



Public Services International Research Unit (PSIRU)

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Electricity companies in Latin America 2007

By

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1. Introduction

This report looks at the companies in the electricity sector in Latin America and some issues arising from recent trends. The first section looks at :

- The position of the largest private companies as at September 2007
- Other international investors
- The activities of Latin American companies

The second section discusses some of the issues:

- Trends in the involvement of international companies
- Private investment and public guarantees
- Private equity and other funds
- Public sector
- Compensation claims and ICSID
- Central America: CAFTA and SIEPAC

2. Companies

Although many multinationals remain in Latin America with stakes in a few companies, there are now clearly six companies with a major presence. These are AES from the USA; AEI, a Cayman Islands based fund holding the former assets of Enron; the three Spanish companies: Endesa, Iberdrola, and Union Fenosa; and Suez.

2.1. AEI

AEI (Ashmore Energy International) was created in 2006 by the UK private equity fund Ashmore Investment Management Limited (Ashmore) to take over the former international operations of Enron. It is based in the Cayman Islands. Ashmore owns 60%, and two USA-based private equity firms, Eton Park and D E Shaw, each own 20%.¹ In September 2006 AEI bought for \$2.1bn² all of the non-USA energy assets of Enron, through the purchase of Prisma Energy International, which was created in 2005 to hold the subsidiaries of Enron.³ AEI's credit rating is poor, (a B+ rating from Standard and Poors), so it is expected to pay higher interest rates on its debts.⁴

AEI holds companies operating in electricity distribution, electricity generation, and gas distribution. All of this business is in Latin America, except for power stations in Philippines, Poland, and Turkey. It also owns a number of gas pipelines and LNG facilities in Brazil, Bolivia, Colombia and Venezuela. In 2007 it sold the Venezuelan gas operation to the state energy company PDVSA.⁵

In 2007 it has been increasing its holdings. It has bought out the former stakes of Globeleq in Nicaragua and Guatemala,⁶ and the stake of PPL in El Salvador;⁷ bought the Peruvian gas distribution company Callida from Suez;⁸ sold its Panamanian generating company Bahia las Minas to Suez;⁹

Table 1. AEI: Power Distribution

Country	Company	% owned	
Brazil	Elektro		Elektro serves 223 municipalities in São Paulo, and five municipalities in Mato Grosso do Sul, encompassing approximately 60,150 miles of distribution and transmission lines.
Panama	Elektra		Elektra serves approximately 300,000 customers and has 7212 kilometers of high, medium and low voltage distribution lines and 12 substations.
El Salvador	Delsur	86.4	Delsur is the second largest electricity distribution company in El Salvador serving approximately 291,000 customers in the central-south region and has 6,000 kilometers of distribution lines.

Table 2. AEI - Power Generation

Country	Company	% owned	Generating Capacity	Fuel Type	
Brazil	Cuiabá-EPE		480 MW	Natural gas	The Cuiabá Integrated Project consists of four companies which, on an integrated basis, operate a power plant in Brazil and purchase natural gas in Bolivia or Argentina and transport it to Brazil for use as fuel
Dominican Republic	Generadora San Felipe	100	180 MW	Fuel oil	A barge-mounted power plant located in the Dominican Republic which sells power to Corporacion Dominicana De Electricidad
Guatemala	POP	100	234 MW	Fuel oil	PQP provides about 13% of Guatemala's installed electric capacity. It sells 110 MW of capacity to Empresa Electrica de Guatemala S.A under a power purchase agreement. The remaining is sold under short- and medium-term sales agreements in the Guatemala and El Salvador markets.
Nicaragua	Corinto	50	70.5 MW	Fuel oil	Corinto sells power to Disnorte and Dissur, distribution companies owned by the Spanish group Union Fenosa.

In addition, AEI owns three power plants in Turkey, Philippines and Poland: [Trakya](#) (Turkey) 478 MW Natural gas; [SPC](#) (Philippines) 116 MW, Fuel oil; and [ENS](#) (Poland) 186 MW cogen Natural gas.

Table 3. AEI: Gas Distribution

Country	Company	% owned	
Colombia	Promigas	52.9	Promigas is the largest natural gas transmission company in Colombia serving 1.4 million customers, representing 36% of the Colombian market . Also involved in gas transportation and fuel distribution. Promigas' has recently entered the energy markets of Perú, Ecuador and Mexico.
Argentina	Metrogas		Argentina's largest natural gas distributor with 27% of total deliveries of all gas distribution companies. Approximately 2 million customers in its service area (Capital Federal and Sourthern and Eastern GBA)
Peru	GNLC		Natural gas distribution company operating in Lima and Callao provinces under a 33 year BOOT consession assigned in 2002 (extendable up to 60 years)
Peru	Calidda	81%	Cálidda is a natural gas distribution company serving Lima and Callao in Peru. AEI and Promigas hold 60% and 40% ownership positions in Cálidda, respectively. AEI owns 52.9% of Promigas.

