

# The Regulator and its Judge

November 7, 2017



# Litigation had been used to suspend the application of the rulings and orders of regulators of other sectors

- ✓ *The full execution of the Telecommunications Regulation was suspended, and thus the applications of its benefits, due to litigation which could take years.*



- ✓ To avoid it, decisions by energy regulators have few ways to be challenged or suspended.

# Co-ordinated Energy Regulators were established in Article 28 of Mexican Constitution, by ammenment issued on December 20, 2013



The article commands the Executive Branch to include three Energy Regulators:

- National Hydrocarbons Commission (CNH),
- Energy Regulatory Commission (CRE), and
- Environmental and Safety Agency for Energy (ASEA)



# Legal Framework of the Co-ordinated Energy Regulators



## Law of the Co-ordinated Energy Regulators



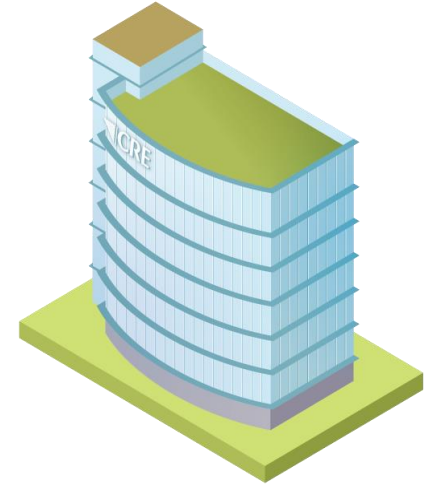
- 
- Electric Industry Law
    - Rule of the Electric Industry Law
  - Hydrocarbons Law
    - Rule of the third title of the Hydrocarbons Law



# CRE as a Co-ordinated Energy Regulator



- Its mandate fosters an efficient development of the energy sector, and a reliable provision of hydrocarbons and electricity to all market participants.
- CRE is an independent regulator with a technical and operational autonomy, and a financial and budgetary self-sufficiency.
- Mostly an economic regulator with some power for setting technical standards.



# The Law of the Co-ordinated Energy Regulators



Issued on August 2014, states

- ✓ Commission's faculty for proposing updates on the legal framework, as well as participating in the formulation of new legal systems.
- ✓ The right for regulated subsectors to challenge those regulations through the mechanism of Injunction.



# Article 27 of the Law of the Co-ordinated Energy Regulators



Market Participants and all interested parties can defend from regulators activities through:

- They can only be challenged through the Injunction.
- In all cases, **the acts will not be suspended**, and fines will be executed until the trial's end.



- ✓ ***On August 2017, the Mexican Supreme Court ruled that no judge can suspend orders or regulations issued by the Co-ordinated Energy Regulators.***



Suprema Corte  
de Justicia de la Nación

- ✓ ***Thus, Co-ordinated Energy Regulators have a solid legal framework which provides clarity and certainty to energy market participants.***



# Legal Review of CRE's Decisions



Instances

1st

District Court

2nd

Circuit Courts

Mexican Supreme Court



Faculty of attraction



In cases of matters that are important and transcendent, and in constitutionality cases.

