**Compliance analysis of the Energy Sector projects of the Municipal Efficiency Program (Pro-Eficiencia) (BR-L1503) with the Strategies, Policies, Sector Frameworks and Guidelines at the IDB (GN-2716) – Public Utilities Policy   
(the “Policy”) (approved Nov. 2013)**

This document presents an analysis of the energy sector projects of the Municipal Efficiency Program (Pro-Eficiencia) regarding the issues raised in the Public Utilities Policy (GN-2716-6).

The following table includes the objectives of the Public Utilities Policy (GN-2716-6), description and comments summarized highlighting aspects that meets the Program.

| **Policy objectives**  **(GN-2716-6)** | **Description** | **Comments** | |
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| **Objectives** | | | |
| **2.2 The promotion of access to and the increased efficiency and quality of public utilities will require that the Bank’s actions aim to:** | | | |
| 1. **Promote access to the service by the entire population** | Promote Access to the Service by the entire population, including the most disadvantaged communities and groups, in both urban and rural areas. | Brazil has 99.6% of the population attended with electricity service. Each distribution company has a target for universal access; most of them have met their targets. The remaining 0.4% demands large investments, as they are located in isolated areas far from the grid, and access roads.  The Program do not act directly in increasing energy access at homes. Nonetheless, access to public lighting will be improved and/or increased. There is a relationship between public lighting and better life conditions, including security, productivity, night activities (education and recreation). | |
| 1. **Deliver a reliable, quality Service** | Ensuring that the service provided to the user meets minimum quality and reliability standards that are viable and consistent with a cost-benefit or cost-efficiency analysis, in keeping with the nature of the service and the supply conditions. | The electric sector in Brazil is regulated. Normative Resolution Number 414 of September 9, 2010 presents the general rules for the supply of electricity. Defines the responsibilities of distributor and also the consumer The regulator, *Agencia Nacional de Energía Eléctrica* (ANEEL), is the local authority under the Ministry of Mines and Energy, was created to regulate the Brazilian electricity sector, through Law Number 9,427 / 1996 and Decree Number 2,335 / 1997.  ANEEL sets annual targets of technical and financial indicators for each of the 64 distribution companies (utilities). These parameters include quality indicators, such as technical losses, reliability of service, and financial return.  Moreover, the need for a reliable and quality electrical service comprises promoting the use of renewable sources and more efficient technologies for sustainable power generation, in order to increase the reliability and safety of the electrical system to respond to the natural growth demand and infrastructure requirements.  The proposed program will help to increase the efficiency of energy use at a municipal level. All the sub-projects to be implemented will be cost efficient, and will help to improve financial efficiency at a municipal level. | |
| 1. **Deliver a service efficiently** | Deliver a service efficiently in terms of supply, while seeking to deliver the service at the least possible cost. | **Regarding electricity tariffs.** Generation projects in Brazil are awarded in competitive annual bidding process, where the regulator aims to guarantee the supply for the projected demand. Projects are awarded based on offered price, and as such, a least cost expansion of generation is guaranteed. Concessions of electricity transmission are also awarded by competitive bidding processes, in which the winner developer guarantees a set return on investments. Distribution concessions have regulated tariffs, with incentives for technical quality. Electricity rates are designed to reflect the costs of the distribution service.  **Regarding public lighting.** In 2013, ANEEL determined that at the end of 2014 all public lighting sources that previously were responsibility of the distribution companies will be transferred to the municipalities.  According to the legislation, all public lighting services must be provided directly by municipalities or by means of private concessions. According to article 149-A of the Federal Constitution, modified in 2002, municipalities have the right to create, by local law, a tax called Contribution for the Custodian of the Public Lighting Service, COSIP (Contribution to Public Lighting Services) with the exclusive purpose of financing public lighting services. The municipalities have the right to adopt a local law to allow the collection of the COSIP and the cash flows necessary for the payment of the investment in the new infrastructure. Moreover, given these structure, municipalities have the incentive of making the public lighting service as efficient as possible.  **The program.** The program (BR-L1503) will support the improvement of public lighting services, increasing its efficiency, and hence supporting a more cost effective service. | |
| 1. **Create suitable incentives for service demand** | Create suitable incentives for service demand, so users make use of the services in a manner consistent with their economic, financial, and environmental sustainability | Law 10.848 of March 15 2004 establishes that electricity supply should guarantee/ensure the proper balance between supply reliability and reasonableness of rates and prices. All the electricity projects are based on competitive bids that guarantee the lowest cost. | |
| **2.3 The scope of the sustainability of the public utilities will be promoted based on three pillars:** | | | |
