PIDIREGAS, The Trojan Horse Of Energy Privatization In Mexico

by Ronald Moncayo Paz

Since the explosion of the Mexican debt bomb in December 1994, the international financial oligarchy has been rather open about its obsession with seizing Mexico's oil resources. In addition to their interest in owning the country's vast oil deposits outright, these forces have also been intent on privatizing, deregulating, and dismantling Mexico's entire energy sector—and in particular, the state oil company Pemex—as a means of ensuring that Mexico will not be able to carry out sovereign economic development.

The main obstacle to the financial oligarchy's takeover design has been the Mexican Constitution of 1917, which establishes that "the state is responsible for the guidance of national development"; that "the public sector will have, under its exclusive charge, the strategic areas" of the economy; and that these strategic areas encompass "oil and other hydrocarbons."

Unable to enter through the front door, the London and Wall Street bankers have pried open the back door, through the mid-1990s adoption of several laws and regulations on investment, which have paved the way for the full privatization and deregulation of the Mexican energy sector. Despite the fact that these laws were unconstitutional, the Ernesto Zedillo government (1994-2000) imposed these new laws, at Wall Street's behest.

For example, the "National Program for Financing Development, 1997-2000" (Pronafide), as presented by the government in 1997, states: It is necessary "to take advantage of modifications of the legal framework, which allow access to new forms of financing. Therefore, the preference will be on the side of budgetary investment, as well as projects promoted by the public sector, but using private financing."

Just what are these "new forms of financing"?

"Investment projects promoted by the public sector with private financing, will be carried out within the framework of reforms to the Budget, Accountability, and Federal Public Expenditure Law, and to the General Law of Public Debt, approved in December 1995. With this, infrastructure projects will be carried out which do not require public resources during the construction phase, and thus will not have an effect on the budget until the public sector receives the infrastructure to operate."

In December 1995, Article 30 of the budget law was modified, as was Article 18 of the debt law. With these changes, private entities were given the right to build infrastructure projects, which would only begin to be paid for at the point that they are delivered to the state. The name given to this new legal construct was the "Project of Deferred Impact on Expenditure Accounts" (PIDIREGAS).

Disguised Privatization

Let us take a closer look at the PIDIREGAS. In the Pronafide document of December 1995, it is stated that PIDIREGAS projects "are self-financing, through a future revenue flow that they are expected to produce through the sale of the goods and services they generate. Thus, from the moment they become part of the public sector, the expected flow will allow for the amortization of private and bank financing, and will strengthen the finances of the public sector. Due to these characteristics, projects financed in this way (highways, electricity generation, and hydrocarbons, for example) will be concentrated in public companies and entities, particularly those of the energy, communications, and transport sectors, since that is where productive projects which permit repayment through their own income, as required by law, are typically to be found."

That is, through the PIDIREGAS, veiled private domestic and, especially, foreign participation in the Mexican energy sector, is now permitted. Although a violation of the Mexican Constitution, this plan does meet the stipulations of the North American Free Trade Agreement (NAFTA), which requires, Ricardo García Rosas revealed in his study "The Destruction Of The Mexican Energy Sector" (see *Resumen Ejecutivo,* September 2001), that "all bids carried out by the signator governments be submitted to international bidding." To this same effect, Chapter 10 of NAFTA refers to "purchases by the public sector," where supranational legislation is established which clearly favors the strongest bidders, i.e., the large multinationals. This NAFTA directive also violates the Mexican Constitution, which specifies that, where bidders are equally qualified, the contract must be given preferentially to Mexican firms, and not to foreigners.

According to García Rosas, in 1995 there were 20,000 Mexican engineers involved in the Federal Electricity Commission's (CFE) engineering projects. Today, there are only

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2,000. Similarly, the engineering and technological schools are turning into administrative schools, or, as a professor from the San Juan del Río Technological Institute said, "They are forcing us to produce sheep for the *maquiladoras*."

While it is the case that the Mexican Constitution acknowledges that the private sector (both foreign and national) has an economic role to play—*albeit under strict government regulation* (see box)—the international financial interests are determined to use this to establish their top-down control. To this end, they are pushing for the "privatization" and "deregulation" of the economy's strategic sectors, especially energy. For example, President Ernesto Zedillo declared in the Implementation Report on his 1996 National Development Plan: "The federal government continued the process of deregulating economic activity, begun in 1995, in the context of the Alliance for Economic Recovery . . . to legally sustain the first package of deregulation agreed upon by the Council for Economic Deregulation."

Pemex Is The Primary Target

The 1996 National Development Plan discussed the "development and restructuring of the energy sector," and defined a strategy for achieving "private investment in the construction of infrastructure for the generation of electricity and in oil activities not reserved to the state." Zedillo later said that Pemex was the key target: "Pemex has encouraged the establishment of alliances with national and international private companies. It has emphasized the participation of the private sector in the construction of water treatment plants for the six refineries, which when finished will be operated by the owners, and Pemex will only pay for the service."

That is, the state removes itself from the new investment, hands it over to private entities, and commits itself to pay for both the project and for the service it provides.

Once the December 1995 reforms which gave rise to the PIDIREGAS were implemented, the next step was to establish the so-called "long-term productive infrastructure projects." In effect, a new category of project was created under the rubric of the PIDIREGAS. On Aug. 20, 1996, the Budget, Accountability, and Federal Public Expenditure Law was modified once again, specifically Articles 38-A and 48-B, in order to "regulate, in a timely and transparent fashion, the operation of these projects and the recognition of the corresponding liabilities." A "long-term productive infrastructure project" is defined as "a project whose execution is given to private and social sector companies, through public bidding." These companies often obtain their financing from abroad, meaning that the door is thereby opened to foreign financial control over a strategic economic sector, something the Mexican Constitution expressly prohibits.

