

## **Transversalidad de la administración pública, nuevo concepto para ubicar dependencias y entidades atípicas del sector eléctrico mexicano**

*Transversality of Public Administration, New Concept to Locate Dependencies and Atypical Entities of the Mexican Electricity Sector*  
*Transversalidade da administração pública, novo conceito para localizar dependências e entidades atípicas do setor elétrico mexicano*

**Luis Alberto Flores Becerra**

Universidad Autónoma de Nayarit, México

[luisin37\\_2@hotmail.com](mailto:luisin37_2@hotmail.com)

<https://orcid.org/0000-0001-5854-7058>

### **Resumen**

A partir de la reforma energética de 2013, el sector eléctrico en México adquirió una nueva fisonomía. Dicha reforma reestructuró la participación del Estado y de los particulares, en su trama normativa, técnica, económica y social, con tendencia a hacer más eficientes y seguros sus procesos, crear mercados, generar riqueza y mejorar los precios del consumidor. Le siguió una vorágine legislativa para adaptar a las dependencias y entidades del Estado a la nueva realidad, porque tanto en la reforma constitucional como en sus leyes secundarias se crearon nuevas instituciones y se reconfiguraron las antiguas, sin detenerse a verificar si su naturaleza coincidía con la organización de la administración pública, sin reparar en lo que la doctrina nacional decía al respecto.

La presente investigación se posiciona en un nivel descriptivo de tipo documental. Al abordar el trazo jurídico, se encontró el andamiaje constitucional que rige la administración pública y su organización clasificada legalmente como centralizada y paraestatal. Retomando conceptos de juristas que sentaron las bases para las lecturas actuales, se analizó la naturaleza de las dependencias o entidades para advertir sus similitudes y discrepancias, proximidades y diferencias; para tratar de ubicarlas conforme a esas estructuras. En esa línea, destacan dos instituciones que no



coincidieron en todos sus términos con la clasificación, pues abarcan características de varias categorías, por lo que se consideró inapropiado seguirlas ubicando en los conceptos tradicionales.

Tomado esto en cuenta, se emprendió la búsqueda de una nueva categoría al interior de la clasificación de la organización de la administración pública que comprendiera la nueva realidad. Y se concluyó que mediante la administración pública transversal caben algunas de las instituciones atípicas del sector eléctrico mexicano.

**Palabras clave:** atípico, centralización, organización, paraestatal, transversalidad.

### Abstract

As of the energy reform of 2013, the electricity sector in Mexico acquired a new physiognomy. This reform restructured the participation of the State and individuals, in its normative, technical, economic and social framework, with a tendency to make its processes more efficient and safe, create markets, generate wealth and improve consumer prices. It was followed by a legislative vortex to adapt the dependencies and entities of the State to the new reality, because both the constitutional reform and its secondary laws created new institutions and reconfigured the old ones, without stopping to verify if their nature coincided with the organization of the public administration, regardless of what the national doctrine said about it.

This research is positioned at a descriptive level of documentary type. When addressing the legal line, the constitutional scaffolding that governs the public administration and its organization legally classified as centralized and parastatal was found. Taking up concepts of jurists that laid the foundations for the current readings, the nature of the dependencies or entities was analyzed to notice their similarities and discrepancies, proximity and differences; to try to locate them according to those structures. In that line, two institutions stand out that did not coincide in all of their terms with the classification, since they cover characteristics of several categories, so it was considered inappropriate to continue placing them in traditional concepts.

Taking this into account, the search for a new category within the classification of the public administration organization that included the new reality was undertaken. And it was concluded that through the transversal public administration some of the atypical institutions of the Mexican electricity sector fit.

**Keywords:** atypical, centralization, organization, parastatal, transversality.



## Resumo

A partir da reforma energética de 2013, o setor elétrico no México adquiriu uma nova fisionomia. Essa reforma reestruturou a participação do Estado e dos indivíduos, em sua estrutura normativa, técnica, econômica e social, com tendência a tornar seus processos mais eficientes e seguros, criar mercados, gerar riqueza e melhorar os preços ao consumidor. Seguiu-se um turbilhão legislativo para adaptar as dependências e entidades do Estado à nova realidade, porque tanto a reforma constitucional quanto suas leis secundárias criaram novas instituições e reconfiguraram as antigas, sem parar para verificar se sua natureza coincidia com a organização. Da administração pública, independentemente do que a doutrina nacional dissesse a respeito.

Esta pesquisa está posicionada em um nível descritivo do tipo documentário. Ao abordar a linha legal, foram encontrados os andaimes constitucionais que governam a administração pública e sua organização legalmente classificada como centralizada e paraestatal. Tomando conceitos de juristas que lançaram as bases para as leituras atuais, a natureza das dependências ou entidades foi analisada para observar suas semelhanças e discrepâncias, proximidade e diferenças; para tentar colocá-los de acordo com essas estruturas. Nessa linha, destacam-se duas instituições que não coincidem em todos os seus termos com a classificação, por abrangerem características de várias categorias, portanto, foi considerado inadequado continuar colocando-as nos conceitos tradicionais.

