Project Finance: A Hypothetical Case Involving the Financing of a Power Generating Plant in Guanajuato, Mexico (A Panel Discussion)

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PROJECT FINANCE: A HYPOTHETICAL CASE INVOLVING THE
FINANCING OF A POWER GENERATING PLANT IN
GUANAJUATO, MEXICO

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MICHAEL OWEN,*** PANELISTS****

STEPHENSON: We are discussing a power project financing based upon a case
study.1 The case study has some problems in it, which will be raised during this
discussion. Project financing is basically setting up a special purpose entity that
will build, own and operate a power plant facility. The sponsors of the project will
typically own the power generating entity. Sponsors also are or could be those
companies that want to develop the power, those who which to operate the plant,
those which want to buy the power or supply the fuel, and those which want to
supply the money in the form of equity or loans.

The power purchaser has to buy the power produced by the plant and then
distribute it and sell it to others. Under the proposed structure in the case study, a
new entity may be an entity that will buy the power from the power generating
facilities, assuming that there are some changes made. There must be a fuel
supplier and it is assumed in this case that the fuel will be natural gas. The primary
cost in developing a power plant is the power generating equipment. The
equipment manufacturers also often sponsor projects and they have, or could have
an interest in the entity that owns the power plant. Multilateral lending institutions,
such as the International Finance Corporation and the InterAmerican Development
Bank, could play a role.

Allocation of risk among the parties is obviously important in the structuring of
the financing. Lenders usually look to the value of the project’s assets, rather than

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**** The views expressed here are the panelists’ own, and should not be taken to represent those of their
employers or other organizations with whom they may be affiliated.

1. See Appendix (The case study for this discussion is at the end of the article in Appendix. It was
prepared by John Stephenson.).
to the sponsor's credit, and the revenues that are generated by the power facility will be the source of the income to pay the lenders debt. The basic project economics involve the purchasing and installing of the power generating equipment, the amount of debt and equity for the project, the interest rate on the debt, the energy output and the efficiency of the project, and the price received for the output. There are seven basic contracts or set of contracts that have to be negotiated: site acquisition contract, construction contract, power sale contract, fuel supply contract, concession or permit contract, operation and maintenance contract, and financing contracts. There are some basic risks, such as an increase in the construction price. Then there could be delays in construction or contractors failing to meet the required performance criteria. There may be legal reasons to change the work requirements. There also may be design refinements that have to be made in Mexico and elsewhere. There can be strikes from various groups of workers and other disruptive events, such as earthquakes, withdrawal of permits, war, conflicts, and other problems. The contractors may fail to pay their suppliers and subcontractors. Some of the operating risks include the performance and availability of the electricity, increases in operating costs, a decrease in the demand for electricity, fuel price and fuel availability, all of which can change, uninsured losses as a result of strikes and other events, inflation in various costs that relate to operation and maintenance, increased interest rates and changes in foreign exchange rates, or the possibility of non-convertibility of the currency.

Lenders usually want fixed priced contracts because then they can measure their risk. Then they require, or would like to see in those contracts, that the contractor is obligated and can pay for cost overruns or other items of responsibility that are allocated to it by the construction contract. They also will want to retain some and not advance all of the loan as construction progresses so that they have a cushion against which they can charge costs in the future and to ensure that the project is completed and the subcontractors are paid. Delays in completion could result in the loss of the purchase agreement itself, if there are time limits set for the completion of the project. As a lender's lawyer, I want the contractor obligated to pay the developer if the contractor can't complete the project on time.

If the project cannot produce what it is supposed to produce, then the developer will earn substantially less and may not be able to repay its debt. There will be a period of performance testing during which the project will operate and required purchases under the power purchase agreement will actually have to be made, in order to meet the standards that permit the release of the performance guarantees. If the contractor can't meet the necessary requirements for producing the amount of power that is required, then usually the lender would require the contractor to pay damages sufficient to reduce the principal balance of the debt to a level that could be carried by the electricity that would be produced and then sold from the project. That is why there are guarantees, letters of credit and bonds, and other kinds of credit support that will be required by the lenders from the sponsors during construction.

The power purchase agreement usually has two foundations upon which the structure of the financing is built. One is a payment that covers the debt and some equity return. The second is a factor that would cover variable fuel and operating and maintenance costs, to deal with fluctuating costs while the project is operating. In both cases, one would try to link these two with some sort of inflation factor, so
that the lenders would not be left in the lurch if there were changes in inflation or in currency rates. In connection with the power purchase agreements, lenders would really like to have a take or pay contract from the purchasers of the electricity, and they would want the price to include a floor that would cover the debt and some adequate return for the project. In order to induce developers to get into these projects, there has to be a sufficient return for them, even though to achieve the lowest possible development cost, one would want to keep the return as small as possible for the developers.

JAUREGUI: This project requires a lot of engineering and as developer’s counsel we are in real trouble in Mexico because we can’t find financing for this project. It is of a magnitude that the Mexican banks really cannot undertake themselves and we have gone to all the major banks and they can’t syndicate it. So, we are talking to EximBank and seeing if they can finance some exports out of the U.S. We certainly are talking to the generator supply guys and seeing if they can help us with some financing. If we have that, it would be a good idea to go the International Finance Corporation because the World Bank has a very close relationship with the Ministry of the Treasury. They are working on the modernization of Mexico and that being a subsidiary of the World Bank it makes sense and, it would be a nice presentation for it from an international point of view. We have persuaded them to give us a term sheet.

We can discuss the merits from the Mexican side, particularly from the vantage of Mexican lender’s counsel. We are going to have to make this financially feasible and make it safe for our clients. We really don’t know the way we’re going to fit this from a regulatory point of view. It’s strange the way this is designed. First of all, we would have to know if it’s a self-generation for industrial purposes and whether it is a concession or a permit. Learned counsel from Monterey said, look, forget it, there are no concessions, just permits. So I guess the first thing we are going to have to deal with is just the permit.

We must consider what will happen if this should become liberalized and all of a sudden these things become concessions. It is going to be a problem to talk to the Comisión Federal de Electricidad, (CFE), authorities and to the Energy Regulatory Commission and find out what they think could happen if there was a law change in mid-stream. So we have to be alert to that, and in writing my consortium agreement as developer’s lawyer, we have to keep in mind who is going to bear these risks and who is going to be the negotiator. The Mexican construction company has been chosen to be the negotiator with the Mexican government.

We will put a lot of the focus of the responsibility to negotiate with authorities and regulators as to what they are going to do in the event of a law change, and then to define properly whether the project is going to be an independent power producer kind of structure or a self-generation for industrial purposes, because that’s of the essence here. Then one thing that I am seeing that my client did not look at is that they are just talking to the CFE, and talking to the CFE is not enough. They may be designing the project and they may have decided that Leon, Guanajuato is a good place for the power plant generation facility and maybe 485 megawatts is enough, maybe not. Maybe we should be thinking of more, but we have forgotten that the Energy Regulatory Commission will have to issue the permit, not CFE. We have to go and find out what the bidding process is going to be because there is no bidding process here. We have made a deal with CFE. We think we have a group
now ready, a group called developers, to do it and all of a sudden we don’t have a bidding process in place.

We will assume that we have won the bid and we are ready to go. Now, this is the starting point. I have already contacted counsel in the U.S., and both jurisdictions have been contacted by major banks that are willing to lend to the project. So I will turn it over to them and then see what happens.

STEPHENSON: On page two of the case study is the basic structure that I have proposed. We have several companies involved in this; Beckshel Energy Co. (BEC), which is a U.S. based company; Power Construction Company (PCC); Auto Producers Company (API), which is a Mexican branch of a U.S. company; Sheet Steel Producers (SSP), which is a Mexican company; and Industrias Guanajuato (IG), which is a Mexican construction company.

The borrower will be a special purpose company, which we will just refer to as BPAS, which is the first letter of the names of the first four on the list of the sponsors. The lenders are Power Banks and International Finance Corporation. The contractors and engineers are BEC, PCC, and IG. The suppliers of the generation equipment are GEM, Generator Supply, and BEC. The grantor of concession may not need to have a concession or at least it needs to be discussed in deciding what we are going to do. The project intended is one where BPAS will build the project, own it, operate it for 25 years, and then be required to transfer it to the CFE. The cost is estimated at $250,000,000. The size of the project is approximately 485 Megawatts. The fuel supply is natural gas and the purchasers of the electricity produced by the project are three entities: CFE will take 60% of the production, API will take 25%, and SSP will take 15%.

The currency analysis has deliberately been complicated by saying that some of the payments for the electricity will be in dollars and some in pesos. We are going to try to make the auto producing company pay in dollars because it is going to have a source of dollars. The contract with CFE is 25 years but the contracts with API and SSP are only five years. I have indicated the source of income. The type of loans I am suggesting here is a ten-year loan from the banks of $120,000,000. The International Finance Corporation, (IFC), would lend $30,000,000 but payments on its loan wouldn’t commence until after payment of the bank loan. Then I included an EximBank Guarantee and provide for some subordinated loans. Supposedly, that will be enough to help the developer, but maybe things need to be changed. Then, the land access has been provided.

There is an environmental impact study in preparation. This project is supposed to decrease the electrical power shortage in Mexico, particularly in the State of Guanajuato, and decrease air pollution in the area where API and SSP production facilities are located since the project will replace CFE generation plants fueled by fuel oil. All of the negotiations should be completed by the end of the year and all contracts should be in place.