| **a. Financial sustainability** | Ensuring that there are sufficient revenues from provision of the service to the user, with the community contributions and direct contributions from the government, to cover the efficient costs of service delivery. | The electricity regulation in Brazil states that the cost of electricity shall be governed by the principle of efficiency requiring the optimal allocation and use of resources in the supply of electricity at a minimum cost. The tariff structure in Brazil is designed to cover all costs of the electricity service, promoting cost-efficiency in the provision of electricity.  Regarding public lighting, the costs of the service are covered by the municipalities, by means of a tax (Custeio do Serviço de Iluminação Pública -  COSIP). This program will support a more efficient public lighting, hence supporting the financial sustainability of the service. | |
| **b. Environmental sustainability** | Helping ensure that the selection, execution, operation, and maintenance of the service delivery projects comply with the Bank’s environmental safeguards and contribute to the development of resilient infrastructure, considering viable alternatives to mitigate climate change. | The program does not generate physical or economic resettlement, impacts on indigenous peoples or traditional communities, or construction impacts associated with civil works.  Nonetheless, the IDB will define an Environmental and Social Management System (ESMS) that will enable the identification of potential impacts and risks and ensure that the beneficiaries of the financing will implement environmental and social assessment, prevention, mitigation and management measures consistent with IDB safeguard policies. IDB Safeguard policies will apply to each individual project, in the terms defined in the OR. | |
| **c. Social sustainability** | Helping increase access to the service and providing mechanisms to consult with the community on pertinent aspects of service delivery. | The Environmental and Social Management Report (ESMR) will have a dedicated strategy to manage environmental and social risks. The Bank will ensure that proper consultation with the community on pertinent aspects of service delivery takes place for every project. | |
| **3.2 The Policy is based on the following principles that will guide the design and supervision of the Bank’s Operations.** | | | |
| **a. Supporting the countries to address basic access needs** | The expansion of access to public utilities at affordable prices is necessary in the region, especially in less developed countries and rural areas in all countries. Access to public utilities is essential to contribute to poverty reduction and promote inclusive development. The Bank will support the development of sustainable systems that use the combination of cost-efficiency and the most appropriate technology solutions, given the characteristics of the demand and the public utility, to address the access needs of the population, both urban and rural. | | The Program BR-L1503 do not act directly in increasing energy access at homes. Nonetheless, access to public lighting will be improved and/or increased. There is a relationship between public lighting and better life conditions, including security, productivity, night activities (education and recreation).  The projects to be financed under this Program will be energy efficiency projects, which will contribute to meet Brazil’s goal of diversifying its energy matrix and efficient use of energy, supporting at the same time the achievement of the country’s INDC goals.  The projects will help to reduce the vulnerability of the energy matrix to climate change, since it will increase the efficiency of the energy matrix, currently based mainly in hydro power generation and thermal power generation. |
| **3.3 Continual improvements in the governance of public utilities will be key for increasing efficiency in service delivery and satisfactorily protecting the interests of users**  The Policy holds that governance for decision-making in public utilities management, as well as the policy and/or regulatory framework that regulates and supervises the utilities are the primary factors determining their performance, quality, and sustainability. This requires the following: | | | |
| 1. **Promoting integrity, transparency, and accountability.** | Bank-financed operations will drive basic institutional arrangements so the region’s countries adopt measures that promote integrity and increase transparency in the delivery of public utilities services, in order to improve accountability and strengthen the observance of users’ rights. To this end, the Bank will make greater efforts to have its operations contribute to the development of good governance systems among public and private stakeholders. Moreover, this Policy recognizes that the weakness of public statistical data and the scarcity of private statistical data are factors that often hinder adequate responses to basic questions on infrastructure investment needs, service provider performance, and rate structure and evolution. Therefore, the Bank will promote targeted transparency, considering users’ information needs, the most effective way in which information should be made available, and the best channels for its distribution. | | Generation, transmission and distribution are governed by principles of transparency, efficiency and quality. The Brazilian law guarantees good governance of the sector through an appropriate institutional structure a clear definition of functions and accountability.  ANEEL provides through its website a section to answer questions, submit complaints, and help resolve problems with the final objective to promote accountability and quality of service to the end users among others.  Additionally ANEEL provides information on its website to the end users, such as: (i) how the tariffs are set up: in order to fulfill its commitment to provide electrical power quality, the distributor’s cost have to be included in the tariffs; (ii) ranking continuity: each year ANEEL publishes the ranking of all the distributors, and how they were ranked compared to each other; (iii) performance of the electricity distributors, key indicators about the performance of the distributor are published regularly.  ABRADEE, the Brazilian Association of Electricity Distributors publishes information about the distribution companies in order to promote transparency in the sector; it also provides a good overview of how the electricity distribution sector is structured in the country in terms of the nature of corporate control. |
