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Final Paper

***The Role of the Brazilian Electricity
Regulatory Agency – ANEEL
on the
Alternative Dispute Resolution***

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I.2. Introduction

The restructuring of the Brazilian economic model has caused a reduction of government's role in the productive sector. By selling state owned companies to private investors, the government intends to enhance its role on social national issues, leaving the productive activities to the investors owned companies, under an environment of open market and competition, adherent to the world globalization.

To cope with this new scenario, Brazil's government has undertaken a deep infra-structure reform and has consolidated an institutional remodeling involving the creation of Regulatory Agencies for the specific sectors of the economy. For the electric energy sector it was created the Brazilian Electricity Regulatory Agency – ANEEL. This agency is responsible for the regulation and auditing of the sector and additionally for the conflict mediation inherent to the electric energy industry.

The restructuring of the electric energy market has introduced new concepts and practices to the interplay between the economic agents and between them and the society. The increasing number of new agents taking part in the market has directly impacted the electric energy business dynamics, the relationship between sector agents and the behavior of the electricity consumers, which have become more critical about the services. As predictable, also a increasing number of conflicts has arisen.

To deal with conflicts, many countries have made use of the Alternative Dispute Resolution (ADR) as a mean offered to opponent parts in their attempt to meet conciliatory solution of their divergences. The benefits of this practice has

been recognized in many countries where it has been adopted. Economic agents have great interest in avoiding exposition of their conflicts in the media since it may cause relevant damage to their image in the way as they are seen by their customers. The judicial court, as well, has been avoided by firms and consumers due to the long time spent until a solution is reached, which is, in most cases, worthless, even to the winner part. Another factor in favor of ADR is that it minimizes the risk of reaching a rupture in the necessary fair and long-term relationship between economic agents among themselves and with their customers. Such a rupture is always unwelcome and can be avoided if the dispute resolution is reached by the alternative via.

Therefore the institutional role of ANEEL on mediating conflicts related to the electric energy sector has been considered a factor of significant importance to the harmonious development of the Brazil's new electric energy model. ANEEL is responsible for offering to economic agents and customers an administrative option to the solution of their divergences. This task is done by means of mediation and arbitration procedures.

Not every country uses the same approach in organizing and implementing the dispute resolution function for the electrical sector. In Brazil this is an institutional role, in charge of ANEEL, which has given an important contribution to the modernization of the Brazilian economy, acting in accordance to the new requirements of the market.

I.3. Objective

The main objective of this paper is to present an approach on the introduction of an institutional Alternative Dispute Resolution in the Brazilian electrical energy sector.

I.4. Organization

The first part of this paper, including the present session, shows its index, main objective, abstract and structure. The following part (Part II) is dedicated to the restructuring of the Brazilian economy, with special regards to the electrical energy sector.

Part III is focused on the ADR aspects, the administrative mediation role of the Brazilian Electricity Regulatory Agency – ANEEL and the dispute resolution function in other countries.

The last part of this paper (Part IV) presents the conclusions and remarks on the introduction of the institutional ADR in the Brazilian electrical sector and the bibliography which gave support to the development of this work.

PART II

II.1. The restructuring of the Brazilian economy

In this session it is briefly presented the restructuring of the Brazilian economic model concerning the globalization trends, the reduction of the government roles in the productive sectors, the creation of an open market and competition and the enhancement of social national roles

Infra-structure industries which used to be in many countries traditionally dominated by the public sector are being now reformed because this dominance was being questioned for a number of reasons. The need and the resources for government to own these industries changed in recent years. Economics of scale in production are less persistent than was thought only a decade ago because of technical developments. Also, political socioeconomic preferences have changed because government cannot afford new investments in these industries, which used to be an instrument of social and economic policy. With this remodeling, an increase in economic welfare at the macroeconomic level is expected by the government.

In these countries an implementation of adaptive organizational structures is being consolidated to enable the industry to achieve optimal performance. They are facing a challenge implementing effective and efficient ways of integrating the public tasks of the industry with the workings of the market.

On one hand the government expects with the liberalization of the infrastructure industries an enhancement of economic performance of the country. On the other hand the government regulation appears to emphasize carrying out the public tasks of the industrial sectors.