The sponsors have a contract with IG in order to have it assist. It will take about two years, a little more, to finish the project. Then there is a term sheet commit-

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2. See Appendix at 2.
ment letter in effect from the Power Banks. I didn’t try to put any numbers in the term sheet other than the loans. You will notice that there is a non-recourse portion of $100,000,000 with a recourse portion of $20,000,000 until the operational tests have been met.\(^4\) By recourse I meant recourse to the sponsors, but they are going to have completion guarantees up until the plant is completed and the performance tests have been met. The percentage ownership is set out as required, and there is a requirement for purchase contracts to be signed, and references to other normal requirements that are contained in a term sheet. The undertakings by the sponsors has each of them obligated to sign a completion agreement, jointly and severally, agreeing (this includes the Mexican company) to cause this project to be completed on time and within budget.\(^5\) Then there is a list of actions that have to be taken to make sure that the project has been completed. I point out that actually payments have to be made under the contracts for a period of six months and it has to operate at least 90% capacity to pass the performance tests.

The requirement for the purchase of power is at page 12 of the case study. The list of collateral arrangements on page 14 is where we would have a Fideicomiso de Garantia, which is referred to as the “Trust,” which will have title to the land or maybe the right to use the land, depending on what can be negotiated.\(^6\) There will be an assignment to the trustee of the power purchase agreements (PPA), the construction contract, the gas supply contract and everything else that is not nailed to them, including the rights to receive payments.

As the lender’s counsel, I want the bank account off-shore, even though some proceeds from the sale of electricity will be in pesos. The dollar purchases should go directly from the auto producer to an account outside of Mexico. Then there would need to be an inter-creditor agreement among the banks, BPAS, the IFC and the two subordinated lenders, BEC and PCC. They both are obligated to provide subordinated loans and in that agreement there would be an ordering of who gets first rights to the assets, if they ever have to foreclose, and there will be a waterfall of payments designating who gets paid first out of the regular payments. There are various other issues scattered throughout the case study.

OWEN: We want to point out that the proposal laid out by lender’s counsel is really generous in terms of the guarantees to the lenders. What leaps out at you most quickly is the proposal that Exim guarantee 80% of the bank’s loans. I look at that and say, well, we’re almost not talking about a project financing anymore. Maybe there won’t be recourse after completion to the sponsors, but the sponsors are having to pay for an 80% guarantee from EximBank and probably most people would be happier to have an 80% guarantee from EximBank than any sponsor anyway.

I really question strenuously the need for that 80% guarantee in light of the fact that this is a $250,000,000,000 project, and there is $100,000,000 coming up front from the sponsors in the form of equity and subordinated debt and a 25 year 60% commitment of taking the electricity from CFE and the other 40% is already

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4. See Appendix at 8.
5. See Appendix at 11.
6. See Appendix at 4. ("Fideicomiso de Garantia...will hold title for security purposes to the land and the improvements as construction takes place, and will hold title for security purposes until Bank and Sponsors have been paid in full.")
contracted out to other purchasers. So, I think there is very strong support here on behalf of the lenders without the sponsors having to incur the cost of the 80% guarantee from EximBank.

JAVIER GONZÁLEZ: My name is Javier González, from Empra Energy. What is the bottom line to get that 80% Exim guarantee?

OWEN: I haven’t actually spoken with anyone from EximBank but it is a significant cost. Of course it requires a number of other restraints on the project in terms of covenants and events of default which may or may not be similar to those of the regular lenders. And, of course, what we need is flexibility in developing this project. But obviously if they are going to guarantee 80% of the loan there is going to be a significant cost involved.

STEPHENSON: Speaking from the lender’s counsel point of view, I think that is a pretty good argument. There is no reason to add extra cost to this and your clients, Beckshel Energy Company, Power Construction Company, Auto Producers Company and Sheet Steel Producers, are pretty strong credits. The actual shareholders may be entities which also need some support from your AA rated companies, the debt rating that your clients have at this time.

OWEN: I respect that. Obviously, to the extent that on the completion guarantees you have got to have the credit of the main companies behind that and that is not going to be a problem.

STEPHENSON: From the standpoint of Mexican counsel for the developers, why is it important, or is it important, to have a Mexican construction company be a part of this process?

JAUREGUI: Well, it is very important to have a Mexican construction company be part of this project because we will have to have some local know how and we will have to have a lot of the knowledge of how things are developed here. I am not implying that in Mexico everything is different from the U.S. I think the playing field is the same. However, like in every other jurisdiction, there are differences that can be addressed more properly by a Mexican construction company. One concern that I have in front of the other partners of the group is that the Mexican construction company may not be sufficiently capitalized. So we are going to have to be careful that in their input and their performance, especially in the performance guarantees and completion guarantees, they be involved. As Mexican lender’s counsel, we are going to have to find out what the source of repayment in the event there is a call upon completion guarantee and what will be the real contribution of the construction company, because we really can’t afford to have an absent contribution or real inability to pay in the case of default.

OWEN: As much as I am sponsor’s counsel and I would like to be representing a cohesive group, I notice that one of the sponsors is not contributing any equity and I was wondering why it has been structured that way?

STEPHENSON: API is not contributing any equity at this time because all it wants is to get its steel produced and it needs electricity to get its steel produced by SSP, which it will use in the construction of its automobiles. So, it is supplying dollar income to the developer group as a part of this project. My understanding, from listening to counsel for API, is that they didn’t feel that it was necessary for them to do so, and so the lenders thought that since API is one of their other customers and that the lenders represent it in their other capital raising activities, they thought that it probably wasn't necessary for them to be involved.
OWEN: How does that differ from SSP?

STEPHENSON: Sheet Steel Producers provides sheet steel to Auto Producers Company and the Power Banks represent Auto Producers Company in the United States in its investment banking section, and that relationship was not to be disturbed in any particular way that would require some equity investment in this operation.

OWEN: We appreciate Power Banks' interest on behalf of their client but we, the sponsors, think we would like to have a cohesive group and I think we are going to need to be talking to API to convince it that it needs to step up to the line here.

STEPHENSON: From the lender's point of view, we wouldn't have a problem with that. We wouldn't really mind it if you were persuasive enough to get it involved.

JAUREGUI: I submit to you that maybe if we don't force API into a capitalization of the Mexican company, maybe we can get a comfort letter or we can have a liquidity facility in API that should there be a default in something they would make it up or they would guarantee the steel purchase agreements in some form. Then we could go around the block, not directly into a participation, if they so wish because I wouldn't like to scare one of the main producers of auto parts which is going to export most of its production and probably that is the source of the dollar income for the project. So you have to be careful.

STEPHENSON: I like that too because that arrangement provides an additional guarantee.

GONZÁLEZ: Seeing how you have multiple clients, from whom do you take direction?

OWEN: Well, that's a very good point. Obviously in the structuring of the deal among the sponsors, each one of these companies is going to have to have counsel representing it and its interest in the structuring of this sponsorship group.

JAUREGUI: We have to have some form of technical committee or special purpose committee to tell us how we are going to do it and who is going to be spearheading the project because I think we are going to get very confused due to the diverse interest and obligations of each of the parties. Beckshel is going to have the lead because they have the most money and they have the know how on how to put this deal together. We have to be careful that, in having that power, the power is exercised within the consensus of the group because you'll have sensitivities on behalf of the Mexican company, the steel company, and certainly from the Mexican construction company that has a lot of responsibility, if it is going to do the on-site negotiations with authorities and make sure that the project is a go.

JOHN ROGERS: My name is John Rogers, from Mexico City. I have a question that is sort of going forward in the power purchase agreement phase. There seems to be a structural mismatch between the tenor of the financing, which is ten years, and the tenor of the power purchase agreement, which in the case of CFE is 25 years, but in the case of the other purchasers is only five years. How will that 40% power purchase requirement be filled?

JAUREGUI: I submit that I have told the consortium that in our view there has got to be some comfort for this disparity which we think can hurt the financing of the project. My suggestion to them has been, especially to the construction company, that they address this issue directly with CFE and perhaps either with the...
CFE or some other Mexican government decentralized agency. I suggested that if the CFE doesn’t want to commit to buy whatever slack is not bought by private investors in the project at the time, or to place it maybe as an agent, if that could be done.

We could make an arrangement that if the CFE would allow us to do that and if we cleared it with the authorities, we could get a purchase contract with the municipalities to fall in place which would be guarantee by you with a liquidity facility. That will help us a great deal in enhancing the credit risk under the agreement.

OWEN: We would argue that you have got 60% with CFE and, given the situation in Mexico that we are all quite familiar with, the increasing demand for electricity is a reality. Realistically, no one should be terribly worried about the other 40% just not being utilized.

STEPHENSON: From the lender’s point of view, I understand that the State of Guanajuato has a very active program of recruiting industrial companies into this particular industrial park where API and SSP are located. They have told us that they have on the horizon three other major companies that they are trying to move into this area, and may even want you as sponsors to increase the size of the facility at some time down the road, maybe five or ten years from now. So, from the lender’s point of view, with these guarantees that we have in place and the participation of IFC we felt that was adequate. In addition, what you just said about the location and the position of industry and electricity in Mexico now gives us some comfort and sounds like a great idea.

We now want to make it part of the commitment and add to it a commitment to obtain a commitment from CFE to pick up any electricity that is produced after the end of this five year term. No one really knows whether you will be able to put a new contract in place but, with CFE with a stand by arrangement so it would pick it up any excess, I think that will be a great idea, and I think I will talk to our clients to see if they may want to make that a requirement.

OWEN: Is there any difficulty with CFE making a commitment to commence purchases, say five years out, to make that commitment now?

