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Resignation of Energy Secretary Complicates Fox's Push for Energy Reforms

by LADB Staff
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President Vicente Fox suffered a major setback in his efforts to push through major energy reforms this year following the contentious resignation of Energy Secretary Felipe Calderon Hinojosa. Calderon replaced Ernesto Martens in September 2003, after a brief term as director of the government lender Banco Nacional de Obras y Servicios (BANOBRAES).

Calderon left his post as floor leader for the center-right Partido Accion Nacional (PAN) in the Chamber of Deputies just a few months earlier to take the BANOBRAES post. Fox then tapped Calderon to head the Secretaria de Energia (SENER) with the specific goal of helping push his energy reforms through Congress (see SourceMex, 2003-09-03). The president considered Calderon's position valuable because of his cordial relations with Congress, especially members of the former governing Partido Revolucionario Institucional (PRI).

Calderon clashes with Fox over 2006 candidacy
Calderon, however, also had his eyes on a potential bid to be his party's presidential candidate in 2006. He had hinted of his presidential ambitions but never formally announced his intentions to seek the nomination. This changed at a rally in Guadalajara in late May, when he accepted the endorsement of 4,000 PAN supporters in Jalisco state.

The PAN leadership, including Fox, was angered by Calderon's acceptance of the endorsement, which it said amounted to a formal declaration of candidacy and a violation of the party's pledge not to jump into the presidential race until at least 2005. "It seems to me that it was more than just ill considered to have held this campaign-type event," Fox said. "I think it was both out of place and the wrong time." The problem was that Fox did not communicate his criticism directly to Calderon, but made the comments during an interview with reporters.

The energy secretary learned about the comments through media reports and immediately tendered his resignation. Presidential sources said, however, that Fox was already planning to give Calderon the choice of resigning from his post or putting his presidential ambitions on hold. In his letter of resignation, Calderon called the president's criticism "unjust" and "disproportionate." He explained that he could no longer be energy secretary because Fox had undermined his ability to serve effectively in the post. "The position requires support, authority, and a capacity for dialogue," said Calderon.

Calderon may have started his campaign early to try to make up ground against other potential rivals for the presidential nomination, especially Interior Secretary Santiago Creel. Recent public-opinion polls showed Calderon running fourth behind Creel, first lady Martha Sahagun, and Deputy Francisco Barrio Terrazas.

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Another candidate, Sen. Carlos Medina Plascencia, received little criticism from the president and party hierarchy when he created a political-action committee to support his bid for the nomination. Medina, however, is not a Cabinet member and is not seen as a threat to the favored candidates.

Fox said his hard-line stance with Calderon was intended as a message to the rest of his Cabinet not to engage in politicking. "We must make our responsibilities a priority...and it should be clear that at this level I will not accept anyone launching an open campaign process now," the president said.

Some PAN members call Fox's stance hypocritical
But several PAN members said Fox's stance was hypocritical because he was quick to reprimand Calderon while allowing more leeway to Creel and Sahagun. "There are other campaigns that were not treated in the same manner," said Deputy German Martinez, one of the PAN floor leaders in the lower house. "Perhaps they were doing this to protect the interests of another candidate," said Jalisco Gov. Francisco Ramirez Acuna, who was instrumental in setting up the rally for Calderon in Guadalajara.

Deputy Margarita Saldana alluded to Fox's hypocrisy, saying that Fox, then governor of Guanajuato state, launched an early campaign before the 2000 presidential election against the wishes of then party president Felipe Calderon. "Calderon asked Fox not to jump the gun, but he ignored this request," said Saldana.

Fox's criticism was also directed at Ramirez Acuna, who in turn offered his own negative comments about the president during a radio interview. "I am not prepared to accept such comments from the president for any reason, because he can't use that language toward a governor," Ramirez said.

Analysts say the irony is that Fox has deepened divisions within his party, a situation he had been trying to avoid by discouraging early candidacies. "Fox is worried because, with these situations, he's losing control of the party," political analyst Gilberto Calderon told the Associated Press. Later, party president Luis Felipe Bravo Mena downplayed the developing rift among PAN members. "There is no crisis in our party," said Bravo Mena.

Ex-Nuevo Leon governor replaces Calderon
Fox named close collaborator Fernando Elizondo Barragan to replace Calderon. Elizondo, who served briefly as interim governor of Nuevo Leon, was the executive's liaison to the governor's association (Confederacion Nacional de Gobernadores, CONAGO) in the tax-reform convention (Convencion Nacional Hacendaria, CNH). The CNH was scheduled to present formal proposals to the Congress.

Before Elizondo's appointment was announced, there was some speculation that Fox had planned to elevate one of three deputy secretaries to head SENER: Hector Moreira Rodriguez, Ernesto Cordero Arroyo, or Juan Camilo Montano. This speculation was unrealistic, however, given the increasingly political nature of the position. Still, there is some doubt that Elizondo will have any success in moving Fox's proposed energy reforms through Congress. Calderon had found this task extremely difficult during his short tenure as energy secretary, especially after the PRI and center-left Partido...
de la Revolucion Democratica (PRD) gained ground in the midterm congressional elections in July 2003 (see SourceMex, 2003-07-16). "With Calderon's resignation, the advances in negotiations on reforms to the electrical-power system will remain stalled," said Eduardo Andrade Iturribarria, president of Asociacion Mexicana de Energia Electrica (AMEE).