Once the project is completed, "the payment obligations corresponding to due dates of current and forthcoming expenditures, are considered the direct liability of the public sector, whereas the remainder is registered as a contingent liability. Payments . . . are made, using the flow of revenue that the projects themselves generate." Further, these payments have preference over any new investment.

A series of norms have also been established to qualify a project as a "long-term productive infrastructure modality." The most important of these norms establishes that "the revenues generated by the sale of goods and services be sufficient to cover contracted obligations." In other words, the private investor risks absolutely nothing, and even receives benefits, such as managing the completed project, which services but one client: the state itself. Quite a deal.

With "long-term productive infrastructure projects" so established, they are then divided into two categories:

1. Long-term productive infrastructure projects through direct investment. In these, the public entities (CFE or Pemex) assume direct responsibility for acquiring "certain productive assets built to their specification by private companies." That is, the state is not obliged to acquire *all* the assets; it can leave some of these in private hands.

2. Long-term productive infrastructure projects through conditional investment. In these, acquisition of the assets by

From The Mexican Constitution

The Mexican Constitution of 1917 establishes, in Article 25, that "responsibility for directing national development lies with the state. . . . The public sector will have exclusive responsibility for the strategic areas named in Article 28, Paragraph 4, of the Constitution, with the federal government always maintaining ownership and control over any agencies which may be established as needed."

In its Paragraph 4, Article 28 states:

"The functions which the state exercises exclusively in the strategic areas to which this rule applies, will not be construed as monopolies: mail service, telegraphs, wireless telegraphy and satellite communication, oil and other hydrocarbons, basic petrochemicals, radioactive minerals and the generation of nuclear energy, electricity, and railroads. . . .

"The state will have at its disposal whatever agencies and companies that are required for the efficient management of the strategic areas for which it is responsible, and in the activities designated as of a priority character where, according to the laws, it itself participates, or does so with the social and private sectors."

TABLE 1
Mexico's Oil Sector: Public And Private Investment
(Billions Of 2001 Pesos)

Year	Public Budget Investment	Private Financed Investment	Amortization
1991	34.8	0	0
1992	33.5	0	0
1993	31.3	0	0
1994	33.4	0	0
1995	35.7	0	0
1996	44.1	0	0
1997	45.6	7.5	0
1998	42.1	35.1	0
1999	29.8	43.5	0.2
2000	35.5	47.5	2.8
2001	35.7	56.9	5.9

Source: Presidential Report 2001, Statistical Appendix, Mexico.

TABLE 2
Mexico's Electricity Sector: Public And Private Investment
(Billions Of 2001 Pesos)

Year	Public Budget Investment	Private Financed Investment	Amortization
1991	30.2	0	0
1992	28.7	0	0
1993	24.4	0	0
1994	23.9	0	0
1995	18.4	0	0
1996	17.0	2.9	0
1997	20.1	4.3	0
1998	25.0	12.3	1.5
1999	25.4	10.4	4.1
2000	22.0	17.6	3.1
2001	19.6	23.6	4.5

Source: Presidential Report 2001, Statistical Appendix, Mexico.

government entities is "the result of the materialization of some eventuality in a contract for supply of goods or services." That is, the state is not obliged to buy the project, unless some "eventuality" occurs in the "supply."

This approach yielded the following results: Between 1997 and 2000, construction of 56 projects under the "direct investment" mechanism was authorized, at an estimated cost of $36 billion, and 22 "conditional investment" projects were authorized, for $8 billion.

That is, there are 78 "monetarily profitable" and strategic projects which are already in private hands. Who are the beneficiaries? In the majority of cases, they are international consortia which, in some cases, have even received loans from their governments, as in the case of Spanish and Japanese investors, for the projects.

Usury Enters The Budget

There exists an additional aspect to the PIDIREGAS, because the state amortizes the capital cost of the project and also schedules the interest payments, which thereby enter into the public debt cycle.

Thus, in each year's budget, there are funds which are "set aside" to cover amortization, and interest payments as well. For example, one government study states that, "given that some of the projects authorized . . . in 1997-2000 will begin operation in 2001, the [2001] Budget Plan includes planned expenditures of about 7.3 billion pesos [about $730 million] in investment costs to cover amortizations . . . and 6.9 billion pesos [some $690 million] in non-programmed expenses, to cover the financial cost of the same."

For 2001, President Vicente Fox requested authorization to spend 66.9 billion pesos ($6.7 billion) for new direct investment projects, and another 13.3 billion pesos ($1.3 billion) for conditional investment projects.

Recall that the state does not have to purchase the conditional investment projects.

For the moment, only CFE and Pemex projects qualify as "long-term productive infrastructure." The amount assigned to this category of projects is called "financed investment." Let us see how this has evolved in the case of Pemex.

Table 1 shows that the public share of total investment in oil has already begun to decline, while private participation is rising. The amortization of the debt is also rising, as are interest payments—which do not appear here.

The case for the CFE is similar (**Table 2**). If we compare budget investment and financing, we see that, here, too, the state is stepping out of the investment role more and more, leaving the greater part in private hands.

The PIDIREGAS Trojan Horse is working exactly as intended: The Mexican energy sector has begun to be privatized, and handed over to foreign interests.

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