JAUREGUI: The answer is there are several complications from a budgetary point of view and several complications from a public administration point of view. I think that these can be bridged appropriately if addressed at the beginning because another thing that I am prepared to suggest to the consortium, if you are in agreement, is that we get together with the CFE and in the event of a force majeure or some default that is beyond the control of the parties and the project is lost, we should get a commitment from the CFE that if anything like that happens, they buy it or they take it over so that we remain with a sovereign risk for the benefit of our lenders.

STEPHESON: I like that approach. I like the idea that if the contractor can’t complete the project prior to the time that it is scheduled for completion because of some force majeure event, the CFE would be obligated to buy the plant and pay all of our debt back that we have advanced by that time. I just happen to have been

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7. An event or effect that can be neither anticipated nor controlled. See Black's Law Dictionary 645 (6th ed. 1997).
told by counsel to another group that did a plan in Monterey and issued some bonds that they actually have a contract to that effect wherein several instances of force majeure that CFE is obligated to buy the project, pay off the debt and return the equity to the investors. Of course, it gets the plant a lot earlier in that case then it would in this case and in the bond offering but there it is, CFE actually gets what it bargained for. That is, it has its plant and it produced electricity.

OWEN: As developer’s counsel, I think this is a great solution also but my query, trying to be realistic here, is why should CFE step up to the line 100% in a force majeure situation when it’s only contracting to buy 60% of the electricity?

JAUREGUI: The Mexican construction company tells me that the reason that they are willing to do this is because at this point they are very interested in the generation of 485 megawatts in the area of Leon because of the possible industrial development of the area and its needs to distribute properly. It is willing to undertake this, reluctantly I might say, and certainly with the advice and consent of the Ministry of Energy and the Energy Regulatory Commission because of the entanglement from a peristaltic point of view. We feel that, although they really are not obligated to do that, it would be a very valuable risk factor, sovereign risk factor on the one hand, and an enhancement from a sovereign debt on the taking point of view.

STEVE GILLAN: My name is Steve Gillan from New Jersey. I noticed that counsel for developers and counsel for banks are having a difference of opinion on who would put all these contracts together. Obviously, this is a dynamic process no matter how you do it, since there are so many flow down conditions in one contract cascading onto another. I would like your comment, please, on can a developer put the package and contracts together first and then shop that package to different banks? At least there would be continuity and uniformity, where as it seems to me you are taking the more dynamic approach in shepherding a whole package together as it goes through these next four months. It seems too complicated from your point of view and I think it is better for the developer.

OWEN: I couldn’t agree more. I appreciate your assistance.

JAMES DEMENT: My name is James DeMent. I think focusing on the documents is talking about the underlying issue and that is, who is going to get the financing? I have seen deals where it’s the developer’s job to get the financing, and I think if it is the developer’s job to get the financing, the developer has the right to say, here’s the package, here is what I can get financed and unfortunately when that happens the developer’s contracts, at least that I have seen, are rock hard. Then you go and say well, we don’t like this and the developer says, well, I can’t finance it. Have you ever had the luxury of the owner being in the driver’s seat?

JAUREGUI: Only in one case and that really made for a very big delay in the project because, as you say, the owner had very bottom line documents and everything was almost in cement. Cracking it was very difficult and it delayed the project a great deal. So, my point here would be, to that extent, project financing is almost an art in putting it together. I think that even though you may have advantages in the drafting of the documents there may be advantages that are counterproductive.

You have to keep it fluid and you have to keep it in such a way that the parties input is welcome to the extent that it doesn’t detract from the business deal but that everybody in a manner of as best as possible, is kept in consensus. Otherwise you
never meet your deadline. Here we have to save money for the client, we have to get the project on stream, we have commitments with the government, and we can’t go beyond December 31. I would like Beckshel to be in the driver’s seat, but it may be too much to ask under the circumstances of project finance across the board, and exceptions are not good in the track record.

STEPHENSON: My understanding from the clients was that API was the moving force in this deal, and that it had invited Beckshel to come in if it brought some lenders with it. API invited Beckshel to come into the project along with Power Construction to provide the construction necessary here, but at the same time to bring a lender with them, and that’s what I understood is how we got to this point.

ROGERS: A comment regarding the construction agreement. In fact, it has to be a Mexican construction company because if all laws are uniform regarding construction, that means that you need a Mexican license in order to apply for all type of permits that are required under construction law and to take responsibility for them. Particularly, environment and construction permits, use of land, etc., those requirements that are needed here.

Further, the construction company must be a very well capitalized company because of the type of work would be rendered. The performance should be guaranteed by a bond, or something similar, that would prevent any problems in regard either to lenders or with the company itself. Also, you have to very careful as far as union issues are concerned because all construction work with unions, often from temporary labor. As far as work in this project, if I were a lender, I would like to know the feasibility of this project. First of all, was a survey made? Is there something firm that I can rely on as far as a feasibility of getting this project done? Secondly, I would definitely have to obtain assurance from the CFE that this project will be authorized by CFE, or supported by CFE, in the event that any law changes might affect my project, that the project under all circumstances will be respected under the terms agreed with the CFE.

Justice is done as far as the civil court for example, when you sell something that is under a lease, the leasee’s rights will be respected no matter what. In this case, even though there is no specific provision, I would say that you must have an assurance from the CFE that this project will be respected under the terms that were contracted. Further, you said that in the event that this project would not be satisfactorily completed, the Commission would be obligated to purchase and pay to the creditors all amounts due. Well I have my concerns here because the government, I don’t think, would be so willing to abide by this regulation or by this position or commit to such a obligation unless it is very fruitful or beneficial to them.

Moreover, in the event that this project does not successfully complete whatever it intended to do, who will have the first right to be paid under this agreement? We have to remember that, in Mexico, in the event anything happens the workers will have the first right to be paid, no matter what. So in my contract, the contract that I will be executing with the borrowers/lender, I will definitely provide for certain stipulations that would obligate the company or the sponsor, so then your company to be organized in order to manage this project. I will force the company to provide me with updated documents regarding my compliance with obligations under Mexican law.
JÁUREGUI: The way I would like to address that is first with regard to the construction companies' relationship, which here are in tremendous interplay, and I think that they are going to be very difficult in a lot of cases. That is really a very daunting relationship for the following reasons. Let’s assume that you are buying standard generation equipment and you receive the equipment manufacturer’s guarantees. That equipment has to be erected and then the plant requires additional equipment and specific designs on site. The relationship between Mike's Power Construction client and the Mexican construction company has to be a very important and regulated relationship, which is what I think was being addressed because the U.S company will have some responsibilities for engineering and supervision and for propriety of completion and the Mexican company will have to do it.

Then, if you have as in the case here GEM, the Generator Supply, we will have some guarantees from them and we will know that this is a world class producer of heavy equipment. Then the technology transfer and how the construction company in the U.S. is going to be paid for its services between sponsorship of a project and investment in a project from the actual rendering of services to the project. We have to be careful how we are going to bind each of the parties to service agreements of a specific nature. In this case, the U.S. construction company will have some responsibility from a technological point of view, from a technical assistance point of view, and certainly from the certification point of view, given the completion details and the necessity to have an assurance that completion will be according to the specifications and design.

OWEN: I agree entirely. In terms of compliance with Mexican law, that is normally going to be monitored by the provisions that appear in the credit agreement. The lenders are going to want to be certain that Mexican law is complied with and they are going to require periodic certifications from the borrower to the effect that they are in compliance with their covenants under the credit agreement and, if they are not, then we have to face up to some bad news.

I wanted to just quickly go back and touch upon our ongoing discussions about API because I think it is very important that we do have, as much as possible, a cohesive consortium in the sponsor group. Since API and SSP are two of the takers, they presumably want to go into this project because they are going to be getting a commitment to provide electricity at a price that they find very attractive and a certainty of provision of the electricity and that’s fine. We are delighted to have them as takers, but we do need to have API step up to the line just as SSP is stepping up to the line also.

I have two questions to address to lender's counsel on the proposal as it appears in the case study. I am not quite certain what this description is when it is talking about subordinated loans. At the start, it says that the subordination is to help provision gain acceptance which is, of course, the norm and that is what we are expecting. But I don’t quite understand the, “but to be subordinated under the Intercreditor Agreement” language is all about. Then the other issue, separate and unrelated a very important issue in terms of costs of this project, is in the
**Fideicomiso de Garantia.**

It is provided that we are going to have to actually transfer title to the real estate into the *Fideicomiso* and I would suggest that that is a very expensive proposition as I understand it in Mexico. I really question the need for that. I can certainly understand all of the other assets going into the *Fideicomiso* but why can’t we just deal with the real estate by a negative pledge issue?

**STEPHENSON:** In answer to the first question about the subordination, my understanding is that having subordinated loans in Mexico presents a difficult situation. The law provides that you may not be able to have subordination in a bankruptcy situation, although we have guarantees up until we accept the project as being completed. Second, after the project is accepted as being operable, then on its face the loan obligations would be *pari passu,* but as among the banks and the sponsors, the banks want to get paid first, and so in the Intercreditor Agreement with IFC and the Power Banks, it just makes a lot of sense that the subordinated sponsors would get their debt paid after the lenders. It is not really equity, but it certainly is not on the same level of priority of payment as the lender’s obligations would be.

**JÁUREGUI:** In dealing with a Trust guarantee, if we are assuming that the developers will own the land, as Mexican lender’s counsel, I would like them to own the land because that is an additional complication I see in evaluating risk. If the CFE is going to give us the free use of the land, at some point if that land were to be expropriated or if something happened to the land, it would be a clearer picture if the developers owned it, from a lender’s point of view. Now, if we want to avoid transferring the title to the land for whatever reason, I would like to own the land and I would rather mortgage the land. So, if we get a mortgage on the land we will be better off than *Fideicomiso* because the assumptions, and this is important for us to bear in mind structuring the transaction for the benefit of lenders, are that a Trust sounds good as a guarantee because you can allegedly perform it easier and make it pay easier in the event of a default.

