



October 10th, 2024

Client Alert

THE ENERGY REGULATORY COMMISSION ISSUES THE RESOLUTION BY WHICH IT ESTABLISHES THE GENERAL PROVISIONS THAT SET FORTH THE METHODOLOGY FOR DETERMINING TARIFFS APPLICABLE TO THE PROVISION OF STORAGE AND PIPELINE TRANSPORTATION SERVICES FOR PETROLEUM PRODUCTS, PETROCHEMICALS, AND BIOENERGETICS

On September 30, 2024, the Energy Regulatory Commission (“CRE”) sent a preliminary draft of the “Resolution by which it establishes the General Administrative Provisions that set forth the methodology for determining tariffs applicable to the provision of storage and pipeline transportation services for petroleum products, petrochemicals, and bioenergetics.” (the “**Preliminary Draft**”) to the National Commission for Regulatory Improvement (“CONAMER”). The complete file of the Preliminary Draft can be consulted here [aquí](#).

- Its purpose is to determine the initial maximum tariffs for storage and pipeline transportation services of petroleum products, petrochemicals, and bioenergetics, as well as fuel storage at aerodromes.
- The Preliminary Draft establishes the requirements for the approval of maximum tariffs by the CRE, and the cases in which intra-quinquennial reviews or changes may occur.
- It outlines the calculation and components that make up the charges for each tariff.

I. Rationale for the publication of the Preliminary Draft

Article 82 of the *Regulations on the activities referred to in Title Three of the Hydrocarbons Law* empowers the CRE to issue general administrative provisions that establish formats and specifications for determining compensation, prices, and tariffs for regulated activities.

According to the explanation for the Preliminary Draft¹, it addresses the need for a regulatory framework to determine initial maximum tariffs, regulate five-year reviews, establish annual inflation adjustments, and create uniform and specific formats and criteria

¹ This is part of the form in *Section I. Definition of the Problem and General Objectives of the Regulation of the regulatory impact statement of the Preliminary Draft*.





for providing storage and pipeline transportation services for petroleum products, petrochemicals, bioenergetics, and fuel storage at aerodromes.

Furthermore, the lack of a legal instrument has caused legal uncertainty regarding the criteria used by the CRE in evaluating and determining maximum tariffs, preventing permit holders from operating under equal conditions and resulting in varied tariff models.

By publishing the Preliminary Draft, the aim is to provide legal certainty and simplify the process for regulated entities by establishing formats and standardizing general and specific criteria for all requests related to maximum tariffs.

II. Maximum tariffs for storage and pipeline transportation of petroleum products, petrochemicals, and bioenergetics

The Preliminary Draft establishes a series of rules related to the setting of maximum tariffs that permit holders must apply, among which the following stand out:

- Permit holders may agree on conventional tariffs with users, but these cannot exceed the limits of the maximum tariffs.
- The Tariffs must be determined in Mexican pesos.
- The CRE must approve the maximum tariffs, for which the permit holder must request authorization either (i) prior to the start of operations, (ii) as a result of a technical modification to their infrastructure, or (iii) every five years through the quinquennial review (see Section VII).
- The authorization request is subject to the procedure established in Article 83 of the Regulations, which must include the requirements set forth in Section 12 of the Provisions (referred to in Section VII of this document).
- The maximum tariffs can be determined under a quinquennial or a leveled scheme (see Section V).
- The maximum tariffs can be adjusted at the request of the permit holders to reflect variations due to inflation or exchange rate changes.





III. Tariffs structures

A. Storage service tariffs

The maximum tariffs have two types: (i) contractual reserve, which can be monomic or binomic; or (ii) common use, which is monomic, with the following charges:

| Contractual reserve | | Common use |
|--------------------------------|-------------------------------|---------------------------------------|
| Monomic | Binomic | Monomic |
| Charge for storage or delivery | Charge for storage capacity | Cargo por uso común de almacenamiento |
| n/a | Charge for delivery-reception | n/a |

The Preliminary Draft breaks down the charges that make up the maximum tariffs and the criteria for their calculation.

B. Pipeline Transportation Service Tariffs

The maximum tariffs have two types: (i) contractual reservation, which can be monomic or binomic, or (ii) common use, which is monomic, with the following charges:

| Contractual reserve | | Common use |
|------------------------------------|---|--|
| Monomic | Binomic | Monomic |
| Charge for pipeline transportation | Charge for pipeline transportation capacity | Charge for common use of pipeline transportation |
| n/a | Charge for use | n/a |

The Preliminary Draft breaks down the charges that make up the maximum tariffs and the criteria for their calculation.





