

## **STRATEGY OF THE BRAZILIAN COURT OF AUDIT FOR THE EXTERNAL CONTROL OF THE REGULATION OF THE BRAZILIAN ELECTRIC SECTOR**

The privatization process and the regulatory reform that started in the 90's resulted in new institutional arrangements on the model of delivery of public services in the Brazilian infrastructure sector. The participation of private agents in the sectors of telecommunications, oil, natural gas, and electric power emerged as an answer to pressures from the international movement to reduce the role of the State as the direct provider of assets and services.

The regulatory agencies created in this new institutional arrangement were given a high degree of autonomy to implement public policies, with credibility, in order to grant stability to the regulatory framework. In turn, the independence of the agencies represents a greater possibility of capture by the regulatory body or by specific groups of consumers, in detriment of the regulatory principles of equity, productive efficiency, and allocative efficiency, which requires a strong of governmental accountability system. In the democratic republican regimes, the delegation of powers that aims at guaranteeing the independence of the administrative agents, mandatorily requires an adequate rendering of accounts regarding the use of these powers in order to balance strengths.

The Brazilian Court of Audit-TCU (the Brazilian Supreme audit institution-SAI) has followed, very closely, all the reform cycle of the State in the area of infraestrutura, issuing opinions on all the processes of privatization and on the granting of public services concession, as well as following the state regulation and the execution of these grants, in order to guarantee the necessary transparency and accountability to the regulatory processes.

The arguments and the facts about regulatory reform and energy management in Brazil in the last decade may lead to the conclusion that the regulatory reform defied, in many ways, the institutionalized practices regarding management of public policies on power and on sector regulation, those that may be systematized, as **lessons and alternatives** of action for the improvement of public management:

- **The Segregation of roles and inter-institutional coordination is the prime factor for meeting energy public policies objectives.** With the creation in 2005 of sector regulatory agencies in charge of improving the public policies and with the reformulation of the sector after the energy crisis of 2001, a favorable environment was created for the expansion of the electric sector since the roles of formulation of public policies by the MME's (Energy Sector Ministry), elaboration of projects by the Company of Energetic Research (national company responsible for the energy projects), and the role of implementation and regulation by ANEEL (Brazilian national regulatory energy agency) became clear. However, those who formulate sectors policies still lack structure and operational and technical capacities, because the creation of regulatory agencies reduced the technical mandates of the ministries. Another fact that deserves highlighting is the need to guarantee greater inter-institutional coordination among the different formulators of public policies and regulatory agencies, mainly in relation to environmental aspects. In fact, Brazil still needs an integrated environment policy, because planning in the electric sector and in the environmental area of this Country is carried out in an unorganized way.

- **Tariff modicity should be an objective to be prioritized by independent sector regulatory bodies.** In the Brazilian case, there was the creation of mechanisms of appropriation of productivity gains for the consumer, based on tariff reviews in the distribution and transmission of electric power, as well as the improvement of economic feasibility studies in the process of transmission granting and power generation. Thus, it is necessary to strengthen the agencies in economic regulation with adequate capacity building of the technical body. Besides, adequate treatment should be given to the information asymmetry problems.

- **The quality of the services rendered derives from an effective action of the regulatory organs.** The creation of an independent agency to regulate the quality of the services, favors the construction and follow-up of Indicators, the inspection of services, and the appropriate application of sanctions for breaking rules. Moreover, it may provide a channel of access for the users. However, in Brazil there is still a high level of electric losses, and the follow-ups executed by TCU (Brazilian Supreme Audit Institution) in the process of tariff reviews of the electric sector indicate appropriation of high rates of electric power losses and lack of regulatory incentives for its reduction.

- **The Universal access and expansion of the supply, with adequate access and coverage, are fundamental dimensions for more equity in the delivery of power public services.** In Brazil there

was an integration of good part of the isolated systems of energy generation (specially in the Amazon regions), what has allowed greater availability of electric power for the population. Although there is a comprehensive program of social tariff of electric power, the criteria used for applying the tariff should be enhanced.

**- The processes of Rendering of Accounts, Transparency and Social Control should be constant and systemic in the regulatory regime.** In the Brazilian case, the external control performed by TCU in different occasions, mainly in the granting phase, is simultaneous legitimating the performance of the agency. In addition, control aims at verifying whether oversight of the agency is being performed appropriately regarding execution of the contract and produces information about the performance of the organs that formulate and implement the electric power public policies. In Brazil, it has also been observed a meaningful increase of transparency and social control of the regulatory processes by means of publicizing the granting processes and the creating regulations (public hearings and consultations) and in creating consumer councils. The disclosure of audit reports written by TCU promotes accountability and social control.

**- Stimulation to competition should be prioritized whenever the organization of the industry allows.** In the electric sector, many mechanisms of regulation for the efficiency of monopolist segments have been developed, such as a regulation system for incentive of remuneration in the electric power distribution sector, as well as competition observed in electric power biddings that have provided discounts to benefit the users. During follow-up of the tariff reviews of the electric sector, the Court has issued several recommendations for the improvement of such methodologies.

**- The governmental bodies involved with energy policies should excel at continuity in the execution of the service.** The regulatory environment implemented in Brazil has guaranteed more legal safety to the contracts signed, and a decrease of the risk of undue state interference in prices and tariffs.