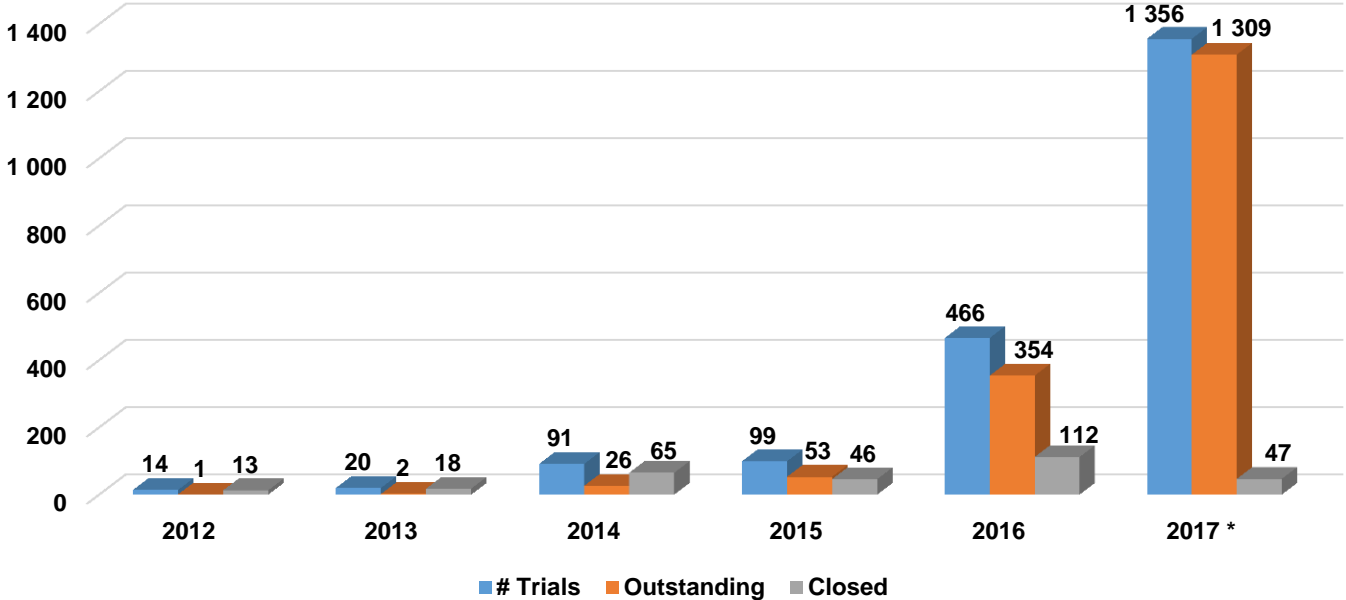
# Many of the Injunctions against CRE are part of a general strategy



- ✓ From January to September 2017, **2,116 Injunctions against the Commission** have been promoted,
- ✓ Around **35%<sup>1</sup>** are related to acts **not under the Commission's attributions**,
- ✓ From the total, 415 have been dismissed, 10 were denied, 5 granted, and the others trials continued.



## Injunctions Trials



# Court rulings 2004-2017

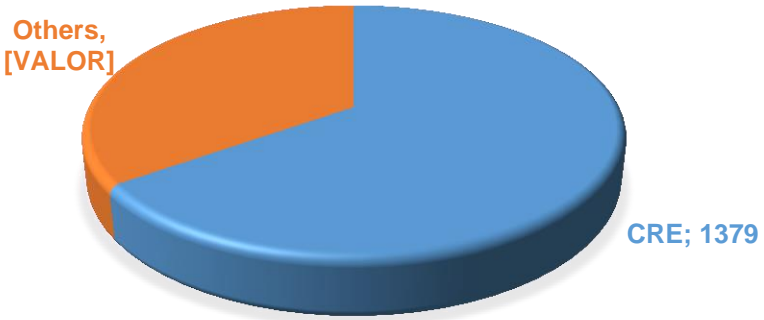
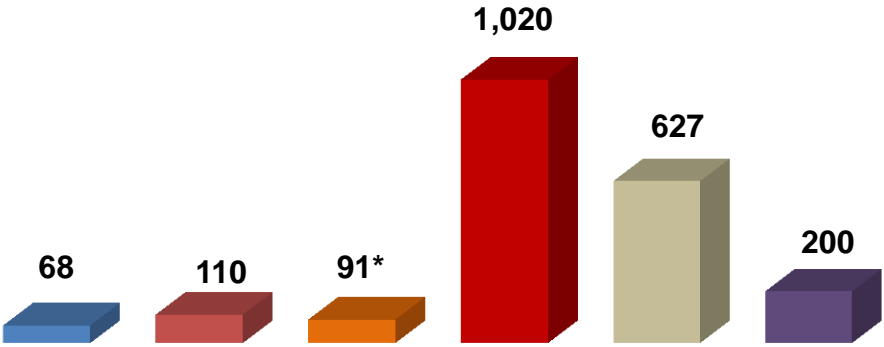


## Closed Cases Decisions

Year	Dismiss	Against plaintiff	Favor of plaintiff
2012	12	0	1
2013	17	0	1
2014	55	3	7
2015	35	5	6
2016	96	8	8
2017*	32	10	5
<b>Total</b>	<b>653</b>	<b>34</b>	<b>49</b>

\* At May 25, 2017

# Commission's Injunctions on 2017



\*Instrument issued by CRE

- NOM-016-CRE-2016 (Oil Products Quality)
- Federal Income Law
- A/051/2016 (Formats Income Law)
- A/059/2016 (Flexibilization Cronogram)
- Gasoline Prices
- Others