Com isso em mente, foi realizada a busca por uma nova categoria na classificação da organização da administração pública que incluía a nova realidade. E concluiu-se que, através da administração pública transversal, algumas das instituições atípicas do setor elétrico mexicano se encaixam.

**Palavras-chave:** atípica, centralização, organização, parastatal, transversalidade.

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## Introduction

The electricity sector has gone through various stages since its arrival in Mexico as an industry. Without clear rules, during the Porfiriato it was operated by the private initiative; and



after the revolution, already with the pacified country, he continued to do so with somewhat lax standards in accordance with the National Electric Code of 1926 (De Rosenzweig, 2007, pp. 113-115). Subsequently, with the creation of the Federal Electricity Commission (CFE) in 1937, efforts were combined between individuals and the public administration to provide service under the first Electricity Industry Act of 1938.

With the nationalization of the industry in 1960, the State was constitutionally the only one in charge of providing the public electricity service. However, the departure of individuals was taking place gradually, as the companies were liquidated: The American and Foreign Power Company, The Mexican Light and Power Company Limited, the Electric Company of Chapala, among others. It was until 1975, when the Electric Power Public Service Law was issued, that the industry was left under conditions of state exclusivity. However, years later, in 1992, with a reform to the law, individuals would once again be given the opportunity to participate in the generation of electricity: in self-consumption and in the production for sale of electricity to the CFE through various schemes ( Cortes, 2007, p. 110).

The energy reform in Mexico turned the theoretical, political and ideological tradition that cemented issues related to oil and electricity, especially when dealing with concepts such as state monopoly, strategic areas, market economy or public administration structure. After the reform of articles 25, 27 and 28 of the Political Constitution of the United Mexican States [Constitution] (1917) in 2013, a legislative cascade that flooded the legal space with the creation of nine laws, the reform of others 12 and dozens of administrative provisions that include regulations, rules, manuals and forms.

Regarding the implementation of the new energy conformation, for the time being, what is referred to as electric energy is of interest, which is the issue that is least addressed by the greater ideological-nationalist relevance that oil has had. To cite recent examples of this relevance, of the 19 papers that make up the book *Energy Reform, Analysis and Consequences* (Cárdenas, 2015), 10 are interested in the topic of hydrocarbons and 9 in both, oil and electricity, but neither speaks only of electricity; or the book entitled *Energy reform and industrial development. An unplayable commitment* (Oropeza, 2015), where of the 24 articles it contains, 14 are dedicated to hydrocarbons and 10 to electricity and hydrocarbons; none addresses only the issue of electricity.

In that order of ideas, the interesting essay written by Hernández (2017), who with the term machine room refers to the authorities and companies of the State involved in the new economic order in which the energy sector develops from the structural reform and its legislative

consequences of 2014, is a starting point to make a deeper review about the location and the powers assigned to them for the performance of their activities, which include planning, control of the electrical system national, the wholesale electricity market, generation, transmission, distribution and supply, since from the aforementioned reform and the laws that have been derived, in the energy sector a competition model has been generated in the wholesale market and in the basic supply (Ferney, 2016, p. 245), a spectrum where both private initiative and the State participate with their companies. On the productive companies of the State, created with the energy reform, Cárdenas (2015) has said that they represent a non-existent category in Mexican positive law; and they are not the only ones, because other entities or dependencies may also be in the same condition, such is the case of the coordinated regulatory bodies.

Article 90 of the Constitution (1917) states that the federal public administration will be centralized and parastatal; and about this organization there has been much theoretical debate, particularly regarding the definition of both concepts and their variants as deconcentration. Authors of the Mexican administrative tradition mentioned by Roldán (2012), such as Gutiérrez, Acosta, Fraga, Martínez, or the public sector such as Ayala (2000), made descriptions and criticisms that have served as a starting point for other New Cuño writers.

Perhaps it is obvious to talk about the concepts of centralization, deconcentration or decentralization, but when entering the analysis of the dependencies that function as authorities or the entities that concur as participants in the electricity sector and contrast their nature with their location within the organization of the public administration and this in turn with what the doctrine says, the conversation becomes disorderly, confusing, or frayed, because they have an atypical structure, since they have hybrid or mixed characteristics, to put it in some way. This becomes a problem of systematization, and to solve it it is necessary to discover, first of all, the gender close to which the authorities and companies belong and the specific differences that make them peculiar. Therefore, it will be necessary to take a tour of the nature of the institutions and given their location within the public administration, verify if according to the current doctrine their systematization corresponds.

Given this problem, the questions raised by this research are the following: Considering the nature of the dependencies and entities of the electricity sector analyzed, is it possible to place all of them within the concepts and characteristics that the doctrine on the organization of public administration made? If the answer is negative, is it possible to generate a new concept that catalogs those of a different nature?

Taking into account everything mentioned here, a tentative response is configured: the concept called transversality of public administration as a complementary proposal encompasses the nature and scope of the authorities and atypical companies related to the electricity sector in Mexico.