**Congressional auditor questions electricity privatizations**

Calderon left office just days after the congressional audit office (Auditoria Superior de la Federacion, ASF) issued a report criticizing the government's policy of allowing private companies to produce electricity. The ASF report, published at the end of May, lists "irregularities" in 77 contracts granted by the Comision Reguladora de Energia (CRE) between 1996 and 2002. Most of those contracts were awarded during the administration of former President Ernesto Zedillo (see SourceMex, 1996-06-12, 1997-01-08, 1999-09-22).

A small number of those concessions have been granted during the Fox government, in 2001 and 2002. The opening of Mexico's electrical sector dates back to the administration of former President Carlos Salinas, who pushed the original legislation through Congress that allowed private companies to produce electricity in Mexico (see SourceMex, 1993-06-16). While the ASF findings call the legality of the private contracts into question, they do not go so far as to directly advocate the elimination of private contracts.

Instead, the auditor has recommended changes that would make these extremely unattractive for private investors and also asks the government to sanction officials who commit "irregularities." These include violations of environmental regulations, failure to comply with specified construction timetables, and the sale of electricity to buyers that were not authorized under the original contract. 

"[The CRE] has not adequately supervised whether these companies have complied with the obligations established under the permits," the ASF report said.

The ASF report said the violators include companies like Spanish-based energy giant Iberdrola, which sold more electricity to one of its associates than allowed under CRE permits to plants in Monterrey and other cities in northern Mexico. Fox challenges ASF findings before Supreme Court

The Fox administration objected strongly to the ASF report and brought the matter before the country's highest court (Suprema Corte de Justicia de la Nacion, SCJN).

Government attorneys said the ASF exceeded its authority by usurping powers reserved to the judicial and executive branches. They argued that the ASF findings infringed on the interpretive powers of the courts by deciding that the concessions were unconstitutional and also trampled on the rights of the executive branch by issuing orders for the CRE to modify its procedures.

Justice Juan Diaz Romero said the court has agreed to examine the government's complaint and has granted the administration a temporary injunction against compliance with the ASF ruling.

Energy-industry advocates sided with the Fox administration, criticizing the ASF for an "erroneous interpretation" of the law that opened the door to limited private investment in the electrical-power sector.

They said the ASF report would have been less controversial had it not also questioned the legality of the contracts under the Mexican Constitution. "The permits cannot be called unconstitutional
because they are covered in the legislation that has been in place since early 1992," said Cinthia Bouchot, president of the Asociacion Mexicana de Derecho Energetico (AMDE).

The ASF report represents the latest salvo in the tug of war between the proponents and opponents of private investment in Mexico's energy sector. Supporters of partial privatization include Fox's center-right PAN, a minority of PRI legislators, and several PRI governors. They would like to expand the existing scheme to allow private companies to sell excess electricity to the state-run utilities, the Comision Federal de Electricidad (CFE) and the Compania Luz y Fuerza del Centro (LFC). Private entities currently account for about 8% of the electricity produced in Mexico.

Both Fox and Zedillo proposed changes to the Constitution to further open electrical-power generation to the private sector, but had to withdraw or delay their proposals because of staunch opposition in Congress (see SourceMex, 1999-02-03, 2003-03-05 and 2003-07-16). Opponents, led by PRI Sen. Manuel Bartlett Diaz, have blocked such a plan on the grounds that it violates constitutional provisions that reserve certain activities like all modes of energy generation to the government.

**Private gas contracts also left hanging**

Bartlett has also led the campaign against the government's program offering multiple-services contracts (contratos de servicios multiples, CSMs) to private companies to develop natural-gas reserves in the Burgos Basin in northeastern Mexico. Under the leadership of Calderon, the administration awarded contracts to five different Mexican-foreign conglomerates since October 2003 (see SourceMex, 2003-10-29 and 2004-01-28).

Bartlett has pledged to present a constitutional challenge to end the CSM program entirely. He said he has received support from 170 legislators from the PRI and PRD, including 43 senators and 127 members of the Chamber of Deputies. The PRI senator will have to develop his constitutional challenge very carefully to ensure maximum support from the PRI. In April of this year, a large number of PRI members refused to back a PRD proposed constitutional challenge to the CSMs because of a technicality (see SourceMex, 2004-04-21). "We will do everything within our reach to prevent this president from turning over our country to foreign interests," Bartlett said. (Sources: Associated Press, Bloomberg news service, 05/31/04; Milenio Diario, 03/26/04, 05/28/04, 06/01/04; Spanish news service EFE, 05/27/04, 06/01/04; Notimex, 05/27/04, 05/31/04, 06/01/04; Agencia de noticias Proceso, 05/31/04, 06/01/04; The Financial Times-London, 06/01/04; El Financiero, 02/26/04, 03/02/04, 06/01/04, 06/02/04; La Jornada, 03/02/04, 04/28/04, 05/28/04, 05/30/04, 06/01/04, 06/02/04; El Universal, 04/28/04, 05/27/04, 05/28/04, 06/01/04, 06/02/04; The Herald-Mexico, Unomasuno, 05/27/04, 06/01/04, 06/02/04; La Cronica de Hoy, 05/28/04, 06/01/04, 06/02/04; El Sol de Mexico, 06/01/04, 06/02/04; The Dallas Morning News, 06/02/04)

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