In general the privatization of a specific sector of the economic activity causes static and dynamic effects over the sector itself. The former are related to the sector organization in a specific moment, which variables, as: number of firms; differentiation in services and products supply; cost and price structures; vertical integration with supplying firms; and investment level, are specially relevant. On the other hand, the dynamic effects refer to the organization of the sector in the long term. In this case, variables as barriers to new entries and to firms leaving the sector, dynamic price competition, repetitive games between firms (with risk of collusion), reputation and predatory behavior are crucial. These effects are even more important when the sector has a natural monopolistic characteristics, in which emphasis on regulation is necessary.

II.2. The institutional changes

*The purpose of this session is
to demonstrate the Brazilian government movements
towards a consolidation of the country institutional remodeling,
regarding specially the electric energy sector, the creation of the
Brazilian Electricity Regulatory Agency – ANEEL and
its role on conflict mediation.*

Brazil's privatization program for the infra-structure industries was launched in 1995 with the approval of the Concessions Law (Law 8.987, February 13, 1995) and the Granting of Concessions and Permissions Law (Law 9.074, July 7, 1995). These laws provided the necessary directives for the new market model. Since then, the restructuring of energy, gas, and telecommunication sectors has been carried out together with a gradual introduction of new regulatory legislation.

The regulation of these economic sectors in Brazil has been done by the state for more than a century. Now, new regulation has been created to fit the new context of the Brazilian economy. To support this activity a specific regulatory agency was created for each sector, following the international experience on regulatory agencies specialization. In the United States, for example, there are the Federal Energy Regulatory Commission – FERC and the Federal Communications Commission – FCC. The regulatory agencies created in Brazil for the energy and telecommunication sectors are: the Brazilian Electricity Regulatory Agency – ANEEL, the Brazilian Petroleum & Gas Regulatory Agency – ANP, and the

Brazilian Telecommunication Regulatory Agency - ANATEL. Recently, a new agency was created for the sanitation sector and other one is about to be approved by the Congress for the water sector. They have been created by means of specific laws and are ruled by the terms of specific decrees and internal statutes and have in general the same structure.

Once the regulatory model adopted in Brazil is characterized by the existence of specialized agencies, a major issue rises concerning the fundamental need of common regulatory principles among themselves, which will not be discussed in this paper.

In general, the mechanisms for conflicts resolution involving agents of each sector can be found in the respective law of creation and in the regulation decree of each of the cited regulatory agencies.

ANEEL was created by Law (Law 9.427, December 26, 1996) and its role is to regulate and audit the energy production, transmission, distribution and retail. Besides that, as stated in the Article 3, item V of the Law, the agency shall also be responsible for:

“clearing, at administrative level, divergences among utilities, permit-holders, authorized agents, independent producers and self-producers, as well as among those agents and their customers”.

Based on this, the Decree 2.335 (signed on October 06, 1997), in its Attached I- Article 18, states that the agency shall be responsible for:

“a) clearing, at administrative level, divergences among utilities, permit-holders, authorized agents, independent producers and self-producers, as well as among those agents and their customers, and hearing directly the involved parties;

b) resolution of conflicts raised as a result of the regulatory and auditing actions concerning the electrical energy service”;

c) prevention of divergences;

d) settling final decision, with determinative strength, when involved parties do not reach an agreed solution;

e) using the mediated cases as inputs to the regulation task”.

In the case of ANATEL, which was created by Law 9.472, in July/16/1997, the dispute resolution role is established in the Decree 2.338/97, in its Attached I, items XVIII and XIX, article 16, which states that the agency shall compose or arbitrate, at the administrative level, conflict of interests between telecommunication service companies and between them and their customers.

ANP, by terms of its creation Law 9.478, passed on August/06/1997, is responsible for providing amicable mechanisms to the solution of: divergences between economic agents and between them and their customers (article 20); disputes related to the concession agreements (article 27, sole paragraph, and article 43, item X); and, as stated by the terms of the Decree 2.455/98, in its Attached I, article 19, it shall be responsible for dispute resolution by means of conciliation and arbitration.

II.3. New features of the electric energy market

In this session it is presented an approach about the new concepts and practices introduced in the electric energy market and their impacts upon the commercial conflicts of the Brazilian society.

In the old model, the Brazilian electrical sector had a vertical structure, with few federal government owned firms responsible for producing, transporting and delivering energy to state government owned companies or directly to consumers. For decades a large and efficient electrical energy system was developed, based on the great hydroelectric generation potential of the country. By 1995, the system ownership and control used to be shared by federal and state governments, with a minor participation of private companies, as presented in the following table.

