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[9] Jeffrey Sachs is an economist, professor, and director of the Earth Institute at New York's Columbia University.

[10] Geologist and founder of the Association for the Study of Peak Oil and Gas.

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Pemex-PMI: A Black Hole

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Germán Romero/Cuartoscuro.com

This article is directed at each and every reader interested in understanding how Pemex, a company that belongs to all Mexicans, operates, what interests it benefits, and what to do with it.

Energy in 1938 and 2012

Mexican Petroleum (Pemex) is the powerful Mexican company that emerged from the expropriation of British oil companies on March 18, 1938. It has historically been managed by a technocracy appointed by each federal administration, and in recent decades, it has been subordinated to the world's oil mecca controlled from Washington and Houston, based on the February 1995 accords that mortgaged Pemex for US$52 billion given to the Mexican government. Since then, Pemex operations have been opaque, effected via agreements to satisfy concrete interests of multinational companies until today, when it is close to collapse.

The big discoveries of crude oil and gas from the Mesozoic era in Chiapas-Tabasco and the Campeche Sound in the late 1960s, when crude was being imported, grew Pemex to a historic maximum unequaled until today. This made it one

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As part of the process of privatizing Pemex, in 1989 the PMI-Comercio Internacional Group was constituted to handle Pemex's imports and exports of crude and its derivatives.

of the world's most important oil companies and by far the largest in Latin America. We should remember that those important deposits were discovered through exploration done entirely by Pemex with Mexican resources because of the U.S. boycott in retaliation for the republican action of expropriating our oil resources.

The ominous unconstitutionality of Pemex's current operations is characterized by chaotic commercialization of crude oil, gas, gasoline, and petrochemicals managed by a group of companies called PMI, S.A. de C.V. In this context, the black market in refined products grows daily through the theft of gasoline, lubricants, and diesel, turbo, and jet fuels produced by Pemex-Refinación (Pemex Refining). Another form the black market takes is the contraband in raw materials used to adulterate the products and increase their volume. In addition, irregular establishments engaging in clandestine sale of these products have also proliferated, although they are also sold through legal gasoline franchises. Given the increases in gas and diesel fuel prices, car owners, truckers, and industrialists resort more and more to stolen or adulterated fuels. Official Pemex distributors reveal how this black market is promoted from inside the para-state company itself.

The Modernization of Pemex

The so-called modernization and restructuring of Pemex and the government energy sector under the guidance of the McKinsey Company and others consist essentially of the privatization of the oil and electricity industries via consulting firms and contracts with multinational companies controlled from Houston. Pemex has not repeated the feat of discovering reserves as important as the historic ones, but it has been subjected to drastic reforms that have led to the export of almost a million and a half barrels a day of crude to the United States, sales controlled by PMI-Comercio Internacional, S.A. de C.V. (PMI-International Trade). This crude is not refined in Mexico to produce gasoline; rather, there has been a rapid growth in the importation of gasoline from the United States: almost half a million barrels a day. In addition, every day one billion cubic feet of gas is imported into our country by Repsol: this is equivalent to half the consumption of foreign companies operating in Mexico, including the gas imported for the Federal Electricity Commission (CFE).[1]

Contracts and Article 27

In 2008, the efforts to legalize contracts with private companies together with other oil practices outside constitutional stipulations made it possible to advance President Felipe Calderón's bill to make them into law up until April 8, shortly before the close of the congressional session. The problem holding up previous similar bills is Article 27 of the Constitution. Together with Articles 25, 26, and 28, this document is absolutely clear about the ownership of our oil being in the hands of the Mexican people, under the guidance of the nation, and that that ownership is direct, unalienable, and not subject to any statute of limitations. This means that the Constitution puts Pemex in charge of all activities related to exploration and exploitation, comprehensively and to the exclusion of all others.

We should remember that the 1917 Querétaro Constitutional Congress approved Article 27, which made it possible to demand public ownership of our oil resources. The article in question attributes exclusive original ownership of all lands and waters inside the national boundaries to the nation itself, as well as the principle of the direct and unalienable domain without any statute of limitations by the nation over all natural resources in the subsoil. This legal epic tale led the oil companies to refuse to recognize Mexico's 1917 Constitution. The United States did not recognize the administration of Venustiano Carranza or subsequent ones as long as Article 27 remained intact, and at the same time inflicted an international boycott against Pemex.

Shortly thereafter, the U.S. government negotiated the Bucareli Accords with Álvaro Obregón in 1923; and in 1925, the legislators passed the Regulatory Legislation for Article 27 of the Constitution for the oil sector, recognizing rights of international companies to oil, based on the principle of the Constitution not being retroactive, which is what the Bucareli Treaties stipulate.

The pressure from foreign companies under the protection of different U.S. administrations has not stopped. A letter

from Under-secretary of State for Latin American Affairs Spruille Baden to his boss, Secretary of State Walter Thruston, avows that the oil companies have finally seen the moment of returning triumphantly to Mexico; that the State Department has no preference for any of them, since it only wants their return to be astute and cautious because Mexicans would probably place great importance on keeping up appearances; nevertheless, the Mexican government is obligated to respect the rule of law and protect the sub-soil, which is the property of the nation; and if the oil companies participated in developing the industry, it would have to be through contracts, so that the Mexican government can avoid giving the impression that concessions are being given to foreign interests. Though this anecdote dates from 1946, it is surprisingly current.[2]

The results of the ominous seven Senate decrees and new unconstitutional laws passed in October 2008, after 10 months of debate, jibes perfectly with the 1946 observation.

PMI-Comercio Internacional, considered a private company, is not required to give an account of its actions.

