**



• Reglamento interno of ASEA, CRE and CNH (secondary legislation)

**2015**

**Jan.**

- **CNH issues guidelines for G&G surveys**

**March**

- **ASEA begins operations**

**Jul. - Mar. 2016**

- **Round 1: tender of oil and gas fields by SENER and CNH**

**Aug.**

- **CNH issues guidelines governing the procedure for quantification and certification of reserves of the nation**

**Sept.**

- **CNH issues dispositions for licensing information of the Hydrocarbons National Data Repository**

- **CNH issues guidelines for the approval of oil & gas production[**

- **CRE issues Electricity transmission tariffs**

**Nov.**

- **CNH issues guidelines for the approval of exploratory & production plans**

**Dec.**

- **ASEA emits its first regulation relative to design, construction, operation and maintenance of petrol stations**

- **CRE issues Electricity distribution tariffs and Independent ISO tariffs**

- **CRE issues permits for retail gasoline stations**

**2016**

- Jan.**
  - CNH issues guidelines for the usage of the non-associated gas in oil production
- Mar.**
  - CRE publishes Clean Energy Certificate (CEC) initial market rules
- April**
  - CRE issues National electricity system grid code
  - CNH issues guidelines for the migration of historical information
- May**
  - ASEA emits regulations on Safety and Environmental Management Systems (SEMS)
- June**
  - ASEA issues regulation on insurance for upstream activities
- Jul. -Oct. 2017**
  - Round 2: tender of oil and gas fields by SENER and CNH
- Sept.**
  - First meeting of the Co-ordination Council for the Energy Sector (CCSE)
- Oct.**
  - CNH issues guidelines for drilling wells for exploration and production of hydrocarbons
- Nov.**
  - CRE to issue Ancillary services and Basic supply tariffs
- Dec.**
  - ASEA issues General Administrative Provisions establishing guidelines on Industrial and Operational Safety and Environmental protection for Surface Surveying (Seismic), and Exploration and Production of Hydrocarbons Activities

**2017**

- Electricity wholesale market monitoring by CRE
- Gasoline market opening (subject to early opening, under proposed legislation Revenue Law Initiative 2017)
- ASEA to issue comprehensive ruling for midstream activities
- ASEA issues regulation for Safety and Environmental Management Systems (SEMS) for downstream and retail
- CRE to issue rate methodologies for hydrocarbons (refined products, oil, Natural Gas and LPG) integrated natural gas storage and transportation system, pipeline transportation and storage activities, and natural gas pipeline distribution.
- CRE to issue general administrative provisions for registration of business transactions hydrocarbons (using SIRETRAC information system)
- CRE to modify and update First Hand Sales price methodology for LPG and Natural Gas.
- CRE to issue rate methodologies for pipeline transportation and storage activities and pipeline distribution activities.
- CRE to conduct Pemex Logistica's open season for granting transport and storage capacity to third parties for LPG.
- CRE to the General Administrative Provisions on First Hand Sales and commercialisation of gasoline and diesel with asymmetric regulation for Pemex.
- CRE to issue Guidelines for disclosing the selling price of fuels at service stations.

- CRE to issue technical standards for the market and electric power sector participants, and on efficient co-generation.
- CRE to issue a number of General Administrative Provisions for electricity, including:
  - CENACE carrying out auctions to ensure system reliability
  - Establishing operative, function and accounting separation
  - Assessing the net benefit of new distribution and transmission infrastructure to the Electric Power System Modernization and Expansion Program
  - Distributed energy resources
- CRE to issue regulation concerning the operation of the Renewable Energy Certificate System.

2018

- ASEA aims to finalise consolidated secondary legislation for industrial safety and environmental protection in the hydrocarbons sectors
- CRE to release first CEL market monitoring report with SENER

2019

- The three energy regulators are expected to reach financial autonomy through perceived duties and fines

Source: Adapted by OECD from ASEA, CNH and CRE.

Figure 2.2. Areas of influence and legal status of energy sector institutional actors, post-2013

Areas of influence						Legal status
Oil	Gas	Electricity	Nuclear energy	Energy efficiency	Safety & envt hydrocarbons	
SENER					SEMARNAT	Sector head
			CNSNS	CONUEE	ASEA*	Ministry's deconcentrated entities
CRE**						Regulatory bodies
CNH***						
PEMEX		CFE				State productive enterprises
	CENAGAS	CENAS				Independent transmission operators
IMP		INEEL	ININ****			Technological research institutions

\* Regulations are applicable to the entire hydrocarbons value chain.

\*\* In the oil and gas industry, the regulations are applicable only to the midstream and downstream segments.

\*\*\* In the oil and gas industry, the regulations are applicable only to the upstream segment.

SENER: Ministry of Energy; SEMARNAT: Ministry of Environment and Natural Resources; CNSNS: National Commission for Nuclear Safety and Safeguards; CONUEE: National Commission for the Efficient Use of Energy; ASEA: Agency for Industrial Safety and Environmental Protection of the Hydrocarbon Sector; CRE: Energy Regulatory Commission; CNH: National Hydrocarbons Commission; PEMEX: Petróleos Mexicanos; CFE: Federal Electricity Commission (utility); CENACE: National Centre for Energy Control; CENAGAS: National Centre for Natural Gas Control; IMP: Mexican Petroleum Institute; INEEL: National Institute for Electricity and Clean Energy; ININ: National Institute for Nuclear Research.

Source: Adapted from APEC Secretariat (2016), “APEC Energy Overview”, <http://aperc.ieej.or.jp/file/2017/6/7/APEC+Overview+2016.pdf> (accessed 13 June 2017).

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## Chapter 3

### Internal governance of the Energy Regulatory Commission

*The Performance Assessment Framework for Economic Regulators (PAFER) was developed by the OECD to help regulators assess their own performance. The PAFER structures the drivers of performance along an input-process-outcome-output framework. This chapter applies the framework to the internal governance of Mexico's Commission for Energy Regulation (CRE) and reviews the existing features, the opportunities and challenges faced by the regulators in developing an effective performance assessment framework.*

## Role and objectives

Prior to the Energy Reform, PEMEX (*Petróleos Mexicanos*) and the Federal Electricity Commission (*Comisión Federal de Electricidad*, CFE) were state-owned monopolies that controlled the upstream, midstream and downstream value chains for hydrocarbons and electricity in Mexico. CRE was initially established in 1993. Its objective was to administer economic and technical regulation of private electricity generation, primarily for self-consumption. Since then, CRE's responsibilities have gradually expanded over time:

- In 1995, with the passage of the Energy Regulatory Commission Law, CRE was responsible for tariff setting, rule setting and first hand sales (FHS) for the transportation, and distribution of natural gas and liquefied petroleum gas (LPG) and also for the storage of natural gas.
- In 2008, the passage of the Law for the Use of Renewables and Finance of Energy Transition (*Ley Para el Aprovechamiento de Energías de Renovables*) provided CRE with the power to issue standards, directives, methodologies and other administrative provisions to regulate electricity generation from renewables. CRE was provided with the additional responsibility of regulating the storage of LPG in 2008.

### *Impact of the 2013 Energy Reform on CRE's functions*

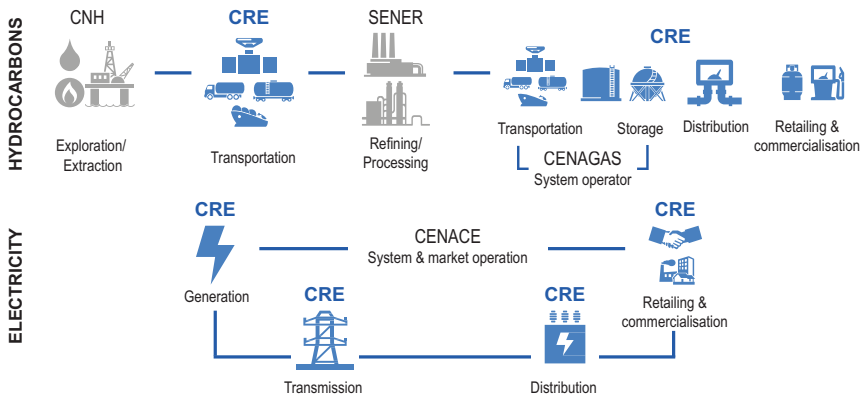
In contrast to the gradual increase in responsibilities between 1993 and 2007, the Energy Reform resulted in a significant expansion in the size and scope of CRE's mandate. A key element of the Energy Reform, which has had the biggest impact on CRE's roles and responsibilities, is the liberalisation of key markets previously provided by the state-owned vertically integrated electricity provider CFE and petroleum products and gas provider PEMEX, such as:

- the creation of an electricity market to be administered by a newly established system operator, the *Centro Nacional de Control de Energía* (CENACE) that enables private generators to compete with the state-owned monopoly provider, CFE.
- the removal of PEMEX's monopoly over the supply of natural gas and liquefied petroleum gas (LPG), and the transfer of PEMEX's natural gas pipelines to the new gas system operator, the National Centre for Gas Control (*Centro Nacional de Control del Gas Natural*, CENAGAS).

- the removal of PEMEX’s monopoly over the supply of oil, petroleum and petrochemicals with planned transition to introduce competition into the downstream gasoline and diesel market (SENER 2014).

As a result of the energy reforms, new agencies were created (the Agency for Safety, Energy and Environment – *Agencia de Seguridad, Energía y Ambiente*, ASEA as were the electricity and gas market operators (CENACE and CENEGAS). Also, the scope of CRE’s functions in the hydrocarbons and electricity markets expanded. Figure 3.1 highlights CRE’s new jurisdiction (midstream and downstream in hydrocarbons, and the throughout the electricity value chain) as a result of the Energy Reform.

Figure 3.1. CRE’s jurisdiction in the hydrocarbons and electricity sectors



In addition to monitoring the new electricity wholesale market, new functions arising from the Energy Reform for electricity include issuing the National Electric System Grid Code and determining electricity tariffs (transmission, distribution, basic supply, independent system operator’s (ISO) tariff, and ancillary services). The reform has also increased the number of electricity permits that CRE can issue, including new permits for electricity retailing. CRE has also been tasked with the responsibility of designing, implementing and monitoring a clean energy certificate system designed to encourage investment in clean energy and to enable Mexico to achieve its clean energy goals.