## Method

To understand the object of study, namely the mainstreaming of public administration, the administrative organization and its concepts must be contrasted with the nature of public sector entities and entities. For this it is essential to follow a method of scientific knowledge, which implies a systematization. This research starts with global ideas, that is, with general issues to arrive at specific aspects. In other words, its special sections, which are the subsidiary or smaller sections, are unraveled, in such a way that the subsequent sections are a consequence of the previous one, but without going deeper and taking advantage of the indirect data offered by secondary sources (Carrillo, 2016, p. 12). Consequently, deductive and analytical methods were used. Depending on the stage and type of investigation by the source of your data, the investigation is descriptive and documentary. In the study of administrative legal norms, it is valid to resort to their substitution in the specific case to find the applicable norm (Martínez, 1998, p. 4), a situation that has occurred in this article.

To achieve the task, as a previous step to the analysis of the participating agencies and entities, it will be necessary to address the issues about the structure and organization of the public administration with the concepts that are proper to it. This results in the need to visualize the competences that are granted from the Constitution (1917) to the organic or regulatory laws that order its procedure. In this way, the general theme, which is the public administration, is moved to the specific issue, called administrative organization, and then to its derivations, called centralization and parastatal sector, with the variants that each one has, until reaching the administrative mainstreaming as a contribution, all this supported by the analysis of some traditional administrativeists in Mexico, who show that from the energy reform the nature of some dependencies and public entities in the electricity sector no longer correspond punctually to the classification of the administrative organization deployed by the doctrine and inscribed in the Constitution (1917).

For reasons of space, the study has been delimited to the five dependencies or entities that have the greatest influence in the sector: the Ministry of Energy (Sener), the Energy Regulatory Commission (CRE), the National Commission for the Efficient Use of the Energy (Conuee), the



National Energy Control Center (Cenace) and the CFE. This is because they are dependencies or organizations within the administrative organization that may have characteristics of being centralized, autonomous, decentralized, decentralized and of a productive enterprise of the State, respectively.

The current readings on administrative law, when arriving at the topic on the form of the administrative organization, continue to use the concepts of centralization and decentralization, so that in that area they have not lost their validity, even the Constitution itself (1917) continues ordering the public administration in such a way, hence this study is based on their departure to these legal and conceptual lines.

At this point it should be clarified that in the so-called administrative centralization of the federal executive, state secretariats, decentralized bodies and coordinated regulatory bodies are organized, which will be called in this contribution dependencies whether or not they have their own legal personality. In the parastatal sector or administrative decentralization, as it is also known, the decentralized public bodies and productive companies of the State participate, which in this investigation will be referred to as entities.

## Results

### Public administration

The administration as a form of organization of public activity has a very distant background, but it was with the French Revolution that the bases for its evolution were established. In such a way that the activities carried out by the State itself are widened or compacted according to the historical, economic or legal moment in which they are carried out. The typologies of State are related to the currents of economic thought and in a sequence they are taken as a reference to mercantilism or physiocracy to give rise to the Gendarme State, the Welfare State, the Business State, the Socialist State and the Neoliberal State (Martínez, 2017). Environments in which the administrative right has been given the opportunity to study the peculiarities of each organizational form of the administration.

Until now, the problems of economic and institutional crises have overwhelmed the local sphere and have been inserted in the global order, so it has been necessary to repair these deficiencies. In recent years, public action has focused on aspects such as organization and administrative action that thin the State; consequently, a wave of transformations has emerged. According to Roldán (2012, pp. 45-47), the following points were predominant in the changes (among others):



1. The economic reason as a guide of thought with criteria of efficiency giving priority to the actions of deregulation, privatization and liberation around the private subject.
2. The retraction of the State as a direct economic agent and only in charge of strategic or limited activities as priority areas; The State remained as regulator and guarantor of freedoms and property rights.
3. The transition from market ideas to administrative activity.
4. Tendency to incorporate own institutions of foreign legal systems.
5. The prominence of international law, by opening in some cases the internal legal order that can escape national controls.
6. Decentralization and administrative deconcentration, actions that, following the design of effectiveness and efficiency, were increasingly moving away from centralized administration.

### **Administrative organization**

The administrative act together with the organization system are the core of the doctrine of administrative law (Martínez, 1998, p. 40). On the system of organization, the need arises to order the institutions that integrate the public administration to achieve their operation in accordance with the purposes and exercise of their activity that through the Constitution (1917) and the laws have been assigned to them.

Thus, being part of that nucleus, when talking about the organizational systems of the dependencies and entities of the executive branch, it is that there is a need for an order or systematization that corresponds to a hierarchical league with the holder that has greater or lesser force, depending on the historical moment in question.

In the case of Mexico, this hierarchical league is with the president of the Republic, and three forms of organization are generally studied by the science of administrative law: centralization, deconcentration and decentralization. Although in the legal framework they usually fit in two, since article 90 of the fundamental letter establishes, in its first paragraph, that “the Federal Public Administration will be centralized and para-state according to the Organic Law issued by the Congress” (Constitution, 1917).

