

Internal rule no. 46, August 25th, 2004

On the oversight carried out by the Brazilian Court of Audit of the processes of concessions of federal roads, including roads or part of roads delegated by the Union to Federal States, Federal District, Municipalities or a consortium among them.

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The BRAZILIAN COURT OF AUDIT, according to its constitutional, legal and regimental mandates;

Considering its regulation power established in article 3, Law no. 8.443, 16 July 1992;

Considering that accounts shall be rendered by any individual or public entity who uses, collects, keeps, or manages public monies, assets or values, or those for which the Union is responsible or who, on behalf of the Union, assumes obligations of a pecuniary nature, as established in the sole paragraph of article 70 of the Brazilian Federal Constitution;

Considering its mandate to evaluate the processes of the National Program for Denationalisation (PND), including those related to public services under concession, permission or authorisation, according to article 2, III and article 18, VIII, Law no. 9.491, of 9 September 1997;

Considering that the federal roads, preceded or not by the execution of public works, are subject to the concession regime, as foreseen in article 1, IV, Law no. 9.074, 7 July 1995; and

Considering that the Union may delegate, through the Ministry of the Transports, for up to twenty five years, extendable for twenty-five more years at the most, to a municipality, a federal state, the Federal District or a consortium among them, the management of roads and the exploitation of part of roads or works at federal roads, according to article 1, Law no. 9.277, 5 October 1996; decides to:

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

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.

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 β :
 - c.2.1) sample of stocks for calculation of the representative β ;
 - 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 15th, 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.