

INTER-AMERICAN HYDROCARBON REGULATORS CONFERENCE

Inventory of issues

THE INTERAMERICAN HYDROCARBON REGULATORS CONFERENCE, held at the campus of the University of Houston on October 7, 2016, featured panels on Brazil, Mexico and Colombia, plus an initial presentation by David Porter, the commissioner-chairman of the Railroad Commission of Texas.

The organization of the conference around countries (plus Texas) meant that each panel was a silo of discussion about the conditions prevailing within a given panelist’s jurisdiction. Observations about the situation in a neighboring jurisdiction were few.

Commissioner Porter described the unitary structure of his organization, noting that upstream and midstream issues were regulated by a single body.

The panel on Brazil treated diverse topics, from the change of presidents to the use of national content in public contracts. Panelists from Mexico mainly discussed the need for transparency in the behavior of regulators and participants in public auctions. The Colombia panel discussion focused on the challenges of dealing with indigenous communities.

In this report, while paying particular attention to the Mexico panel, we seek to extract common, inter-American themes from the presentations and remarks of panelists, speakers and members of the audience. We identify ten themes that are relevant to hydrocarbon operations from the North Slope to Tierra del Fuego:

- ✓ Safety, legal and regulatory regimes
- ✓ Farmouts
- ✓ Biddable variable in upstream auctions
- ✓ Farmouts
- ✓ Market design
- ✓ Rights of local communities
- ✓ National content
- ✓ Regulatory transparency
- ✓ Legal and regulatory stability
- ✓ Regulatory balance and efficiency



Contents	
INTRODUCTION	2
DISCUSSION	3
DAVID PORTER, RAILROAD COMMISSION OF TEXAS	3
THEMES OF AN INTER-AMERICAN DIALOGUE	3
Environmental and industrial safety regime	3
Legal and regulatory regime	4
Farmouts	5
Market design	5
Rights of local communities	6
National content	6
Regulatory transparency	7
Legal and regulatory stability	8
Regulatory balance and efficiency	9
OBSERVATIONS	9
CONCLUSIONS	10
APPENDED MATTER	12
Exhibit A: Conference program	12
About this report	11
Additional reading	13

MEXICO ENERGY INTELLIGENCE® is a digital publication, with editorial offices in Houston, that provides reports on the political, legal and institutional environment of Mexico’s energy sector. Subscribers are companies in the oil and gas and power industries and their regulators, also law firms, management consultancies, embassies and university libraries. Reports are distributed principally on a subscription basis. Contact info@energia.com

INTER-AMERICAN HYDROCARBON REGULATORS CONFERENCE

Inventory of Issues

INTRODUCTION

IN VIEW OF THE DIPLOMATIC RESET IN U.S-CUBAN RELATIONS, political and commercial changes in Brazil, the downward spiral of democratic rule, private investment and oil production in Venezuela and the offering of offshore hydrocarbon leases by Mexico, the moment is propitious for a discussion of the issues, similarities and differences in hydrocarbon regimes in the Americas.

The conference that took place on October 7, 2016 at the University of Houston was advertised as the “First Inter-American Hydrocarbon Regulators Dialogue.”

The scope of the program (Exhibit A) was broader than those at meetings of the International Regulators Forum,¹

at which only offshore regulators and presenters are invited (see insert, above). The Houston conference also featured regulators from the midstream as well as representatives from private industry, academia and the public.

On the program were commissioners from the Texas hydrocarbon regulator, Mexico’s National Hydrocarbon Commission (CNH) and Energy Regulatory Commission (CRE). From Brazil, the director of the National Petroleum Agency (ANP).

The luncheon keynote speaker was a professor at the University’s Law Center, Jacqueline L. Weaver, who offered a reassessment of the role of the regulator in the aftermath of the Macondo incident of 2010.

There were upwards of fifty members of the audience.



¹ <http://www.irffshoresafety.com/about/>. The charter specifies that English will be the official language of the organization and its programs.

DISCUSSION

IN THIS SECTION, we shall initially refer to comments by the chairman of the Texas state hydrocarbon regulator. The remainder of the discussion is organized around topics that are relevant in a comparative analysis of hydrocarbon regimes in the Americas. As mentioned, except for Texas, the panels were dedicated to countries, not to themes. Our identification and discussion of themes draws from all four of the panels as well as the luncheon keynote speech.

DAVID PORTER, RAILROAD COMMISSION OF TEXAS

Mr. Porter introduced the mission and organization of the Texas Railroad Commission (RRC). He noted that annually it receives delegations of regulators and elected officials from around the world who would want to better understand its structure and philosophy of regulation. He mentioned that the Commission is organized into divisions: one for exploration and production, another for pipelines and a third for safety, among others.