In hydrocarbons (oil, natural gas,, LPG, refined products, petrochemicals and biofuels) CRE is responsible for issuing permits, setting tariffs for transportation, storage and distribution, setting maximum prices for FHS, and regulating the technical conditions for service operation and quality. CRE is also responsible for liberalising prices in the natural gas, LPG and petroleum markets. In particular, LPG prices were liberalised on

1 January 2017, and CRE is currently in the process of liberalising prices for gasoline and diesel. Consistent with SENER’s Public Policy for Natural Gas Market Enactment (*Política Pública para la Implementación del Mercado de Gas Natural*), published on 25 July 2016, there is scope for the price of natural gas to be partially liberalised in 2017 (where CRE would authorise PEMEX’s retail sales in accordance with the market price), with prices being left to the market in 2018.

### ***Functions and powers***

The Energy Reform made significant changes to the legislative framework that CRE administers – beyond providing additional functions, the Energy Reform sought to minimise duplication between regulators and government agencies with the objective of enabling different agencies to work together so as to improve the robustness of Mexico’s energy regulation. The legislation that CRE now administers is set out in the Box 3.1.

#### **Box 3.1. Key legislation and regulation administered by CRE**

CRE’s roles and functions are set out in the following legislation and regulation:

- Law of the Coordinated Energy Regulators (*Ley de Órganos Reguladores Coordinados en Materia Energética*)  
[www.diputados.gob.mx/LeyesBiblio/ref/lorcme.htm](http://www.diputados.gob.mx/LeyesBiblio/ref/lorcme.htm)
- Hydrocarbons Law (*Ley de Hidrocarburos*)  
[www.diputados.gob.mx/LeyesBiblio/ref/lhidro.htm](http://www.diputados.gob.mx/LeyesBiblio/ref/lhidro.htm)
- Electrical Industry Law (*Ley de la Industria Eléctrica*)  
[www.diputados.gob.mx/LeyesBiblio/ref/lieiec.htm](http://www.diputados.gob.mx/LeyesBiblio/ref/lieiec.htm)
- Federal Revenue Act for Fiscal Year 2017 (*Ley de Ingresos de la Federación para el Ejercicio Fiscal de 2017*)  
[www.dof.gob.mx/nota\\_detalle.php?codigo=5460968&fecha=15/11/2016](http://www.dof.gob.mx/nota_detalle.php?codigo=5460968&fecha=15/11/2016)
- Regulations of the Hydrocarbons Law (*Reglamento de la Ley de Hidrocarburos*) [www.diputados.gob.mx/LeyesBiblio/regla.htm](http://www.diputados.gob.mx/LeyesBiblio/regla.htm)
- Regulations Electrical Industry Law (*Reglamento de la Ley de la Industria Eléctrica*) [www.diputados.gob.mx/LeyesBiblio/regla.htm](http://www.diputados.gob.mx/LeyesBiblio/regla.htm)
- Regulations of the activities referred to in the third title of the Hydrocarbons Law (*Reglamento de las actividades a que se refiere el Título Tercero de la Ley de Hidrocarburos*)  
[www.diputados.gob.mx/LeyesBiblio/regla.htm](http://www.diputados.gob.mx/LeyesBiblio/regla.htm)

**Box 3.1. Key legislation and regulation administered by CRE (cont.)**

CRE's internal structure, role of the President Commissioner, Governing Council, and Executive Secretary are set out in its internal regulation of the Energy Regulatory Commission (*Reglamento Interno de la Comisión Reguladora de Energía*, Internal Statute), which is explained in further detail in the Input Section of this chapter.

*CRE's functions in detail*

As outlined above, CRE has a broad range of functions that encompass economic regulation (tariff setting, ensuring access to essential facilities to promote competition through open seasons, monitoring the electricity market), technical functions (reviewing permits to operate in the electricity, mid-stream and downstream hydrocarbon markets, and developing official Mexican Standards regarding quality and measurement), and also environmental functions (such as developing the clean energy certificate system).

*Grant and ensure compliance with permits*

In order to participate in the electricity and hydrocarbons markets businesses are required to obtain permits from CRE. Permit applications must include information set out in legislation and in CRE's regulations.

For example, regulations developed by CRE for natural gas systems (Permit requirements for transportation, storage, distribution, liquefaction, regasification, compression, decompression, sale to the public and management of integrated gas systems) requires that permit applications include:

- Proof of payment
- Corporate structure
- Estimated investment in the project
- Project financing
- Description and technical specifications of the project
- Technical specifications of the installations
- Total system design capability
- Total operating capacity of the system

- Description of the project stages
- Social impact assessment
- Applicable regulations
- Self-regulation letter.

Permit holders are also generally required to provide information to CRE regarding their performance on an on-going basis. For example, for natural gas permits, these reporting obligations include, amongst other things, monthly reporting of natural gas quality, quarterly reporting of the origin and destination of natural gas, annual reporting of tariff adjustments, insurances, financial statements, operation and maintenance programmes and standards compliance certifications, natural gas leak reports and five-year report of their business plan.

For hydrocarbons, permit holders are also subject to economic regulation based on the type of facility. Article 10 of the relevant regulations (*Reglamento de las actividades a que refiere el Título Tercero de la ley de Hidrocarburos*, Regulations of the activities referred to in the third title of the Hydrocarbons Law) provides that transportation via pipelines, and storage of petroleum products via pipelines are subject to economic regulation (FHS, open access and tariff regulation).

While CRE oversees quality and measurement of hydrocarbons, the responsible authority for industrial security is ASEA. ASEA has developed guidelines which permit applications need to fulfil in order for CRE to grant a permit for specific regulated activities. The different types of permits that CRE issues are set out in Box 3.2.

### Box 3.2. The different types of permits issued by CRE

CRE is responsible for assessing applications for permits for both the hydrocarbons and the electricity sectors:

#### **Hydrocarbons sector**

The different types of permit that CRE can issue for the hydrocarbons sector are set out in the Regulations of the Activities referred to in the Third Title of the Hydrocarbons Law (*Reglamento de las actividades a que refiere el Título Tercero de la ley de Hidrocarburos*). Article 7 of the regulations state that the permit activities must be carried out in efficient, homogenous, regular, safe, continuous, uniform and non-discriminatory terms as to their quality, opportunity, quantity and price.

### Box 3.2. The different types of permits issued by CRE (*cont.*)

Permits are valid for 30 years (which can be extended). These regulations allow CRE to issue six different types of permits:

- Commercialisation, including hydrocarbons trading, management and recruitment of transportation, storage and distribution services
- Storage
- Compression, decompression, liquefaction regasification of natural gas
- Transportation via pipeline truck, tram, train, semi-trailer and ocean vessels
- Distribution via pipelines, tank-trucks, distribution vehicles, and portable containers subject to pressure
- Retail.

#### Electricity sector

The general obligation on CRE to issue permits for the electricity sector is set out in the Law of the Electrical Industry. CRE is able to issue two permits in the electricity sector:

- Generation permits (which require permit holders to comply with the electricity market rules, and to report their power generation to CRE monthly)
- Retail permits for basic supply (1MW), qualified supply (>1MW) and last resort (for qualified users).

CRE also issue authorisations:

- Authorisation to import electricity from a power plant installed in another country and exclusively connected to the National Electric System
- Authorisation to import or to export electricity in isolated mode.

*Source:* Information provided by CRE.

CRE is also required by Law to carry-out on-site inspections of permit holders, which can be carried out by an authorised third-party. CRE equally carries out inspections to ensure compliance with the Federal Law on Metrology and Standardisation (*Ley Federal sobre Metrología y Normalización*) and with the Official Mexican Standards.

There is a unit within CRE, the Standardisation and Engineering General Coordination (*Coordinación General de Ingeniería y Normalización*), which consults internally on the permits to be visited, submits to the Governing Council an annual programme of visits,

co-ordinates and supervises the visits, and reports on visit outcomes (including on any non-compliance). CRE has recently conducted the following inspections:

- As of July 2016, CRE has carried out a total of 13 inspections in the petroleum products sector.
- For the 2015 period, CRE carried out 47 inspections in the natural gas sector.
- In 2016, CRE carried out 28 inspections in LPG regulated facilities.
- CRE has carried out an average of 38 inspections per year for the electric power generation sector.
- CRE has not yet conducted inspections in the electric supply and commercialisation sector.

#### *Developing Official Mexican Standards and technical regulations*

CRE is also involved in developing Official Mexican Standards (*Normas Oficiales Mexicanas*) for the hydrocarbons and electricity sectors. For example, CRE has issued standards on the quality of oil fuels and petrochemicals, and has also issued the National Electric System Grid Code in April 2016.

CRE was responsible for assessing whether standards that were developed by CFE and PEMEX, prior to the Energy Reform should be converted into official standards after the implementation of the Energy Reform in conjunction with SENER and the Ministry of the Economy. It has also taken responsibility for standards developed by the independent electricity system operator, CENACE.

The Ministry of Economy oversees the annual programme of standardisation in Mexico, and CRE has registered three areas in which it plans to develop standards as a result of the Energy Reform in 2016-17, including for electricity metrological instruments, efficient co-generation, and power electrical installations of generation, transmission, and distribution.

#### *Tariff regulation*

CRE is responsible for setting tariffs in both the hydrocarbons and electrical sectors. In general, tariffs are set for five year periods (at which point, a business case is considered), and are adjusted annually to account for the impact of inflation. CRE's responsibilities and approach to tariff setting is set out in Box 3.3.



### Box 3.3. CRE's tariff setting responsibilities in detail

Prior to the Energy Reform, CRE set tariffs for the storage, transportation and distribution of natural gas and LPG. CRE now has additional tariff setting responsibilities for electricity and hydrocarbons (oil products, petrochemicals, crude oil and natural gas integrated systems). In particular:

- For electricity, CRE is responsible for setting a number of tariffs, including transmission, distribution, basic supply, ancillary services and ISO tariffs and will also develop tariffs for controllable electricity demand and supplier of last resort during the 2017-18 period.
- For hydrocarbons it is responsible for setting transmission, distribution and storage tariffs. CRE also sets initial tariffs for open season processes that provide access to capacity of existing infrastructure, and has recently issued initial tariffs for providing access to PEMEX's transportation and storage infrastructure in the Baja, California and Sonora states, as part of the process of facilitating entry in the domestic petroleum market.

