

DRIFTING REGULATOR?

Analysis of the political intervention in the tariff function of the electric regulator

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Overview

Have you ever wondered what is hidden behind acts as simple as turning on or off the lights? Although many of us find it strange, behind these acts hide a complex framework of technical and economic regulations that seek to achieve an efficient electricity market, which eliminates the risks generated by the inherent failures of this market. The electricity sector is by far one of the economic sectors with the greatest regulatory impact. Why? Simple, this market presents a production chain with monopolistic activities that, if it is not regulated, it would generate a perverse incentive for electric companies to increase the rates we pay for electricity supply.

But if this situation justifies a certain dose of state regulation, it is not less true that this intervention is not free of fails. If the market has faults, the State has “demons” much more difficult to exorcise. For example, the interests and limitations imposed by the political process (Stiglitz, 1995). And this is clearly seen in the tariff regulation of services such as electricity supply. Here, the political pressure is always a latent risk because the rates of this service have a direct impact on the population and their perception of the government (Ariño, 1993). There are thus incentives for populist measures, despite the negative effects they can generate in the regulated market.

Given these risks, several countries chose to create independent regulatory agencies, as is the case with Osinergmin, which supervises and regulates the energy sector in Peru. In this way, these regulatory agencies appear as a neutral point between two tides: the threat of capture by companies in the regulated sector and populist political intervention.

However, one thing is what is preached and another thing what happens in reality. Regulatory agencies live with these shadows behind their backs, and a sample of this was what happened in October 2018 between Osinergmin, as regulator, and the Ministry of Energy and Mines of Peru (Minem), as essentially political entity of this sector.

Let's explain the case. As mentioned, the electricity sector is one of the sectors with the greatest regulatory impact, which is not only limited to the conditions of service, but also to the rates that users must pay. Without delving into the complexities of the electricity market, the problem between the Minem and Osinergmin was due to the fact that the first entity modified the Electricity Concessions Law Regulation (“the RLCE”) even though this affected an ongoing tariff setting procedure in charge of the Osinergmin, as entity regulator.

Through Supreme Decree No. 027-2018-EM promulgated on October 4, 2018, the Minem modified the RLCE to incorporate a previous stage of determining costs in the tariff setting procedure that attended some of the claims raised by the electricity companies (Ruiz, 2018; Guevara, 2018). Beyond the justification of these claims, the Osinergmin opposed this modification why it impeded a possible reduction of tariffs for the benefit of users (Osinergmin, 2018). And maybe because of the unpopularity that this modification could generate in the population, the Supreme Decree No. 027-2018-EM was derogated on October 9, 2018.

As you can see, the facts exposed reveal only one thing: the fragility of the regulatory agent in the face of pressures coming from the ministry of the sector, either for attending the claims of regulated companies (first time) or to stop a measure that could be unpopular (second time).

Political pressures are always there and this is something that should be clear for any analysis on the subject, because it leads us to ask the following question: What is the limit of the ministry of the energy sector, as a political entity, in order to intervene in the regulatory activity of the Osinergmin? And here the answer is not clear and should always be analyzed case by case.

In principle, the ministry of the economic sector can enact the regulatory provisions that correspond to it, and the modifications made by the Minem were framed within its faculties. However, changes in the tariff setting regulations must derive from a process that gathers and harmonizes the positions of the main players in the sector, and it is done with due anticipation and does not interfere with the independence of the regulatory entity.

How to achieve a more independent regulator and less prone to political interference? The answer is complex, but it should begin with the establishment of clear rules that limit the intervention of political entities in the tariff setting procedure. And perhaps to see the need to endow the Osinergmin with a constitutional autonomy, given the relevance of the energy sector in the economy of our country.

No matter how the tariff system is regulated, if padlocks are not established to stop the pressures that the regulator must face, they will end up sending it to drift; shipwrecked of the tides that regulator had to overcome.

Methods

Two methods will be used. The first involves a multidisciplinary approach to the subject, which starts from the legal analysis of the nature of the electricity regulator, for later we studies the contributions of the economy to identify the failures that may arise in the regulatory activity. Also, to make our research more solid, it will be treated in our investigation concrete cases that show the fragility of the electric regulator, both in Peru and in other countries.

Results

Based on analysis of cases, it will be presented as a key finding that the electric regulator is still prey to political intervention, despite its technical and economic autonomy.

Conclusions

Given the fragility of the electric regulator to avoid the tides that it has to face, it is necessary to provide it with greater autonomy. For this purpose, the conversion of the electric regulator into a constitutionally autonomous organism is an ideal way.

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