

# Internal rule no. 43, July 3<sup>th</sup>, 2002

**Establishes rules for the Brazilian Court of Audit to monitor the cases of periodic tariff review regarding contracts of concession of electricity distribution services.**

**T**HE BRAZILIAN COURT OF AUDIT, using its constitutional, legal and internal mandates;

Considering the power granted to it by article 3, of Law no. 8.443, of 16 July 1992;

Considering its mandate to carry out performance audits of institutions belonging to the direct and indirect public administration, according to article 71, item IV, of the Federal Constitution;

Considering the public power's mission to deliver public services, directly or under the regime of concession or permission, according to the provisions of article 175, of the Federal Constitution and relevant legal norms;

Considering the mandate of the Union to explore direct or indirectly electricity services and facilities, according to article 21, item XII, "b", of the Federal Constitution;

Considering the provisions of article 11 of Internal Rule no. 27, of 02 December 1998, regarding monitoring by the Brazilian Court of Audit of the fulfillment of the concession contracts, decides to:

## **CHAPTER 1 PRELIMINARY PROVISIONS**

Article 1. It is the duty of the Brazilian Court of Audit to monitor, through all phases, the cases of periodic tariff review related to the contracts of concession of electricity distribution services, carried out by the regulating agency of the electrical sector.

Paragraph 1. For the purposes of the provisions of this Internal Rule, the following definitions will be followed:

I – periodic tariff review: review of contract which consists in:

a) repositioning the tariffs of electricity supply to a level that is compatible with the conservation of the economic-financial balance of the concession contract;

**B** b) definition of the X factor, that will be applied to the subsequent tariff readjustments, with the objective of sharing productivity profits with the consumers.

II – tariff repositioning: redefinition of the level of electricity tariffs of the concessionaire, considering the relation between the required revenue and the revenue verified, besides other revenues that contribute to low tariffs, with the purpose of preserving the economic-financial balance of the contract;

III – X factor: percent coefficient to be applied to the variation index of the inflation that readjusts the installment of manageable costs of the parametric formula used for calculating the Tariff Readjustment Index – IRT, when annual tariff readjustments occur in between the periodic reviews; it represents sharing the estimated productivity profits among the concessionaires and the consumers;

IV – contractual date for tariff review: a date in the concession contract establishing when the tariff repositioning and the X factor will go into effect;

V – public hearing: a public event open to the participation of the interested parties, where the regulating agency presents the periodic tariff review proposal and the tariff restructuring proposal, which is designed to obtain additional subsidy and information for the improvement of these two processes.



## CHAPTER 2

### OVERSIGHT OF THE PERIODIC TARIFF REVIEW PROCESS

#### SECTION 1

##### PRELIMINARY EXAMINATION

Article 2. Oversight of the periodic tariff review processes will be supported by a preliminary examination carried out by the technical unit, by studies and procedures that can be applied uniformly to all the tariff review processes.

Paragraph 1. The regulating agency, aiming at enabling the preliminary examination referred to in the heading of this article, will send to the Brazilian Court of Audit information regarding:

I – standard procedures, with a consistent methodology and respective technical basis, to be used for:

- a) choosing the test year;
- b) calculating the bases for capital remuneration;
- c) projection of market demand, in case this is used in the calculations;
- d) definition of the operational expenses;
- e) definition of the taxes on tariffs;
- f) definition of the quotas for reintegration, depreciation, and amortization;
- g) definition of the non-operational result;
- h) definition of the investment plans to be considered;
- i) definition of the revenues of provisions, supply and other revenues;
- j) definition of the amount of extra-concession revenues that will be considered to contribute with the low tariffs;
- k) definition of the X factor;

II – parameters to be used when defining the rate of remuneration of the capital, accompanied by the respective calculations and criteria of definition, consisting of:

- a) projected rates for inflation and interest;
- b) capital structure adopted and a sample of the companies used to define the ideal capital, in case any were used;
- c) rate of remuneration of the own capital, informing the model to be used, and, also:
  - c.1) time perspective for application of the model;
  - c.2) parameter  $\beta$ :
    - c.2.1) sample of stocks for calculation of the representative  $\beta$ ;
    - c.2.2) marketability indexes of the sample stocks;
    - c.2.3) leverage and deleverage of calculations;
  - c.3) risk-free return index;
  - c.4) market return index;
  - c.5) country risk index (if necessary);
- d) remuneration rate of third party capital:
  - d.1) remuneration rate of third party capital for fund raising in the market;
    - d.1.1) sample of fund raising to be considered;
  - d.2) cost of third party capital raised from public institutions with subsidized rates.

Paragraph 2. A case can only be filed in the preliminary examination phase if indications or evidence of irregularities are found in the studies presented by the regulating agency. In this case, the technical unit will file a document with the Brazilian Court of Audit.

Paragraph 3. If there are any alterations in the information related to the standard procedures or to the rate of capital remuneration, listed in Paragraph 1, the regulator must notify the Brazilian Court of Audit of the alterations and present the appropriate justifications, indicating the applicable tariff review cases.

Paragraph 4. The examinations carried out by the appropriate technical unit regarding the information object of Paragraph 1 of this article and their alterations, according to Paragraph 3, will be presented to the Rapporteur, immediately after conclusion, even when a case is not filed.

