ENERGY REFORM: ALL IS NEW UNDER THE SUN (AT LAST!)

MIRIAM GRUNSTEIN

Houston TX, September 2014
THE LONG AWAITED CONSTITUTIONAL REFORM

After many months of expectation (and anxiety) Mexico finally amended its constitutional framework on different levels, including all the untouchables.

The chore topics are:

The New Nature of Pemex and CFE as “Productive Enterprises of the State.” (art

The new ability of the Mexican State (Not Pemex) to enter into Contracts (including, “licenses)

The elimination of the exclusivity of the State in midstream, downstream and retail activities.
ARTICLE 25 (FOURTH PARAGRAPH).
A NEW PERSONA FOR PEMEX AND CFE?

- Article 25 intends to dress Pemex and CFE for commercial success.
- But how will they be dressed?
- Can Pemex and CFE shed their official uniforms behind? Will the law allow this?
- To this day there is no certainty—or even a vague idea—of the new business model for either the oil company or the public utility. The key question thus remains how much distance can there be between the State and its companies.
CAN INTERNATIONAL MODELS BE REPLICATED?

Although partially privatized NOC’s (Statoil, Petrobras, Ecopetrol) were a constant reference throughout the reform, the Constitutional provisions really leave very little room for such models to be replicated.

- Cannot be publicly traded
- Will not be incorporated by commercial charter but by law.
- They will be solely run by public officers.
- The Pemex Union has been removed from the Board of Managers but may still have considerable political weight.
ARTICLE 27. UNTOUCHABLE NO MORE!
WELL, ALMOST.

- There great political resistance to amending the article that has served as the political pillar of the state based model.

- Now, the Mexican State will be able to enter into an ample array of oil and gas negotiations, pursuant to the secondary laws.

- However, the historical prohibition to enter into concessions remained.

- On the other hand, the transitory articles of the amendment “licenses” are mentioned as one of the negotiations that will be allowed by law.

- What do they mean by licenses?

- How are they different from concessions

- Could this pose a threat to legal challenge?
ARTICLE 27 (PARAGRAPH SIXTH)

In the cases established in the two paragraphs hereinbefore, the Nation’s dominion is inalienable and not subject to the statute of limitations, and the exploitation, use or enjoyment of the resources in question by private persons or by companies incorporated in accordance with Mexican laws, may not be undertaken save by means of concessions granted by the President of the Republic, and in accordance with the rules and conditions set forth by the Laws, with exception of radiobroadcasting and telecommunications that will be granted by the Federal Institute of Telecommunications. Legal provisions regarding the exploitation and works in respect to minerals and substances referred in paragraph fourth, shall govern the performance and verification of such exploitation activities and works carried out or that should be carried out, from its effective date, regardless of the date the concessions were granted. Failure to comply therewith shall cause the cancellation of the concessions. The Federal Government has the right to establish and suppress national reserves and the corresponding declarations shall be made by the President of the Republic in the cases and under the conditions provided by the Law. Concerning radioactive minerals concessions will not be granted. The planning and control of the national power system, as well as the public service of transmission and distribution of electric energy, pertain exclusively to the Nation; in these activities no concessions will be granted, however the State can make contracts with private persons in terms of what is established by the Laws, which will establish the form in which private persons can participate in the other activities of the electric power industry.
OTHER IMPLICATIONS AND ISSUES OF THE NEW ARTICLE 27

BIDS ROUNDS WILL NOW BE OF THE COMPETENCE OF THE NATIONAL HYDROCARBON COMMISSION. WILL IT HAVE THE INSTITUTIONAL CAPACITY TO HANDLE THEM COMPETITIVELY, EFFICIENTLY, FAIRLY AND WITH TRANSPARENCY?

SEISMIC, GEOLOGIC AND GEOPHYSICAL DATA HAS TO BE HANDED BY PEMEX TO ITS NEW ADMINISTRATOR, CNH. WILL PEMEX RESIST?

HOW MUCH MEDDLING WILL THERE BE FROM THE FISCAL AUTHORITIES IN THE DESIGN AND THE AWARD OF THE CONTRACTS?

WILL PEMEX CHALLENGE THE AWARDS?
ARTICLE 28. FAREWELL TO THE STRATEGIC ACTIVITIES (OR NOT?)

ARTICLE 28 WAS ONCE THE FOUNDATION FOR THE MONOPOLY OF THE STATE BOTH AS REGULATOR, OWNER AND PRODUCER OF ENERGY GOODS AND SERVICES.

THIS WAS DONE BY QUALIFYING ALL HYDROCARBONS AND ELECTRICITY AS STRATEGIC ACTIVITIES (EXCLUSIVE TO THE STATE)

NOW, MIDSTREAM, DOWNSTREAM AND RETAIL ACTIVITIES, AS WELL AS THE GENERATION OF ELECTRICITY, ARE NO LONGER CONSIDERED STRATEGIC.

BUT, ALAS, THE EXTRACTION OF OIL STILL IS A STRATEGIC ACTIVITY, PURSUANT TO ARTICLE 28. CAN THIS MEAN TROUBLE?
THE POTENTIAL IS AS GREAT AS THE CHALLENGE

ENVIRONMENTAL, HEALTH AND SECURITY. WHO WILL LAY THE GROUND RULES?

PUBLIC SECURITY. INTERFERENCE OF ORGANIZED CRIME. FUEL AND CONDENSATE THEFT.

RIGHTS OF THE INDIGENOUS. OBLIGATION TO CONSULT WITH COMMUNITIES PURSUANT TO INTERNATIONAL AGREEMENTS.

WIDENED LEGAL STANDING FOR CONSTITUTIONAL LITIGATION.

AND MANY MORE!
THANK YOU!

Miriam.grunstein@cide.edu

¡Gracias!