Most of the tariffs that CRE sets are set for a five-year regulatory period in advance (tariffs for the electricity ISO are set annually), which can be updated annually at the request of the permit holder to account for inflation and exchange rates. The tariff setting process involves using information on costs and demand from the previous regulatory period combined with forecast information provided by the permit holder for the forecast period to determine a cost-based annual income requirement for the upcoming regulatory period which is then converted into a price cap. CRE does not employ incentive schemes as part of its tariff determination process, but efficiency gains made in the previous five-year period are passed on to users in the following regulatory control period.

Tariff methodologies are available online for each of the regulated activities, which include Excel templates setting out the information that CRE requires from the regulated business in order to calculate the income requirement. The current tariff setting process involves information being provided by the regulated business and CRE conducting its own assessment, with opportunities for CRE to seek further information from the regulated business as required. However, unlike the process of developing regulations, which are subject to an external consultation process conducted by COFEMER, there is no stakeholder consultation in CRE's current tariff setting processes.

For hydrocarbons, CRE is currently in the process of updating its tariff methodologies which are set out in its general administrative provisions. CRE is planning to review and update its approach to determining natural gas and LPG tariffs and also its accounting standards. As CRE will be updating regulations, it is proposing to do this within a consultative process with stakeholders prior to going through the COFEMER review process which will also involve consultation.

### Box 3.3. CRE's tariff setting responsibilities in detail (*cont.*)

This process of updating tariff methodologies will seek to align differences in approaches to tariff setting between sectors (for example, in terms of depreciation profiles) to ensure that they are consistent, and will also seek to have consistent requirements in terms of the information that is provided by the permit holders at the start of the process (including auditing requirements). In conducting this review, CRE is looking at the different approaches to determining tariffs of regulators in other jurisdictions and is also seeking to put in place information collection requirements aimed at enabling cost comparisons to facilitate a greater use of benchmarking in future tariff assessments.

For electricity, CRE is currently in a transitory tariff-setting phase, and proposes to develop more permanent methodologies from 2019 onward. CRE is partway through the transitory process of making its first set of electricity tariff determinations having decisions on transmission, distribution and the ISO tariffs with determinations for basic supply and ancillary services to be made in 2017, followed by tariffs for controllable demand and supplier of last resort. Subsequent to finalising its initial set of tariffs, CRE also plans to develop the methodologies that it will use to define electricity tariffs for 2019 onwards.

*Source:* Information provided by CRE.

### *Managing the transition to competition in hydrocarbons markets*

Due to the dominance of PEMEX in Mexico's domestic hydrocarbons markets, CRE is currently responsible for determining FHS prices for natural gas, LPG, petroleum products and petrochemicals. FHS prices are prices for the first sale of a product produced in Mexico and sold by PEMEX to a third party, for delivery in Mexican territory.

However, with the implementation of the Energy Reform, CRE now has responsibility to facilitate the introduction of competition in these markets. The Energy Reform intended for prices for LPG to be set by the market in 2017 (which occurred on 1 January 2017), and for prices for petroleum and petroleum products to be set by the market in 2018. Prices for natural gas are due to be partially liberalised in 2017, with full liberalisation to occur in 2018.

While the Energy Reform initially envisioned that the liberalisation of the gasoline and diesel markets would be completed by 2018, this was brought forward one year from 2018 to 2017 (the Revenue Law Initiative 2017 was approved on 26 October 2016 and was published in the official gazette on 15 November 2016). In January 2017, maximum prices for gasoline and diesel increased in accordance with a new pricing methodology

based on international prices, transportation storage, distribution costs, and applicable taxes and margins (SHCP, 2017). The application of this methodology resulted in a substantial price increase on 1 January 2017. The process for liberalising Mexico’s gasoline market is set out in Box 3.4.

Once effective competition has been introduced into these markets, there will be no need for CRE to set FHS prices. For petroleum products, CRE will cease setting FHS prices regionally when 30% of the total supply is provided by companies other than PEMEX. There is scope for CRE to stop issuing FHS prices for natural gas in 2018. There is no set date for LPG.

#### **Box 3.4. Early liberalisation of the gasoline market in Mexico**

While the Energy Reform originally intended for the downstream gasoline and diesel markets to be liberalised in 2018, passage of the Revenue Law Initiative in 2016 (*Ley de Ingresos de la Federación para el Ejercicio Fiscal de 2017*) moved this deadline to the end of 2017.

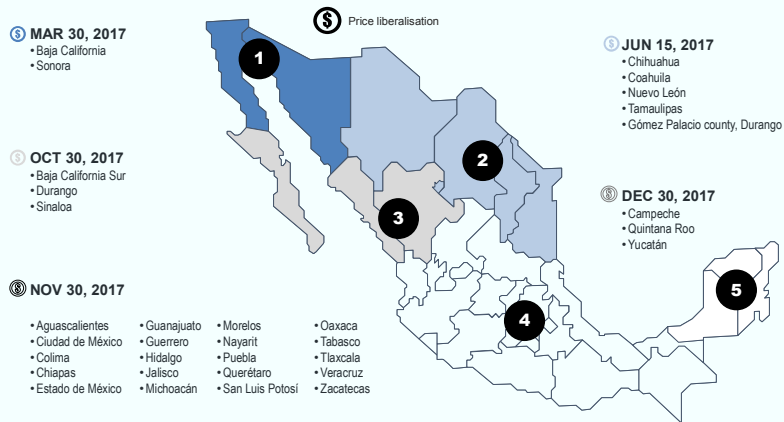
The process of liberalising Mexico’s gasoline market involves three different government agencies: SHCP CRE and COFECE. Within this process:

- CRE and COFECE have established a schedule setting out when different zones in Mexico will have their gasoline and diesel prices liberalised.
- CRE will manage open seasons processes to provide capacity and access to PEMEX’s storage and transportation infrastructure in each of the different regions throughout 2017.
- SHCP will continue to determine maximum retail prices in zones where prices changes are not linked to international price changes and do not correspond to competitive market forces (last resort measure).
- As of 2019, COFECE will decide whether CRE should re-regulate prices where it considers there is an absence of effective competition.
- Permit holders will be required to provide information to CRE, including information on price changes one hour in advance of the price change, volumes purchased and sold, and on their corporate structure. CRE will be responsible for delivering a product price information system that will provide information to the public on prices for gasoline and diesel.

The figure below sets out the timing of the stages of the liberalisation of gasoline and diesel markets in Mexico over the course of 2017.

### Box 3.4. Early liberalisation of the gasoline market in Mexico (cont.)

#### Fuel price liberalisation strategy in Mexico



Source: Information provided by CRE.

#### Monitor the wholesale electricity market

The responsibility of monitoring the wholesale electricity market transferred from SENER to CRE on 27 January 2017. CRE is now responsible for monitoring the transactions that occur in the electricity market, as well as the decisions of CENACE. A number of transactions occur in the national wholesale market; including:

- electric power exports and imports
- electric power acquisition
- the acquisition of ancillary services
- transmission financial rights transactions
- clean energy certificate transactions.

CRE monitors these transactions to ensure, amongst other things, that market participants do not abuse their market power, that they are not involved in collusive activities, that they present offers in accordance with the reference costs of their generation units, and that they do not perform any other activities to manipulate the market and its prices.

### *Clean energy certificates system*

The Energy Reform provided CRE with the responsibility to design regulations to implement CEL requirements in conjunction with SENER, to monitor CEL transactions, and to prepare a CEL market monitoring report on CEL in conjunction with SENER in 2018. Consumers and suppliers of electricity are obliged to purchase CELs in proportion (determined by SENER) to their electricity consumption. Clean generators receive CELs, and receive additional income from selling CELs to those parties which are obliged to purchase them. In this way, CELs provide incentives for market participants to develop clean sources of electricity generation.

### *Developing regulations to support the implementation of the Energy Reform*

While the Energy Reform has provided CRE with a number of new responsibilities for the regulation hydrocarbon and electricity markets, CRE is tasked with the responsibility of developing regulations that set out the processes that it will undertake to implement these new responsibilities. The different types of regulations that CRE issues are set out in Box 3.5.

#### **Box 3.5. Types of regulations issued by CRE**

- **Internal Statute** (*Reglamento Interno de la Regulatora de Energia, Internal Statute*). Its purpose is to establish the structure and regulate the organisation and operation of the CRE.
- **Mexican Official Standards.** They are designed to regulate the characteristics or specifications of products, services or raw materials. They also regulate measuring instruments, measurement standards and methods of measurement, verification, calibration and traceability. CRE has the authority to issue the Mexican Official Standards that establish:
  - Petrol quality standards
  - Metrological instruments for the electric sector
  - Efficient electricity co-generation standards, and
  - Standards for power electrical installations for generation, transmission, and distribution.
- **General administrative provisions.** They are generally applicable legal instruments whose purpose is to detail the rules applicable to the regulation mandated by law. These differ from the bylaws because a regulatory body issues them, while the executive issues the bylaws.
- **Interpretation agreements.** The Governing Council of CRE has the power to interpret laws, bylaws and other instruments that are within its competence, in order to determine the criteria applicable to regulation.

*Source:* Information provided by CRE.

Regulations that CRE develops are required to be accompanied by regulatory impact analysis (RIA), which is then subject to a review process conducted by the Federal Commission for Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*, COFEMER), which in turn involves public consultation. This process is set out in detail in Box 3.6.

