Panel Discussion: A Hypothetical Problem on Energy Development in Mexico

Michael W. Gordon
Miguel Jauregui Rojas
William D. DeGrandis
Abdon Hernandez
Suedeen G. Kelly

See next page for additional authors

Follow this and additional works at: https://digitalrepository.unm.edu/usmexlj

Part of the International Law Commons, International Trade Law Commons, and the Jurisprudence Commons

Recommended Citation
Available at: https://digitalrepository.unm.edu/usmexlj/vol3/iss1/13
Panel Discussion: A Hypothetical Problem on Energy Development in Mexico

Authors

This article is available in United States - Mexico Law Journal: https://digitalrepository.unm.edu/usmexlj/vol3/iss1/13
THE HYPOTHETICAL PROBLEM

A Proposal for Participation by ENERGY, INC., a Texas Corporation, in the Development of Natural Gas, Electric Power, Coal, Oil, and Petrochemicals in Mexico

ENERGY, INC., is a Delaware corporation with a principal place of business in Houston. The company undertakes exploration for natural gas and oil, has refinery capacity and produces electricity at several locations in the Southwest. It has three wholly owned subsidiaries.

One of these subsidiaries is ENERGY NATURAL GAS, INC., which has several divisions that: (1) explore for natural gas, (2) produce and store natural gas, (3) transport gas by company owned trucks and railway cars, and (4) distribute natural gas in several large cities.

A second subsidiary is ENERGY PETROLEUM, INC., which has divisions for: (1) exploration, (2) production and storage, and (3) marketing. It does not have a refinery.

The third subsidiary is ENERGY ELECTRICITY, INC., which produces electricity in several areas in the Southwest by means of either natural gas or oil.

Each subsidiary is chartered in Texas and each has a principal place of business in Houston at the same address as the parent, ENERGY, INC.

ENERGY, INC., and its subsidiaries have never done business with Mexico. But the officers and directors are aware of the enactment of the North American Free Trade Agreement (NAFTA), the general openness of Mexico which has developed since the mid-1980s, especially under the Administration of President Carlos Salinas de Gortari, and the prediction of a continuation of that policy during the Administration of President Ernesto Zedillo.
ENERGY, INC., is in a good position to undertake new investment. It has substantial cash reserves and good lines of credit. The board of directors of ENERGY, INC., has instructed the boards of each subsidiary to aggressively seek new business in Mexico.

The company officials have asked in-house counsel to work with outside counsel, including Mexican counsel, to learn about the legal framework in Mexico affecting the company’s business opportunities in Mexico. All that the officials know from reading Business Week, the Wall Street Journal and other business journals is that NAFTA was supposed to open trade with Mexico. However, Mexico was reluctant to open the energy industries to United States and Canadian investment.

In an initial meeting with in-house counsel, the following have been identified as some questions that address both policy and law which must be discussed. Our focus, as in-house counsel, outside United States counsel, and Mexican counsel, will be to consider these and any other questions deemed important to the company’s plans:

A. Part One: General Questions Dealing with Mexican Attitudes and Policy in General Towards Various Aspects of the Energy Industry

1. Is the company foolish to consider any energy industry investments in Mexico in view of the protection given to the energy industry in the Mexican Constitution, the 1993 Foreign Investment Law, and NAFTA?
2. Are the Constitutional provisions in Article 27, or the 1958 Regulations of Article 27, the basis for the restrictiveness in Mexico?
3. Does Mexico view oil and natural gas in the same way? Is one of these resources more open to foreign investment than the other?
4. In considering various stages from exploration to marketing of both oil and natural gas, are any stages, such as exploration, production, or marketing, more open to foreign investment than other stages?
5. How open is Mexico to foreign investment for the production of electricity?
6. What administrative agencies in Mexico will ENERGY, INC., have to deal with?
7. If the foreign ownership interests in energy in Mexico remain severely restricted, might ENERGY, INC., or other similar foreign companies use trusts (fideicomisos) for an investment?

B. Part Two: Some Questions More Directly About the Ability of ENERGY, INC., and Its Subsidiaries to Operate in Mexico

1. Article 27 of the Mexican Constitution seems to reserve energy to national ownership. How extensive is that provision and what parts of ENERGY, INC.,’s business would it affect?

QUESTIONS FOR ENERGY NATURAL GAS, INC.