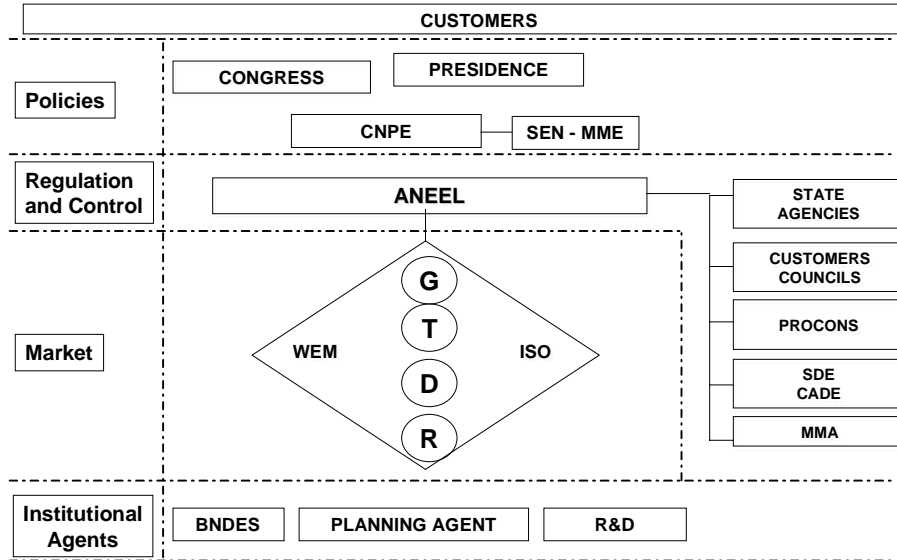
Segment	Federal %	State %	Private %
Generation	65	35	0
Transmission	70	30	0
Distribution	19	79	2

Traditionally, not only because of political interests but also due to technological constraints, the electrical systems of the world used to be vertically integrated and so, concessions used to comprise the generation, transmission and distribution segments. However, increasing technical advances has allowed the unbundling of the electrical systems and this has turned competition in the generation side more feasible and also has made possible the free choice of supplier by the customers.

The unbundling of the Brazilian electrical sector into four parts (generation, transmission, distribution and retailed sale) and the undergoing privatization of the federal and state government generation and distribution firms, some times splitting and selling them to different entrepreneurs, have introduced new pattern of commercial relationships. Today, about 60% of the electric energy distribution market is private owned, while in the generation segment, which privatization effectively started in 1998, it is about 10% private owned.

The number of relationships between players of the electrical energy market has increased significantly due to the new institutional framework. A simplistic view of this framework is presented in the following chart. The relationships, as any other commercial relationship, are source of potential conflicts, and divergences. Therefore, the sector economic agents, consumers, industries and society as a whole are facing now a new scenario, where disputes seems to be more than ever a natural day-to-day feature.

Brazilian Electricity Market - Institutional Framework*



- * CNPE: National Council for Energy Policy;
 SEN-MME: Energy National Secretary – Department of Mines and Energy;
 PROCONS: Consumers Protection Public Organizations;
 MMA: Environment Department;
 G/T/D/R: Electricity Generation, Transmission, Distribution and Retail companies;
 WEM: Wholesale Electricity Market;
 ISO: Independent System Operator;
 BNDES: National Bank for Social and Economic Development.

PART III

III.1. Interests on ADR

In this session it is presented an approach about the benefits of the use of alternative dispute resolution

The ADR process comprises every good-faith effort parties make to settle their dispute by agreement. It can be done in a form of negotiation, conciliation, mediation or arbitration. It is just that, an alternative to the resolution of disputes in the courts. ADR is supposed to be a simple, user-friendly process. In fact, if it is well designed and competently handled, it can indeed provide the benefits that the proponents claim for it: proceedings that are more confidential, simpler, quicker and less costly than litigation; that are fair, and that produce final and enforceable decisions.

There is a fundamental difference, however, between the forms of alternative dispute resolution which goes from negotiation through arbitration levels. Negotiation is the first step of the attempt to resolve the conflict. It is held without a third part intervention.