### Box 3.6. Regulatory impact analysis in Mexico

In Mexico, the use of Regulatory Impact Analysis (RIA) was formalised through amendments to the Federal Law of Administrative Procedure, in 2000. RIA became compulsory for all types of legal measures of general application that create compliance costs, from formats to major implementation rules. They have to be submitted to COFEMER, except for the subjects that the law explicitly excludes, like those of a fiscal nature, or acts by sub-national administrations (states or municipalities). Ministries and regulatory agencies are responsible for elaborating RIAs, while COFEMER is responsible for reviewing them. RIAs include a discussion of the problem to be addressed, objectives, obligations to be imposed, alternatives considered, potential costs and benefits, and other relevant impacts, risk and competition analysis, mechanisms of implementation, monitoring and evaluation, and the results of public consultation.

Regulatory impact assessments are reviewed by the Federal Regulatory Improvement Commission (COFEMER) and if they are unsatisfactory, for example, by not providing specific impacts, COFEMER can request the RIA to be modified, corrected or completed with more information. If the amended RIA is still unsatisfactory, COFEMER can ask the lead ministry to hire an independent expert to evaluate the impact, and the regulator cannot issue the regulation until COFEMER's final opinion.

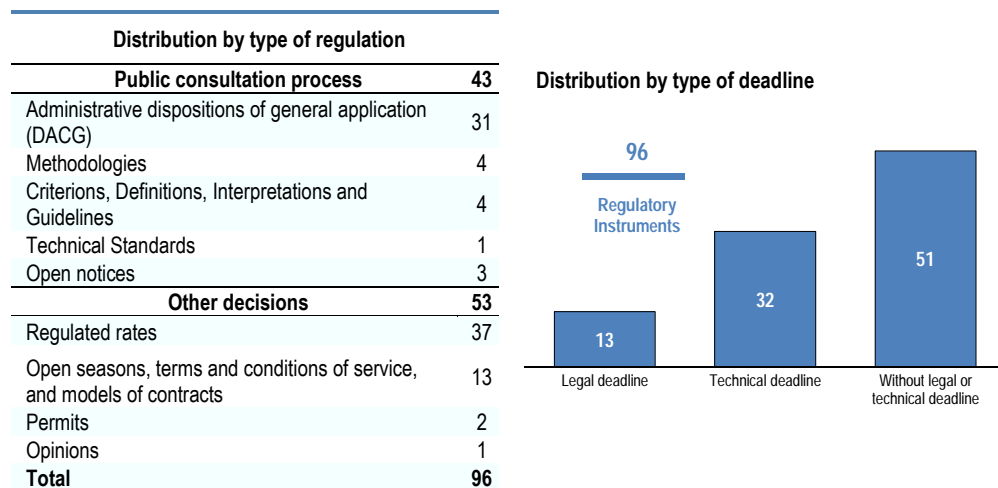
*Source:* OECD (2014), *Regulatory Policy in Mexico: Towards a Whole-of-Government Perspective to Regulatory Improvement*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264203389-en>.

### Strategy

CRE's internal regulation establishes a planning and evaluation unit (UPE) within CRE. Article 32 of the internal statute sets out the responsibilities of the UPE, which amongst other things, include planning, monitoring CRE's work, guiding CRE to achieve its strategic goals, and establishing measures to evaluate CRE's effectiveness.

The primary tool developed by the UPE to plan and monitor CRE's progress is its annual Regulatory Program. A snapshot of CRE's 2017 Regulatory Program for hydrocarbons is set out in Figure 3.2.

Figure 3.2. Summary of CRE's Regulatory Program for hydrocarbons



Source: Information provided by CRE.

The Regulatory Program is developed annually, usually commencing the year prior and finishing in January the following year. The Regulatory Program is a comprehensive list of all of the projects that require a vote of the board. In light of CRE's workload, this includes regulations that CRE needs to develop that year, which subsequently are required to go through a review and public consultation process through the Federal Commission for Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*, COFEMER).

The Regulatory Program is organised by industry sector (Natural Gas, LPG, Oil, Electricity) and transversal projects, and each of the projects are allocated to a specific unit or division within CRE with a deadline for delivery.

The Regulatory Program is continuously updated throughout the year by the UPE, which co-ordinates with the other units and divisions within CRE to collect information on CRE's progress in delivering the regulations and decisions on the existing Regulatory Program. The Regulatory Program is sent to CRE's Commissioners weekly, which includes a dashboard summary of the Regulatory Program setting out the number of regulations CRE needs to issue by market, by type of legal instrument, and in each month of the year. In addition, CRE shared its upcoming Regulatory Program for 2017 with its stakeholders at a session of its advisory council in December 2016.

Not all of CRE's activities are captured in its Regulatory Program. Activities that are currently outside the Regulatory Program include the Statistical Record of Commercial Transactions System (*Sistema del Registro Estadístico de Transacciones Comerciales*, SIRETRAC) a system designed to monitor transactions within the hydrocarbons market, the CEL monitoring system, and the organisation and preparatory work leading up to the 7th World Forum for Energy Regulation in 2018.

At this stage, CRE has not commenced the process of developing a strategic plan, however it anticipates developing a strategic plan for the 2017-22 period, by the summer in 2017. CRE's strategic plan needs to be aligned with broader energy industry planning documents, such as the National Plan for Development 2013-18 and also the Energy Sector Programme 2013 to 2018.

### ***Co-ordination***

In light of the scope of CRE's mandate (i.e. hydrocarbons and electricity, technical and economic regulation), CRE co-ordinates with a number of government agencies in order to deliver its functions.

The scope and amount of co-ordination between government agencies has substantially increased since the implementation of the Energy Reform. While the Energy Reform created a number of formal mechanisms for collaboration in the energy industry, prior to these mechanisms being established there was a great deal of informal co-ordination between the energy agencies.

Formal mechanisms for co-ordination in which CRE participates, include:

- The Co-ordination Council of the Energy Sector
- Consultative Councils established under Section 28 of the LORCME
- The National Institute of Electricity and Clean Energy
- Formal co-operation agreements.

There are a number of different government agencies that have the responsibility of implementing different parts of the Energy Reform. As a result, in order to co-ordinate the activities of these agencies, the Coordination Council of the Energy Sector (*Consejo de Coordinación del Sector Energético*, CCSE) was established in Article 19 of the LORCME. However, while the CCSE was designed to be the co-ordinating body for the Energy Reform, it has only met twice so far: on 5 September 2016 and on 28 February 2017.



The members of the CCSE are SENER (which also chairs the CCSE), CRE, CNH, CENAGAS and CENACE. As set out in Article 21 of the LORCME, the function of the CCSE is to make CRE and CNH aware of energy policy developed by SENER, make recommendations on the federal energy policy that should be included in the annual work programmes of CRE and CNH, and to analyse, and make recommendations and proposals on CNH and CRE for the implementation of energy policy.

Article 28 of the LORCME also provides for consultative councils to be established with the objective of providing feedback on the regulations issued by the co-ordinated energy bodies.

CRE has an overall consultative council (also known as its advisory council, *Consejo Consultivo*), which has two working groups on electricity and hydrocarbons that provides feedback on the regulation that CRE has developed. Additionally, there are two standards consultative committees:

- The National Consultative Committee of Electrical Standards (*Comité Consultivo Nacional de Normalización Eléctrico*)
- National Consultative Committee of Hydrocarbons, Petroleum and Petrochemicals (*Comité Consultivo Nacional Hidrocarburos, Petrolíferos y Petroquímicos*).

CRE's Consultative Committee was established on 8 May 2015. It is composed of two working groups: 1) an Electricity working group, and 2) an Oil, Natural Gas, Petroleum, Petrochemicals, and Bioenergy working group that meet independently (CRE, 2017). CRE's Consultative Committee enables CRE to seek views on regulation in addition to the public consultation process conducted by COFEMER, and meets around three or four times per year. Government, academic and industrial representatives are integrated into CRE's consultative committees on standards.

In addition to CRE's three consultative councils, CRE also participates in two advisory councils for the development of national supply chains:

- Consultative Council for the Development of the Electrical Industry (*Consejo Consultivo para el Fomento a la Industria Eléctrica*)
- Consultative Council for the Development of the Hydrocarbons Industry (*Consejo Consultivo para el Fomento de la Industria de Hidrocarburos*).

These consultative councils are chaired by the Ministry of Economy, and are also composed of representatives from Government, academia and industry. These consultative councils not only focus on supply chain

development, but also look at technological innovation in the energy industry.

The National Institute of Electricity and Clean Energy (*Instituto Nacional de Electricidad y Energías Limpias*) was established with the Energy Reform. CRE, along with SENER, participates in this forum. The mandate of this forum is to promote the development of clean energy research – primarily for energy generation.

CRE has also established an agreement with the Federal Consumer Protection Agency PROFECO, in order to share consumer complaints regarding electricity. Under this arrangement, PROFECO will deal with residential complaints, while CRE will address complaints from wholesale and major electrical power consumers.

CRE has also established co-operation agreements with agencies overseas to learn and contribute to international practices and bolster its internal capacity. These include:

- International Confederation of Energy Regulators
- The Association of *Iberoamerican* Energy Regulators
- The National Association of Regulatory Utility Commissioners USA
- The Memorandum of Understanding with the Peruvian Regulator (*Organismo Supervisor en Energía y Minería*)
- The Memorandum of Understanding with the Federal Energy Regulatory Commission USA
- The Memorandum of Understanding with the Department of Energy USA
- The Memorandum of Understanding with the North American Electric Reliability Corporation
- The Memorandum of Understanding with the School of Public Policy of the University of Calgary
- The US Department of State Bureau of Energy Resources.

### ***Participation in the legislative process***

In addition to implementing regulations to support the implementation of the Energy Reform, CRE also provides its views on energy policies, laws and regulations developed by other parts of government. These include the

Ministry of Energy, Congress, and by other government bodies with the powers to draft and propose new legislation (such as the Executive Power).

CRE provides guidance to these agencies through a number of different means. In some cases, CRE establishes working groups and meetings to discuss proposed policies, legislation and regulation. In other cases, CRE uses informal mechanisms for providing its views. As a result, not all of the contributions that CRE makes to policy development are publicly disclosed and recognised.

Recently, CRE has provided comments on SENER's public policy for the development of the natural gas market. It has also worked very closely with the SENER in order to facilitate the recent transfer of the electricity market monitoring function to CRE in 2017.

### *Independence*

As part of the Energy Reform, CRE's status changed from an agency within SENER to that of a co-ordinated agency.