## SECTION II

### SPECIFIC EXAMINATION OF THE TARIFF REVIEW PROCESSES

Article 3. Every year by August 15<sup>th</sup>, the regulating agency will inform the Brazilian Court of Audit which periodic tariff review processes of concession contracts for electricity distribution services will be initiated the following year, indicating for each concessionaire the gross operating revenue of the most recently published balance sheet as well as the number of consumer unites that received the service.

Paragraph 1. Out of the processes informed, four tariff review processes will be selected to be fully monitored, according to the following criteria:

I – three, related to the companies that delivered services to the largest number of consumer unites;

II – one process chosen randomly by the technical unit, subject to approval by the Rapporteur.

Paragraph 2. In case the difference between the number of consumer units selected by the criterion listed in item I of Paragraph 1 is inferior to fifty thousand, the gross operating revenue will be used as a tie-break criterion and the company with the largest revenue will be chosen.

Paragraph 3. In case any of the companies chosen according to the criterion of item I of Paragraph 1 deliver services to less than forty thousand consumer units, another company should be selected randomly.

Paragraph 4. The Court will inform the regulating agency that a certain process will be monitored fully, within 260 days after its formal beginning.

SECTION III  
DEADLINES

Article 5. The regulating agency of the electricity sector will forward to the Brazilian Court of Audit the documentation listed in items I and II of Paragraph 1 of article 2 as well as that listed in items I and II of article 4, observing the deadlines below:

I – 165 days after the formal opening of the tariff review process, regarding the standard procedures (article 2, paragraph 1, item I);

II – 195 days after the formal opening of the tariff review process, regarding definition of the capital remuneration rate (article 2, paragraph 1, item II);

III – 275 days after the formal opening of the tariff review process, regarding the tariff repositioning process and the X factor, supported by calculation spreadsheets and regarding the opinion of the concessionaire (article 4, item I, letters “a” and “b”);

IV – 295 days after the formal opening of the tariff review process, regarding the technical note disseminated on the internet, together with the calculation spreadsheets that serve as basis for it (article 4, item I, letter “c” and “d”);

V – 365 days after the formal opening of the tariff review process, regarding documents that are a part of the second phase (article 4, item II).

Paragraph 1. The documents related to the preliminary examination listed in items I and II of Paragraph 1, of article 2, will be forwarded to the Brazilian Court of Audit only once, on the occasion of the first tariff review process in which they will be used.

Paragraph 2. In case there are alterations in the standard procedures and in the studies about capital remuneration rates, the regulating agency should forward to the Brazilian Court of Audit the new studies respecting the established deadlines, respectively, listed in items I and II of this article, counted taking into consideration the first tariff review process in which they will be used.

Article 4. Oversight of the four processes referred to in Paragraph 1 of article 3 above, will be carried out in two phases, by analyzing the following documents:

## I – FIRST PHASE:

a) proposal for tariff review is presented to the regulating agency to the electricity distribution concessionaire supported by the corresponding calculation spreadsheets, in a magnetic device;

b) response from the concessionaire to the tariff review proposal created by the regulating agency;

c) analysis by the regulating agency regarding the manifestation of the concessionaire dealt with in item “b” above;

d) technical notes and calculation spreadsheets, recorded in magnetic devices, that serve as basis for the proposal of tariff repositioning and an estimate of the X factor, disclosed before the public hearing;

e) report by the representatives of the Brazilian Court of Audit regarding the opinions expressed by participants in the public hearing mentioned in item V of Article 1, above;

## II – SECOND PHASE:

a) second technical note and calculation spreadsheets, recorded in magnetic devices, that support the final decision of ANEEL, related to tariff review;

b) occasional important facts related to the ongoing tariff review process ;

c) tariff homologation act.

Article 6. The appropriate technical unit should analyze the documents sent according to the following deadlines:

I – thirty days for analysis of the tariff review proposal sent to the concessionaire by the regulating agency, and of the resulting opinion from the concessionaire (article. 5, item III);

II – thirty days for analyzing the tariff review proposal contained in the technical note disseminated on the internet and the corresponding calculation spreadsheet, besides analyzing the manifestation of the Public Hearing participants (article 3, item I, letter “e”, and article 5, item IV);

III – twenty days for analysis of the technical note and the calculation spreadsheets that are the basis for the final decision of the regulating agency regarding periodic tariff review, besides analysis of occasional important facts that may interfere in the process (article 5, item V).

Sole paragraph. The dockets of the process will be sent to the Rapporteur after their merit has been analyzed in the last stage, except in the situations provided for in article 7 of this Internal Rule.

### **CHAPTER III**

#### **FINAL PROVISIONS**

Article 7. Oversight of the periodic tariff review processes will be carried out by the appropriate technical unit, under the guidance of the Rapporteur in charge of the regulating agency of the electricity sector.

Sole paragraph. For the purposes of the provisions in this article, the technical unit, at the discretion of the Rapporteur, may perform an audit, inspection or survey of the regulating agency or of the concessionaire of the public service whose tariff review process is being examined.

Article 8. In any of the phases of monitoring of the periodic tariff review, if there are indications or evidences of irregularities, the technical unit will submit the dockets to be the Minister-Rapporteur for examination, proposing that the appropriate measures be taken.

Article 9. This Internal Rule goes into effect on the date of its publication.

VALMIR CAMPELO  
Vice-President, Acting President