We have found in our experience that it is not quite correct. Trustees are very reluctant to execute on guarantees right away without going to court and then you have the big disadvantage that we have noticed in a Trust scenario. The Trust is not specifically regulated by standards of procedure in Mexico as the mortgages are, so we feel more comfortable that a mortgage foreclosure will be faster and better if that came to be. We have to think about all of those things, but certainly we need a Trust in order to have a lock box which is desired for this project and for many other additional guarantees of completion and so on.

**DAN FEZLER:** My name is Dan Fezler from San Francisco. I would like to take you back to something that you may have explained and I simply missed it. If you have got long-term power purchase contracts as the foundation of the economics of this arrangement, I don’t quite understand how they are going to work. How is the electricity going to be priced for the 25-year life of the power purchase obligation of the CFE?

**JÁUREGUI:** You’ve hit the nail on the head. The problem that we have been facing as a consortium is how to persuade the CFE to not use its contracts. They

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10. *Fideicomiso de Garantia,* (Guaranty Trust). *Fideicomisos* in Mexican law are analogous to trusts in U.S. law.

have published contracts for the purchase and for the take of electricity. Believe me, they have been very difficult. Those are the typical contracts that are in cement, they say "use this" or do nothing. We have been persuading them this is a problem.

Fortunately, I think we have achieved market prices, whatever those may mean at any given time and maybe we have some recourse in comparison to other prices, but certainly this is an area that we have to strengthen in the negotiations with CFE because we don't want to follow. We can persuade our clients to take the steel company and the auto part company because we can have a very nice relationship with them and they don't have, I assume, contracts in cement. CFE does have a contract in cement. So we have to be careful with what we are doing there.

FEZLER: What will be the basis of the payment obligation? In other words, are these fixed priced contracts that you are trying to fix out into the future? Are they following any type of indices that you are trying to agree on now to settle the price terms? If you anticipate that Mexico's market for electricity will look rather unlike it does at the moment, that is in five, ten, fifteen and twenty years, then how are you going to follow those developments, realistically, over that time?

STEPHENSON: What I would expect my Mexican counsel to negotiate on this is to make sure that we do have fixed prices with escalators that would rise over a period of time and make sure that we cover my debt payments and my interest payments and if there is something left over there will be some return to the equity owners.

Also, I think you would require, to the extent that it can be done, floors and an escalator, at least for the 60%. There are problems, obviously, with the other two short term ones which sort of anticipate a market of some kind in the future or industrial facilities that need electricity.

FEZLER: Would you be recommending to a client in Mexico today, proposing to build a 400 to 500 megawatt plant, that they steam forward with the development of everyone's understanding, sort of ignoring that basic aspiration of the Mexican government?

STEPHENSON: I would if I could get an absolute obligation, unconditional obligation to pay over this period of time. But, I would require as a part of the CFE's obligation to buy the plant if there was a change in law that would affect the obligations of CFE, and if it went into this kind of a power grid in a real market, then, and if there were no entities left that would have the capacity to pay, then I would want there to be some kind of a direct obligation for CFE to go ahead and pay for the plant at that point, because that's really what they intended to compete 25 years in the future. That would be the only way at this point that I could see.

If he didn't have that, I think that is a major problem of someone going forward but there are a number of plants going forward right now with a bidding arrangement. In fact this case study is based upon the Monterey project that is being bid right now where the CFE changed its bidding process for a combined cycle IPP, Monterey III, where it will award two permits in this case, one for public service and one for supplying local industry, to the winning bidder. It is the first time that CFE will promote this major power plant with a double orientation, and I wrote this knowing that was what they were doing, but not having answers to all of these questions.

FEZLER: Mexico's position on this course will ultimately be determined by public policy or orders in Mexico, but as you look around the world, these types of
agreements are beginning now to flounder in both Indonesia and in India, precisely on these issues, and at least the Indian courts have said that if you enter into a contract at about the point in time that we are discussing this one, and the government has already begun to lay out at least a broad outline of its quality aspirations, don’t come whining to us with some claim of *force majeure* when those things take place because, ladies and gentlemen, those were eminently foreseeable risks and, if you have not bound us to take them, you took them.

**STEPHENSON:** Good point, and I agree with that. How to solve it, I suppose, it is going to be different in each country.

**JAUREGUI:** We could have the acceptance and your point of acceptance by sovereign is well taken. I think it is a must coming in because of the stated purpose of the policy change that is announced, and for the market driven reasons of the change and the issue you are raising. My idea would be to have a clause or a covenant that would carry with it a fixed price plus an escalation or a formula depending on a specific market formula that one could dream up and use, whichever is higher at the time one or the other kicks in regulatorily. That would be in my view a feasible thing to do.

The other thing that you may think about is, if they buy the plant and we saw it coming in, if the conditions of the new legislation are applicable to us and the manner in which energy will be bought and distributed in Mexico by pricing, and the best price gets it, then the government will be obligated to buy the plant or they will have to make up the difference. That is another possibility, if they don’t want to buy the plant and we want to go on for 25 years, at least for the 60% part, because this news from Monterey III to me is disturbing in the sense that we are now creating a new face of regulation without real regulation. We would essentially be creating law. In creating law, you go into the blue-sky regulation of it and the dangers that are inherent to such a situation. So you have to become more creative as to the kinds of covenants and undertakings that the government has to take.

**FEZLER:** I said you don’t want to have your plant be one that has to exist as a grandfathered entity for the next 25 years, recognized by Mexico’s government as sort of the proverbial one-eyed, red-haired man with a limp, every time they think of how the general industry is to evolve.

**STEPHENSON:** I agree. There are two recent awards of IPP contracts, one for a 27 year, five month contract to sell electricity to CFE and another one, that was to Mitsubishi, that was awarded in July for the State of Vera Cruz for a $250,000,000 535 megawatt plant, and they obviously have to have faced the issue some way or if they didn’t, they are going to be in a pickle. In addition, Intergen, which is a joint venture of Shell and Bechtel, just won the 25 year contract for Guanajuato for a $230,000,000 645 megawatt project, where 545 megawatts go to CFE and the rest goes to local industry. It is practically the same project we are talking about. There are no details in here on how the pricing mechanism works. Then Intergen also has another project near Monterey where CFE is already rationing electricity and 12 companies now have guaranteed to buy at least 75% of the project’s output. CFE is only going to take 25%, and it’s treated as one of the self-generation projects. There are a large variety of these going up, but they all have the same issue, all of them know that the government intends to or is going to try and make some changes. So this is certainly going to be a real issue.
OWEN: This gets right back to the issue that a number of lenders, especially export/import banks around the world, are quite concerned about the element of the proposal involving the privatization of generating plants owned by CFE because many of them have been financed by these lenders on the assumption that they have got sovereign obligations backing up the financing. So far the proposals don’t seem to grasp, or even acknowledge, the interest of those lenders and relying on the sovereign contracts.

STEPHENSON: Going back to the question of whether CFE would be obligated and would really be interested in being obligated to buy the plant. The Monterrey project, with the bonds, has a Fideicomiso de Garantia as the foundation for it. I don’t think the land was owned by the borrower or the Trust, the borrower in this case, but the right to use it was there and the construction took place inside the Trust. Why would anybody want to do that? Why don’t you, as the borrower, construct the plant and then transfer it to the Trust?

JÁUREGUI: The only reason that I can think of is that they wanted to administer construction and have construction supervision within the Trust, maybe through a technical committee. That would be the only reason why I would put the construction in the Trust. Maybe they were wondering if the Mexican construction company and the U.S. construction company, as it may be, would fund the project appropriately and they wanted to make assurance of the proceeds being spent the right way. I certainly think it would be more practical to do it the way the that you are suggesting. But it is credit driven and supervision driven I think.

JOHN WALSH: My name is John Walsh from Denver, Colorado. Could you address the environmental approval permitting process and the risks involved in that, given what the current state of that evolution is in Mexico and what implications it might have for the financing?

JÁUREGUI: The first thing that lender’s counsel said was ‘that’s why we chose natural gas.’ The idea of the environmental impact study is certainly there and the question as to where it’s being processed. We have to be very mindful of the implications of environmental impact and permits. Now, if you had asked this question three or four years ago, I would have said to you, ‘wow, that’s a difficult one’ but, given NAFTA after five years of suffering, we have more or less walked to a more reasonable plateau of enforcement and permitting. If the environmental study was proper and, given the natural gas nature of the fuel of the plant, and given the CFE’s prior actions, but assuming that the CFE’s prior studies really justify the location of the plant and the type of plant and the impact in the area where it is going to be constructed, the permitting should not be that difficult to get. Certainly it is substantially required but I don’t foresee any big problems with that.

JAVIER TRONCOSO: My name is Javier Troncoso. What is the governing law?

STEPHENSON: What we have written into this is that New York law will govern the loan agreement. The various contracts that are part of the collateral package will mostly be Mexican law contracts: the construction contracts, the power purchase contracts, the Trust, all of those will be Mexican law. The exercise of remedies will likely be only under Mexican law since the plant is in Mexico and since the plant will have no assets other than the cash deposits that may be outside Mexico. There will be no other assets after completion to the operating status. Part
of that time we would access under the guarantee arrangements to the sponsors, and they are in both Mexico and the United States.