For its part, the Organic Law of the Federal Public Administration [LOAPF] (1976), in its article 1, establishes the organizational bases of the federal public administration, which will be centralized and para-state, and states that “the Office of the Presidency of the Republic, the





Secretariats of State, the Legal Department of the Federal Executive and the Coordinated Regulatory Bodies integrate the Centralized Public Administration ". And it specifies that the parastatal public administration is composed of "decentralized agencies, state-owned enterprises, national credit institutions, national auxiliary credit organizations, national insurance and bail institutions and trusts." Production companies of the State as such are still not considered (LOAPF, 1976).

Regarding the classification of the public administration organization from the doctrine, Roldán (2012) quotes Gabino Fraga, who has established the following classification:

1. Administrative centralization.
2. Administrative deconcentration.
3. Administrative decentralization.
  - a) Administrative decentralization by service.
  - b) Administrative decentralization by region.
  - c) Administrative decentralization by collaboration (p. 216).

According to Roldán (2012, p.216), the classification is followed by Andrés Serra Rojas, who adds to private companies of public interest. Other authors formulate variants to the previous ones: Acosta Romero, also cited by Roldán (2012, p. 216), divides them into centralization, deconcentration, decentralization, mercantile societies and state companies and public trusts. Martínez Morales lists the centralization, deconcentration and the parastatal (Roldán, 2012. p. 216). It is visible in the light of the doctrine that in the form of administrative organization present in article 90 of the Constitution (1917), entities with ambivalent, mixed, dual or hybrid structure are not mentioned, or as they are called, although in reality is found, as well as in secondary laws, which makes it difficult for legal operators to frame them specifically in some of those indicated in the administrative organization.

## **The centralized public administration**

### **Secretary of Energy**

When dealing with the form of administrative organization in a general way and specifically on centralization, Martínez (1998) says that "the organs depend immediately and directly on the head of the executive branch" (p. 41). Abundant in the subject, it makes a timely description of each of the notes that identify both the centralized, the decentralized and the parastatal public administration. On the centralized, Roldan (2012) specifies the following:



In addition to being a form of administrative organization, it is a technique of organizing or designing intra-organizational relationships based on hierarchy. The instruments that objectify the technique are the presence and intensity of various powers: command, appointment, oversight, review, disciplinary, budgetary, and conflict resolution. (p. 217).

The centralized public administration is an administrative organization in which the units and organs are linked in a staggered manner from the top command. For Ayala (2000): “They are articulated under a single hierarchical order, starting with the President of the Republic, in order to unify the decisions, command, action and execution of the objectives and goals established in public programs” (p. 109).

Under this assumption, with the 2013 reform, the executive offices acquired competencies dictated directly by the constitutional text, contrary to what was happening in the case of the autonomous constitutional bodies that were left with powers. Hernández (2017), in a special way, refers to two of them: the Ministry of Finance and Public Credit (SHCP) and Sener. Due to space and importance in the subject, in the present study reference will be made only to the second.

The Sener is a typical dependency of the centralized public administration; He is a member of the legal cabinet of the executive branch and office responsible for regulating the country's energy resources, among which is electricity; designs, plans, executes and coordinates public policies so that it conducts itself in accordance with the protection of the environment, seeking the sustainable development of natural resources. These areas of competence are deployed both in the LOAPF (1976) and in the Electricity Industry Law [LIE] (2014).

### **Energy regulatory commission**

Centralization was already analyzed, and legally the CRE belongs to that type of organization, but it is important to highlight the following finding. One modality of administrative and political decentralization of the organization and operation of the State is the autonomous constitutional bodies (which fulfill relevant tasks), which implies an enrichment of the theories of the division of powers, as there are public functions different from those traditionally established. , such as administrative, legislative and jurisdictional. Sánchez (2015, p. 232) highlights the characteristics of autonomous constitutional bodies:

1. The Constitution regulates its existence and composition;
2. The methods of designating its members;



3. Its purpose and competence;
4. Its existence is indispensable so that the constitutional system as a whole is not affected;
5. Participate in the political direction of the State in decision-making and conflict resolution;
6. They are located outside the organic structure of traditional powers;
7. They have autonomy;
8. Decision authority, and
9. In some cases with the coercive power to execute their resolutions.

Among the autonomous constitutional bodies are the Bank of Mexico, the National Human Rights Commission, the National Electoral Institute, the Federal Telecommunications Institute, the Federal Economic Competition Commission, among others.

In the eighth paragraph of article 28 of the Constitution (1917), and the transitory tenth, tenth, and thirteenth of the 2013 reform, the way forward for the preparation of the secondary legal norm regarding the organization and operation of the coordinated regulatory bodies, whose features are to have technical autonomy, management autonomy, guarantees of budgetary sufficiency and a government body whose members have stability in the commission and that the Constitution (1917) mentions by name, so they should fit strictly into the traditional conception of autonomous constitutional bodies that has been pointed out.

But it doesn't happen that way. This is because they are subject to higher limits, since, to begin with, they are part of the executive, and although they enjoy autonomy from the Sener, they have the obligation to coordinate within the Energy Sector Coordination Council so that their actions and resolutions adhere to the public policies of the federal executive (Hernández, 2017, p.254). Therefore, it can be established that it is a form of atypical organization, composed of a mixture between centralized units, autonomous constitutional entities and decentralized bodies.