| 1. **Analyzing the characteristics and impacts of subsidies**. | The operation and financing of the services addressed by this Policy should efficiently recover service delivery costs through rates charged to users. However, this Policy acknowledges that, occasionally, financial sustainability can be achieved by supplementing the revenues earned through rates charged to users for the service with contributions from the community and direct government contributions. Where subsidies are granted, the Bank will promote both their transparent allocation and use, subject to frequent, effective accountability mechanisms. Such mechanisms will include: (i) identification and analysis of sources and beneficiaries of the subsidies; (ii) analysis of the distributive incidence of the subsidies; and (iii) quantification of the subsidy relative to macroeconomic indicators (for example, gross domestic product, total public sector expenditures) used by the Bank or by the level of government granting the subsidies to report on their fiscal sustainability. In cases where rate subsidies are granted, the Bank will promote their targeting toward the most vulnerable and lowest-income groups. In addition, to the extent possible, the Bank will help countries replace rate subsidies for public utilities with income transfer mechanisms that are more direct and targeted toward the lowest-income population segments. | | Electricity services are based in a tariff structure that aims to recover all the costs, including distribution, transmission and generation costs. Tariffs are reviewed on a yearly basis, in order to take into account changes in the costs structure, as well as new investments and transmission and generation costs.  The market is based on a regulated market where captive consumers (residential consumers of distribution companies) have their demand ensured by means of long term generation contracts, and a parallel free market of contracts for larger consumers.  Regarding public lighting, the costs of the service are covered by the municipalities, by means of a tax (Custeio do Serviço de Iluminação Pública -  COSIP). This program will support a more efficient public lighting, hence supporting the financial sustainability of the service.  In recent years, given droughts, thermal power plants had to be included in the generation market to provide energy to the regulated market, at higher prices than the regulated market (short term prices). As such, distribution companies were exposed to high short term prices, which were not included in the tariff (given the yearly tariff review). This caused both: an increase in tariff (creating yellow and red flags, that were included as an additional charge), and also the necessity of transfers from the central government, to enable distribution companies to cover the cost of thermal generation during the droughts. These transfers were subsidized loans. The situation has now stabilized, with rain patters coming back to normal.  The current operation will help to reduce the vulnerability to this type of events, as it will support energy efficiency measures, which reduce the use of energy. |
| 1. **Separating institutional roles to improve sector governance.** | Experience shows that the most effective organization for the sectors to achieve this Policy’s objective is the separation of the roles of policy-maker, regulator, and service provider. In this context, the sector authority retains responsibility for policy-making and planning, the public agencies determine and oversee compliance with the regulatory system, and public or private entities are assigned responsibility for providing the service. This Policy recognizes, nonetheless, that the institutional organization cannot follow a single model, but must be adapted to the specific features of each sector and country. In several of the region’s countries, responsibility for policy-making, regulation, and delivery of public utilities is based at the local (provincial or municipal) level. In these cases, where it is not necessarily optimal to separate the roles of policy-making and regulation, the Bank will promote homogeneous regulation, with adequate minimum quality parameters, rate-setting principles supervision and control mechanisms. It will also help develop institutional mechanisms that strengthen appropriate management in the framework of local legislation. | | Brazil has a sophisticated and well-defined institutional framework in the energy sector, with policy-setting government authorities, regulatory agencies, state-owned enterprises, and private sector companies all operating in a dynamic market. Most of the existing energy laws and policies were put in place recently, following larger economic reforms introduced by the federal government in the 1990s and 2000s.  The National Council for Energy Policy (CNPE) is the highest-level body in charge of setting energy policy in Brazil. The Ministry of Mines and Energy (MME) has the overall policy-making responsibility for the electricity sector while ANEEL is responsible for regulating and controlling electricity generation, transmission and distribution in compliance with existing legislation.  After the market reform in Brazil, there is an Independent Regulatory Agency (ANEEL), an Independent System Operator (ONS) and an Independent Clearing House (CCEE). There is also a separated planning agency, in charge of producing the indicative plans for the sector (EPE). There is competition on generation, independent power producers and free commercialization and pricing for electricity. Transmission and distribution tariffs are regulated. There are also public companies, which operate under the rules of the market. |