1. The United States currently has an excess of natural gas, could ENERGY NATURAL GAS sell United States gas to Mexican end users? Just who would be those end-users?
2. Could ENERGY NATURAL GAS buy natural gas in Mexico and resell it to Mexican end-users?
3. Could ENERGY NATURAL GAS participate in the exploration for or production of natural gas in Mexico?
4. Would natural gas from Mexico enter duty free to the United States for sale to United States consumers? For transshipment to users in Europe?
5. Could Mexico impose an export tax on gas purchased by ENERGY NATURAL GAS from Mexico?
6. Would ENERGY NATURAL GAS have to operate as a joint venture with Mexican equity participation for any of the above activities?
7. Would the discussion above regarding Article 27 of the Mexican Constitution and the 1958 Regulations affect the expectations of ENERGY NATURAL GAS?
8. Chapter Six of NAFTA (Energy and Basic Petrochemicals) applies to a list of eleven classifications of goods in Article 602. Is natural gas affected? Do any of the reservations or special provisions of Annex 602.3 of NAFTA apply?
9. Does Part 3 of Annex 602.3 require Mexican government approval for a sale of natural gas from ENERGY NATURAL GAS to a Mexican end-user, or may the buyer and seller contract directly without government involvement?

QUESTIONS FOR ENERGY PETROLEUM, INC.

1. May ENERGY PETROLEUM market U.S.-produced oil and oil products produced in Mexico?
2. Might ENERGY PETROLEUM purchase oil products in Mexico and resell them in Mexico, such as the operation of a gas station, sale of oil or aviation fuel?
3. Might ENERGY PETROLEUM participate in the exploration for or production of petroleum products in Mexico?
4. Would petroleum products from Mexico enter the United States duty-free for sale to United States consumers? For transshipment to users in Europe?
5. Could Mexico impose an import tax on petroleum products purchased by ENERGY PETROLEUM from Mexico?
6. Would ENERGY PETROLEUM have to operate as a joint venture with Mexican equity participation for any of the above activities?
7. Would the discussion above regarding Article 27 of the Mexican Constitution and the 1958 Regulations affect the expectations of ENERGY PETROLEUM?
8. Chapter Six of NAFTA applies to a list of eleven classifications of goods in Article 602. Are petroleum products affected? Do any of the reservations or special provisions of Annex 602.3 of NAFTA apply?
9. Does Part 3 of Annex 602.3 require Mexican government approval for a sale of petroleum products from ENERGY PETROLEUM to a
Mexican end user, or may the buyer and seller contract directly without government involvement?

QUESTIONS FOR ENERGY ELECTRICITY, INC.

1. May ENERGY ELECTRICITY create a Mexican subsidiary to produce electricity for sale in Mexico from Mexican fuels?
2. May ENERGY ELECTRICITY create a Mexican subsidiary to produce electricity for sale in the United States from Mexican fuels?
3. Could either of the above occur with exclusive use of United States fuels?
4. Could ENERGY ELECTRICITY participate in a joint venture with Mexican equity in any of the three above scenarios areas? Would the joint venture be required to have 51% or more Mexican ownership?
5. Does it matter what types of fuel the plant would use?
6. Might ENERGY ELECTRICITY locate the electricity-producing plant on the United States side of the border and sell to Mexico? Would it matter what types of fuel were used? Or whether the fuels were from the United States or Mexico?
7. Under what circumstances will power have to be sold to Mexico's Federal Electricity Commission (CFE), the state-owned electric power monopoly?
8. Under what circumstances can CFE require that proposed electric facilities be subject to competitive bidding procedures?
9. How difficult and expensive would it be for ENERGY ELECTRICITY to participate in such competitive bidding programs?
10. Will ENERGY ELECTRICITY be able to secure financing for electric plants it intends to build in Mexico?
11. What types of factors will lenders examine before agreeing to finance such plants?
12. How can ENERGY ELECTRICITY ensure that the rates in a power output sale agreement will be honored for the term of the agreement?
13. What is the likelihood that ENERGY ELECTRICITY can team up with Mexican industrialists to build plants that would serve these industrialists' needs?

SOME LAWS AFFECTING ENERGY IN MEXICO


5. *Ley de Inversión Extranjera* [Foreign Investment Law], D.O. (Dec. 27, 1993) (Mex.).