Article 3 of the LORCME sets out the scope of CRE's independence as a co-ordinated agency, noting that co-ordinated agencies have technical, operational and managerial independence, judicial personality and are able to collect income from the delivery of their services. However, this independence is contingent on CRE co-ordinating with SENER so that its functions are carried out in accordance with the public policy of the Federal Executive.

While the scope of CRE's activities is influenced through the development of energy policy and the design of the sector plan (the Energy Sector Program 2013-18) by SENER, SENER is unable to direct CRE, issue statements of expectation, or overturn CRE's decision making.

## **Input**

### *Financial resources*

#### *Sources of funding*

As set out in Box 3.7, CRE is currently in the process of transitioning from being funded through the Federal budget to being funded by income from fees and duties collected from regulated firms.

### Box 3.7. CRE's transition to a new funding model

#### Transition to financial autonomy in 2019

Prior to the reform, CRE's budget was within SENER's budget. After the Energy Reform, LORCME provisions granted a degree of budgetary independence to CRE, and it now has its own budget line in the Federal budget. Additionally, CRE is now able to retain fees and duties collected from the regulated entities.

Over the period of 2015-18, CRE's budget will transition from being funded by the federal government towards being funded entirely by fees and duties. During the transition period, CRE's budget will be composed of a mix of revenue granted by the Federal Government, and revenue collected from fees and duties. The transitory sixth article of the Federal Law on Budget and Treasury Responsibility (*Ley Federal de Presupuesto y Responsabilidad Hacendaria*) projected that CRE would receive a declining amount of Federal resources as it made this transition, as shown in the below table:

Year	Federal resources (MXN million)
2015	400
2016	370
2017	340
2018	280

At this stage, SHCP has not specified what the operational budgetary procedures will be for CRE for 2019.

#### Fees and duties

Fees and duties are determined in accordance with the capital and operating costs of regulation. The expansion in the scope of CRE's regulatory responsibilities has increased the number of permits that CRE is responsible for administering considerably. While this has increased CRE's revenue from fees and duties beyond CRE's current expenditure, it is expected that in following years this expenditure will be equal to income as CRE expands its activities.

#### Allocation of income from fees and duties

Article 31 of the LORCME requires that CRE's Trust Fund to be managed by a trustee. It also provides that the transference of Trust Fund resources into the regulator's annual expenditure coverage does not need authorisation from the Ministry of Finance, as long as the Article 134 of the Mexican Constitution is being respected and the regulator accepts to be subject to the fiscal controls and assessments from the State. Further, it provides that the Trust Fund cannot accumulate more than three times the annual budget for the last fiscal year. Resources in excess of three times the last budget will be transferred to the Federal Treasury.

### Box 3.7. CRE's transition to a new funding model (cont.)

However, in practice, the Ministry of Finance determines and authorises the amount of resources from the income surplus that: i) will be transferred to cover CRE's annual expenditure; ii) will contribute to the Trust Fund and; iii) will contribute to the Federal Annual Budget, and these decisions are in accordance with the general situation of the public federal finances.

The table below shows the allocation of the total income surplus collected from fees and duties in million MXN. In particular, it shows that more than half of the income surplus collected from fees and duties was transferred to the Federal Annual Budget (*Presupuesto del Gobierno Federal*, PGF) in 2015 and 2016.

	2015		2016	
<b>Total income surplus</b>	<b>897.8</b>	100%	<b>1 036.0</b>	100%
Transferred to:				
CRE's annual budget (to supplement)	67.1	7%	143.0	14%
CRE's trust fund contribution	302.2	34%	200.0	19%
Federal Annual Budget	528.6	59%	693.0	67%

#### The Trust Fund

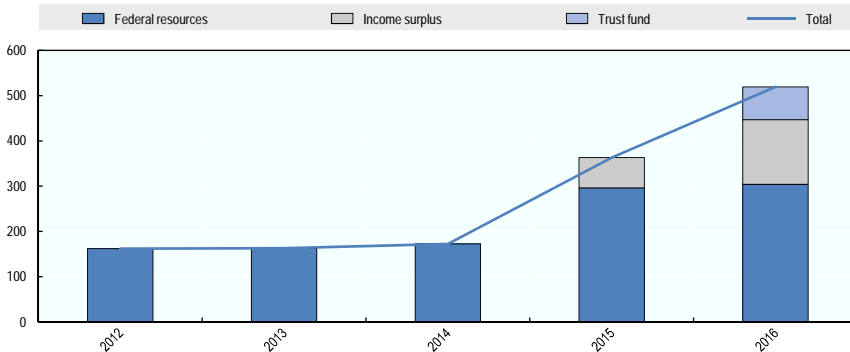
CRE's Trust Fund commenced in 2015 with an initial budget of MXN 302.2. In 2016, a committee was established to administer CRE's Trust Fund. The members of the Trust Fund Committee are SHCP, SENER, SFP and CRE. The starting balance of CRE's Trust Fund was MXN 302.2 million in December 2015, which increased to 441.1 as at December 2016.

*Source:* Information provided by CRE.

Since the implementation of the Energy Reform, CRE's funding has increased substantially in line with the increase in the number and scope of its roles and functions. Figure 3.3 shows CRE's expenditure for the period between 2012 and 2016. It also shows the funds that CRE has received from federal resources, fees and duties, and from the trust fund.

Figure 3.3 shows that CRE's allocated expenditure has increased substantially since 2012. In particular, CRE's expenditure increased by 201% between 2014 and 2016 (subsequent to the passage of the secondary laws in 2014). However, Figure 3.3 also shows that CRE has received less federal resources than the budget allocated for the transition period in 2015 and 2016 (MXN 400 and MXN 370 million respectively).

Figure 3.3. CRE's expenditure for the period 2012 to 2016 (MXN million)



Source: Information provided by CRE.

### *Management of financial resources*

While CRE collects fees and duties from regulated industry, it continues to set its budget in parallel with SHCP, in order to reconcile with the annual Federal budget setting process.

The Federal budget setting process is established in accordance with the Federal Law on Budget and Treasury Responsibility (*Ley Federal de Responsabilidad Hacendaria*). In May, of every year, individual fiscal plans are integrated into the first draft of the Federal Expenditure Budget Plan (*Presupuesto de Egresos de la Federación*) for Congress' approval on 8 September, of every year.

The first step to determine CRE's budget involves the development of a proposal to be sent to SHCP for its consideration and approval. CRE's Finance Unit then co-ordinates with each Technical Unit and Division, to determine their resource needs for the upcoming financial year. This process is not linked to the planning process conducted by UPE.

Subsequent to the proposal being presented to SHCP, the second step involves SHCP making an assessment and setting out the funds that each agency needs to accomplish its goals and obligations; in accordance with Laws and Regulations that are aligned to the National Development Plan (2013-18).

The way in which CRE spends its resources is reviewed in two ways. First, annually, the Federal Budget (*Presupuesto de Egresos*) allocates resources on a programme structure. Each programme has a performance evaluation matrix (*Matriz de Indicadores para Resultados*, MIR). The matrix includes key performance indicators that determine how results were achieved and in what proportion programme goals were met. In this sense,

CRE's budget is subject to a performance assessment conducted by SHCP. CRE reports the MIR to SHCP quarterly. CRE describes how its activities have contributed to the delivery of its mandate and objectives.

Second, CRE is subject to internal and external audits. External government agencies audit CRE such as the Federal Auditing Office (*Auditoría Superior de la Federación*). Internal audits are conducted by the Internal Audit Office.

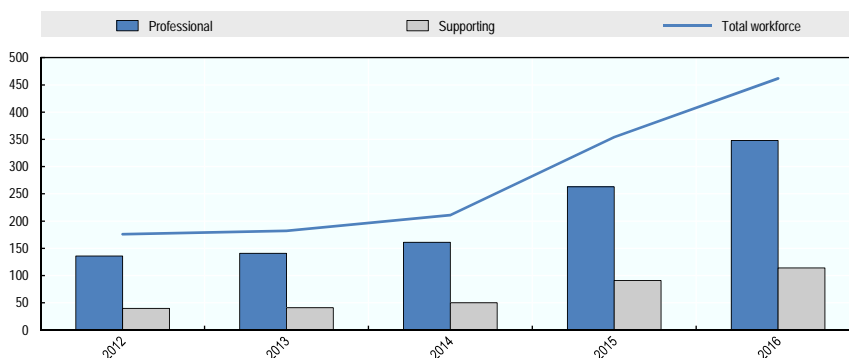
## ***Human resources***

### ***Staff profile and recruitment***

Figure 3.4 shows the rapid growth in CRE's workforce since the implementation of the Energy Reform in 2014. In particular, Figure 3.4 shows that CRE's workforce has increased by 163% over the period, with a 119% increase between 2014 and 2016. CRE currently has approval from SHCP for 500 staff, whereas CRE considers that it requires 650 staff in order to accomplish its goals and obligations.

Figure 3.4 also shows the proportion of supporting and professional staff at CRE. It shows that in 2016, 24% of staff were responsible for administrative functions while 76% were responsible for technical duties, such as the determination of tariffs, on-site inspections, and regulation tasks. Of this 76%, 27% are engineering skillsets, while 49% have legal and economics skills. CRE is currently seeking to strengthen its capacity by hiring professionals with experience in tariff setting.

**Figure 3.4. CRE's total, professional and supporting workforce for the period 2012 to 2016**



Source: Information provided by CRE.

Table 3.1 sets out the profile of CRE’s workforce. While CRE was established in 1993, Table 3.1 shows that the majority of staff have worked at CRE for less than or equal to five years.

Table 3.1. CRE’s workforce profile as at March 2017

Years in CRE’s workforce	Men	Women	Total
Less than or equal to 5 years	214	159	373
Between 5 and 10 years	21	20	41
Between 10 and 15 years	8	2	10
Between 16 and 20 years	7	4	11
More than 20 years	8	9	17
Total	258	194	452

*Source:* Information provided by CRE.

