



#### Eletrobras Privatization

**Court decisions:** 3.176/2021, 296/2022

e 1.103/2022-Full court

**Session dates:** 15/12/2021, 15/2/2022

e 18/05/2022

**Rapporteur:** Minister Aroldo Cedraz

**TC:** 008.845/2018-2

**Responsible Department:** SeinfraElétrica

## WHAT HAS THE TCU AUDITED?

The capitalization of Eletrobras was an innovative action by the State in terms of privatization. In addition to being the privatization of the largest electric energy company in the country, the methodology used to dilute the Government's control over the company differed from those already carried out until then. This is because instead of the Federal Government putting its shares up for sale, Eletrobras issued new shares on the market and its parent company (the Federal Government) was barred from acquiring any of these shares, as established by Law 14,182/2021, which defined the main rules regarding privatization. At the end of the capitalization, the Government would have a direct or indirect interest of less than half of the company's voting capital, which is exactly what happened.

Therefore, given the relevance of the State-owned company, as well as the very large volume of the amounts involved in the operation, and in compliance with the rules of Normative Instruction (IN) TCU 81/2018, TCU focused on the two most important stages for conducting the operation: the calculation of the value added to

## VOLUME OF AUDITED FUNDS

The total amount was R\$ 91.8 billion, of which R\$ 62.5 billion representing the value added by the new Eletrobras concession contracts and R\$ 29.3 billion refer to the primary and secondary offers of shares carried out by Eletrobras and BNDESPar, respectively.

## WHAT HAS THE TCU FOUND?

In the inspection stage referring to the values of the new concession contracts (VAC), inconsistencies were found in the spreadsheets shown, since part of the calculations performed did not correspond to the defined methodology. The Ministry of Mines and Energy (MME) made adjustments during the work, even before the Court's decision, resulting in a reduction of approximately R\$ 6 billion in VAC.

Also at this stage, an inadequacy in the values used in the projections for the price of electric energy in the long term was identified, which would not comply with the methodology defined by the Granting Authority itself. There was the suggestion of applying a value, which was accepted and led to an increase of about R\$ 10 billion in the VAC - as later verified in the monitoring during the second stage.

It is worth mentioning the understanding reached, i.e., the methodology for defining the price of energy in the model used needs to be revisited in future privatization of hydroelectric generation, aiming to increase the compliance and accuracy of projections, reflecting in a more appropriate pricing of assets.

It was also identified the opportunity to improve governance in the operation of the management committees of funds destined for the São Francisco River basin, for the area of influence of the reservoirs of the hydroelectric plants of Furnas and for the structural reduction of energy generation costs in the Legal Amazon etc.

In addition to these notes, suggestions for improvements were made for future privatization processes.

In the second stage concerning the valuation carried out by the consulting companies retained by the Brazilian Development Bank (BNDES) - the agent responsible for defining the methodology and organization of the offer - to evaluate Eletrobras, inconsistencies were again found in the spreadsheets shown, which as in the first part of the work were adjusted by the BNDES during the follow-up, waiving a decision by the TCU. The minimum price per share increased by 6.1% as a result of these changes.

Furthermore, it was found that part of the calculations performed by the consulting companies retained by BNDES did not agree with the report of assumptions that would guide the development of the evaluations and had been prepared by one of such consulting companies for this purpose. As the aforementioned report was made available for all contractors to perform their calculations, the errors had a direct impact on the company's valuation.

Eletrobras new generation concession contracts (VAC) for a period of 30 (thirty) years - the VAC was used to define the grant bonus to be paid by the company, which as provided for in such law was chiefly destined to the National Treasury and the Energy Development Account (CDE) directly to the Treasury [sic] and; the valuation of the company, which served as a benchmark for calculating the minimum acceptable value of new shares issued by Eletrobras.

Failures were also observed in the records of cumulative dividends in the financial statements of Eletronuclear (a subsidiary of Eletrobras) and Eletrobras since 2010, in addition to possible irregularities in the statements.

Also in this second stage, opportunities for improvement were found for future privatization projects conducted by BNDES.

## **WHAT HAS THE TCU DECIDED?**

Because the work was carried out in two distinct stages, the Court issued two merits judgments examining the monitoring of Eletrobras' privatization, both under the rapporteurship of the Min. Aroldo Cedraz.

The first one – Court decision 296/2022-TCU-Full court –in addition to ensuring through determinations and recommendations the use of the parameters indicated by the Technical Department in the definition of the VAC, determined the preparation of tariff impact studies, the need to show a reason for public choices regarding the staggering of the discount within the legally defined minimum term and an advance of R\$ 5 billion from the VAC as a contribution to the CDE still in 2022. There was also the recommendation to conduct studies of optimal use for all Eletrobras hydroelectric power plants by the company itself, promoting new alternatives for pricing electricity in future privatizations, and the suggestion to include contractual clauses aimed at the future sharing of possible benefits arising from the approval of a tax reform.

The second one – Court decision 1.103/2022-TCU-Full court - in addition to monitoring the commands issued by Court decision 296/2022-TCU-Full court, determined that measures be taken, during the pricing of shares, related to the methodological inconsistencies pointed out by the Technical Department, as well as how the studies carried out were updated and ordered the Ministry of Mines and Energy to disclose the studies regarding the economic and financial impacts of the privatization. Furthermore, the BNDES was recommended to verify the cash flow assumptions and the occurrence of duplication of tax benefits in the valuation of Eletrobras subsidiaries (Eletronuclear and Furnas, respectively). Also, in light of possible irregularities in Eletrobras' accounting records, the points raised by the Technical Department were reported to the Securities and Exchange Commission of Brazil (CVM), so that this independent government body could take the measures considered appropriate within the scope of its competence. Finally, recommendations were made to the BNDES with a view to improving future retaining of specialized consulting firms to carry out valuations of assets and companies.

## **WHAT ARE THE NEXT STEPS?**

Considering that the privatization of Eletrobras was completed in June 2022, the determinations and recommendations made in Court Decision 1.103/2022-TCU-Full court should be monitored and verified for compliance and impact on the process.