Article 43 of LOAPF (1976) states that:

The Centralized Public Administration will have Coordinated Regulatory Bodies in Energy Matters, with its own legal personality and technical and management autonomy. They will be created by law, which will establish its competence as well as the coordination mechanisms with the Ministry of Energy. The Regulatory Bodies Coordinated in Energy Matters will be governed by the provisions applicable to the Centralized Public Administration and the special regime that, where appropriate, provides for the law that regulates them.

While chapter II of the Law on Coordinated Regulatory Bodies in Energy Matters [Lorcme] (2014) states that it will be the National Hydrocarbons Commission and the CRE who will have technical, operational and management autonomy. They will have legal personality and may dispose of the income derived from the rights and exploitations established by the services they provide according to their powers and powers (Lorcme, 2014).

And following articles 41 and 42 of this same law, in addition to the powers established in the Hydrocarbons Law, the Electricity Industry Law and the other applicable laws, the CRE shall regulate and promote the efficient development of electricity generation and public electricity transmission and distribution services, electricity transmission and distribution that is not part of the public service and the commercialization of electricity (Lorcme, 2014).

The CRE will promote the efficient development of the industry, promote competition in the sector, protect the interests of users, provide adequate national coverage and attend to reliability, stability and security in the supply and provision of services. In this regard, the Law of the Electric Industry [LIE] (2014), in its article 139, first paragraph, indicates as competences the application of the methodologies to determine the calculation and adjustment of regulated tariffs, the maximum tariffs of the suppliers of last resort and the final rates of the basic supply and use of national transmission networks or general distribution networks.

### **National Commission for the Efficient Use of Energy**

Regarding deconcentration, Martínez (1998) states that in it “the entities have a hierarchical relationship with some centralized body, but there is some freedom in regard to their technical performance” (p. 41). And on the parastatal sector, to differentiate it, he affirms that “it corresponds to the form called in the doctrine, decentralization. It is structured by entities that have their own legal personality, different from that of the State and whose link with the head of the executive branch is indirect” (p. 41).

Ayala (2000), meanwhile, states that the decentralized administration:

It is a form of administrative organization in which limited powers of decision are granted to the decentralized body and autonomous management of the budget or its assets, while continuing to exist the hierarchy link. It consists of attributing decision-making powers to some administrative bodies that, despite receiving such powers, remain subject to the hierarchical powers of superiors (p. 110).

Decentralized bodies have their *raison d'être* in article 17 of LOAPF (1976), which states:



For the most effective attention and efficient dispatch of matters within its competence, the Secretariats of State may have decentralized administrative bodies that will be hierarchically subordinate and will have specific powers to resolve on the matter and within the territorial scope determined in each case. , in accordance with the applicable legal provisions.

While Roldan (2012) adds the following:

The characteristics of the deconcentrated organs derived from the aforementioned precept are:

1. They are part of a centralized public administration unit.
2. Maintain hierarchical subordination with the holder of the branch.
3. They have autonomy to exercise the competition granted.
4. They must be created, modified or extinguished by an instrument of public law (law, regulation, agreement or decree).
5. Its competence is limited to a certain subject or territory.
6. They lack legal personality (p. 231).

Although these are the characteristics of the decentralized bodies, there are some who have legal personality and their own assets, facing the triple problem of having technical autonomy, having personality and also having an organic autonomy, which would make them look like decentralized organizations if it were not for their legal qualification as deconcentrated, which makes them peculiar organisms, such as the National Polytechnic Institute, National Institute of Fine Arts and the National Institute of Anthropology and History (Roldán, 2012, p. 231).

In addition to what has already been mentioned, article 39 of the Internal Regulations of the Sener [RISE] (2014) highlights the following:

For the effective attention and efficient dispatch of matters within its competence, the Secretariat has the decentralized administrative bodies that are hierarchically subordinate to them and which are granted technical and operational autonomy, executive powers to resolve specific matters within the scope of jurisdiction that is determined in each case, in accordance with the regulations established for that purpose in the corresponding legal instrument.

There are two deconcentrated bodies of the Sener, the National Commission for Nuclear Safety and Safeguards and the Conuee, with the organization and the powers that established the

legal and regulatory systems by which they were created and that regulate their organization and operation.

La Conuee is a typical decentralized administrative body for not having its own legal personality and depending on the Sener. It was created through the Law for the Sustainable Use of Energy, published in the Official Gazette of the Federation (DOF) on November 28, 2008. On December 24, 2015, the decree was published in the DOF The Energy Transition Law was issued, which aims to regulate the sustainable use of energy, as well as the obligations in terms of clean energy and reduction of pollutant emissions from the electricity industry, maintaining the competitiveness of the productive sectors.

## **The parastatal or decentralized public administration**

### **National Energy Control Center**

There are also decentralized agencies. About them Acosta (1997, p. 476) said that semantically deconcentration and decentralization meant moving away from the center and that, sometimes, care is not taken when expressing the specific difference of both. Regarding administrative decentralization, Sánchez (2015, p. 214) points out that public services are separated from the set that are managed by the centralization in which they are granted a more or less wide margin of autonomy, since they are specialized and gifted agents of independence of the central power, which does not direct them but somehow controls them.