| 1. **Establishing the most appropriate sector structure given the characteristics of the Service and the objective of the Policy.** | Experience in reform processes and management changes in Latin America and the Caribbean shows that good or bad performance by public utilities providers is not necessarily explained by the type of ownership (public or private), or by the sector’s structure (monopoly or competitive). For that reason, and considering the heterogeneity of markets and services in the region, this Policy does not promote a single sector industrial organization for the delivery of public utilities, and emphasizes that regardless of the management model used; there must be good governance practices and a clear, predictable, stable regulatory framework that encourages efficiency and investment. | | The Brazilian electricity sector is based on a competitive market in the generation segment, where generation contracts are awarded by yearly bids, based on projected demand. The transmission sector is based also on concessions awarded also by bids. The distribution sector is a regulated monopoly, with the participation of 64 companies, which have their tariffs regulated by a central regulated. There is separation of the generation, transmission and distribution segments. While there is public and private participation, public companies operate under the same set of rules and conditions than private companies.  The current regulatory framework was established in the 90’s, and was improved following the electricity sector crisis of 2001. As such, it can be considered a stable regulatory framework that provides clear, predictable, and stable rules to encourage efficiency and investment.  Regarding public lighting, municipalities are in  charge of this service. They can performed by themselves or contract third-parties to do it. The Program will support small and medium size municipalities to implement efficient public lighting. |
| 1. **The role of economic regulation in creating incentives for efficient, investment, and protection of users’ rights.** | The adoption of an effective regulatory system tailored to the specific conditions of each sector in each country is a key factor for achieving the Policy’s objectives. A regulatory system should help reduce the capital cost of service providers, encourage investment, set service quality standards, and allow service providers to obtain sufficient revenues to be financially sustainable. The selection of the most appropriate institutional instrument for the specific conditions of the country and the service is of the utmost importance for the effectiveness and sustainability of the regulatory process. This instrument may take various forms, from regulation by contract to more complex methods that require the creation of a multisector regulatory body or even a specific one for each service. The probability that economic regulation will contribute to achieving the Policy’s objectives increases with the degree of independence, autonomy, and transparency of the regulatory institutions and processes.  The promotion of users’ rights should be a core objective of the service regulation process. Thus, regulation should ensure that the efficiency gains achieved over time by the service providers are passed on to the users through rate reductions or improvements in service quality. For this to happen, it is essential to prevent the abuse of dominant market power by the provider and strictly apply the standards for quality of service. Regardless of the sector structure and institutional regulation model selected by each country, the Bank will provide assistance in developing information systems that show policy-makers and users the structure and cost and rate levels at all stages of service production. | | ANEEL main tasks include: (i) regulate generation (production), transmission, distribution and sale of electricity; (ii) overseeing, directly or through agreements with state agencies, concessions, permissions and electricity services; (iii) implements policies and guidelines of the federal government regarding the exploitation of electricity and the use of hydraulic potential; (iv) establishes tariffs; (v) settles disagreements at the administrative level, between agents and between these agents and consumers; and (vi) promotes the activities of granting concession, permission and authorization of projects and electricity services, as delegated by the Federal Government . |
| 1. **Creating the proper conditions so private participation in public utilities service delivery is a viable option.** | This Policy recognizes that competition has the potential to increase productive efficiency and quality of service. In markets where production technology does not exhibit characteristics specific to natural monopolies, market competition can be generated by allowing several companies to offer services simultaneously. When the markets are natural monopolies, competition for market can produce the same results as competition in the market, as long as the process of selection and regulation of the company providing the service is open and effective. The Policy also recognizes that private participation (in any of its manifestations, including management contracts, concessions, or mixed-ownership enterprises) is a key tool for closing gaps in the quantity and quality of utilities in the region. Attracting private participation to the services covered under this Policy and maximizing its impact on efficiency gains in service management depends on the existence of a macroeconomic context that favors investment and credit, a clear, stable institutional and regulatory framework, and economic conditions that reduce capital cost and allow for reasonable returns on investment. In those cases where the countries consider that competition and implementation of public-private partnerships are suitable mechanisms for promoting the expansion of the supply and enhancing the quality and efficiency of public utilities services, the Bank will provide assistance in strengthening the institutional and legal framework and in developing rules and mechanisms that encourage the participation of enterprises under equal conditions. | | Brazil has created various tools to stimulate private investors to invest in the energy sector in particular to develop projects related to renewable power. A wide range of initiatives have been implemented to benefit the renewable power sector, among which:  (i) simplified Environmental Licensing Process (Conama Resolution 279/2007): establishes a period of up to 60 days for the concession of each environmental license, with priority for the analysis and prevision of simplified studies; (ii) simplified grant concession process; and (iii) creation of a market reserved for the sale of renewable power: consumers with significant demands, but that would be initially excluded from the open power market, may acquire electricity from Small Central Hydroelectric Power Plants; and (iv) 50% reduction on the Electricity Use and Distribution Fees for power originating from renewable sources. Various other benefits are offered in order to attribute economic benefits to electricity projects in general.  **Regarding public lighting.** In 2013, ANEEL determined that at the end of 2014 all public lighting sources that previously were responsibility of the distribution companies will be transferred to the municipalities.  According to the legislation, all public lighting services must be provided directly by municipalities or by means of private concessions. |