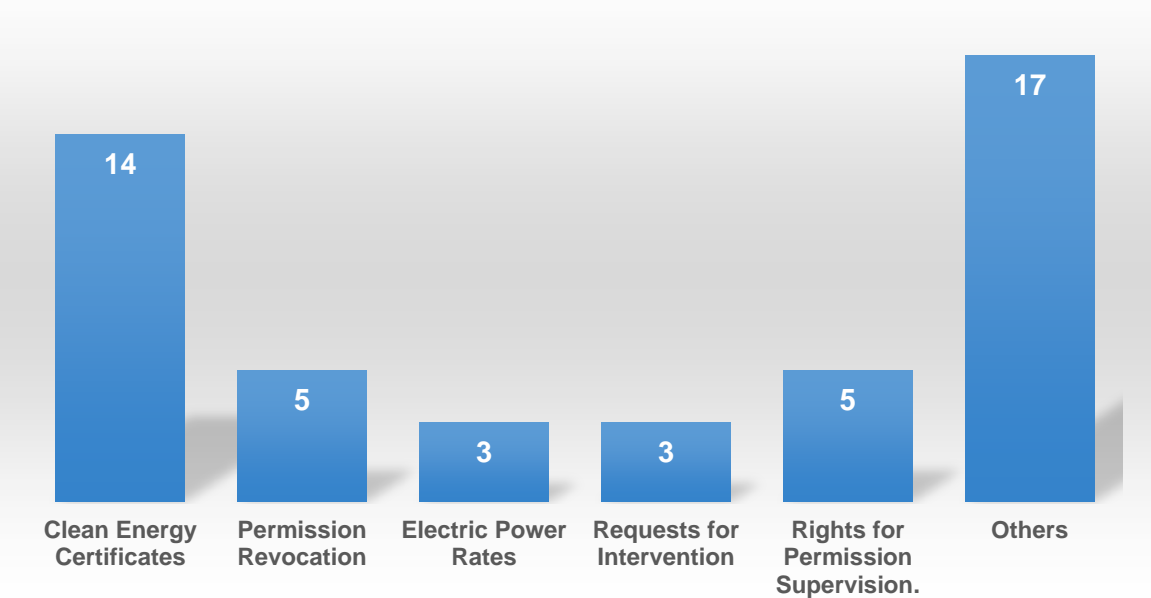
From 2016 to 2017, the procedures were increased more than 350% by the transition to the new regime, with them, some participants seek to continue in the previous regime.

# Commission's Injunctions on 2017



Less than 2.5% of the Injunctions correspond to electrical matters.

Injunctions in electrical matters (47)\*



Of the total Injunctions in electrical matters (47), only **2** Have caused state.

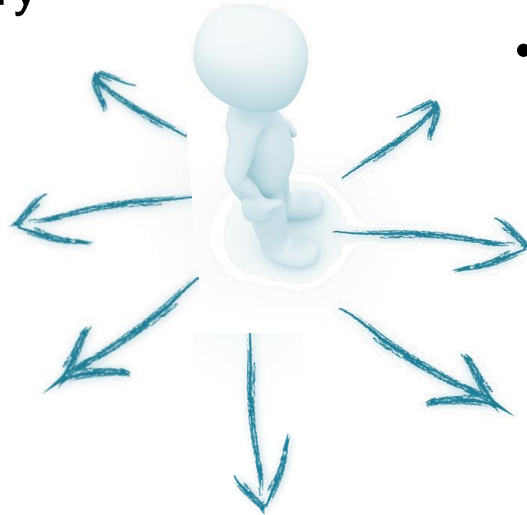
\*Data to the first week of November 2017

- ✓ *In order to decrease litigation stemming from “non-fundamental” errors, on October 12, 2017, the Commission approved an Agreement to rectify errors on arithmetic calculations, concept and materials in orders issued by the Commission.*
- ✓ *This mechanism will allow permit-holders to request errors correction, only when they are obvious, manifested and indisputable, and can be evidence-based on themselves.*

# CRE's Decisions Litigation



- Transactions Registry
  - Oil products specifications standard NOM-016-CRE-2016
  - Fines
- Supervision fees
- Native Communities dissatisfaction
- Gasoline's price liberalization
- Methodology of calculation of payments and technical specifications



The arguments presented in the Injunctions proceedings are mainly related to the grounds and motivation of the acts that are issued by CRE.



# Resources for Litigation

Human, materials and financials resources devoted to litigation such as:

- Vehicles,
- Training courses, and
- Travel expenses



## Humans Resources

14

Lawyers for Injunctions

16

Lawyers for other litigious matters

**CRE Staff takes care of litigation all over the country.**

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