### *Staff recruitment*

While CRE does not have a Chief Executive Officer, the President Commissioner has a number of functions in relation to staffing. In particular, Article 23 of the LORCME provides the President Commissioner with the responsibility of appointing and removing staff and proposing the appointment of the Executive Secretary to the Governing Council for approval. While the President Commissioner appoints senior staff (heads of unit) directly, CRE does not have established procedures for advertising positions or for informing the President Commissioner’s decision through selection panels.

For other staff, CRE also does not have a systematic approach to recruitment (advertising and selection processes). For example, CRE recently obtained access to 142 additional temporary positions (in October 2016), and it managed to fill 116 of these positions between 16 October and 1 November in 2016. CRE advertised these positions on university websites, but not on the Federal Government job database ([www.trabajen.gob.mx](http://www.trabajen.gob.mx)). CRE was unable to advertise positions on the Federal Government database because it had not yet established its Regulatory Service Career System. CRE’s selection decisions were made by each of the units and divisions through interviews (the decision was taken by each head of unit and by direct supervisors). Psychometric testing of employees was conducted after this two-week period, with the objective of using this experience to develop a guideline for the Regulatory Service Career System.



CRE is in the process of reforming the approach that it takes to hiring and developing staff by creating a Regulatory Service Career System, which is provided for in the LORCME. The Regulatory Service Career System will establish position descriptions, setting out specific profession and technical requirements for each of the roles within CRE.

### *Remuneration*

CRE has limited flexibility over salaries because they are determined in accordance with the Federal Manual (*Manual de Percepciones de los Públicos de la dependencias y entidades de la Administración Pública Federal*), which varies according to level of responsibility and job category. CRE considers that the salaries that it is able to offer, for the most part, are not competitive compared to salaries in the private sector.

CRE is able to compare its salaries with the salaries of other government agencies (such as CFE, PEMEX, SENER, CENAGAS, and CENACE) through the *Portal de Obligaciones de Transparencia*, which is an electronic window that the public can access as a means of transparency.

In this context, in order to attract and retain staff CRE is seeking to provide its staff with competitive salaries within the scope of the Federal salary scale. CRE has also provided its staff with a degree of flexibility such as working less hours on Fridays to incentivise productivity (this measure was approved by CRE's Governing Council).

### *Staff training, development, and promotion*

Table 3.2 sets out CRE's total staff training activities, hours, trained staff and budget over the period 2014-16. Table 3.1 shows that the total number of training hours at CRE have increased substantially between 2014 and 2016.

**Table 3.2. CRE's staff training for the period 2014-16 (MXN)**

<b>Year</b>	<b>Activities</b>	<b>Hours</b>	<b>All staff</b>	<b>Trained staff</b>	<b>Budget</b>
2016	69	26 760	462	424	2 654 737.49
2015	83	10 635	354	253	2 510 535.58
2014	69	5 045	211	133	1 806 205.21

*Source:* Information provided by CRE.

CRE has previously partnered with a university, *Centro de Investigación y Docencia Económicas* (CIDE) to provide staff with a diploma in energy policy. CRE is currently in the process of reaching an agreement with CIDE,

and proposes to send ten of its staff to attend in March 2017. CRE is also in the process of exploring agreements with the Mexico Autonomous Institute of Technology (*Instituto Tecnológico Autónomo de México*), the Monterrey Institute of Technology and Higher Education, (*Instituto Tecnológico y de Estudios Superiores de Monterrey*) and the National Autonomous University of Mexico (*Universidad Nacional Autónoma de México*).

Other than recognising their accomplishments and constant performance, CRE does not currently have specific processes to promote staff. CRE envisages that its forthcoming Regulatory Service Career System will establish a promotion procedure based on merit. The Regulatory Service Career System aims to foster the development of technical skills, and ensure that CRE obtains access to the right staff for its positions.

In addition to the Regulatory Service Career System, CRE is developing a Performance Indicators System for itself as a whole and for its different internal units and divisions. CRE anticipates that the indicators for the Regulator Service Career System will be constructed in the next two years.

## Process

### ***Decision making and Governing Council***

The Governing Council is responsible for CRE's decision making, and is composed of seven commissioners (CRE currently has six), one of whom serves as the President Commissioner. Commissioners are nominated by the President of Mexico and the decision to appoint is made by the Senate. In particular, the President of Mexico nominates a shortlist of candidates to the Senate, who then votes on the candidates after testing them at a Senate hearing.

Commissioners have seven-year terms which can be extended once. CRE does not have a CEO, and in effect this role is taken on by the President Commissioner. Amongst other things, the role of the President Commissioner is set out in the LORCME. The role includes implementing the resolutions made by the Governing Council; implementing and monitoring internal policies, proposing the appointment of the Executive Secretary, and CRE's staff (aside from the personal staff of the other Commissioners), formulating CRE's budget, and reporting on CRE's performance decision process

As set out in Article 10 of the LORCME, CRE makes decisions in either ordinary meetings (arranged 72 hours in advance), or extraordinary meetings (arranged 24 hours in advance), at least once per month. To be in session, at least four Commissioners must attend. Decisions are made by majority, with the President Commissioner having a casting vote.

Article 11 of the LORCME provides that Board meetings are open and public, and that they must be transmitted by electronic media. The only exception to this is when confidential information is discussed. Furthermore, Article 12 of the LORCME requires that Commissioners not take part in decision making in which they have an interest. Where Commissioners believe they may have an interest in a matter before CRE, they are required to excuse themselves and notify the Governing Council.

### *Nomination and appointment*

CRE's Governing Council is appointed by the Senate upon proposals made by the Executive. The hiring process for CRE's President Commissioner and Commissioners is conducted through a short-list of three candidates proposed by the President of the Republic to the Senate, which chooses one of them following hearings and a vote. The shortlist is based on specific requirements stipulated in the LORCME and is established by the executive through informal internal consultations. To become a Commissioner it is necessary to be Mexican and to have a good reputation; to have a bachelor's degree, and to have a minimum of five years of work experience in energy-related fields, among other requirements.

The Governing Council then appoints an Executive Secretariat, with the guidance of the President Commissioner. The Commissioners are appointed for a period of seven years and can serve an additional seven-year mandate. Their mandates are staggered and can only be removed for severe causes listed in the LORCME. The leadership team is then selected by the President Commissioner according to the candidate's profile and the technical requirements for the position. The President Commissioner likewise has the authority to dismiss any staff under specific circumstances.

The nomination and appointment process is not always aligned with the timing of vacancies. For example, CRE is currently operating with six out of maximum of seven Commissioners. Additionally, CRE lacked a President Commissioner during a four-month period between 1 January to 28 April 2016. During this period, the Governing Council exercised some of the Chairman's attributions until the Senate appointed CRE's current Chairman.

### *Preventing conflicts of interest*

In addition to the transparency provisions in the LORCME for the operation of the Governing Council (meetings to be publicly broadcast, agreements and resolutions to be public and published on the website, Commissioners prevented from taking part in decisions in which they have an interest), the LORCME also seeks to make all interactions between Commissioners and external stakeholders (such as industry) transparent. In

particular, Article 13 requires that Commissioners meet stakeholders in hearings, which involve least two Commissioners, held at CRE's offices, and that a meeting minute note be prepared, and that the meeting be recorded and stored.

There are pre-employment and post-employment restrictions for Commissioners. Prior to taking up a commissioner position, Commissioners are restricted from being an elected official, Minister, or manager in the regulated sector. Post-employment, commissioners are not subject to a cooling-off period, but are subject to Article 9 of the Public Servant's Administrative Responsibilities Law, that provides general obligations on public servants, including not using influence or confidential information obtained from their previous position to their own benefit.

### *Operation of the Governing Council*

Article 25 of the LORCME requires that the Commissioners be randomly assigned responsibility for formulating and presenting projects to the Governing Council. This process of randomly assigning cases is a function of the Executive Secretary. CRE is currently giving effect to this obligation by having each session of the Governing Council hosted by a different Commissioner. CRE is in the process of developing its processes to give effect to this requirement in the LORCME.

### *Code of conduct*

Since its creation CRE has had a code of conduct and also a code of conduct vigilance committee. The code of conduct vigilance committee's purpose was to implement strategies for the correct observance of CRE's code of conduct. The code of conduct vigilance committee was composed of middle and senior managers, selected by the heads of unit. In 2012, these arrangements were modified to comply with guidelines issued by the Ministry of Public Administration (*Secretaría de Función Pública*, SFP). This resulted in the membership of the committee being determined through elections.

The LORCME created the obligation for CRE to establish its own code of conduct, and Article 16 sets out what the code of conduct should include at a minimum, including criteria to be observed when conducting hearings with regulated businesses, considerations for Commissioners and Staff attending events (such as academic events and public forums) which relate to CRE's work, acts that could present a conflict of interest for public servants, and rules for reporting any situation which could present a conflict of interest.

The current version of CRE's Code of Conduct was approved in December 2014 (which was published on 11 November 2016). The Code proposes the creation of an Ethics and Prevention of Conflict of Interest Committee within the regulator that will contribute to the implementation and enforcement of the Code of Conduct, in collaboration with the Internal Audit Office (*Órgano Interno de Control*, OIC). Further information on CRE's and Prevention of Conflict of Interest Committee is detailed in Box 3.8.

### Box 3.8. CRE's Ethics and Prevention of Conflict of Interest Committee

CRE's Ethics and Conflict of Interest Prevention Committee operates in accordance with guidelines issued by the Ministry of Public Administration.:

Its purpose is to guide CRE's public servants, so that in the exercise of their functions, they assume an integral and honest attitude, according to the institutional values of righteousness, honesty, impartiality, respect and transparency.

- Its membership includes representatives of all hierarchical levels, to be elected every two years.
- It meets at least three times a year, ordinarily, being able to hold extraordinary sessions if necessary.
- Its activities are planned and set in a work programme to be approved the first trimester of each year. It reports progress of its work programme to the *Control and Institutional Performance Committee* (COCODI) and SFP.

*Source:* Information provided by CRE.

## ***Accountability***

CRE can be requested to appear before Congress. Both chambers of Congress include ordinary commissions for energy, and the lower chamber includes a Special Commission of the Coordinated Energy Regulators, created in April 2016. The Special Commission has been fully operational since December 2016, includes all three energy regulators in its remit and aims to oversee the implementation of the Energy Reform. So far, there is no pre-defined working programme, public minutes or initiatives.