When asked in the Q&A to compare the Commission's unified structure with the decentralized structure found in other jurisdictions (Mexico's, for example) he replied that the unified structure allowed for better, more efficient regulatory processes. On average, he boasted, his agency approves an application for a drilling permit within three days.

He opined that "Mexico made a mistake" in having separate regulatory agencies for different segments and functions of the oil industry.

THEMES OF AN INTER-AMERICAN DIALOGUE

The topics that have been selected for comment in this section were discussed or touched on during the conference.

Environmental and industrial safety regime

There are three hydrocarbon safety regimes in the Americas that have come into prominence. Two of these were driven by BP's Gulf of Mexico Macondo oil spill of 2010, while a third emerged in response to the challenges of permitting and development of unconventional resources.

1. Safety and Environmental Management System (SEMS), in which each operator and service company is required to devise a local, self-correcting safety regime, one that is subject to auditing by third parties.
2. Safety Case, in which each operator and service company is required to demonstrate to authorities that it has identified salient risks and has in place measures to lower risk and mitigate safety and environmental damage should an incident occur.

FIRST INTER-AMERICAN HYDROCARBON REGULATORS DIALOGUE HOUSTON, OCTOBER 7, 2016



8:00 a.m. Registration

8:30 a.m. - 10 a.m. **First Panel: Dealing with Drilling Permits and Completions**

Panel led by Chairman David Porter, Railroad Commission of Texas (Texas RRC)

- Compliance with industry practices
- Regulation of contingency plans

10:00 a.m. - 10:30 a.m. Break

10:30 a.m. - 12 p.m. **Second Panel: Dealing with Legal and Social Issues in Colombia Regulatory Practice**

Panel led by President Orlando Velandía, Colombian National Hydrocarbons Agency (ANH)

- Procedures for prior consent based on Colombia law and industry practices
- Negotiation with indigenous groups and applicable rules

12 p.m. - 1:00 p.m. **Lunch and Keynote Presentation: The Role of the Regulator by Professor Jacqueline L. Weaver**
- New Legal Developments in the Legal Regime for Regulators

1:30 p.m. - 3:00 p.m. **Third Panel: Mexican Transparency Regulations in the Oil and Gas Sector**

Panel led by Comisionado Sergio Pimentel, Mexico National Hydrocarbons Commission (CNH)

- Applicable law for the preparation of transparent and efficient bid rounds
- The practice of transparency

3:00 p.m. - 3:30 p.m. Break

3:30 p.m. - 5:00 p.m. **Fourth Panel: The Promotion of Investments by the National Regulator**

Panel led by Director José Gutman, Brazilian Petroleum Agency (ANP)

- Creation of regulatory incentives for petroleum investments
- The role of international investment treaties promoting investments

5:00 p.m. Closing remarks

Panel members will be from national hydrocarbon regulators agencies, industry and academia.



Additional reading

UNIVERSITY of
HOUSTON
LAW CENTER
Environment, Energy & Natural Resources Center

**FIRST INTER-AMERICAN
HYDROCARBON REGULATORS DIALOGUE
FRIDAY, OCTOBER 7, 2016**



With the participation of:
The Brazilian Petroleum Agency (ANP); the National Hydrocarbons Agency of Colombia (ANH); the National Commission of Hydrocarbons of Mexico (CNH); and the Railroad Commission of Texas (Texas RRC).

Keynote Presentation: The Role of the Regulator by Professor Jacqueline L. Weaver

With support of:
UNIVERSITY of **HOUSTON** | LAW CENTER
Center for U.S. and Mexican Law

Friday, October 7, 2016
UH Hilton Hotel, University of Houston 4800 Calhoun Rd, Houston, TX 77004
Entrance 1, University of Houston, parking available in hotel underground garage
8:00 am - 5:00 pm

Year	Topic	File #	Pages	Chart
2016				
Sep 26, 16	Deconstructing Minister Coldwell: Keynote Speaker at Rice University's Baker Institute	819	15	0
	At a conference on Mexico's Energy Reform that was held on September 23, Energy Minister Pedro Joaquín Coldwell was the keynote speaker. This report focuses on his remarks on upstream topics, including the migration of Pemex contracts, the Trión auction and Round 1.4 and Round 2. The minister spoke about durability of the reform were a administration to come to office that was opposed to the role of private capital in the oil and electricity sectors. The report finds that there would be numerous ways for a new administration to disrupt the energy reform without changing laws or the constitution.			
Aug 24, 16	Trión Auction: Problematic Issues	816	11	0
	This report draws on our critiques of the government's bidding protocols for the three auctions of Round 1 held in 2015. The report identifies risks for the several stakeholders in the Trión auction: the government, Pemex and prospective bidders. In the second part of the discussion, we offer ideas for how to improve the process of partner selection.			