For Ayala (2000), the decentralized public administration:

It is a form of organization that the public administration adopts to develop activities that belong to the State or that are of general interest at a given time through organizations created especially for it and that are endowed with their own assets, personality and legal regime [...] while remaining part of the State, which does not dispense with its regulatory public power and administrative protection (p. 110).

The constitutional basis of parastatal organizations is found in article 90 of the Constitution (1917) and in LOAPF (1976). In addition, in the Federal Law of Parastatal Entities (1986), in its

article 1, it is established that the purpose is to regulate the organization, operation and control, relations with the federal executive. According to Sánchez (2015, pp. 226-227), its characteristics are the following:

1. They have their own legal personality;
2. An equity of its own;
3. Own legal regime;
4. Denomination;
5. Object;
6. Purpose;
7. Representation bodies;
8. Its director is appointed by the president of the Republic or at his indication;
9. Control and surveillance regime;
10. Address;
11. Hierarchy regime, and
12. Tax regime.

The Cenace was created by decree published in the DOF on August 28, 2014. It is a typical public body for following all the stated characteristics, decentralized of the federal public administration, with legal personality and its own assets, sectorized to the Sener.

The work of Flores (2017) describes the powers of Cenace, responsible for developing and proposing to Sener, for its authorization, the expansion and modernization of the national electricity system, and is assigned the operational control comprising the national transmission network and the general distribution networks and the energy dispatch corresponding to the wholesale electricity market, where carriers and distributors participate according to their instructions. Following the legal framework, these activities are considered strategic for national development, so the public sector is in charge of it exclusively.

### **Federal electricity commission**

It should be remembered that as of August 2014, the most recognized parastatal energy companies ceased to be decentralized organizations and were transformed into productive State enterprises, with specific regulations (Sánchez, 2015, p. 219). Although little has been said about these companies, the criticisms by Cárdenas (2015) stand out, since, from their point of view, with

the modification of the constitutional article 25 they were created to address the strategic areas and represent a nonexistent category in Mexican positive law.

Cárdenas (2015) adds that, from the creation of these companies, it is clear that they will not have the proper supervision of the Congress and of the State bodies, since they will have an exception regime apart from the rest of the debt institutions, Acquisitions, transparency and responsibilities. Since the Constitution (1917), productive State companies are conceived as quasiprivatives that are conducted according to the best practices at the international level to exploit the resources of the nation with business criteria and constitute a contradiction because the objectives of public bodies must be the safeguard of the general interest, and not the maximization of the individual benefit, since these companies will help and benefit the transnationals in the appropriation of the nation's resources (Cárdenas, 2015).

With respect to the exclusivity of strategic areas, the fifth paragraph of article 25 of the Constitution (1917) establishes the following:

The public sector will be in charge, exclusively, of the strategic areas indicated in article 28, fourth paragraph of the Constitution, always maintaining the Federal Government ownership and control over the organisms and productive companies of the State that in its case be established.

On the other hand, in the seventh paragraph of article 27, mention is made of the State's oil production companies and they are mentioned again in the fifth paragraph of article 28:

The State will have the organizations and companies that it requires for the effective management of the strategic areas under its charge and in priority activities where, according to the laws, it participates on its own, or with the social and private sectors (Constitución, 1917).

To clarify the idea, it is important to mention the decree by which various provisions of the Constitution (1917) on energy are amended and added, published in the DOF on December 20, 2013. This establishes an instruction, in the twentieth transitory, for the ordinary legislator: "Within the period stipulated in the fourth transitory of this Decree, the Congress of the Union will make the adjustments to the legal framework to regulate the productive enterprises of the State" (Constitution, 1917). While, in its third transitory, it provides that:

The law will establish the form and deadlines, which may not exceed two years from the publication of this Decree, so that the decentralized bodies called Petróleos



Mexicanos and the Federal Electricity Commission become the State's productive companies (Constitución, 1917).

If analyzed in detail, the Constitution (1917) states that Petróleos Mexicanos (Pemex) and CFE must become productive companies of the state, but it does not say that they will cease to be part of the public administration. This statement is confirmed by the Supreme Court of Justice of the Nation (2018), in the isolated constitutional administrative thesis 2a. LXXX/2018 (10a.):

On the other hand, and as article 90 of the Constitution states that the Federal Public Administration will be centralized and parastatal, it is concluded that the State's productive enterprises are a new category of parastatal entities with a new special and differentiated legal regime, far from the traditional logic of controls and administrative hierarchy, based on principles of corporate governance (p. 1214).