Conciliation is the case where a neutral third part promotes the resolution by stimulating a negotiation. The conciliator, in this case, helps the parties on reaching a consensus, offering suggestions for a possible agreement.

Mediation is similar to conciliation, but is characterized by a different level of third party interference. Here, the neutral party is intended to assist the opponents in settling their disputes by bringing them into agreement through his intermediation. The mediator is limited to help on the analysis of the issues presented by the parties and also on the better understanding of each ones position about the conflict. His main role is to raise arguments and to control the quality and the effectiveness of the discussions. The mediator is expected to make sure that all aspects of the divergence are focused. After the conclusion of the discussion by the parties, the mediator may, at this point, make a suggestion for an agreement. This process takes place when the negotiation and conciliation steps didn't succeed.

As a last resort level, comes the arbitration which has a different function. It resolves disputes when the parties don't meet a solution. Like litigation, it is a tiebreaker, to be used if, and only if, the parties cannot settle their differences by agreement.

The arbitration process can be undertaken under two different set of rules. It is called "Ad Hoc Arbitration" when the parties set the rules that they desire the arbitrator or an arbitration committee (more than one arbitrator) follows. This way, the parties them selves administrate the process and the arbitrator has no special external assistance.

The other kind of arbitration process is called "Institutional Arbitration", which is held by a technical organism under its own procedures. The parties in this case commit to a specific institution the administration of the process, considering its professional capacity, independence, impartiality and transparent rules. The

institution may be an organism which provides the arbitration service for any type of conflict or an organism that deals with conflict resolution within a specific area or sector as, for example, electrical energy, international commerce etc.

Many factors may influence the choice between “ad hoc” and “institutional” arbitration. The latter appears to be more suitable since the institutions can provide expertise and facilities as: structure, practice, information systems, skilled personnel, updated and tested rules, background and experiences. These factors avoid risks, always present, of failure of the process or misbehavior of the arbitrator.

However, some times both parties are able to administrate by their selves the arbitration process due to their frequent recurrence to conflict resolution and because they have the necessary infra-structure, what makes them confident in setting the rules and indicating an arbitrator. So, in this situation the “ad hoc” process may be chosen. Nevertheless, it is observed nowadays a transition from a stage of “ad hoc” arbitration, which is kind of handmade, to an “institutional” arbitration stage.

The use of the ADR process has largely increased around the world, as the offering of ADR services by institutions and specialized centers has been also increased significantly. In Brazil, as set by the terms of the Consumers Law (Law 8.078/1990), it is a principle of the national policy for consumption relationships the promotion and creation of alternative mechanisms for conflict resolution. Also, it is set by the terms of the Concessions Law (Law 8.987/95), in its article 23, paragraph XV, that the concession agreements shall have, among other essential aspects, a clause related to the venue and amicable manner of settlement for

contractual disagreements. As pointed out on item II.2 of this paper, the newly created Brazilian regulatory agencies have the ADR as one of their responsibilities.

III.2. The ANEEL's role on disputes resolutions

The purpose of this session is to make considerations regarding the institutional role of ANEEL on mediating conflicts related to the electric energy sector

As seen before, the ADR process can be administered by institutions, under their rules, or by the parties and a chosen arbitrator. Actually, the parties are free to at any time agree to try to resolve their dispute through any ADR institution, unless they have a contractual arbitration clause establishing a specific institutional arbitration center to conduct the process.

Sectorial Institutions with specialized ADR services are becoming very common. In general, a sectorial ADR has its own rules and the sector agents are subject to them. In Brazil, as presented before, the electricity, gas & petroleum, and telecommunication sectors have their respective regulatory agency responsible for providing Administrative ADR services.

This role in charge of the newly created agencies bring out some issues involving specific agents and customers, but the adopted procedures and solutions, in many cases, cause a great repercussion over the society as a whole. Therefore, the agencies' ADR mechanisms must to be very well designed. Their office for dispute resolution service must have independent, impartial and trained staff, with expertise on negotiation, conciliation, mediation and arbitration. Also, the participation of experts from the other areas of the agencies in the ADR process is totally convenient.

In ANEEL, the provision of ADR services was introduced together with the creation of the agency in December,1997. The services are in charge of the Superintendence of Sectorial Administrative Mediation. The procedures are based on two acts: ANEEL's Organization Rule, attached of the Resolution No. 233, July 14,1998, and Penalties Resolution, No. 318, October 06, 1998. The scope of the ADR process comprises conciliation, mediation and arbitration.

