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"NUCLEAR POWER PLANTS:
RECENT DEVELOPMENTS IN BRAZIL RELATING TO
THE LEGAL ASPECTS OF INSTALLATION -
ERECTION - OPERATION"

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Abstract

Installation, erection and operation of nuclear power plants in Brazil are dealt with by a Federal Statutory system, which makes possible a harmony between the codified legislation concerning hydroelectric energy and another one referring to the nuclear energy, owing to the appearance of the new technological event. Analysis is made of the legal framework since the Magna Charter, administrative policy system and law comprises the body of those principles and rules of action. Finally the legal system performed the problems which have been brought to light resulting from the transfer of technology and focused a new system making it possible to gather various governmental agencies license under care of a specific committee.

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Introduction

Under the Brazilian Constitution, the right of exploitation of electric power services and facilities of any nature rests on the Federal Power.

Since the State frequently would rather not carry out these services directly, it delegates the execution of these to the appropriate legal concepts foreseen in our Brazilian Administrative Law: Franchise and Authorization.

Being the franchise "intuitu personae", it results in delegation of exclusive power to the utilities, no matter which source of energy - hydraulic, conventional thermoelectrical or nuclear.

The principal characteristics concerning this delegation are: the performance of public service, its transfer by the State to an intermediate - utility - which accepts this charge of service execution by the pecuniary advantage.

As the public utilities contributes with their own funds to investments, the Granting Power assumes the obligation to establish reasonable tariffs according to the legal principle of rendering services by the cost in order to assure financial stability of the utility by the remuneration of the invested

capital.

This delegation is burdensome to the utility, as far as the grantee assumes a serious burden on its accepting the franchise or authorization the utilities not only undertake the performance of the public service, but assumes the obligation as well as in the case under discussion, to set up the service with its own financial resources not only for the initial installations but also for successive material renewals in order that the continuity of services are not interrupted.

This also results from a constitutional sumption, that obligates the utility to have appropriate service, to improve them, to expand them, to guarantee on the other hand the economic and financial equilibrium for investment by an adequate tariff.

Outline of the Public Utilities

Public Utilities, as delegated by Federal Power, can't choose the methods and conditions under which services are executed.

They must observe the legal rules in force, and the rights and obligations regarding to the franchise or authorization, to the electric energy production, established in a specific

legislation that determines the conditions of the services exploitation.

Rights

In order to make it, who is derived from the Federal Power delegation, as well as exploitation of services, the utility has the following rights:

- to use the ground public dominium and establish easement;
- to expropriate particular constructions;
- to establish permanent or temporary easement necessary to the work;
- to construct railroads, roads, telephone or telegraph lines, without prejudice of ^{the} others, for exclusive use of the exploitation;
- to establish transmission and distribution lines.

Obligations

Besides the obligations due to specific legislation of electric energy (laws, decrees and administrative rules), the utility must comply all exigences of the Fiscalization of the Public Power; the latter imposes heavy obligations upon it and makes the utility subject to surveillance of technical, economic and financial nature, besides making else of various punitive measures in the shape of fines,

production control, forfeiture of various rights, etc.

Outline of the Nuclear Power Plant Installation

Under the present legal system, the franchise to produce electricity by harnessing thermonuclear power is granted to the utility only by Presidential Decree, after the opinion of the competent Mines and Energy Ministry (MME) organs, has been known and set forth in Law in the shape of an authorization to build and operate a nuclear power plant.

At the first step towards realizing its intention the future licensee of a nuclear power plant submits its application to Electrical Energy National Department (DNAEE) for authorization to build and operate same, in the shape of a technical feasibility study. DNAEE in its turn consults ELETROBRÁS, since by law the latter must be heard first on the subject of any electricity generation project application for which is required to DNAEE.

The foregoing provision is due to the legal competence held by ELETROBRÁS to participate in the development and performance of the official electric power policy and to promote together with other competent agencies enlargement of undertaking already existing and execution of those which are to be initiated.

The generation pool expansion which depends on the evolution of the power market is bound most closely to the energy balance of interconnected systems covering the North/Northeast, Southeast/Centre, West and South, geographical areas of Brazil, jointly with the principal franchise holders thereof, and based upon the government's goals and policies for sector and overall economic growth.

Having secured ELETROBRÁS' opinion, DNAEE forwards the process to CNEN (Brazilian Nuclear Energy Commission) for the same, to be examined from the point of view of the requirements of laws and regulations concerning atomic energy, and as to the due observance of the procedure set forth by CNEN and in compliance with the requirements of the National Policy for Atomic Energy.

With CNEN's formal opinion about it, the process returns to DNAEE and it thereupon issues its final opinion concerning the provisions of electric power legislation; the process is then forwarded through MME, to the President of the Republic accompanied by the Exposition of Reasons, as the project can only be authorized by a Decree.

Thereupon the licensee makes its application to the relevant State Environment Pollution Control Agency, soliciting "prior license", justifying its choice of the site and

submitting such requisite documentation which would enable the agency to examine the measures to be taken for the safeguarding of the environment.

Brazilian Alternatives

Even at the time of authorization for the installation in Brazil of its first nuclear power plant, there already long existed codified legislation concerning the electricity production, based on harnessing of water on thermal energy and as since 1956 there was also existence the Brazilian Nuclear Energy Commission (CNEN).

However, since up to then there did not yet exist the particular technology, there could neither exist the Positive Statutes applying to it. It was then that the government, conscious of the need for such legislation, promulgated a specific act aimed at harmonizing the supervisory action of DNAEE/CNEN, regiment "the process for application of authorization, construction and the granting of concession to operate a nuclear power plant.

The following competent entities thereupon entered their activities, harmoniously: ELETROBRÁS, for the planning of the power producing plant installation requirements; its subsidiary FURNAS - CENTRAIS ELÉTRICAS S.A., as the

constructor and operator of the first Brazilian nuclear power plant facilities, DNAEE and CNEN, as the regimenting and supervisory organs. This goes to show that Brazilian Public Administration is perfectly able of rising to the occasion to adequate the actions of its agencies so as to simplify and speed up solutions intended to discipline, by promulgating regulations, the growth of technological development.

In order to establish, develop and improve the transfer of technology process ^{it} was promulgated a specific legal act aiming it, so that, the Decree authorizing a nuclear power plant to be installed, imposes upon the utilities the obligation to make an agreement in a global form, with the holding Brazilian Nuclear Enterprises - NUCLEBRÁS or its controlled Power Plants Constructor Enterprises - NUCON, for furnishing all the engineering services, equipment and material necessary to construction, erection and start-up the plant, under condition of losing the authorization if it doesn't do it.

So, NUCON, became a service manager in engineering project, contractor for provisions, furnishing equipment, license and start-up process and also encharged to set up all constructor services to the utilities.

Coordinator Committee

Brazilian legal system performed a Protection to Nuclear Program System - SIPRON, which goal is the national security and public interest, protecting the facility and health of the population. This system includes all the license organs and execution entities connected with Brazilian Nuclear Program, and has as first coordinator the General Secretary of Security National Council. So, it makes it possible to gather various governmental agencies license under care of specific Committee.