The guarantee from IG would need to be different from the guarantees from the other sponsors who are outside of Mexico. So, the loan agreement, the note, would be under New York law and then some of the guarantees would be under New York law, but some of the others, most of the others then, would be under Mexican law.

MICHAEL GORDON: You have taken care of the choice of law, presumably for all of these. What about the forum? There are a lot of different forums and NAFTA agreements suggests arbitration and I can certainly see a Chapter 11 investment here, have you considered the forum?

OWEN: I don't think there is any doubt. It is going to be Guanajuato.

STEPHenson: I would like to have any loan agreement disputes settled in New York and also any issues that relate to the note. But I do have a problem about enforcement of any kind of judgments that I would get in New York and so I think we might want to try arbitration outside of Mexico.

ROGERS: On the coverage of the guaranty Trust agreement (fideicomiso), I noted that it refers to guaranteeing the bank loans only. It doesn't mention IFC. I am wondering what happens in a default situation where you enforce the guarantee Trust, you get all the bank loans paid off, but then you have to share with IFC? How would that work?

JÁUREGUI: The designer of the project is responsible.

ROGERS: It doesn't appear that the IFC is secure.

STEPHenson: The IFC would want to participate through the participation agreement and the Trust, to be a part of it, obviously, so it's in a secured position too. But since it is involved, it doesn't expect any governmental default to ever occur.

ROGERS: The other question is in relation to the power purchase agreement, which presumably will be take or pay unconditional obligations of all the power purchasers. Do you have any thoughts as to the enforceability of the unconditionally aspect in Mexico under Mexican law?

JÁUREGUI: First of all, I think I would like to take one step back and address an issue here that goes directly to what you are saying. The proposal here is we are going to have arbitration in New York and we are going to arbitrate the terms of the loan agreement and the note. The problem that I have would be from a practical nature point of view and that is why I was pleading to have the land outside of the trust and put into a mortgage situation. The reason for that was that the standards of procedure for the foreclosure of mortgages is clear enough in Mexico that it allows for some safety as to enforcement, on the one hand.

On the other hand, notes have been enforced in Mexico. No one really goes and enforces a credit agreement, a loan agreement, unless for some reason it has such specific issues that cannot be contemplated in the note, which literal rights cannot be expanded beyond what the law describes as a negotiable instrument. You may want to have that turned into a public instrument. We are dealing with the feasibility of enforceability of a credit and, to me, the feasibility certainly would be in using Mexican courts that have proper standards of enforcement of notes, proper standards of enforcement of guarantees, etc.

If we go to a jurisdiction like New York, coming back here with an arbitration award will be good then because we have the operability of the insertions in the
Code of Procedures that we have seen after NAFTA. So, therefore, I am less concerned that it will be executed on. There will have been a lot of time lost. Then find out, attach and do everything that we have to do and the foreclose on the guarantees and do everything that we have to do quite fast. So, I think it is more appropriately addressed from a practical point of view than from a wish point of view, because certainly I have nothing against going to New York for arbitration.

Also, with a Trust and guarantee, the automatic enforcement pursuant to the decision of a technical committee may not necessarily be upheld by the trustee. The trustee will take care of itself. They won’t act as fast as we would like them to act so that is why I would prefer having arbitration in New York, because then I can expedite things there presumably and by expediting the enforcement of the Trust I can move quickly.

OWEN: In terms of where we go to enforce, I would prefer the arbitration in New York but the reason for that may not be so obvious. I just want to get this thing wrapped up quickly. I know that they are going to more readily go with the New York arbitration approach and I think it is a good approach. Obviously if you get an arbitration award in New York, it should be enforceable here in Mexico and, just for time considerations and practicality, I would rather just bite the bullet and go with that.

ROGERS: My question before was really focused not so much on the credit agreement and the collateral structure, but rather on the power purchase agreement. Those are really the key to the revenues necessary to pay the debt. Let’s suppose that CFE or any of the power purchasers stop purchasing, can we take those parties into court and, if so, where? If the court enforced arbitration, would it be appropriate to have those contracts subject to arbitration in New York or should we rely upon enforcement in Mexico?

JAUREGUI: I think to be able to say that with some certainty, we would have to look at the organic law of CFE. Then, if we determine that the organic law of CFE allows us to go to arbitration, the first answer would be, certainly with the private parties’ agreements, we don’t have any problem, we can do what we like. But with the CFE agreement, if we assume or if its organic law and its wish is to go to arbitration, we can provide for that. I would love to see arbitration in those agreements.

Secondly, if we can go to arbitrate in New York I would think that it would be more than a legal bar, it would be a policy bar for the CFE to go and submit to an arbitration in New York dealing with the purchase of electrical power, that they have permitted to do to somebody else now putting it into a self supply kind of contract. If it can’t be done, the least we can do is provide for an arbitration to take place in Mexico with ICC rules or any other rules that you may want and then follow through and expedite that way. The question raised is whether this would be enforceable in Mexico.

We go back to the old issue of, can you sue the government and can you enforce it? The answer is, you can sue the government but can you actually attach something of the government, and the answer is no. The government’s track record has been to comply with its obligations, so there we go back to the sovereign risk.

JUAN TRUJILLO: My name is Juan Trujillo from Gibson, Dunn & Crutcher, New York. I have a question that relates back to the sovereign risk issue. What is the approach of guarantors like EximBank to qualify this as a sovereign risk and the
fact that CFE has stated that there is no full faith and credit from the Mexican government? Second, under the PPA contract what are the purchase obligations of CFE, and does it actually qualify as public debt because the financing doesn’t go directly to CFE?

OWEN: In my experience, the export import banks around the world readily take CFE obligations as, in effect, a Mexican government obligation. I have not seen a reluctance to go forward on that basis.

FREDERICK HILL: My name is Frederick Hill from Los Angeles. Please comment further on the recommendation that the mortgage, rather than the guarantee Trust, be used. I would like to know what your thoughts are with respect to how it is treated in Mexico now, if you think the courts are not going to enforce guarantee Trusts, generally, because procedures are not as clear. My thought was, it is a mechanism that was developing, maybe becoming more recognized in Mexico now, and could be useful for a lot of other fields. But, if we are going to have to use a judicial foreclosure on mortgage to be secure in our financing, then it is kind of disappointing because I thought the guarantee Trust would be a useful mechanism and it is becoming more common and more useful.

JAUREGUI: The Trust is in evolution because it is an ever-encompassing possibility. It is a good vehicle and I don’t think that it is out of use in any way, shape or form. Another thing, trustees who have to be licensed, and therefore subject to very heavy regulation, are very reluctant to act in an expedient sort of self-execution manner. So the purpose that one is seeking to set up a Trust, which is the ability to self-move, to promote things without going to the court, I don’t think is there for any project, regardless of the size or style and the nature of the purpose of the Trust, because the purpose of the Trust is really the guiding force here.

We are using loosely the term “guarantee Trust” or “Trust in guarantee.” But, you know it’s administration, if we are going to do the construction and it may be even transfer of ownership if we were to own the land through the Trust. It takes several Mexican forms of obligation creation inside the Trust and they are best described in the purpose. So, as an organizer of legal business, it is a good vehicle. As a transparency vehicle to administer projects, it is a good vehicle. If you are looking for it on a debt situation, and we are really looking at a debt situation here, I defer from that. It is not a good vehicle because it is not self-executable in the sense that you are going to wind up going to an arbitration or you are going to wind up going to a court.

Once we say this, the basic and most germane question that you make is, “Is this going to be enforced in Mexico?” And the answer is yes. The problem with my answer is that Trusts, unlike mortgages that are clear in how they are enforced, and unlike notes that are clear how they are enforced, have specific enforcement problems that I have encountered that are subject to discretion on the part of the court, and therefore, if you are going to be subject to discretion, just looking through my eye glasses in London, do I want to be subject of Mexican judge or do I want to have arbitration in the City? Well I feel more comfortable with arbitration in the City because I know what is going to happen. I do not know what is going to happen with the discretion of a Mexican judge. This is not tainting by any means or attempting to taint the responsibility and the transparency of a Mexican judge. Let’s assume everything is good. Discretion is there and that is what the issue is. Therefore, the Trust is very useful.
CASE STUDY FOR PROJECT FINANCE

APPENDIX

CASE STUDY: FINANCE PROJECT ON A HYPOTHETICAL POWER PLANT IN GUANAJUATO, MEXICO
John Stephenson

This case study is intended to permit analysis of legal issues involving a hypothetical financing of a power generation plant to be located in the State of Guanajuato, Mexico. The information and issues are intended to highlight legal issues related to Mexico and the United States. This case study is not comprehensive and will not attempt to address all relevant issues.

The audience attending the United States-Mexico Law Institute 8th Annual Symposium being held September 3-4, 1999 in Guanajuato, Mexico is expected to participate in the analysis, and add issues and comments to the discussion of the panelists who will address this case study.

One of the speakers will primarily take the role of the developer’s counsel, John Stephenson will primarily take the role of lenders’ counsel, and Miguel Jáuregui will take the role of Mexican counsel to the lenders or the sponsors, depending upon what he decides will be the most interesting position to take at the moment (that is, he may switch from one position to another, without notice, as he chooses). The purpose of the analysis will be to bring to light issues that must be faced under both United States and Mexican law in the financing of a power generation project in Mexico in 1999 (before any changes to Mexican law have occurred related to privatization of the electricity industry, although the speakers and the audience are encouraged to offer suggestions and comments of how issues and resolution of those issues might change as the result of the proposed privatization).