**THE DISCUSSION**

*Michael Gordon:* Our hypothetical problem involves ENERGY, INC. It is a Delaware corporation, headquartered in Houston, and has three subsidiaries: one in natural gas, one in petroleum and one in electrical energy production. Each subsidiary is chartered in Texas and each has a principal place of business in Houston. The company has not done any business with Mexico, but is interested in doing so, as are so many other companies. In this hypothetical, there are some general questions dealing with Mexican attitudes and policy towards various aspects of the energy industry. The first question is: Is a company foolish to consider any energy industry investments in Mexico, in view of the complex maze of regulations and rules?

*Miguel Jauregui:* I do not think so, if you believe that the Mexican oil industry, as defined in the statute, will be opened in the near future. By near future, I mean that the Mexican oil industry at large, the hydrocarbons and petroleum industry, will be open within three years. In certain areas, I would say that it is not foolish, but it is going to be very cumbersome from three standpoints. First, there is difficulty in not having clear answers from a legal point of view. Second, there is difficulty in having very cumbersome investment structures which are invented precisely to technically circumvent all those deficiencies in the law that would not allow them to be there. Finally, Mexico favorably views those foreign companies that share their growth, modernization and technical ability with the country. This has been proven time and time again. Many transnational companies in the oil industry are in Mexico providing services to *Petróleos Mexicanos* (PEMEX), getting along with PEMEX, understanding the meaning of the four new subsidiaries, the power structure, and so forth. The answer to this first question is that while difficult, time-consuming and requiring some effort, it is not foolish for a foreign company to consider investing in the Mexican energy industry.

*Gordon:* What are the sources of energy law in Mexico that must be examined very closely and merit the greatest concern?

*Jauregui:* First, the 1958 Regulations are more restrictive than Constitutional Article 27. Second, the reason that the regulatory laws of Article 27 are more stringent is because they were adapted to the original legislative intent. Basically, one must be very careful with the broad definition of "do's and do not's" in the oil industry, as defined in the law. In conclusion, ownership is forbidden; managing, extracting and exploiting are forbidden; and first-hand sales are forbidden.
**Gordon:** What are the real rules in Mexico? It seems that the United States is much more rule-focused, and U.S. rules change constantly, which is more welcome to U.S. investors in Mexico because they are more familiar with the rules of the game.

**Jauregui:** In this area the rules are very clear and definite. Mexican investors do not like the rules; however, that is a different issue. Mexicans are not bordering on anything that is not in black and white. I believe the problem is that to get away from the black and white, one must start dealing with very complex legal structuring that allows for participation. For example, the neutral investment provisions in the Foreign Investment Law state that no foreigner may participate in excess of those percentages set forth in the neutral investment provisions, directly or indirectly.\(^3\) But neutral investment is allowed. Neutral investment is something that you have to explain very specifically, and it is very cumbersome.

**Gordon:** It took quite a number of years, until 1989, to obtain the Regulations to the Foreign Investment Law. Perhaps, we will not seek Regulations to the 1993 Foreign Investment Law for some time. Is the 1989 Regulations framework likely to be the only regulatory framework for the near future?

**Jauregui:** For the foreseeable future, unfortunately, the answer is yes. The problems are: (1) How are you going to attain financial resources for exploration and drilling? (2) How are you going to achieve production of petrochemical, oil and gas production in a modern way, sufficient for Mexico's growth? (3) How are you going to transport all the products that you are producing? As a result, the regulatory framework is a deterrent to Mexico's well-being. Mexico's oil is viewed by the government as the most important feature of its patrimony where its oil industry is Mexico's main taxpayer and main source of industrial power. Oil is of strategic economic importance and is the only industry that the government has decided not to open in the future. To the extent that Mexico's treasury is assured of at least the same revenues through privatization, the industry will open. Privatization will not mean private monopolies of the past initiated by the state. Competitive privatization laws not only cascade in, but they are broadly spread among Mexican citizens and foreigners. By the same token, foreign investors cannot eliminate Mexican industry through government procurement in the manner that capital goods manufacturers are currently experiencing.

**Robert Rendell:** Following up on whether these laws will be applicable for some time, is Mexico obliged to enact new laws or regulations to comply with its NAFTA obligations in this area?

**Jauregui:** NAFTA's reservations are so stringent that there is no foreseeable obligation to enact new laws or regulations. The reservations that Mexico took in this area are quite different, and they have no room for exception. It is not like the financial services area, where we see slow

---

and steady openings in the law as the years go by until there will be no restrictions whatsoever.

**Gordon:** Is there a difference in the viewpoints about natural gas and oil as resources in Mexico, and the rules and regulations applicable to each? For example, what is the thinking in the Mobil Corporation about the opening up in these different areas that would be of interest to Mobil.