IV. Tariffs for segment or route-based pipeline transportation

The Preliminary Draft allows permit holders to propose maximum tariffs for pipeline transportation services differentiated by segments or routes, which will be determined based on the Revenue Requirement² attributable to the various segments or routes according to distance traveled and operational capacity. The Draft also outlines the calculation method for determining charges in each segment.

V. Leveled or quinquennial Scheme

Maximum tariffs for storage and pipeline transportation services can be calculated based on either a quinquennial or a leveled scheme. In case a permit holder is in the quinquennial model at the time the Draft enters into force, or if they choose this model, it cannot be changed in the subsequent annual reviews of the five-year period. Similarly, if permit holders opt for the leveled model or are already using it, this will apply to all annual reviews and cannot be modified.

Leveled models are determined using a discounted cash flow valuation method to establish constant annualized tariffs based on the validity of the permit.

VI. Conventional tariffs

Permit holders may offer storage and pipeline transportation services based on conventional tariffs, which may be agreed upon in U.S. dollars but must be paid in Mexican pesos. These tariffs must not exceed the maximum tariffs approved by the CRE.

Service contracts for storage and pipeline transportation must meet the following conditions:

- Each conventional tariff must state the maximum tariff approved by the CRE.
- If conventional tariffs were agreed upon before the CRE's approval of maximum tariffs and the latter are lower, the permit holder must adjust the former to ensure they do not exceed the maximum tariffs.
- Conventional tariffs must not provide subsidies or be discriminatory and must cover the variable costs of the service.

² According to the Preliminary Draft, the Revenue Requirement is defined as the "projection of the necessary income to cover applicable operation, maintenance, and administrative costs (OMA) for services, taxes, depreciation, a reasonable rate of return, and, where applicable, the amount of interest required for debt repayment during each quinquennial period. The Revenue Requirement constitutes the quantitative basis for calculating the maximum tariffs of Permit Holders."





VII. Process for approving maximum tariffs

Permit holders must submit their proposed maximum tariffs to the CRE for approval, following the payment of fees. Maximum tariffs will be determined based on the proportion of the Revenue Requirement attributable to each service type, as per the business plan presented by the permit holder for the relevant regulatory period.

Maximum tariffs will be determined after a review of the business plan, which must include the following summarized requirements:

- i. Revenue Requirement;
- ii. Net value of the regulated asset base;
- iii. Breakdown of physical assets;
- iv. Necessary investments and supporting documents;
- v. Annualized financing plan for investments and other expenses;
- vi. Projection of OMA (Operation, Maintenance, and Administrative) costs;
- vii. System design and operational capacity, delivery and reception capacity;
- viii. Reserved capacity and capacity reserve projections;
- ix. Annual projections of volumes to be stored, transported, received, and delivered; x. Historical information on fixed asset investments from the last five years;
- x. Historical OMA cost data from the last five years;
- xi. Historical volume data for transported or stored volumes from the last five years;
- xii. Information on AFUDC (Allowance for Funds Used During Construction); xiv. Project rate of return with calculation breakdown;
- xiii. Proportions affected by inflation and exchange rates;
- xiv. Start and end dates of the quinquennial period;
- xv. Economic-financial model used; and
- xvi. List of proposed maximum tariffs for each service type.

The CRE will review the tariffs every five years. Permit holders must submit their approval request and tariff determination documents six months before the end of the period. Mid-term adjustments can be made if permitholders introduce new types of services.





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VIII. Interconnection Services

Permit holders must allow users to interconnect with their systems according to open access principles and avoid undue discrimination. They may charge for interconnecting, disconnecting, and reconnecting users. Projected investment for interconnections should not be included in the business plan's investment program. Permit holders may freely negotiate these charges with users.

IX. Transitory provisions

If there is an ongoing approval process for maximum tariffs when the Preliminary Draft comes into force, the regulations in effect at the time the tariff approval request was submitted will apply.

Permit holders with permits granted prior to the Preliminary Draft's entry into force will continue applying the approved tariffs until the current quinquennial period ends. However, they may choose to waive these tariffs and request approval for new ones, subject to the Preliminary Draft's provisions.

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This document does not constitute legal advice. If specific information or legal counsel is required, please contact us.