1. John Stephenson is a member of the firm Jenkens & Gilchrist in Dallas, Texas. Mr. Stephenson is the President and Director of the United States-Mexico Law Institute which was established by him with the support of the ABA Section of International Law in 1992 when he was Chairman of the Mexican Law Committee of the Section. Mr. Stephenson has specialized in international business transactions and is a former Chairman of the Section of International Law of the State Bar of Texas. He received his B.A. degree from Rice University and an L.L.B. degree from Southern Methodist University.
PROJECT FOR THE CASE STUDY

The following is a hypothetical partial term sheet for the financing of the Guanajuato Power Generation Facility (the "Project"):

1. **Sponsors**
   - Beckshel Energy Co. ("BEC"), a U.S. corporation
   - Power Construction Co. ("PCC"), a U.S. corporation
   - Auto Producers Co. ("API"), a Mexican branch of a U.S. corporation
   - Sheet Steel Producers, S.A. de C.V. ("SSP"), a Mexican company
   - Industrias Guanajuato, S.A. de C.V. ("IG"), a Mexican construction company

2. **Borrower**
   - BPAS Electricidad, S.A. de C.V. ("BPAS"), a special purpose company

3. **Lenders**
   - Power Banks ("Banks")
   - International Finance Corporation ("IFC")

4. **Suppliers of Generation Equipment**
   - GEM Generator Supply ("GEM")
   - BEC

5. **Contractor and Engineers**
   - BEC
   - PCC
   - IG

6. **Grantor of Concession**
   - Comisión Federal de Electricidad ("CFE")

7. **Term and Structure of Concession**
   - Twenty-Five (25) years
   - Build, Own, Operate and Transfer

8. **Cost of Project**
   - U.S. $250,000,000

9. **Size of Project**
   - 485MW

10. **Fuel Supply**
    - Natural Gas

11. **Purchasers of Electricity produced by Project**
    - pursuant to Power Purchase Agreements ("PPA")
    - CFE - 60%
    - API - 25%
    - SSP - 15%

12. **Currency of Payment under Power Purchase Agreement**
    - CFE - Mexican Pesos
    - API - U.S. Dollars
    - SSP - Mexican Pesos
13. **Length of Terms of Power Purchase Agreements**
   - CFE - 25 Years
   - API - 5 Years
   - SSP - 5 Years

14. **Source of Income for Power Purchasers**
   - CFE - Pesos
   - ACI - U.S. Dollars
   - SSP - Pesos

15. **Structure of Bank and IFC Financing**
   a. 10 year term loan by Banks: U.S. $120,000,000
   b. IFC Loan, payments to commence in 11th year, with final maturity in 19th year: U.S. $30,000,000
   c. U.S. ExinBank Guarantee of 80% of Banks’ loans
   d. Subordinated Loans by BEC and PCC: U.S. $50,000,000 until provisional acceptance, when loans will be *pari passu* with Bank Loans, but to be subordinated under the Intercreditor Agreement.

16. **Equity to be Contributed by Sponsors to BPAS**
   - BEC - $28,000,000 .................. 41.2%
   - PCC - $15,000,000 .................. 22.1%
   - IG - $15,000,000 .................. 22.1%
   - SSP - $10,000,000 .................. 14.6%
   - **$68,000,000** .................. 100.0%

The Sponsors will organize BPAS Electricidad, S.A. de C.V. by contributing approximately U.S. $1,500,000 to fund the overhead and development needs through financial closing. It will be a single purpose company, and the *estatutos* will restrict its activity to developing, financing, owning, operating, maintaining and selling or transferring a power generation facility in the State of Guanajuato, Mexico.

17. **Use of Proceeds**
   To fund development, construction, interest costs, and initiation of operation of the Project.

18. **Security for Bank Loans**
   a. PPAs and payments thereunder by CFE and others.
   b. Rights under Fuel Supply Agreement with PEMEX or other natural gas transporter.
   c. Concession Rights.
   d. Fixed Price, Turnkey Construction Contracts
   e. Completion Guarantees from Sponsors
   f. Payments under PPAs to be made by BPAS outside Mexico into account of collateral trustee in the U.S. or England (after conversion into
19. Completion Requirements

The Sponsors are developing for construction a 485MW natural gas-fired power generation plant (the “Plant”) located near Leon, southwest of Guanajuato in the State of Guanajuato, Mexico. Electricity will be sold to CFE (60% of projected production), API (25%) and SSP (10%). Total minimum generation per year is...
subject to final negotiation in each PPA. The Project will be fueled by natural gas supplied by CFE, Petroleos Mexicanos ("PEMEX") or another party transporting natural gas to the Plant. Total capital costs of the facility, including soft costs and IDC, are estimated to be U.S. $250 million. Start-up date is anticipated to be 2002. The status of the development is as follows:

- Feasibility Study submitted to CFE and approved December, 1998.
- Commitment Letter issued by Power Banks, a copy of which follows.
- Build-own-operate-transfer proposal submitted to CFE for a concession.
- Draft Natural Gas Sales Agreement submitted to PEMEX and approved
- Land under contract for purchase (or CFE will supply usufruct for use by BPAS and the Trust).
- Environmental Impact Study under preparation.
- Site permits, environmental permits, construction permits applied for.
- Fixed Price, turnkey construction contracts negotiated and submitted to Power Banks for approval.

The benefits of this project include (a) decreasing the electrical power shortage in Mexico, and particularly in the State of Guanajuato, where industrial development continues rapidly, and (b) decreasing the air pollution situation in the area where the API and SSP production facilities are located, since the Project will replace CFE generation plants fueled by fuel oil.

The Sponsors anticipate concluding all major contracts listed above within calendar year 1999. The Sponsors have prior experience in building gas-fired power generation plants, but have never built a plant in Mexico. Therefore, the Sponsors have entered into a contract with IG as one of the contractors to assist in the negotiation, documentation and implementation of the construction contracts for the Project. Construction of the Project is expected to require 24 to 28 months. The participation of the Sponsors in the equity of BPAS is set forth above.

The negotiation of the financing documentation and allocation of responsibilities among the participants in developing, constructing, financing and owning the Project is the next stop is the process of development of a successful project. A copy of the commitment letter from the Power Banks follows:

POWER BANKS
1000 Power Street
Houston, Texas
Eng. Horacio Alger  
BPAS Electricidad, S.A. de C.V.  
Av. Poder  
Guanajuato, Guanajuato, Mexico

Dear Sir:

We are pleased to offer to BPAS our offer to lend, and then syndicate, a U.S. $120,000,000 financing in connection with the construction of the Project on Av. Poder in the State of Guanajuato, Mexico.

Our proposed terms as committed by us are:

Borrower: BPAS

<table>
<thead>
<tr>
<th>Amount</th>
<th>Non-Recourse Portion</th>
<th>Recourse Portion</th>
<th>Total Financings</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000,000</td>
<td>$20,000,000, until operational tests have been met</td>
<td>$120,000,000</td>
<td></td>
</tr>
</tbody>
</table>

The Recourse Portion may be adjusted and increased if one or more of CFE, API or SSP reduces its purchase obligation under its PPA prior to completion of operational tests.

The amounts above are based upon the assumption that there will be no reduction in any of the purchase obligations under the PPAs.

BPAS has been formed by wholly-owned subsidiaries of the Sponsors, as follows:

<table>
<thead>
<tr>
<th>Sponsor</th>
<th>Percentage Share Ownership by Sub</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEC</td>
<td>41.2%</td>
</tr>
<tr>
<td>PCC</td>
<td>22.1%</td>
</tr>
<tr>
<td>IG</td>
<td>22.1%</td>
</tr>
<tr>
<td>SSP</td>
<td>14.6%</td>
</tr>
</tbody>
</table>

Breakdown of Projected Construction Costs and How They will be Financed

<table>
<thead>
<tr>
<th>Maximum Projected Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost Breakdown</td>
</tr>
<tr>
<td>Estimated costs</td>
</tr>
<tr>
<td>Hard Costs ........... US $</td>
</tr>
<tr>
<td>Contractor Fees for Construction</td>
</tr>
<tr>
<td>Total Hard Costs .......</td>
</tr>
</tbody>
</table>

Soft Costs (Interest and Working Capital)
Total Costs

Cash Costs
(excluding letters of
Credit backing PPA
of API and SSP)

Total Financing

Some of the Sponsors, namely API and SSP, shall sign Power Purchase Agreements (PPAs) covering approximately forty percent (40%) of the electricity to be purchased from the Project at fixed prices, with escalation provisions. After the first five years of operation, if API and SSP agree, their PPA's can be extended for prices that are at the then-prevailing market prices.
Borrowings

The initial equity must be contributed to BPAS and utilized pursuant to the Construction Contract and for soft costs as provided in the budget approved by the Banks. After such utilization and disbursement of the loans by BEC and PCC to be made on a subordinated basis to BPAS, the Banks will make advances so long as the amount advanced and the remaining amount to be advanced under the Bank Loans cover the costs to be incurred through completion of the Project. In addition, advances shall be made at the same time as and in the same amounts as the advances made by IFC pursuant to its loan agreement with BPAS.

Commitment Period

Commencing with the date of acceptance of this Commitment and continuing through completion or December 31, 2002, whichever first occurs.

Commitment and Arrangement Fee

____% of 1% payable on the average undrawn amount during the Commitment Period, payable monthly.

BPAS may reduce the committed amount in integral multiples of US $2,000,000 on ten banking days prior written notice, provided that such right may be exercised only twice each period of 12 months during the Commitment Period.

There shall be payable at initial funding a flat fee in the amount of US $______________.