MEXICO ENERGY INTELLIGENCE® (MEI) is a commercial and policy research and advisory service offered by BAKER & ASSOCIATES, ENERGY CONSULTANTS, a management consultancy based in Houston. MEI reports facilitate two-way communication between Mexican public and private institutions and the global environment. Our reports examine policy, institutional and cultural issues as they affect the operating environment, energy regulation, and government and private investment in Mexico's energy sector. Reports are distributed principally on a subscription basis. Energia.com contains reports, title lists, calendar postings and interviews with stakeholders and observers that are made available as a public service.



Additional reading

Year	Topic	File #	Pages	Chart
Feb 18, 16	Mexico's Upstream Reform in 2015 <p>In this report, 26 elements of the Energy Reform of 2013-14 are selected for scoring on a 5-point scale of value creation, where 5 = strong value creation and 1 = severe value destruction. Each element is scored twice, once for political value, second for commercial value. With few exceptions, political values were higher than commercial ones for any given element of the energy reform. This discrepancy is interpreted as the principal reason why in the three bid rounds of 2015, no major American oil company chose to compete. Bid Round 1.4 is seen as the test of whether the government has taken corrective measures.</p>	803	6	6
<hr/>				
2015				
Nov 18, 15	Suitability and Safety in CNH Guidelines: Regulatory concerns <p>This report provides a translated set of 50 terms found in the definitions and text of the CNH Guidelines that were published on Nov. 13, 2015. The report calls attention to one term, idoneidad (suitability), which appears in reference a decision to be taken by the Commission regarding the exploration and development plans of an operator.</p>	1000082	4	1
Jul 14, 15	Zero CNH Discretionality: The Counter-Arguments <p>A week before the CNH auction scheduled for July 15 for awarding blocks for 14 shallow-water fields, Energy Secretary Pedro Joaquín briefed the press on what to expect during the day. Emphasis was given to the transparency of the process, evidenced by a policy of "zero discretionality" and by the participation of multiple government agencies, as if to suggest that a system of checks and balances was in place. This report sets forth counter-arguments that support giving the Hydrocarbon Commission (CNH) discretionality in determining the best offer in each case.</p>	1000075	6	3
Mar 09, 15	CNH in 2015: Scenario Analysis (Update of Market Note 077) <p>In January 2011, at the suggestion of a commissioner, we prepared a scenario analysis of how the CNH might look at year-end 2015. We visualized four scenarios, in two of which the agency is marginalized, a third in an ambiguous status quo, and a fourth as an independent regulator. Moving the clock forward 4 years, we now ask about the CNH's future today.</p>	1000067	5	4



Additional reading

Year	Topic	File #	Pages	Chart
<hr/>				
2012				
May 26, 12	FCPA Risk in Mexico (Part II): Wal-Mart vs. Sempra	100127	30	7
	<p>This report is a follow-up of an earlier report on FCPA risks in Mexico, published July 23, 2011. In that report we examined diverse risks as seen in the stories of Metalclad, Marathon Oil and Sempra Energy in Mexico. In this report, we examine, comparatively, the allegations of illicit payments in Mexico made by Wal-Mart and Sempra. At the same time, we reexamine the discussion among economists about the efficiency of corruption as a mechanism that promotes economic development.</p>			
<hr/>				
2010				
Dec 21, 10	Juniors in Mexico's Oil Sector: Are They Quick Learners?	100060	7	2
	<p>This report examines the sociological cohort of the English-speaking graduates of public and private universities outside of Mexico (often with degrees in economics) who come to occupy mid- and senior-level positions in the public sector in Mexico. Table 1 is a list of illustrative names of persons in this cohort, sorted by the career of the parent or ancestor who branded the family name as a member of the ruling class.</p>			
<hr/>				
2004				
May 25, 04	The risk of virtual expropriation: Metalclad and Marathon Oil	673	9	5
	<p>This report examines the risk to investors in infrastructure projects in Mexico from indirect or regulatory expropriation. The cases heard in the first ten years of NAFTA leave serious doubts about the remedies available under its Chapter 11. This report examines two virtual expropriations: that of Metalclad Corp. in 1997 and that of Marathon Oil in 2004. Two questions are asked: What went wrong? and What are the lessons?</p>			



BAKER & ASSOCIATES, ENERGY CONSULTANTS

*Management consulting
Industry, policy and regulatory reports*

A management briefing is available on the topics covered in this report.

(832) 434-3928 (text/cell)

Mailing Address:

Box 271506

Houston TX 77277-1506

*To learn about our reporting,
consult the title lists, by year or category, on
<http://www.energia.com>, or write to us at*

info@energia.com