In contrast to the ordinary Energy Commissions in each of the chambers of Congress, the Commission of the Coordinated Energy Regulators has a special status, which in practice means that it can only issue recommendations to the ordinary commissions, but these are not binding. Its first activities have consisted in transmitting concerns from stakeholders

regarding changes brought about by the Reform (i.e. changes in requirements for oil station permits with ASEA, oil liberalisation prices with CRE).

While there is no regular requirement to report its progress to Congress, CRE prepares its own annual report, and also CRE provides inputs to the annual Government Report issued by the President of the Republic. In contrast, on an annual basis, SENER has the obligation to elaborate a report on its main activities, projects, and policies developed, which has to be presented by the Minister in Congress.

CRE can be audited by the Federal Superior Audit Office that reports directly to Congress, as well as by the Ministry of Public Administration that reports to the President of Mexico. In that sense, CRE is directly audited by and is accountable to both Congress and the Federal Executive. These audits focus on administrative and financial aspects. In the case of relations with SFP, all federal entities include an OIC, which responds directly to the SFP. The purpose of these internal audit offices is to support the performance of the entity, to prevent non-compliance by staff and handle complaints against public servants. They are also responsible for supervising and enforcing the Federal Law on the Liabilities of Public Officers (*Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*). CRE also has an internal audit office, which has powers to inspect and audit the activities of CRE's staff.

As explained in the section on financial inputs above, CRE goes through a quarterly process of reporting against MIRs set by SHCP for the use of its budget. CRE also periodically reviews the extent to which the MIR is reflective of the policy objectives for its activities.

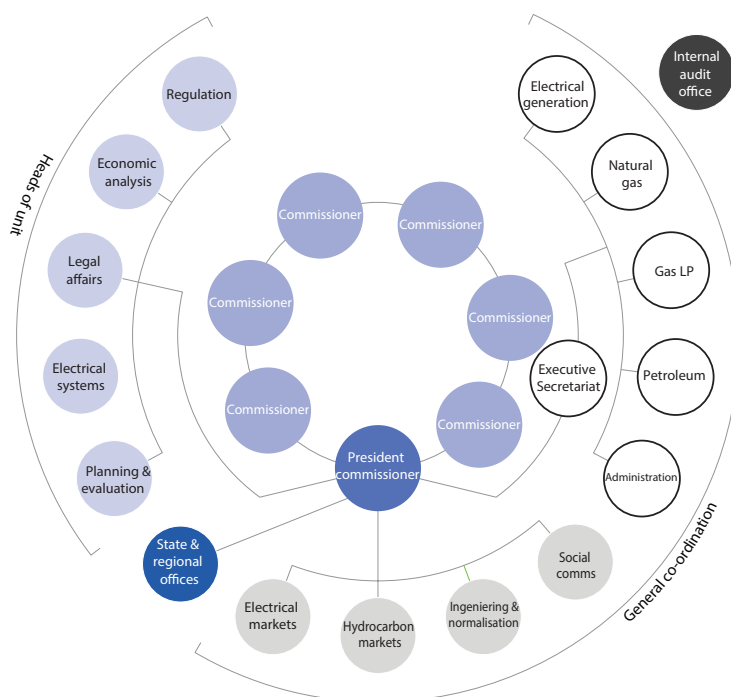
CRE is also accountable to Mexican citizens. As instructed by LORCME, CRE publishes a quarterly newsletter that summarises activities and results. Moreover, decisions and votes of the board as well as minutes of meetings are made available on CRE's website in real time.

## ***Internal organisational management***

### *Internal structure*

CRE's organisational structure is detailed in its internal statute (*Reglamento Interno de la Comisión Reguladora de Energía, Internal Statute*). The Internal Statute sets out the operation of the Governing Council, the secretariat and all of the units and divisions within CRE. CRE's current organisational structure is shown in Figure 3.5, and its internal statute is explained in detail in Box 3.9.

Figure 3.5. CRE's internal structure



Source: CRE (2015), “20+1 CREanzo Confinaza Para Los Mexicanos”, Mexico, [www.cre.gob.mx/documento/libro-21aniversario.pdf](http://www.cre.gob.mx/documento/libro-21aniversario.pdf) (accessed 29 May 2017).

At the time of finalising this report, CRE is undergoing an internal restructure because it has just implemented a new Internal Statute. CRE has consolidated its Internal Statute to align the organisation in terms of the markets that it regulates (natural gas, LPG, petroleum, and electricity), which has reduced the number of units and divisions from 15 to 8. In the current structure, the large number of transversal units and industry segment specific areas created circumstances where Commissioners would be in the position of needing to reconcile the differing opinions of the different units, rather than considering one consolidated position from staff. Furthermore, CRE considered that its previous organisational structure (as detailed above) was fragmented, made challenging for the transversal units (such as the economic analysis unit) to prioritise their work, and dispersed the responsibility for different parts of the permitting process between different teams.

### Box 3.9. CRE's internal statute

The internal structure of CRE is set out in detail in regulation (*Reglamento Interno de la Comisión Reguladora de Energía*, Internal Statute). The Internal Statute lays out the CRE's responsibilities (with reference to the key legislation that CRE is responsible for administering – including the Energy Law, the Hydrocarbons Law, the Law of the Electrical Industry, the Renewable Energy Law and the Financing of the Energy Transition). It also lays out the functions, powers and responsibilities of CRE's President, Governing Council, Executive Secretary, Units and Divisions.

In particular, CRE's Internal Statute sets out that CRE has the following 14 units and divisions:

- **Regulation Unit:** works with CRE's other internal units and divisions to design and develop the majority of CRE's regulatory instruments
- **Economic Analysis Unit:** determines tariffs across the hydrocarbon and electricity sectors
- **Legal Affairs Unit:** manages litigation, provides legal services and review to other areas
- **Electrical Systems Unit:** develops the National Electric System reliability and security regulation and the development and monitoring of the Clean Energy Certificate System
- **Planning and Evaluation Unit:** conducts strategic planning, *ex post* impact assessment and institutional performance evaluations
- **Electric Markets Division:** reviews electricity supply and commercialisation permits and monitors the wholesale electricity market
- **Electric Power Generation Permits Division:** reviews electricity generation permits, and monitors the compliance of regulated entities with the regulatory framework
- **Hydrocarbon Markets Division:** reviews hydrocarbons commercialisation permits and monitors market performance
- **Natural Gas Regulated Activities Division:** reviews natural gas permits and monitors compliance of regulated entities with the regulatory framework
- **Liquefied Petroleum Gas Regulated Activities Division:** reviews liquefied petroleum gas permits and monitors the compliance of regulated entities with the regulatory framework



### Box 3.9. CRE's internal statute (*cont.*)

- **Petroleum Products Regulated Activities Division:** issues refined products, petrochemicals, biofuels and oil permits and monitors compliance of regulated entities with the regulatory framework
- **Engineering and Standardisation Division:** designs a range of technical standards covering CRE's mandate, including fuel quality standards. It also monitors the compliance of regulated entities with the regulatory framework
- **Communication and Institutional Relations Division:** administers the communications strategy and CRE's relationships with other institutions
- **Administrative Division:** responsible for the budget, human resources and internal administrative processes.

With regard to the administrative bodies and co-ordinating units, CRE's Internal Statute develops their roles and responsibilities in detail. Each of the units and divisions have a holder or a co-ordinator that has the responsibility of delivering the functions allocated to the unit or division in the Internal Statute and a series of general responsibilities that are set out in the Internal Statute.

*Source:* Information provided by CRE.

## *The working relationship between Commissioners and staff*

### *Commissioner working groups*

The LORCME provides for CRE to establish working groups composed of some of CRE's Commissioners, in order to manage and deliver large projects or programmes of work. CRE's Commissioners are involved in the design and development of regulations in these working groups. The working groups that CRE has established are listed in Box 3.10.

### Box 3.10. Commissioner working groups established by CRE

#### **Initial working groups to implement the Energy Reform**

In 2015 CRE established three working groups through agreement to implement the Energy Reform. Working groups were established on electricity, natural gas and petroleum.

#### **The development of resolution for issuing petroleum permits**

A key peak workload for CRE in 2015 was establishing the new regime for permits for the petroleum sector which resulted, amongst other things, in CRE being able to grant a large number of permits for retail petrol stations (11 028,

**Box 3.10. Commissioner working groups established by CRE (cont.)**

CRE, 2015) by the end of 2015. CRE addressed this peak workload by developing a resolution setting out the formal for the application of permits for transportation, storage, distribution, retail and management of integrated oil, petroleum, petrochemical and bioenergetics. This resolution was the product of several working groups and meetings between staff and Commissioners, and it also established the electronic mechanism for the submission of permit applications.

**Working groups currently in place at CRE**

Currently, CRE has a number of different working groups, including:

- a working group on electrical standardisation
- a working group on storage, transportation and distribution of jet fuel; and
- a working group on petroleum and petrochemical standardisation.

*Source:* Information provided by CRE.

*Commissioners involvement in specific projects*

Commissioners also participate in the development of the regulation according to their interest in these issues, in conjunction with staff. Staff keep commissioners up to date on these projects as they are developed. Other ways in which Commissioners can keep up-to-date on the progress of projects include requesting an information note from the Executive Secretary on the status of a specific project, or by requesting meetings with staff directly. Once finalised, this Commissioner submits the regulation to the Governing Council for decision.