**Environmental sustainability is a primordial factor for the success of the enterprises in the long run.** In Brazil mechanisms that manage the environmental impact of the concessions on the infrastructure sectors have been developed, such as a requirement for previous licensing as a requisite for bidding in the electric sector. However, there is an immediate need for greater coordination and

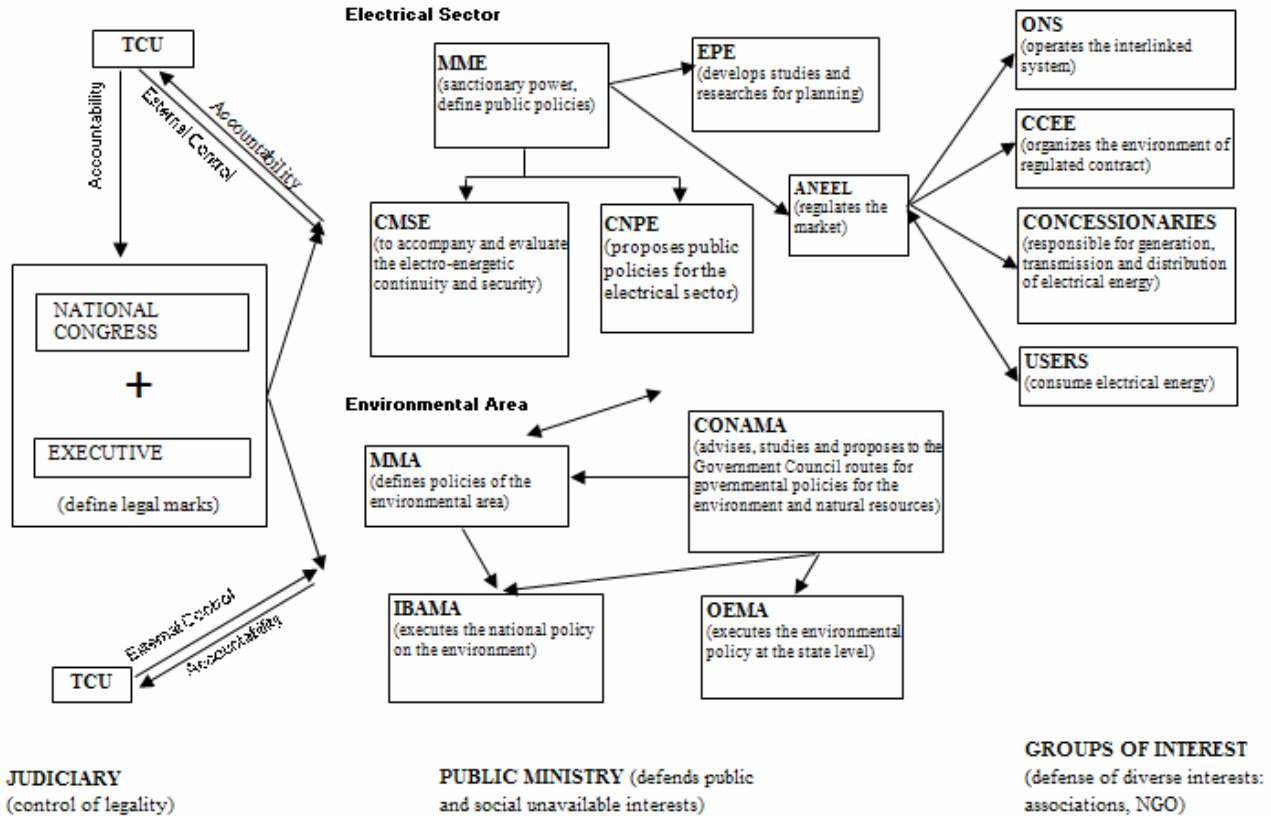
integration of the environmental policy among the different formulators and implementers of public policies.

In particular, it has been observed that the Governance of Electric Power and Environment Policies in Brazil has challenges to be faced, among which is the need to improve the processes related to these areas, as well as to improve the coordination between the policies of the Electric Power Sector and of the Environmental Area.

Thus, considering the deficiencies observed and having as parameter what is planned for the expansion of energy generation, one can observe that the restriction on the participation of hydroelectric power plants in biddings of new energy has direct impact on this expansion, as it gets far from the target set to the electric sector, bringing quantitative consequences (with impact over costs and tariffs), and also qualitative ones (such as increase on greenhouse effect gas emissions). The causes associated to the gap between what was planned and what was implemented, according to verifications, encompass from planning problems – like the restrictions on the portfolio of enterprises able to offer a bid (and to be submitted to licensing), to the lack of monitoring, evaluation and review of the actions proposed – the flaws in the licensing system – such as regulatory gaps, lack of standardization of procedures, and no evaluation of greenhouse effect gas emissions of the electric sector.

It is necessary to highlight the advancements sponsored by the Federal Sphere, as a return to planning by the electric sector, through the Company of Energy Research, and the existing norms for environmental licensing of hydroelectric enterprises, through Ibama (National Environmental Agency) Norm No. 065/2005. Although the progress is meaningful, the difficulties to be faced with the eventual maintenance of participation restriction on hydroelectric power plants in bidding for new energy instigate the need for improving these processes. Thus, the recommendations that result from performance audit TCU is conducting, submitted to the Minister-Reporter, have the special virtue of improving the implementation of the electric matrix, influencing, mostly, the achievement of what is planned in the Decennial Plan of Expansion of Electric Power, and in the other related public policies issued by the Federal Government, among which is the Environment National Policy , and the Brazilian commitment of reducing greenhouse effect gas emissions.

**Tables and Graphs**



Graph 1 Roles of the different Actors of the Governance of the Electric Power and Environmental Sectors, Sectors Agents, Electric power users, groups of interest, Judiciary Power, Public Prosecution Service and Brazilian Court of Audit.

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