Every complaint addressed to the agency is filed and starts a dispute resolution process. There are only two requisites for the formalization of a complaint as an ADR process: 1) the parties must have tried to find a solution by means of negotiation before asking the involvement of the agency, and 2) the dispute must not be held by the court in the same.

ANEEL has signed with the states' regulatory agencies an agreement for decentralization of complimentary activities. This act gives to the state agencies the right to undertake some of the ANEEL's roles. One of them is the ADR services for disputes originated in the respective state. These decentralization agreements are very important to assure that local problems can be solved more promptly. The complaints are addressed directly to the state agency. If for instance a complaint is addressed to ANEEL and it is relative to a dispute in a state with a partner agency, it is transferred to the state agency.

The mediator or arbitrator is indicated by the agency from a list of the specialists of the Mediation Superintendence and there is no restriction on his participation as mediator and then as arbitrator in the same case.

The ADR process has no cost to the parties and begins with an initial evaluation of the complaint, which will define the need of collecting more

information from the parties or from an external entity in order to make clear the subject of the dispute. This task can be done by mail, email or hearing meeting.

From this stage on, conciliation and mediation techniques are used to meet a resolution. If they don't lead to a successful end, the arbitration takes place. In any stage of the ADR process, hearing and discussion meetings can be held.

When the decision comes from the arbitration stage, the parties are notified about the arbitrator's decision and determinations. If they are not fulfilled as demanded, the party is enrolled in a infraction process, which implies penalties to the transgressor.

The parties can always appeal if the arbitration decision doesn't seem fair or if the arbitration process didn't follow the rules. The appellation are accepted by the agency and the directors evaluate and give the final decision about the appeal.

III.3. Dispute resolution function in other countries

This session presents a brief review of alternative approaches on organizing and implementing the dispute resolution in the electrical sector in other countries.

In the United States, the Administrative Dispute Resolution Act of 1990 (initially passed in 1990, later finalized in 1996) promotes the use of alternative means of dispute resolution and states that: ADR is any voluntary procedure used instead of traditional adjudication to resolve matters in controversy; each agency is required to designate a senior official to be the dispute resolution specialist; and ADR may be used only “if the parties agree to such a proceeding”.

The US President’s message of 1998, stated the following:

“As part of an effort to make the Federal Government operated in a more efficient and effective manner, and to encourage, where possible, consensual resolution of disputes and issues in controversy involving the United States, including the prevention and avoidance of disputes, I have determined that each Federal agency must take steps to: 1) promote greater use of mediation, arbitration, early neutral evaluation, agency ombuds, and other alternative dispute resolution techniques, and 2) promote greater use of negotiated rulemaking.”

President Clinton also directed that an Interagency Alternative Dispute Working Group be convened, under the guidance of the Attorney General, to facilitate and encourage the use by agencies of alternative means of dispute

resolution and negotiated rulemaking. The Working Group will report to the Attorney General on the progress Federal Agencies have made to implement ADR programs.

The FERC's policy evolution on conflict resolution has been based on the following:

- In 1958, the Federal Public Commission - FPC stated that "...settlements, as a rule, are favored in the law. ...Paragraph 5 (b) of the Administrative Procedure Act requires us to afford all interested parties in proper proceedings opportunity for ... offers of settlement... where time, the nature of the proceeding, and the public interest permit."
- The Commission Order No. 32, issued in 1979, emphasized the importance of voluntary settlements to the orderly and expeditious conduct of its business.
- Procedures for Submission of Settlement Agreements: Order No. 32, FERC Stats. & Regs. (1979) and Order No. 32-A, 8 FERC (1979).
- In 1994, the Commission in its preparation to implement the ADR Act, stated that "it is the policy of the Commission to conclude its administrative proceedings as fairly, effectively, efficiently, and expeditiously as possible...The ADR Act gives the Commission the opportunity to further develop and refine its policies to achieve less costly, less contentious, and more timely decisions in its proceedings...The Commission intends to foster the effective and sound use of innovative ADR procedures pursuant to the established in the ADR Act."