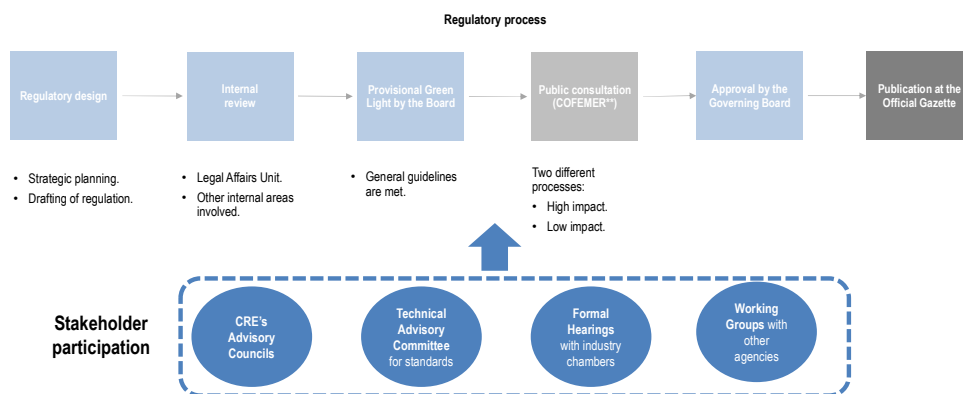
*Internal processes for the development of regulations*

Issuing and developing regulations have been a significant focus of CRE's responsibilities since the implementation of the Energy Reform. Figure 3.6 details the approach that CRE takes to developing regulation internally.

Figure 3.6 shows that there are a series of stages in the process of developing CRE's regulations, which provide for stakeholder consultation and quality assurance. However, as mentioned above, within these stages Commissioners are involved (either through working groups or direct involvement) in the design and development process, and provide direction to different teams within CRE at different stages as regulations are developed.

Figure 3.6. CRE's internal process for developing regulation

Regulations go through several stages before they are approved by the Governing Board and their mandatory publication in the Official Gazette\*.



\*Article 4, Federal Administrative Procedure Law (LFPA).

\*\* COFEMER is in charge of conducting the Regulatory Impact Assessment and the Public Consultation Process, Article 69-E, fraction II, LFPA.

Source: Information provided by CRE.

### *Quality assurance for decisions going to the Governing Council for decision*

All Commissioners are kept up to date on the decisions that will be presented at meetings of the Governing Council through meetings held in advance, at which staff explain the matters that will be presented for decision. These meetings provide an opportunity for members of the Governing Council to provide comments to staff to be resolved before the projects are presented for decision.

All projects that are submitted to the Governing Council for decision must contain a complete case file that includes the necessary technical and legal opinions, as well as economic analysis when required. While previously each of the areas within CRE would sign their opinions for the case file, CRE now has an electronic system. This system prevents projects from being presented to the Governing Council if it does not have the required technical and legal opinions.

### *Stakeholder engagement*

CRE has a number of mechanisms for consulting with non-government stakeholders (regulated entities, businesses, citizens, non-government associations), which include:

- CRE’s advisory council and standards consultative councils on hydrocarbons and electricity
- Hearings that CRE conducts with stakeholders at the stakeholder’s request; and
- The public consultation process that COFEMER holds on the regulations that CRE has developed.

However, while CRE is obliged to engage with stakeholders when it is developing regulations (because these regulations need to go through the COFEMER process which involves stakeholder engagement), it is not required to consult with stakeholders for all of its decision making. For example, in making decisions on tariffs, CRE currently just engages with the regulated business.

### ***Complaints and appeals***

CRE has an agreement with PROFECO that shares responsibility for dealing with complaints from electricity consumers (CRE deals with complaints from wholesalers and major users, while PROFECO deals with complaints from residential consumers). CRE investigates and rectifies issues where justified. In contrast, there is no formal process for dealing with hydrocarbons complaints, however it is currently in development.

As specified in the LORCME, decisions by CNH and CRE can only be appealed to the federal courts via *amparo indirecto*, which examines the constitutionality of the decision. In this process, regulated entities can submit a claim to a judge after the decision is made. If the judge decides to admit the claim, CRE provides a counter claim, and the judge then hears the matter.

In these cases, a judgment against the regulator in court can have significant consequences as it rules a decision of the regulator to be unconstitutional. Decisions in federal courts can be appealed in second instance to the *Tribunales Colegiados de Circuito*. If it is appropriate, decisions made in second instance can then be challenged through the review appeal (*Recurso de Revisión*) to the Supreme Court (*Suprema Corte de Justicia de la Nación*). Overall, it is felt that the complexity and severity of the appeals available to industry may be cumbersome and that, in the case of co-ordinated regulators, there should be an intermediate recourse available for the review of regulator decisions.

### ***Regulatory quality tools***

For those regulations subject to a COFEMER review process, CRE develops a RIA prior to submitting the regulation to COFEMER for review. The complexity of this review process depends on the expected impact of the regulation, with a detailed quantitative cost-benefit analysis for regulation expected to affect a large number of firms and/or consumers, and high social regulatory costs of implementation. Additionally, competition impact analysis and environmental and security risk assessments could be conducted if the regulation is expected to have a direct effect on any of these issues. Regulations with a moderate or small regulatory impact are not required to present a detailed quantitative cost-benefit analysis. Regulations are then subject to public consultation, where third parties and COFEMER provide comments on the instrument. CRE considers all comments made on its regulation and provides an explanation where it does not incorporate a comment.

### ***Risk analysis***

CRE has conducted risk analysis, but does not conduct risk analysis systematically. CRE did prepare a high level risk assessment with the heads of the units within CRE at the end of 2016.

### ***Ex post evaluation***

CRE has a Regulatory Performance Evaluation Committee that is tasked with the responsibility of assessing the effectiveness of the regulation that CRE issues in light of the regulatory objectives defined by the Governing Council and the policy developed by SENER. Specifically, the Regulatory Performance Evaluation Committee analyses the impact that CRE's regulation has on the promotion of competition within the energy sector, as well as how this regulation helps align private incentives to the attainment of public interest and common good, fosters an appropriate and efficient energy supply on a national scale, and underpins its reliability, stability and security. The Regulatory Performance Evaluation Committee has not systematically assessed many regulations as of yet because the Commission is still developing most of the regulation concerned with the implementation of the Energy Reform. The UPE is currently in the process of developing a process for conducting *ex post* review of regulation.

CRE considers that *ex post* review will not be required for some time for new regulation that it has issued arising from the Energy Reform. CRE has been going through a process of modifying and updating existing regulation in light of the important changes that have occurred within the industry and the objectives of the Energy Reform. CRE considers that this process of

updating existing regulation could be considered to be a form of *ex post* review.

Additionally, CRE is in the process of conducting a review of its tariff setting methodologies and processes. CRE is seeking to make the approach that it applies to determining tariffs consistent across all of the products that it now regulates in hydrocarbons, and to improve the robustness of data that it collects from regulated industry (which will assist CRE in comparing costs between regulated businesses). CRE intends to use its advisory councils and working groups to obtain stakeholders views on any revisions to these processes. In addition to this, because CRE is reissuing regulations, the formal COFEMER process will also apply.

## Output and outcome

### ***Assessing the performance of the regulated entities and the regulated market***

CRE collects a diverse range of technical, economic and financial information from each of the different permit holders and regulated firms in the electricity and hydrocarbons industry. CRE also receives information by conducting other activities, including:

- ongoing reporting requirements in permits
- verification visits
- electricity wholesale market monitoring, and
- tariff reviews.

Some information provided by industry is made public, such as performance reports provided by electric power supply permit holders, reports, technical issues, service provision conditions of electric transmission and distribution service providers, and the performance of power generators. In contrast, reports provided by hydrocarbon permit holders are not publicly disclosed. That said, the Hydrocarbons Act contemplates that statistics will be published for the hydrocarbons sector and that permit holders will provide data including their capacity, tariffs, and service delivery terms and conditions through an e-newsletter.

For some of its functions, CRE has been provided with the responsibility of providing information to the public, and also to other agencies. For example, with the recent decision to bring forward the liberalisation of the gasoline and diesel markets, CRE is now required to manage a price

information system which will be available to the public and provide price information on an aggregated basis and by zone.

CRE is also developing a commercial transactions tracking system for refined products, natural gas and LPG. This tracks supplies from the refinery or import point to the retail gas station. This information will enable CRE to track where supply is in the supply chain and also determine the lawful origin of fuels. The main challenges that CRE faces in collecting performance information include ensuring that it receives quality, and organised information. To address this challenge, CRE is establishing a system to collect, process and prepare indicators for the periodic monitoring of the energy sector using the information it receives from regulated firms.

### *Assessing the performance of the regulator*

As mentioned above, CRE reports its performance to SHCP by updating performance indicators matrices for electricity and hydrocarbons on a quarterly basis. However, in the absence of a strategic plan, these measures are not linked to CRE's medium and long-term objectives. CRE considers that the current MIR indicators which it prepares and reports to SHCP may be updated once it releases its strategic plan in 2017.

CRE also prepares an annual report and contributes to reports developed by the Mexican President and the SENER. There are also other accountability mechanisms in place that occur periodically, including:

- audits by the Federal and Internal Audit Offices
- the President Commissioner may be requested to appear before Congress.

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## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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## The Governance of Regulators

# Driving Performance at Mexico's Energy Regulatory Commission

As “market referees”, regulators need to be constantly alert, monitoring trends as well as assessing the impact of their decisions. What should be measured? Is it possible to attribute impacts to regulators’ decisions? How to make effective use of what is measured? How should the organisational structure and governance be optimised? Addressing these questions effectively can ultimately determine whether trains will run on time, there is clean water in the tap, lights switch on, the telephone and internet work and there is cash in the ATM machines. To help regulators in their quest to better evaluate their performance, the OECD has developed a Performance Assessment Framework for Economic Regulators (PAFER) that looks at the institutions, processes and practices that help regulators improve their organisational impact, based on the premise that governance matters for the performance of regulators.

This report applies the PAFER to Mexico’s Energy Regulatory Commission and assesses its functions, practices and behaviour. It focuses on internal governance, including structures and processes for decision making, managing financial resources, attracting and retaining talent, managing data and assessing performance. The review identifies a number of challenges and opportunities for improvement, and is a companion to reviews of the internal governance of two other Mexican energy regulators, the Agency for Safety, Energy and Environment and the National Hydrocarbons Commission, and the review of the external governance of the country’s energy sector, *Driving Performance of Mexico’s Energy Regulators*.

[www.oecd.org/gov/regulatory-policy/ner.htm](http://www.oecd.org/gov/regulatory-policy/ner.htm)

Consult this publication on line at <http://dx.doi.org/10.1787/9789264280830-en>.

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