Hydropower Licensing Law: Brazil

Brazil is the world’s ninth largest consumer of electricity and one of the world’s leading producers of hydroelectric energy. It generates approximately 85% of its electricity from hydroelectric facilities. Although Brazil had the world’s sixth largest national gross domestic product in 2011, Brazil ranked just 118th in per capita consumption of electricity in 2009. Nevertheless, some observers believe that improvements in efficiency would offset the need for increased production capacity as Brazil’s demand for energy increases.

Environmental protection is a key theme in Brazil’s current constitution, which was ratified in 1988. For example, the Constitution grants Brazil’s citizens the right to sue on behalf of the public for activity that causes harm to the environment. Additionally, the Constitution recognizes Brazil’s environment and natural resources as being within the public trust, and imposes upon both the government and individuals the duty to protect them for future generations. Consequently, the Constitution requires that environmental impact studies (similar to the analysis required by NEPA) be completed prior to activities that may cause harm to the environment.

A number of administrative agencies play a role in the licensing of new hydroelectric facilities in Brazil, but the most important such agency is the Ministério de Minas e Energia (Ministry of Mining and Energy), which also operates the country’s state-owned energy companies. Brazil uses a multi-step licensing process for “large public works projects” such as hydroelectric facilities, each requiring an environmental impact assessment (EIA). First, in order to obtain a Licença Prévia (Preliminary License), an applicant must demonstrate that the proposed project is technically and economically feasible. At this stage, the EIA must include a discussion of alternatives to the proposed project, as well as a plan to mitigate any negative environmental impacts. The applicant must also summarize the EIA’s conclusions in terms the general public can understand. After the Institute Brasileiro do Meio Ambiente
e dos Recursos Naturais Renováveis (Brazilian Environmental and Renewable Natural Resource Institute) holds public hearings on the proposed project, it can either grant or deny the Preliminary License.

After the Preliminary License, the applicant must obtain a Licença de Instalação (Installation License), which authorizes project implementation. At this stage in the process, the applicant must submit a Basic Environmental Plan, which describes how it will address the environmental impacts identified in the EIA. To obtain a Licença Operacional (Operating License), the applicant must report on the implementation of the mitigation described in the Basic Environmental Plan. However, even after an applicant succeeds in obtaining approval for a project, the applicant’s license can be revoked for a variety of reasons—including the omission or falsification of relevant data, serious risks to health or the environment, or a violation of relevant legal conditions.

Source: Daniel Sherwood Sotelino, Complexo Madeira: Environmental Licensing for Large-Scale Hydropower in Brazil, 43 ENVTL. L. REP. NEWS & ANALYSIS 10055 (2013).