Hence, if its content is analyzed, it can be noted that the distinctive notes of the State's productive companies are the following:

1. Its purpose is the creation of economic value and increase the income of the nation, with a sense of equity and social and environmental responsibility.
2. They have budgetary autonomy and are subject only to the financial balance and the roof of personal services that, at the proposal of the secretariat of the field of finance, approves the Congress of the Union.
3. Their remuneration regime is different from that provided for in article 127 of the Constitution (1917).
4. Its organization, administration and corporate structure must be in accordance with the best practices at international level, ensuring its technical and management autonomy, as well as a special contracting regime to obtain the best results from its activities, so that its Government bodies have the necessary powers to determine their institutional arrangement.
5. Its governing bodies comply with the provisions of the law and its directors are freely appointed and removed by the head of the federal executive or, where appropriate, removed by the board of directors that has 10 members.
6. They coordinate with the federal executive, through the competent agency, so that their financing operations do not lead to an increase in the cost of financing of the rest of the public sector, or contribute to reducing the sources of financing of East.
7. They have, in terms of what is established in the corresponding laws, a special regime in terms of procurement, leases, services and public works, budgetary, public debt,

administrative responsibilities and others that are required for the effective realization of its purpose, in a way that allows them to compete effectively in the industry or activity in question.

With the distinctive notes already described, it is time to approach Article 2 of the Law of the Federal Electricity Commission (2014) to warn the legal nature of this entity, which is to be a productive company of the State, of exclusive property of the Federal government, with legal personality and its own assets and that enjoys technical, operational and management autonomy.

In the words of Ochoa (2015, pp. 59-60), the CFE has a special regime in budget, debt, acquisitions, leases, services, work, administrative responsibilities, goods and services, also in the financing mechanisms for its investments, so that the legal provisions for the public sector are not applicable, because in these matters the board of directors will be responsible for issuing its own policies to streamline its processes, with the intention of making it more competitive in the electricity market, without neglecting which must act with the highest standards of transparency, accountability and control.

In accordance with article 5 of its law, the CFE, apart from providing public transmission and distribution services that continue as strategic areas reserved for the State, may perform other activities through its subsidiary productive companies or subsidiary companies, and passed from being an electricity company to becoming an energy company that can commercialize the surplus of natural gas and other fuels that it does not use in its generation processes (Federal Electricity Commission Act, 2014).

Highlights its work with high social content as a basic provider and distributor: bring electricity to isolated rural or urban areas marginalized through the use of resources assigned by the Universal Electric Service Fund. With the aforementioned characteristics, it is evident that it is in the presence of an atypical entity, with features of decentralization, but also of public and private enterprise and, by the Supreme Court's own claim, capable of being classified in a new category of entity parastatal.

## Discussion

The interesting article by Hernández (2017) has served as a guide to this investigation, which in one of the sections makes a brief description of the authorities and companies involved



in the reconfigured electricity sector since the 2013 reform, and of course the Suggestive statement by Cárdenas (2015), in the sense that non-existent categories had been created in the Mexican legal system. In that conductive thread, the legal nature and competencies of each of the dependencies and entities related to the theme of electricity selected were analyzed in order to propose a category within the organization of the federal public administration.

### **Regarding the centralized public administration**

1. When contrasting (in the results section) the nature, features and competencies of the Sener with the concept and characteristics of centralization, it coincided fully, since it depends directly and immediately on the President of the Republic, so it is identified as a dependency Centralized federal executive power.

2. When the concept and characteristics of the deconcentration were analyzed and contrasted with the nature and competences of the Conuee, there was also a full coincidence, so it can be said that it is a decentralized dependency of the Sener, in turn centralized to the federal executive branch

3. The CRE deserves attention and care apart, which moves away from the concept of identification of centralized units and their characteristics. Because, in part, it shares characteristics of the autonomous constitutional bodies, which are clearly identifiable, since it has some characteristics of these in that the Constitution (1917) calls it by name, it has technical and management autonomy It has its own legal personality, budgetary sufficiency, designation and stability of its commissioners.

However, the Magna Carta itself deliberately created a new concept called a coordinated regulatory body that does not have its own autonomous sphere separate from the executive, since it is part of it, because the Sener is responsible for coordinating it, because it was thus established in LOAPF (1976), of which it forms part as a centralized body.

Therefore, it is not possible to place it only within one of the concepts already described, referring to centralization, deconcentration, decentralization or even an autonomous body, since it brings together at least one characteristic of all of them. It can be established, then, that its nature corresponds to an atypical entity, product of elements of different nature.

### **Regarding the parastatal or decentralized public administration**



1. When the features, nature and competences of Cenace were analyzed and contrasted with the concept and characteristics of decentralization, they fully agreed, so it can be affirmed that this is a parastatal entity.

2. When the CFE was analyzed, it went from being a decentralized entity (with all its characteristics) to a state-owned productive company, whose new configuration starts from the Constitution (1917) and which, in accordance with the characteristics indicated in the section of results, the legal provisions for the public sector are not applicable because it has a special regime in budget, debt, acquisitions, leases, services, work, administrative responsibilities, goods, services and in the financing mechanisms for your investments, what turned it into a public company also regulated by private law, it was not possible (so far mentioned) to make it fit the concept of pure parastatal administrative organization. In other words, it was not possible because it corresponds to an atypical entity, product of elements of different nature, which would share some data with the figure of public company (or majority state in the cases of subsidiaries) that involves a regulation under common law, subject to an exorbitant regime of public law and considered by our highest court as a new category of entity.

