

September 4, 1953

Thank you for your letter of the 18th ultimo and for the copy of your letter to Mr. Maryssael dated the 21st ultimo.

I am glad you wrote me so frankly because it is apparent from your letter that there are certain fundamental differences in point of view which exist between us which I shall endeavor to clarify.

In the first place I cannot agree with your view that an increase in the funded indebtedness of the Company involves a change in its ownership. It is not customary for loan capital, of the kind you refer to, to carry with it any voting rights. This absence of participation in control is no mere accidental omission; the type of investor who accepts the security of bonded indebtedness deliberately refrains from assuming any responsibility for the conduct and management of the affairs of the Company, except when his security is threatened. It is for this very reason that the World Bank as a matter of principle declines to have any representation on the Board of the companies to which it lends money.

The acquisition of common shares of the Company by United States and Canadian interest to which you refer is, of course, very different from an alteration of the funded indebtedness and does involve a change in the character of the ownership of the Company. As you rightly say, the several investment houses which have taken a position in Mexlight securities are not interested in the Company but in the share business. Sofina, on the other hand, has been identified with the Company for a great many years and has been concerned to render it every possible assistance so that it can play an important part in the network of public utility undertakings which have been established by Sofina over the past fifty years. As you concede at the outset of your letter its "actuation in connection with Mexlight has been constructive and helpful" and I hope this will always be the case. Fortunately, therefore, for Mexlight, so long as Sofina retains its interest in the Company it will be able to prevent its exploitation by financial interests unfamiliar and unconcerned with the

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historical background of the Company and its plans for the future. It seems to me, therefore, that far from weakening the ties which exist between Sofina and Mexlight this trend towards change of ownership should serve to strengthen their relationship. This protection should give the management of the Company confidence in their ability to pursue to a successful conclusion all the difficult and important developments they contemplate in the future.

So much for some of the background of your letter and now I want to refer to the service contract between Mexlight and Sofina which is the real issue involved. First, let me point out that just as the service contract is not worth a penny to Sofina if Mexlight cannot operate properly with an assured future, so the investment by Sofina in the form of bonds and shares in Mexlight is worthless without that satisfactory operation. I just cannot understand your feeling that as the Company starts to pay dividends consideration should be given to the termination of the service contract. It seems to me that there is no connection whatsoever between the two things and I cannot accept the inference that the service contract is some sort of compensation to Sofina for the inability of Mexlight to pay a dividend on its preferred and ordinary shares for a number of years. The fees paid to Sofina under the service contract have been for the very real and important contribution it has made to the development of Mexlight during the years in question and until now I have never heard the value of these services questioned. As I see it, the service contract will continue so long as Mexlight requires these services and Sofina is able to provide them on a fair and proper basis and the question as to whether or not Mexlight is able to pay a dividend will in no way influence the situation.

I also do not understand why, after acknowledging that the relations between Sofina and Mexlight through the service contract have been correct and helpful, you should think it fortunate that so far no shareholders have asked about the service contract. The only basis upon which the contract could be open to criticism would be if the terms were not fair and reasonable and despite all you say in your letter I cannot believe that you think that this is the case here. The contract has been approved by the World Bank after full consideration and surely the very fact that no criticism has been made by any of the shareholders over the years despite Sofina's special position as a shareholder must be some indication to you that it is in fact a fair and proper arrangement. I am completely undisturbed by the possibility of an unjustified attack either from a share-

holder or from any other source and I am sure Sofina would not allow that factor to influence its judgement in any way.

So many irrelevant considerations have now entered into the picture that I think it important to remind you that, until an amendment to the Mexican fiscal laws effective as from the 1st January 1951 raised the question of a possible liability for Mexican taxes on income arising from the Service Contract, there was no suggestion that the contract was operating unfairly in any way. That being so the only real question we have to consider is what adjustments are necessary to the Service Contract as a result of the impact of Mexican taxation. In your letter you referred to the Resolution of the Board of Directors of Mexlight at a meeting held on the 10th December 1947, at which meeting the Service Contract was originally adopted and I think it would be well for me to set out the terms of that Resolution. It stipulated that

" The agreement should not provide that Sofina's
 " remunerations thereunder would be free of any tax im-
 " posed in Canada or Mexico, but on the other hand that
 " the matter of Sofina's remunerations under the said
 " agreement would be reconsidered in the event that
 " Sofina's remunerations thereunder were ever to become
 " subject to taxation in Mexico. "

I think you must be under a misapprehension when you say Sofina contend that at the time the contract was entered into Mexlight agreed to pay any taxes which might fall on Sofina in connection with the contract, because so far as I am aware no one in Sofina has ever made that suggestion. As I understand the Resolution it means not that Mexlight should be called upon to bear all the Mexican taxes which may be imposed nor on the other hand that Sofina should have to accept complete responsibility for those taxes, but that in the event of the impact of Mexican taxation, the position would have to be reconsidered with a view to arriving at a fair and reasonable settlement between the parties. That surely is precisely what we should endeavor to do and I don't think that the introduction of extraneous circumstances however important they may be can assist us in reaching a proper solution.

Whatever may have been the situation prior to December 1952, when Mr. Brosens visited you in Mexico, he did make it perfectly clear at that time that he was in agreement with your contention that the fees under the Service Contract must be entered in your books in Mexico and that in consequence Sofina must become liable for Mexican taxes. I have seen nothing in the correspondence subsequent to that date indicating a reversal of that attitude on the part of Sofina.

Mr. Maryssael will have told you the result of the recent discussions which took place here from which it appears that the groundwork has been laid for a new contract to become effective on the 1st January 1954, but the final details of that contract cannot be agreed until Sofina has ascertained its precise tax position in Mexico through independent advice obtained on the spot by a representative of Sofina. I must remind you, however, that the fees charged by Sofina under the Service Contract have always been exceedingly reasonable, consequently its ability to absorb any Mexican taxes is limited.

I am sorry that so many misunderstandings have surrounded what really is a rather simple problem and I regret not so much that Mexlight thought fit to give notice terminating the existing contract whilst negotiations for the new contract were already pending, but the manner in which it was done. I think that the Directors of the Company were at least entitled to have prior notice of the intention of the Management to propose a resolution terminating what after all is quite an important contract for both companies, and the absence of this item from the agenda of the meeting at which the resolution was passed, is something which I find it difficult to understand. As you know I had every intention of attending the meeting but was prevented from doing so due to a strong attack of virus. I think you might have told me of your intentions with regard to the Service Contract, particularly having regard to the absence of this item from the agenda. If the terms outlined in the communication from Sofina dated the 6th March 1953 were unacceptable to you I think it would have been much better for you to reply to it with any counter proposals you may wish to put forward rather than take what, on reflection you may agree, could only be regarded as a precipitate and unfriendly action. The fact that the relationship between Mexico and Sofina must be a purely business one does not mean it should not be pleasant and harmonious. Indeed without an atmosphere of friendship and understanding neither party can derive any real benefit from the relationship and I am glad to know that the differences and misunderstandings which have arisen over the past few months are soon to be dispelled.