Facility Fee

A facility fee of US$___________ is payable upon signature by BPAS of this Commitment, and if the Loan is not funded because of any event other than Bank's inability or refusal to close without reason, then such amount shall be non-refundable.

Interest Rate

The U.S. Base Rate per annum of Agent Bank, plus ____%, as it changes because of changes in the Base Rate from time to time; or
LIBOR (or defined) for 3 month interest periods plus _____%

Maturity

Commencing on the earlier of one year after completion or January 1, 2003, BPAS shall make quarterly payments of principal plus accrued interest, with payments to be applied first to accrued interest and then to reduce the principal balance. Principal payments each quarter shall be in an amount of U.S. $______, with all unpaid principal and accrued interest being payable on December 31, 2012.

Prepayment

In whole or in part in a minimum amount of US$5,000,000 or integral multiples thereof, without ______ or penalty, except that prepayments in the first five years of the payment term shall also require payment of an amount equal to 2% of the principal prepared. All prepayments shall be applied in the inverse order of maturity. Prepayments of advances bearing LIBOR based interest may be made only at the end of an interest period and only upon five days prior notice in writing. If payments are made on a day other than the last day of an interest period, then BPAS shall also pay the breakage costs of the Banks.

Undertaking by Sponsors

1. Each of BEC, PCC, IG and SSP shall sign a completion agreement jointly and severally agreeing to cause the Project to be completed on time and within the agreed budget.

Completion shall be defined as:

a. The time when the Project has been constructed according to plans and specifications approved by the Banks.

b. Operation of the Project for a period of six (6) months at 90% capacity and

(1) CFE, API and SSP all shall have purchased and paid for electricity pursuant to their PPAs, and

(2) all electricity produced shall meet the requirements of the PPAs.

c. All costs for construction and operation of the Project shall have been paid in full.
d. No defaults or potential defaults shall have occurred and be continuing under any of the Loan Documents.

e. All permits, licences and other governmental approvals have been obtained and are in full force and effect, and there are no legal or administrative proceedings of any nature threatened or pending against BPAS which if determine adversely could have a material adverse effect.

2. API and SSP shall enter into PPAs under which API shall agree to purchase 25% of the electricity produced by the Project and SSP shall agree to purchase 15% of the electricity produced by the Project for a period of five years.

3. The Construction Contract shall be a cost plus fixed fee contract with a guaranteed maximum price, and the contractor shall pay all cost overruns in excess of the guaranteed maximum costs.

### Extent of Recourse

Banks shall have full recourse to BPAS until completion. Thereafter, Banks shall have full recourse to BPAS, and the completion guarantees shall terminate upon the completion of the operating period under the requirements for completion.

Banks may require financial covenants in the completion guarantees relating to any of the Sponsors, contingent on the Banks’ financial review. In addition, each Sponsor shall covenant to furnish annual consolidated financial statements which shall be audited by certified public accountant or a chartered accountant of recognized standing which shall be in reasonable detail. The statement shall include a balance sheet, an income and surplus statement as well as such other financial information as Banks shall reasonably request.

### Support Arrangements

To increase the flexibility provided through the financing, the credit agreement shall be structured so that portions of the financing shall be available to provide support to other types of financings, such as those described in the following:

1. Letters of Credit to back-up export credits from export credit agencies.
2. Irrevocable Letters of Credit to back the sale of commercial paper by BPAS, if it decides to obtain financing in such manner. In that event, Banks would be willing to be placement agents of the commercial paper on BPAS's behalf.
3. A contingency fund equal to 5% of the Project cost will be established by the Trustee of the Trust, to be prepaid by BPAS if not utilized by the completion of the Operating tests.

**Collateral**

The financing shall be secured by:
1. A *fideicomiso de garantia* (the "Trust") to which shall be transferred the land or the usufruct of the land, and in which shall be constructed the Project.
2. An assignment to the trustee of the Trust, for the benefit of all Banks (and through the Intercreditor Agreement, IFC, BCC and PCC) of the Power Purchase Agreements ("PPAs"), the shares of BPAS, the Construction Contract, the Gas Supply Agreement, any other contracts for the purchase of raw materials, any contracts for the purchase of equipment and all other contracts in connection with the construction with the Project, and the rights to receive payments under the PPAs.
3. BPAS's operating account shall be maintained at Agent Bank in an offshore account and shall be subject to its right of set-off.
4. Assignment of all receivables of BPAS (including the right to receive payments under the PPAs).
5. Intercreditor agreement among the Banks, BPAS, IFC, BCC and PCC.

Prior ranking security will be permitted with Agent Bank's consent for specific equipment financings, for financings arranged under export credit and other purchase credit, provided that the priority shall only relate to a specific piece of equipment that is financed and any such financing availability shall reduce the availability under this financing.

The insurance shall be written with a loss payable clause in favor of Banks.

**Other Conditions Precedent**

Prior to the first advance:
1. All legal matters shall be satisfactory to counsel for Banks.
2. The Project shall be covered by insurance and Banks shall be satisfied with the underwriters and of the coverage.

3. Banks shall be satisfied that BPAS has "good and marketable" title to the Project and the land on which the Project is being built, or a clear usufruct regarding use of the land.

4. The corporate charter of BPAS and of the shareholders agreement shall have been signed in a form that is satisfactory to the banks.

5. Banks shall be satisfied with the terms and effectiveness of all of the collateral arrangements.

6. Banks shall verify the contents of the Feasibility Study to satisfy the numbers that the construction of the Project is feasible and that the Project provides adequate coverage for this financing.

7. Banks shall be satisfied with the financial strength of each of the Sponsors.

8. An independent engineer shall have reviewed the feasibility for the Project, shall have examined the provisions of the Completion Test and shall confirm that these requirements provide an adequate test for the Project Completion.

BPAS shall:

1. Maintain existence, maintain all consents, permits and governmental approvals and maintain its property in good operating condition.

2. Maintain the insurance in full force and effect.

3. Pay all of its indebtedness, taxes and other obligations as they come due.

4. Furnish:

   a. within 90 days after the end of each fiscal year a balance sheet, an income and flow of funds statement certified by a certified public accountant of recognized standing;

   b. within 45 days after the end of each quarter financial statements which are not audited but certified by the chief financial officer of BPAS;

   c. at the same time that a and b are delivered, a certificate that no default or potential default has occurred and is continuing, signed by an officer of BPAS.

   d. at the same time a is delivered, a statement of existing insurance and whether it is in full force and effect.

Covenants of BPAS
e. quarterly status reports on construction and expenditures on the Project.

f. after operations a budget which shall project earnings for the project over the following five year period.

g. such other information as banks may reasonably request; and

h. prompt notice in writing of any default or any potential default, any material adverse development or any levy or attachment against BPAS property.

5. Maintain complete financial records and permit banks reasonable access to such records during business hours.

6. Use its best efforts to take all actions necessary and economically feasible so that the completion test are satisfied.

7. Comply with all applicable law.

8. Sign and deliver such other documents as banks shall deem necessary to carry out the provisions of the loan documents.

9. Perform all of its obligations under all collateral arrangements.

10. Defend the Project against all lawsuits or other claims.


12. Pay all legal expenses and closing costs in connection with this financing, whether or not the loan agreement is signed or funds are ever advanced.

BPAS shall not

1. Incur, create or permit to exist any claim, mortgage or lien on the Project except for exceptions approved by the Banks.

2. Incur, create or permit to exist any debt except for:

   a. subordinated indebtedness on terms acceptable to Banks which legal and binding under the laws of Mexico.

   b. financings of specific equipment on a secured basis as otherwise authorized herein.

   c. other types of indebtedness permitted hereunder.

   d. other indebtedness secured by purchase money mortgages, security agreements, or conditional sales agreements, provided
that the amount of such indebtedness does not exceed 60% of the value of the asset being acquired, and the lien does not extend to any asset other than the asset being acquired, and the indebtedness is incurred in connection with the purchase of an asset subsequent to completion.

3. Make any loans or advances to or investments in any other party.
4. Sell all or a substantial part of its assets.
5. Merge or consolidate with or acquire all or a substantial part of the assets of another entity.
6. Incur any lease obligation if the aggregate annual rental payments exceed US $_________ per year, or enter into any sale and leaseback arrangement.
7. Declare payor any dividends or other distributions from BPAS unless BPAS is current in all of its payment obligations, its cash reserves plus cash flow during the previous twelve months equals or exceeds ______% of the next annual anticipated debt service requirement and total unsubordinated liabilities divided by tangible net worth does not exceed ______ and or and in any event any distribution may not exceed the earnings for the previous year.
8. Engage in any business except the operation of the Project.
9. Pay any management or other fees to the Sponsors except those provided for in this Commitment.
10. Guarantee, endorse or otherwise become responsible for obligations of any person in any way, including obligations under so called "take or pay", "working capital maintenance" agreements or similar arrangements.
11. Amend or in any way change the terms of the collateral arrangements.
12. Create any subsidiary.