**William Wilson:** Mobil is confused and uncertain. If and when participation becomes available, the belief and hope is that those who have already done business with PEMEX will have the best opportunities. But Mobil is still thinking about whether it will ever get into participation.

Mr. Jauregui, you have predicted that in three years the oil industry will open up. I am curious whether you believe that this will come about through amendments to either the petroleum laws or the Constitution, or through the mechanisms that achieve *de facto* participation without arguably violating the letter, if not the spirit, of the statute?

**Jauregui:** Well, I am contemplating amendments to the laws, but not to the Constitution. The Constitution is less stringent than the laws for the time being. So, if the Mexican government starts amending and liberalizing the laws or dictate transaction oriented policy, they will open up the oil industry slowly. The main legislative change will need to be in the natural gas industry because Mexico needs it for public transportation, especially in Mexico City, and it needs it on a comprehensive basis for electricity generation. Due to the environmental problems of hydrocarbons and other kinds of fuels, Mexicans are going to start seeing a liberalization with its laws through pipelines and a lot of other mandated changes.

**Gordon:** In dealing with gas, oil and electrical production, which federal agencies must one deal with in Mexico? Is there a great variation among these groups in their receptiveness to the liberalization of these laws?

**Jauregui:** As a regulatory matter, one deals with the Secretary of Energy, Mines and Paraestatal Industries for Mexico (SEMIP). On business issues, and sometimes regulatory issues, one basically deals with PEMEX. For exploration and drilling or for pipeline construction, one would deal with the Ministry of Commerce and Industrial Promotion, for activities in Mexico which would require board of directors approval beyond the 49% capital stock ownership of what a foreign investor could hold.

To answer your second question, I would say that the attitude is optimistic. The Mexican bureaucracy is still recovering from the years of protectionism and sacredness of the oil industry and of the electricity generation industry. It is a very difficult scenario within PEMEX. There are still many difficult issues to be addressed by the four subsidiaries of PEMEX including ascertaining which powers lie where and refining elements of control within the corporation. Within CFE, there is a similar attitude. Hopefully, at least in petroleum, it will all become streamlined, but it has to happen by streamlining PEMEX’s functions within those four subsidiaries. Streamlining the law by making necessary legal changes
to the 1958 statute is not very easy politically. It must be presented in an appropriate manner to Congress and, hopefully, by the Administration of Ernesto Zedillo. Privatization was not a big priority in the Administration of President Salinas; it “fell between the cracks,” because it was such an emotional issue in Mexico it had to be dealt with carefully. We face so many other bigger problems such as Article 27. Therefore, attitudes will have to change within the first three years of the Zedillo Administration. If they do not, then we are seeing a long-term future without any change. Thus, in the future, investors must be working together with PEMEX, getting to know them, giving them service contracts, trying to do the best under the circumstances, and then trying to invent legal structures to accomplish what one cannot accomplish with the existing law. This is a very cumbersome and difficult task for investors to achieve.

Wilson: If the government was willing to change the regulatory law, or PEMEX was willing to enter into a contract that realized de facto participation, is there a mechanism by which a third party could challenge that contract? Do Mexican citizens have standing to challenge a contract that they believe is in violation of their Constitution? Are foreign investors at risk if they enter into such a contract, that somewhere down the road somebody could make a constitutional challenge that the investor would lose?

Jauregui: Well, first of all, the limitations of the 1960 Constitutional Amendment certainly established the main results of restriction. This amendment does not go as far as other manifestations, such as drilling and exploitation, that can be coupled with some form of risk contract. Within the law of responsibilities of public officials, if an official has exceeded his authority as defined in the Ministry’s law, the functions law of the executive power, the organic law of PEMEX and the authority of the officers of PEMEX, then probably some political party in disagreement with these actions may bring suit before the Ministry of the Controllership, saying that one abused his authority upon signing a contract.

William DeGrandis: Regarding electricity, U.S. lawyers and observers are cautiously optimistic. Mexico needs significant amounts of electric power. Mexico’s demand is increasing annually at dramatic rates and $18 billion of investment is needed. The laws and regulations have been amended and issued quickly. The next step is dealing with CFE and SEMIP in getting these contracts prepared and in a way that lenders will find financeable. If there is a reluctance to guarantee a price for the first ten years of the contract, then these contracts will not be financeable. The energy hypothetical states that the electricity industry has a lot of capital such that no one else typically has the means to commit the requisite capital for these types of projects. Investors, other than the major electric corporations, experience great difficulties in financing these projects, which will require that wheeling rights, long-term contracts, and the fuel rights be specified or they will not be financeable.
Gordon: Would your clients be willing to use trusts as devices to participate in this energy area? Are trusts considered appropriate devices, too risky or the only options for participation?