| 1. **Strengthening the management of infrastructure used for public utilities service delivery** | Increasing the supply of infrastructure is not always the most efficient solution in response to growing demand for public utilities. Diagnostics often encourage building more infrastructure over promoting optimal use and management of existing assets, in order to increase the supply and quality of public utilities services, thus avoiding sub-optimal investments. The most pertinent spheres of action for optimizing infrastructure management are: (i) encouraging efficiency in business management; (ii) developing and implementing appropriate, stable asset maintenance policies; and (iii) optimizing the use of the infrastructure through incentives for demand. Policies to drive demand through the setting of standards or the establishment of price incentives (including congestion charges and peak and off-peak rates) have the potential to change consumption patterns while increasing the availability of infrastructure services. Optimization of infrastructure use through price mechanisms not only allows cost savings, but can also contribute to environmental sustainability by creating incentives to conserve, and therefore reduce emissions and adverse impacts on ecosystems. When establishing price incentives and changing rates, it is highly advisable to rigorously analyze their distributive incidence among the various types of users, in order to report on possible impacts on social inclusion. | | The program contemplates the possibility of financing energy efficiency projects, which will help to optimize the use of infrastructure. |
| **3.2 Promoting innovation to foster efficiency, access, and environmental sustainability.** | | | |
| **a. Promoting innovation to foster efficiency, access, and environmental sustainability** | Technological advances make it increasingly possible to design targeted solutions to meet the demand for infrastructure services. Photovoltaic power generation, microhydroelectric generators, and waste separation plants for recycling are examples where technology fulfills the dual role of increasing the supply of services and contributing to environmental sustainability through the development of a lower-emissions offering. The adoption of the latest technologies can also help reduce service delivery costs, for example, through technical and nontechnical loss detection in water and power distribution. Moreover, technological innovations such as smart meters, have the potential to reduce utilities consumption during periods of high demand. This Policy highlights the role of technology for increasing access with cost-effective solutions, reducing maintenance costs, and managing consumption, while avoiding unnecessary investments in increased capacity. The Policy recognizes that the Bank will help disseminate information on the adoption, financing, and systems for management of the most appropriate technology solutions for each particular combination of public utility and demand characteristics. . | | The operation promotes energy efficiency, promoting the development and use of practices and environmentally sound technologies. |
| **Conditions** | | | |
| **Financial sustainability** | For each operation, it will be verified that the relevant service will generate or receive sufficient funds to meet its financial commitments and cover the operating and maintenance costs of the systems related to the operation.  When a Bank operation involves contributions of budgetary funds to subsidize the provision of a public utility service, it will be verified that: a. the budgetary allocation of such contributions is transparent; and  b. its purpose corresponds with one of the following objectives: i. Expansion of capacity to provide greater access; ii. Increase in the quality of the existing services; iii. Improvement in process administration and adoption of technology for the services to contribute to climate change mitigation or to the management of natural disaster risks.  When the budgetary funds represent rate subsidies, it will be confirmed that progress is made on the design and implementation of the subsidy targeting instruments that grant priority to the most vulnerable and lowest-income groups. | | All the projects to be funded by the program are expected to be financially sustainable, since the program will be operated through public financial institution that will require that sub-projects are financially viable, which in turn also rely on a set of regulations on tariffs that ensure investments’ returns.  No specific subsidies to the beneficiaries of the program will be provided, and the tariff to be applied shall be those already in place by the regulatory framework.  The selection of the portfolio of projects to be financed by this operation will go through a rigorous analysis of the economic-financial and technical viability of them to determine their sustainability, and a sensitivity analysis of their economic returns to changes in main parameters. |
| **Economic evaluation** | Public utilities projects will be economically viable in accordance with the cost-benefit and cost-effectiveness evaluation methodologies used and accepted by the Bank. | | The program has a cost-benefit economic evaluation, following the bank’s procedures, that shows that it is viable, from an economic point of view. Sensitivity analyses for the main parameters have been performed. |