This energy reform opened the door even wider to the foreign firms, attempting a simulation of the government maintaining control and that it was not granting unconstitutional concessions. The discourse in the new laws does not cancel the advance of the intention of other privatization projects, publicized as "modernizing," but with the clear intention of convincing those who do not understand —or prefer not to understand— to move toward another, more profound reform that is on the agenda.

As part of the process of privatizing Pemex, long in the works since the first reclassification of petrochemical products in 1986, on May 24, 1989 the PMI-Comercio Internacional Group was constituted as a company with majority government ownership. Its aim was to be Pemex's trade branch in the international market; it handles Pemex's imports and exports of crude and its derivatives. Seven companies were created and granted initial licenses: PMI Services, BV (Netherlands); PMI Holdings, BV (Netherlands); PMI Holdings, NV (Dutch Antilles, now in Spain); PMI Comercio Internacional, S.A. de C.V. (Mexico); Pemex Capital, Inc. (Delaware, U.S.); Kot Insurance Company, AG (Bermuda, now in Switzerland); and III Services, S.A. de C.V. (Mexico). Outstanding among these is PMI-Comercio Internacional, since its authorization was signed directly by Ernesto Zedillo Ponce de León, former minister of programming and the budget under the administration of President Carlos Salinas de Gortari, May 23, 1989.

In the name of the president, Zedillo backed Pemex's request to create the "private company" PMI-Comercio Internacional; due to this, it is not required to give an account of its actions, which puts it outside the law, as confirmed by the Federal Auditor's Office in its audit of public accounts for the years 2003 to 2006. Pemex itself has told the Federal Institute for Access to Public Government Information (IFAI) that PMI is not its subsidiary, although its offices occupy several floors of Pemex's headquarters office building. What is more, when review 299/08 presented against Pemex was underway, the company stated, "Because of its legal origin, Petróleos Mexicanos and [its] subsidiaries have the dual nature of public bodies and private persons, and in the latter case, they act in the same manner as any private individual." What is more, what is today known as Grupo PMI, S.A. de C.V. functions with different companies that use those initials in their names: PMI Trading, Ltd.; PMI Norteamérica, S.A. de C.V.; PMI Holdings Petróleos España, SL; PMI Holdings, BV; PMI Services North America, Inc.; PMI Pemex Services Europe, Ltd.; PMI Pemex Internacional España, S.A.; PMI Services, BV; PMI Holdings North America, Inc.; and PMI Marine, Ltd. The companies in this group are also directly or indirectly owned by Petróleos Mexicanos, although they do not give an accounting of their actions. Auditor Arturo González de Aragón testified before the Senate on July 17, 2008, "Opacity, complexity, and confusion were found in Pemex's investments in national and foreign firms' stocks, which have multiple ends; 21 of them are not transparent; they do not account for themselves, and their results are not sufficiently revealed in federal public accounts."

The unconstitutionality is manifest, and the murkiness regarding international oil earnings and expenditures is complete, similar to the way organized crime operates, making this a veritable black hole.

WHERE NOW?

We must recognize that a reform to make Pemex-PMI's transactions transparent in accordance with the law is urgent;

also, it must create an administrative structure that puts an end to the uncontrollable financial speculation amidst which it functions. Our time is clearly characterized by the replacement of the generalized use of highly polluting fossil fuels —the oil of the twentieth century and the coal of the nineteenth— with alternative energy sources, like solar and wind power, now in development. Pemex and the CFE have been excluded from these modern forms of business, which has meant that they are confined and subordinated to the transnational corporations that get the most profitable contracts in the world and thus capture most of the oil rent. Nuclear-electrical plants, presented as alternatives, are also obsolete and highly dangerous, since they emerged during the Cold War to simultaneously produce electricity and plutonium for weapons.[3]

Pemex and the CFE could have a promising future in producing solar energy. They should be restructured to make them modern, active companies, in Mexico's energy transition toward solar and wind power —the old windmills renovated— that we could even export to the countries of the North. The manifestly unconstitutional laws must be repealed and both companies given the independent management they require. VM

NOTES

[1] Last year, the CFE paid out almost Mex$200 billion to 22 private firms, mostly transnationals, with whom it has signed 25-year contracts for the generation of electricity. This is just the payment for the purchase of energy from these private firms. In addition, it had to spend Mex$88 trillion to comply with a contingency clause that commits it to assuming the cost of the risks that could prevent the so-called "independent producers" from fulfilling their contractual obligations. This is, in fact, the reestablishment of the colonial model.

[2] Miguel Alemán Valdés, *La verdad del petróleo en México* (Mexico City: Pemex, 1988), p. 482.

[3] Today, the 500-ton stockpile of separated plutonium is sufficient to make 100 000 nuclear weapons. In 1994, the U.S. Academy of Sciences stated that this material represented a clear danger for national and international security, and since then, no technology has been developed capable of dissolving plutonium, which continues to accumulate as a waste product that puts environmental health, and therefore, human health, at risk.

The Energy Agenda for The 2012-2018 Administration[1]

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The rumor has been spreading that the legislature will pass a new energy reform soon, perhaps even before December 1, when the new president is slated to take office. That was Enrique Peña Nieto's campaign pledge that made the biggest impact in the foreign media; however, the national political situation and the complexity of the task will make it difficult to implement, above all because no consensus exists about the details.[2]

The programatic proposals disseminated until now call for major surgery: for example, the proposal to make Pemex a government corporation registered on the stock market; the adoption of a regime of concessions for the drilling and pumping of oil, gas, and shale oil and gas; a constitutional reform of Article 27 that, once approved, could immediately be followed with a change in the article's regulatory legislation; and strategic alliances and what is involved in the many "good contracts" signed over by Pemex for oil production, but also to all those activities opened up to private participation.

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