- Administrative Dispute Resolution, Notice of Proposed Rulemaking, FERC Stats & Regs. (1994).
- Order No. 578, FERC Stats. & Regs., issued in April 1995, integrated ADR techniques into the Commission's dispute resolution procedures. The final rule also modified, and added to, the Commission's regulations to achieve this goal.
- Order No. 602, issued 03/31/99, revised the Commission's regulations governing complaints: encourages and supports the consensual resolution of complaints; offered the services of the new Office of Dispute Resolution Service and the Commission's Enforcement Hotline to achieve this goal; and filings must state whether ADR has been tried and if ADR under the Commission's supervision should be considered.

In practice, FERC has traditionally provided three paths for dispute resolution: 1) Commission order-decision rendered based on record developed through "paper" hearing or evidentiary hearing; 2) Hearing before administrative law judge; 3) Settlement judge proceedings. Indeed, FERC, by this terms, has a jurisdictional role.

Nowadays, with the establishment of the Office of the Dispute Resolution Service, February, 1999 (a Center of ADR Excellence), FERC intends to expand the use of ADR, improve outcomes through consensual decision making, create a cultural change (internally and externally), champion the increase use of ADR. FERC's ADR process has the following features:

- The Commission can initiate a convening session ADR inquiry;

- Any entity interested in exploring the use of an ADR process can initiate discussions or call the Office of the Dispute Resolution Service;
- The Commission doesn't charge the parties for the ADR services provided;
- A convening session would address certain considerations including whether a consensus exists among interested persons in favor of using an ADR process ("consensus" generally means that a general agreement exists to go forward with an ADR process);
- If consensus exists, the Office of Dispute Resolution Service may be met or contacted to initiate a convening session;
- A convening professional, neutral who assists parties in their wish to keep confidential (as with any neutral, he serves at the discretion of the parties), may provide a variety of services, such as: help identify parties to be included; help participants design the ADR process that meets their needs; assists in the selection of an appropriate "third party neutral" who assists the participants during the ADR process;
- All interested parties need to be contacted to determine if they wish to participate in the ADR process;
- Participants then reach consensus on:
 - the scope of the ADR process;
 - the design of the ADR process;

- the need for, and role, of a neutral facilitator;
- communications protocol, operational procedures, decision making process, definition of consensus;
- what, if any, training on ADR would be appropriate;
- If collaborative process used, participants should also address how dispute will be addressed;
- A mediator cannot act as an arbitrator in the same ADR case.

In Portugal, the legal framework about arbitration is based on the Law No.31/86. Institutions which desire to promote institutional arbitration must require an authorization from the Department of Justice to create the arbitration center.

The regulatory agency for electrical energy – ERSE is in charge of providing conflict resolution mechanisms such as conciliation, mediation and arbitration for the electricity sector. The scope of the agency's task is every dispute emergent from the electrical sector. This role is to be developed by ERSE's Arbitration Center which will be supported by an arbitration association formed by representatives of the consumers and electricity sector players. The center is designed to have technical and financial support from official institutions such as: Consumers Institute; Department of Justice; General Directory of Energy; Regional Directories of the Economy Department. Also, agreements are going to be signed with consumer and sector agents protection entities in order to promote mutual help, inclusive logistic support.

The Arbitration Center is designed to have competent and permanent staff to take care of the ADR cases. For the arbitration process an Arbitration Tribunal is set, with one resident arbitrator or three arbitrators designated by the parties.

The center will keep a list of experts to be eventually called to take part on a dispute resolution case as an experts or arbitrators, if the parties desire.

The Arbitration Center is supposed to cover the whole country, therefore it is going to have such a structure that the arbitration tribunal will be able to move to the place where the conflicts are. However, it is ERSE's policy to promote the creation of specific Arbitration Centers for the electrical sector and also to stimulate the provision of resources to the existent ones.

ERSE's ADR process always begins with notification of the parties, followed by a conciliation, mediation and arbitration stages. It basically comprises hearing meetings and agreement or arbitrated decision settling.