DeGrandis: Some of our clients are already looking into trusts and some companies have used a similar device in countries like Argentina. My understanding was that the trust arrangement is more appropriate in situations where restrictions prevent ownership of oil and gas facilities. Electrical facilities may be owned outright, so the trust mechanism is not usually necessary. Our clients have set up stock companies where the investors each have a share of the profits and bear a proportionate share of the expenses. Whether it is a project company or a partnership, our clients want the ability to participate, to have their equity interests clearly established, to share in expenses and profits equally, and to be able to take their profits out of the country without any penalty. It is recommended that foreign investors seek Mexican counsel to establish and arrange these corporate structures accordingly.

Suedeen Kelly: What is the atmosphere among end-users of electricity in Mexico, whether they receive their power directly from independent power producers or co-generators, or are self-producing? Because those are the possible areas for investment, I think U.S. firms are interested in knowing how much, if any, interest there is in Mexico.

Hernández: From the perspective of an end-user in Mexico, it must be inexpensive and reliable, without interruptions. CFE recognizes this need and currently has a more customer-oriented approach and has implemented more amenable, flexible long-term agreements to optimize consumption of energy while minimizing prices for that electricity.

Jauregui: There is also a great interest on the part of municipalities to get independent producers to start producing electricity for them at the right price. Some municipalities are even investigating wind-generated electricity projects.

Gordon: Would it be permissible for ENERGY ELECTRICITY, one of the subsidiaries in our hypothetical, to build a Mexican plant to produce electricity for sale in Mexico from Mexican fuels?

Kelly: Yes. There are really several areas that NAFTA has opened up to U.S. investment. U.S. investment could involve the building of self-generation, independent power production. Also in self-generation and co-generation, the electric power would be used by the industrial site located next to the generator, with the excess being sold to CFE.

Gordon: Would independent power producers be permitted to produce electricity for sale in the United States?

Jauregui: SEMIP must first determine whether Mexican needs for electricity were being met before it could be sold in the United States.

DeGrandis: Also, the sale of electricity back to the United States can only be sold at wholesale prices. Power producers in Mexico cannot sell back electricity at retail prices under the Energy Policy Act.

Gordon: Could the Mexican subsidiary in our hypothetical import U.S. fuels to use in generating electricity? If so, would that affect the per-
mission to send the electricity back to the United States whether or not Mexican needs were being met?

DeGrandis: It would be more difficult to import U.S. fuel into Mexico than to sell it back to the U.S. One would have to negotiate with PEMEX for an unbundled transportation rate to bring the gas or oil from the border to a Mexican power plant.

Gordon: Could ENERGY ELECTRICITY of our hypothetical participate in a joint venture with Mexican equity?

Jauregui: A joint venture is a marriage of convenience to the extent that a Mexican joint venture partner would have the sufficient “know-who” in the Mexican government and with regulatory authorities to strike a more effective deal. That practice, however, may become questionable from the standpoint of the Foreign Corrupt Practices Act for “know-who” reasons, not for technical or financial reasons.

DeGrandis: Some of the projects being developed now already have these types of these strategic alliances, if you will. These are partnerships that make sense. The Samalayuca Project near Ciudad Juárez has the largest Mexican construction company as one of the partners. The Rosarito project that was being developed by Tri-National also had a Mexican company, Grupo de Planeacion y Proyectos de México.

Gordon: Could an electric power plant located in the U.S. send electricity to Mexico?

Kelly: Power imported from the United States could be used by the end user, if it is lower than CFE’s power or CFE could buy it wholesale. The regulatory approvals needed would depend, in the first instance, on who the buyer is. If the buyer is a private end user, as opposed to CFE, then the U.S. generator is a private utility, not a public utility. There are some advantages in that the buyer would not be subject to state regulation or to Federal Energy Regulatory Commission (FERC) regulation as a private utility. The potential disadvantage is that wholesalers are able to get wheeling orders from FERC to use existing U.S. transmission lines to transmit the power across the border. A mandatory wheeling order would most likely not be available to an entity that is trying to sell it directly to an end-user.