### **Centralized and parastatal administrative transversality**

At this point it is necessary to bring back the question from which it started: Considering the nature and competencies of the dependencies and entities of the electricity sector analyzed, is it possible to place all of them within the concepts and characteristics that the doctrine on of public administration organization? In this regard, it should be pointed out that the data found indicates that not in all cases it is possible to place the current dependencies and entities within the traditional concepts of organization, because they are distorted as the study progresses in its most aspects punctual

However, this exercise was of great value since from its analysis it was possible to identify the gender close to which each dependency or entity belongs and the specific difference that makes them peculiar. Having found a negative response in the CRE and CFE institutions, then is it possible to generate a new concept that catalogs those of different nature? Given this reality, a tentative response is configured: the concept called transversality of public administration as a complementary proposal encompasses the nature and scope of authorities and atypical companies related to the electricity sector in Mexico.

When the CRE and the CFE do not fit into the concepts of the known administrative organization, the doctrine must deploy a deeper study of these atypical institutions, if atypical it is understood that “by their characters it departs from representative models or types acquaintances ”(Royal Academy of Language, 2019).

It is advisable to review the traditional concepts that converge in the administrative organization and that new ones are given that adequately configure the characteristics of the dependencies and entities that have been modified or that, from the current legislative framework, can be created in the future, because they have currently been exceeded by the constituent or by the legislator, either due to ignorance or deliberately creating non-existent categories, according to Cárdenas (2015).

The legal insight, according to Hernández (2010, p. 26), is the psychological response after intuitively analyzing an issue. In that tenor, the transverse line can serve to unravel the tangle. An example of the application of the concept of transversality is presented when the Supreme Court of Justice of the Nation (2016), in the isolated administrative constitutional thesis I. 1st. A.E. 135 (10a.), In the field of telecommunications established that:

Mainstreaming should be taken into account when deciding that the application of the legal provisions and principles of economic competition, broadcasting and telecommunications matters involves, in certain cases, authorities other than the Federal Telecommunications Institute and the Federal Competition Commission Economic, given the cross-cutting nature of these matters, which transits since the Constitution (1917) in aspects such as human rights, economic rectory, free competition and regulation, such as, among others, the right of access to information (p. 2830).

The transverse word comes from the Latin transversus which means 'that it is or extends across from one side to the other', and in its second meaning 'that departs or deviates from the main or straight direction' (Spanish Language Dictionary, 2019 ). In legal terms, it is the “attribution that gives rise to regulations or legal interventions that affect not only the competency title that is exercised, but also other diverse matters, although there is no immediate connection between them” (Dictionary of Legal Spanish, 2019 ). Transversality can be understood as the quality of crossing perpendicularly (be it a line or a plane).

Thus, administrative mainstreaming means a form of systematization by virtue of which it is integrated into public agencies or entities that, due to their atypical nature, are not limited to belonging only to a certain category of organization, but may comprise two or more.

Administrative mainstreaming is a proposed solution that tries to assimilate the various legal natures of entities and organizations that, when not properly analyzed, seem to be straight lines that only join two points, but which, once carefully reviewed, extend through from one side to the other, that go from the center to the outside or from the public to the private, covering more than one option, in lines that unite but then separate without returning. It has been seen how the CRE and CFE are separated from the characteristics that make up the nature of the centralized and deconcentrated, and the decentralized in its various known branches, which constitutes them in atypical institutions because they are hybrid, dual, ambivalent or mixed.

It was already seen that the Constitution (1917), in its article 90, establishes that the organization of the public administration is centralized and parastatal; so do the authors mentioned by Roldan (2012) above. However, they are not enough to encompass the nature and characteristics of CRE and CFE.

The concept of transversality of public administration can be a solution so that, in the organization of public administration, those dependencies or entities that by their nature have one or more different characteristics than what the doctrine has reserved for them are included. In that understanding, the administrative organization would be integrated as follows:

1. Centralized Public Administration

a) Administrative centralization

Dependency: Sener

b) Centralized Administrative Transversality

Dependency: CRE

c) Administrative deconcentration

Dependency: Conuee

2. Parastatal or decentralized public administration

a) Administrative decentralization

Entity: Cenace

b) Decentralized Administrative Transversality

Entity: State productive companies, CFE

In administrative mainstreaming (whether centralized or para-state), the reconfigured or newly created dependencies and entities that do not coincide with the concept and characteristics



that the doctrine has conferred on centralization, decentralization and administrative decentralization, as with the CRE and the CFE.

## Conclusion

The way in which the federal public administration is organized is organized in a general but structured way, to whose gender the dependencies and entities that have greater participation in the Mexican electricity sector belong. From its classification in centralized and parastatal the specific differences have been understood, with the purpose of locating them within the established concepts; and since it has not been possible to do so with all the dependencies and entities, the objective of proposing a form of administrative organization that endorses the dependencies and entities of the electricity sector that due to its atypical nature required a new form of organization has been achieved.

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