PART IV

IV.1. Conclusions

In this session it is presented the conclusions and remarks on the introduction of an institutional alternative dispute resolution in the Brazilian electrical energy sector drawn from the previous sessions

It is relevant to point out the positive influence that the administrative dispute resolution undertaken by the Brazilian regulatory agencies can have over the market protection organisms, like “Economic Rights Department” (Secretaria de Direito Econômico – SDE), “Economic Supervision Department” (Secretaria de Acompanhamento Econômico – SEAE) and “Economy Protection Administrative Council” (Conselho Administrativo de Defesa Econômica – CADE), since specific noxious practices can be eliminated in advance by the agencies’ ADR offices, avoiding that issues are brought to their instances. The judiciary, as well, highly benefits from the ADR roles of the agencies, since the Brazilian courts are unable nowadays to clear the big amount of suits accumulated in their charge. Many of the litigation cases related to the infra-structure sectors, which used to be addressed to court in the past, can now be resolved by the dispute resolution services of the agencies.

In some aspects, the design and implementation of the institutional ADR process applied in the electricity sector differ from country to country. Some

differences, in this very brief and general review, can be observed. However, as verified in the literature and in the cases of Brazil, USA and Portugal, presented in this paper, the stimulus to the use of ADR is a very present goal, due to its efficiency and efficacy.

For an accurate view of different ADR rules and practices adopted in the electrical energy sector of Brazil and around the world, a detailed research and analysis must be done. Nevertheless some remarks and issues may be raised from this work:

- in general, the logical structure of the ADR process starts from the need of previous negotiation between the parties and the following steps are attempts to find a resolution through conciliation, mediation and arbitration;
- as a general rule, the process initiates with the consensus of the parties in using the ADR process, since it requires a voluntary participation;
- when a complaint addressed to the regulatory agency is reasonable, the participation of the involved firm in the ADR process is implicit, because its commercial behavior is subject to the agency regulation and control; the firm may refuse to take part in the preliminary stages of the ADR process, but cannot avoid participating in the arbitration stage promoted by the regulatory agency;
- in some countries there is no concurrency between judicial process and the ADR process of arbitration because the institutional ADR run by the regulatory agencies has jurisdictional enforcement; where it has not, like

in Brazil, the court can always be searched during or after the end of the ADR process conducted by ANEEL;

- parties may choose one or more mediators or arbitrators for the ADR process;
- as a general rule, the parties choose the mediator and arbitrator they want, but the ADR institutions provide a list of enrolled experts, from its staff or not to offer to the parties; an open question is if ANEEL should make use of external experts, accept professionals freely chosen by the parties and, if any, what requirements should they meet;
- there is a common goal among the agencies nowadays which is spreading the use of ADR services in order to assure that they are available to every one;
- one of the advantages of using the agencies institutional ADR services in comparison with private ADR centers is that they have no cost for the sector agents and consumers;
- the decentralization of the agencies institutional ADR services is done by different means and arrangements; the use of private ADR centers as a support to the agencies is possible but restricted if costs are prohibitive.

As seen, there is an issue upon the convenience of a mediator be or not the arbitrator in the same conflict case. One may argue that the mediator during the mediation procedures had acted somehow bending to find an agreement that would favor the other party. This hypothesis is acceptable because the mediator only brings the parties together and do not decide about the case. He and the parties are free to discuss all kind of tentative resolution, and so, are free to raise

any aspect of the problem without any concern about the consequences. Suspicion on the impartiality of the former mediator in the role of arbitrator may occur. In this case, the mediator must not be the arbitrator.

On the other hand, if none of the parties vetoes the arbitration conducted by the former mediator, his continuity in the case can be positive for reaching a fair decision, because he has got the confidence of the parties and is already aware of the many aspects and details of the conflict.

As deduced from this paper, there is no consensus about this issue. Some institutions and ADR centers don't make any reference to this subject, some textually allow it, while others forbid the mediator to act as arbitrator, unless the parties express their contrary will.

To conclude, it is important to observe that any national economic reform implies several transformations, not only in the executive but also in the legislative and judicial branches. The former, in Brazil, is now dealing with new legislative production focus and the latter is discussing new structure and mechanisms that can promote better responses to society's conflicts.

Historically, very early before the state took to his responsibility the conflicts solution, this role used to be in charge of a third part chosen by the opponent parties. The new scenario of reforms and privatization enforces bringing back this extra-judicial form of conflict solution, now called ADR. The consolidation of institutional and ad hoc ADR has positive impact in the judicial system and in the society.

As a result, ADR has increasingly been used in the recent years, and ANEEL is among the electrical energy institutions in the world that are ahead in

implementing the ADR services. The procedures used by ANEEL have been improving along with the experience gained during almost two years of ADR service practice.

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