Jauregui: It is not that easy to transport energy between the United States and Mexico due to infrastructure reasons. The power transmission lines of CFE are not sufficient to carry the necessary voltage capacity in some areas. The prevalent areas would be industrial zones within one hundred kilometers from the border.

Gordon: Under what circumstances might CFE require that the proposed electric facilities of our hypothetical be subject to competitive bidding procedures? How difficult and expensive would it be for our hypothetical company to participate in bidding?

DeGrandis: Any proposed sale of over twenty megawatts to CFE is subject to competitive bidding. Regarding expense and difficulty, it is very time-consuming to respond to a request for proposal for capacity. It could be several hundred thousand dollars of legal, engineering, and financial work. The CFE then identifies a short list of people from which
the real negotiations start. Negotiations take time, require lawyers, both U.S. and Mexican, and could end up unsuccessful.

_Gordon:_ Is financing available in Mexico for building electric power plants and are lending sources in the United States willing to finance these projects?

_Wilson:_ Financing, at this stage, in the upstream oil and gas business is not an issue. Foreign development is prohibited and most U.S. sources end up negotiating some service contracts, and maybe help develop a couple of fields for a fee. Financing would be available, if and when PEMEX permits participation and such that U.S. investors will be assured that their rights will be protected through international arbitration for instance.

_Gordon:_ The United States currently has an excess of natural gas reserves. Could ENERGY NATURAL GAS, another one of the subsidiaries from our hypothetical, sell U.S. natural gas to Mexican end-users?

_Kelly:_ NAFTA has a provision that allows U.S. producers to negotiate and enter into contracts directly with end-users. All agreements in Mexico, however, must first be approved by PEMEX, which could easily block or delay implementation. There are also problems involved in negotiating unbundled transportation rate and capacity with PEMEX. In reality, PEMEX has a great deal of control over a particular contract.

_Jauregui:_ In my limited experience, one is basically better off dealing with PEMEX from the very beginning and hinging the end-buyer with the supplier to make a deal all together. I do not think that trying to keep the end-user out of the negotiations is a good idea.

_Kelly:_ Over the last five years, there has been an increasing amount of negotiation with U.S. producers and PEMEX to sell gas to PEMEX.

_Gordon:_ The eighth question of our hypothetical refers to Article 602 of NAFTA which lists eleven classifications of goods. Is natural gas affected and do any of the reservations or special provisions of NAFTA's Annex 602.3 apply?

_Jauregui:_ Yes, they do.

_Gordon:_ Does Part 3 of Annex 602.3 require Mexican government approval for sale of natural gas from ENERGY NATURAL GAS, our subsidiary, to a Mexican end-user or may the buyer and seller contract directly without government involvement?

_Kelly:_ The buyer and seller's contract may be subject to regulatory approval.

_Gordon:_ May our hypothetical subsidiary, ENERGY PETROLEUM, market U.S. produced oil and oil products in Mexico? Is the fact that these products compete with those of PEMEX problematic?

_Jauregui:_ Yes, one can market oil and oil products. If oil or gas is marketed, there are issues of who is going to transport it. In reality, that is PEMEX. In other oil derivatives, lubricants for instance, one can export as much as one likes.

_Gordon:_ What about the end-user, the operator of a gas station in Mexico; will there be “Texaco” and “Shell” stations in Mexico?
Jauregui: Change is coming not quite that fast. Mexico needs more efficient gas stations with better customer service and a safer supply of gasoline for end-users. The larger reason for keeping the petroleum industry restricted is tied to the PEMEX name and its importance to the public. Because of the positive perception of its name, PEMEX will not be changed quite so easily. The mere fact of having a foreign-named gas station would indicate to the public that Mexico had sold out its oil industry to foreign companies. Currently in Mexico, gas stations open to the public are closing daily because the land is so valuable, vis-a-vis the productivity as a gas station. It is more likely that because upgrading is necessary, there will be financial institutions, oil companies and others interested in financing the growth under the PEMEX franchise.

Gordon: To a company which has not been in Mexico before and would like to get involved in either oil or gas, where are the best opportunities right now in view of the complexities of rules?

Jauregui: One must first try to understand the culture and the Mexican stand-off between written law and practice, and try to be a prudent but wise investor. The best strategy is to start by providing services and exploring service-related activities with PEMEX. When considering Mexican infrastructure, I always include energy, oil and gas, which requires liberalization. Such a liberalization will probably occur first in the gas industry.