**Events of Default**

a. Upon:
1. misrepresentation by BPAS.
2. Failure to pay principal or interest when due.
3. Default under any of the terms or provisions of the loan agreement and such default is not cured within 10 days after written notice from Agent Bank.
4. Any Sponsor disposes of its interest in its subsidiary or in BPAS.
5. Voluntary or involuntary bankruptcy or \textit{suspension de pagos} of BPAS or BPAS's failure to pay any other debt in an amount in excess of $500,000.
6. Any unsatisfied final judgment against BPAS in excess of $500,000.
7. Non performance by a Sponsor, purchaser under a PPA, or under a completion guaranty which has not been corrected or remedied by another Sponsor, purchaser or shareholder within any applicable grace period.

then Banks may accelerate the time of payment of the financing.

b. Upon:
1. Default under any of the collateral arrangements by any party thereto where another Sponsor or purchaser has remedied such default and performed on behalf of the defaulting party
2. Material misrepresentation by a Sponsor, a purchaser under a PPA or a shareholder.
3. Voluntary or involuntary bankruptcy of a Sponsor, a purchaser under a PPA or a shareholder.
4. Any unsatisfied final judgment in excess of $100,000 against a purchaser, a Sponsor or a shareholder.
5. The occurrence of a default of a Sponsor's other indebtedness in excess of $100,000 which gives the holder the right to accelerate.
6. Non-payment of a Sponsor under a completion guaranty which is remedied by another Sponsor.

then:

a. the defaulting share of the financing shall become immediately due and payable by the defaulting party.

b. the default shall not constitute a default by BPAS for a period of 365 days if BPAS shall otherwise perform upon its conveyance and the other Sponsors are also performing their obligations and there are no money defaults. If, however, within such 365 day period, either

(i) a substitute party acceptable to Banks must take the place of the defaulting party’s obligations
under the collateral arrangements and the completion; or

(ii) the other non-defaulting Sponsors, purchasers under PPA and shareholders shall assume and takeover the defaulting party's obligations under the completion guaranty and the collateral arrangements on a pro rata basis in proportion to their existing obligations. If these conditions are not satisfied by the end of such 365 day period an event of default shall exist in respect of BPAS under the financing and the Banks may accelerate the Loan and proceed to enforce their rights under the collateral arrangements.

c. Any advances by non-defaulting parties to BPAS on account of a defaulting party will be indebtedness of BPAS subordinated to the financing under this arrangement, subject to the provisions of Mexican law.

Yield Protection

Standard tax and yield protection.

Other Terms and Conditions

BPAS will enter into a loan agreement with Banks incorporating the terms and provisions of this offer and anything appropriate thereto in satisfactory to Banks and their independent counsel.

Expenses

All legal and other expenses incurred by the Banks shall be for the account of BPAS.

Counterparts

This commitment may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one Commitment.

Other

These terms are intended to provide you with a description of the financing contemplated by the Banks and do not prejudice the terms to be set forth in the Credit Agreement. In making decisions and negotiating matters related to the Credit Agreement, Banks shall be entitled to
exercise their sole discretion, without reference to any independence standard of judgment, and shall not be legally bound or have any liability to any party if it determines that any of the matters under negotiation can not be resolved to the complete satisfaction of Banks.

Expiration

This offer set forth herein shall expire on ______ unless accepted prior to that time by BPAS at 5:00 p.m. New York time and returned to Banks.

Yours very truly,

Accepted By BPAS

By:________________________
A. ALLOCATION OF COMMERCIAL RISKS

The basic commercial risks that must be allocated among the parties are:

1. Construction Risk
   (1) Increase in construction Price.
   (2) Construction delays.
   (3) Failure to meet performance criteria.
   (4) Change in scope of the work, required by law.
   (5) Change in scope of the work because of design changes.
   (6) Strikes.
   (7) Force Majeure events - natural disasters, political risks, invalidity of government guarantees, etc.
   (8) Failure of Contractor to pay subcontractors and its other suppliers.
   (9) Environmental risks.

2. Operating Risks
   (1) Increases in Operating Costs.
   (2) Failure to meet performance criteria.
   (3) Demand decrease for electricity.
   (4) Change in fuel prices or availability of fuel.
   (5) Changes in applicable law.
   (6) Strikes.
   (7) Force Majeure events.
   (8) Increases in prices (inflation).
   (9) Uninsured loss.
   (10) Rise in interest rates.
   (11) Currency risk, such as conversion risk, exchange rate changes and blocked currency remittances.

3. Market Risk
   (1) Volume of production of electricity.
   (2) Price to be paid.
   (3) Force Majeure events.

B. STRUCTURAL ISSUES

1. Is there a role for the Overseas Private Investment Corporation? Other political risk insurer?
2. How does the involvement of the IFC affect the financing?
3. What role could the IFC play in the lender structure that could add value to all parties?
4. What obligations should CFE undertake in connection with the power purchase contract that would give the lenders and developers comfort that, if something occurred as a result of governmental action or inaction, the lenders and developers could be assured that the debt would be paid and the Sponsors would obtain an appropriate return?
5. Are there provisions under the North American Free Trade Agreement that are applicable to this transaction? If so, how are they applicable? Do they protect
the lenders? the developers? the Mexican government? Is Mexico restricted by NAFTA in how it can arrange its regulatory affairs regarding the generation and delivery of electricity?

6. What could happen if the next President of Mexico is a member of the PRD of PAN? Should there be any contingency plan in the documentation?

7. How could the proposed privatization affect the structure of this transaction?

8. Should the Sponsors look to the Multilateral Investment Guaranty Agency (MIGA) for protection? If so, what type of protection?

9. Does it make a difference if a U.S. government corporation is involved in the financing?

10. If the U.S. Eximbank insures 80% of the loans made by the Banks, are there any special considerations that affect the structure of the security for financing?

11. What considerations should there be if the Sponsors decide that they want to have BPAS issue bonds in the United States?

12. Are the security concerns different if bonds are to be issued?

13. What is the nature of the control CFE has over the generation and distribution of electricity in Mexico? Under what laws does BPAS have the legal right to sell electricity to API and SSP?

14. Should BPAS attempt to get an option to operate under the new concessions that may be available under the power reform proposals submitted to the elected representatives by President Zedillo?

15. How does the uncertainty regarding the regulatory authority of CFE affect the lenders? The Sponsors? CFE's ability and commitment to become obligated to the Sponsors and the Lenders under the PPA? Should the change in governmental regulation in Mexico be a force majeure issue?

16. Is it possible to do a limited recourse financing for a power generation plant at this time in Mexico?

17. Since the PPAs with API and PCC are only 5 year contracts, and since power reform is already scheduled to be considered by Mexico, what criteria should BPAS be considering in looking at a potential new market after the Mexican presidential election in 2000? How is risk to be shifted to the debt holders and the equity holders and away from power purchasers, at least for the private section aspects (40%) of production of electricity?

C. COMMERCIAL ISSUES

1. Discuss how the lenders, the Sponsors and CFE should allocate the commercial risks, based on the draft commitment letter and term sheet?

2. What Mexican rules related to taking security over property and rights in Mexico must the lenders address specifically in structuring and implementing their loans?

3. What important Mexican legal risks must be addressed in the power purchase agreements so that the lenders can expect a stable cash flow that would enable BPAS to repay its debt on schedule and provide an appropriate return to the Sponsors of the Project?

4. What are the principal lien creation and enforcement problems for lenders that exist under Mexican law for lenders that want to finance the Project?
5. Should the Lenders be concerned about the 5-year term of the PPAs with API and PCC? Why?
6. What is the currency risk and how should the currency risk be addressed?
7. What principal issues are involved in the construction of the Project that relate to labor issues? Is the union representing workers for CFE likely to be a problem for the Sponsors?
8. Have environmental issues been a problem for developers of the IPP type power generation plants built in Mexico prior to this Project? What are the principal environmental issues?
9. Under the Trust Agreement to be put in place to hold title for collateral security purposes, what limitations of liability are the Sponsors and BPAS likely to achieve?
10. How do the Banks address the rights and obligations of SPC and PCC as subordinated lenders?
11. What are the withholding tax implications under the proposed structure? What are the IVA implications?
12. What happens if IG or SSP has financial difficulties and is unable to completely fund its Sponsor obligations? What if SSP is unable to perform under its PPA? How can BPAS and the lenders be protected?
13. Why is the construction of the Project undertaken while the land is owned by the Trust? Does it make any difference if the Project is constructed by BPAS and then transferred to the Trust?
14. How does the credit rating of debt of CFE affect the financing by BPAS and the Sponsors?
15. What tariff increase commitments should be negotiated with CFE to make sure that rate increases at least follow inflation increases in Mexico?
16. How do we protect the Project from a failure by PEMEX or CFE or a third party contractor to deliver gas supplies?
17. What should lenders require for pricing under the PPAs in order to grant limited recourse financing?
18. Should hedging arrangements be used for protection against currency exchange rate changes and/or interest rate changes?
D. BANKRUPTCY ISSUES

1. What are the principal rights under Mexican law that BPAS and the Sponsors have, if the commercial risks result in BPAS being unable to pay the lenders, to protect the operations of BPAS so that it can work itself out of cash flow problems?

2. What are the basic rights under Mexican law the Banks have (disregarding the Intercreditor Agreement) if BPAS is unable to make its payments on time?

3. Is there a way to use the Mexican bankruptcy laws (suspension de pagos) to force a restructuring of debt payments and a rearrangement of operations so that debt can again be paid as rescheduled?

E. NAFTA ISSUES

1. Is the IPP structure we are discussing permitted under NAFTA? Which Articles are applicable?

2. What is presently permitted under Mexican law under Mexico’s 1993 regulations?

3. Do the laws of the U.S. permit Beckshel Energy Company, assumed a subsidiary of a U.S. electric utility, to own and operate a power generation facility outside the U.S.?

4. How do the Mexican government’s procurement laws affect the Project? Must the Sponsors contract a certain percentage of equipment and services from CFE or PEMEX to make the Project viable or permissible?

5. How do the national and most favored nation treatment provisions of NAFTA affect rights of the parties in this transaction?

6. What are some of the other NAFTA provisions that could affect this transaction?