2.2. AES

AES is a global multinational electricity company, with sales of US\$11.6 billion and 30,000 employees in 2006. It is based in the USA, but has a relatively small proportion of its business there. Half its total business is in Latin America, where it has about 10,000 employees. It also operates in Europe, Asia and Africa.¹⁰

In 2002 and 2003 it faced major losses and responded by exiting from many subsidiaries. It abandoned major investments in the UK (Drax), India (Orissa) and Uganda (a major hydro project, where there were allegations of corruption); sold controversial operations in Georgia (where its finance director was murdered) and Kazakhstan, and in Ukraine. In Latin America, by contrast, it increased its stake in many companies, buying shares from other multinationals who are leaving: it was effectively forced to take over the shares in four companies abandoned by its partner PSEG. It systematically renegotiated the debts of all its subsidiaries in Brazil - after defaulting on the loans due from its subsidiary Eletrobras - and in Chile. In Dominican Republic, where it owns both generators and distributors, it has been involved in bitter disputes with the government: AES shut down its generators to force the government to make payments. In Venezuela, AES promised Union Fenosa the right to buy some assets in Colombia in return for its agreement not to enter a bidding war for the Venezuelan utility.¹¹

It has deliberately refinanced its operations in Latin America to reduce AES' own debt, increase the proportion of locally raised debt and increase the maturity of the debt.

In 2006 it had investments in Latin America in 9 distribution companies serving more than 8 million customers and sales of \$4.6 billion; and 48 power plants with a total capacity of 11,181 MW and sales of \$2.6 billion. AES has a 'junk' credit rating, so it has to pay higher interest rates for its debts, but in July 2007 this was being considered for upward revision by ratings agency Standard and Poor.¹² AES continues to expand, and in October 2007 announced it will borrow US\$2 billion to fund further acquisitions.¹³ New power plants are being developed in Chile and Panama.

Table 4. AES in Argentina

Parent	Country	Company	Sector	%	Employees
AES	Argentina	Edelap	Electricity distribution	90	444
AES	Argentina	Eden	Electricity distribution	90	637
AES	Argentina	Edes	Electricity distribution	90	281
AES	Argentina	San Nicolás	Electricity generation	88	
AES	Argentina	Central Dique	Electricity generation		
AES	Argentina	Rio Juramento	Electricity generation	98	
AES	Argentina	Hidroelectrica Alicura	Electricity generation	100	
AES	Argentina	AES Parana	Electricity generation	100	
AES	Argentina	CTSN	Electricity generation	99	

2.2.1. Brazil

Table 5. AES in Brazil

AES	Brazil	AES Sul	Electricity distribution	100
AES	Brazil	Eletropaulo	Electricity distribution	16.1
AES	Brazil	Tiete	Electricity generation	24.3
AES	Brazil	Uruguaiana	Electricity generation	36.2

There have been major financial problems with AES' Brazilian operations. There was a major restructuring carried out in 2004, with the crucial support of the Brazilian development bank BNDES. One effect has been to refinance operations using local capital: for example, the Sao Paulo distributor Eletropaulo raised US\$482m. in debt in Brazil in 2005.

The exercise has successfully restored the profitability of most AES operations, but this itself has now become problematic. For example, Eletropaulo made net profits of 506mn reais (US\$255mn) in the first six months of 2007, more than double the 227mn reais from the first half of 2006. It has now been ordered by the regulator, ANEEL, to cut prices by 12.7%¹⁴. AES Tiete, a generating company, made net profits of 303mn reais in the first six months of 2007, but plans to distribute all the profits in dividends to shareholders, without reinvestment, although AES Tiete has so far failed to fulfil its obligations to expand its capacity in Sao Paulo state, and now wants to expand outside that state.¹⁵ AES defaulted in 2003 on repayments of a \$2billion loan from BNDES which was made in 1997 to enable AES to buy Eletropaulo: AES now wants to sell the company to Brazilian investors and use the proceeds to repay BNDES, which would still be expected to accept a significant loss.¹⁶

AES may use its new debt to buy the other half of Brasiliana, the power company of which it already owns 50%, when BNDES sells its holding: AES will be competing with Brazilian companies including CPFL for this stake, but claims it has the right of first refusal.¹⁷

AES' initial purchase of its stake in Eletropaulo in 1998 is now the subject of a court case and an investigation. The court case is against 17 people including former presidents of BNDES accused of illegal and irresponsible acts by granting a loan to AES to buy Eletropaulo, which put at risk "the financial health of BNDES," AES subsequently defaulted on repayments and the loan was restructured in 2003. Jail sentences of up to eight years are possible. The São Paulo state legislature has also investigated the privatisation, including payments made by AES to the state treasury.¹⁸

2.2.2. AES in Central America

Table 6. AES in Central America

AES	Dominican Republic	AES Andres	Electricity generation	100
AES	Dominican Republic	Itabo	Electricity generation	48
AES	Dominican Republic	Los Mina	Electricity generation	100
AES	El Salvador	CAESS	Electricity distribution	75
AES	El Salvador	CLESA	Electricity distribution	64
AES	El Salvador	Deusem	Electricity distribution	74
AES	El Salvador	EEO	Electricity distribution	89
AES	Honduras	AES Honduras	Electricity generation	
AES	Mexico	Merida III	Electricity generation	55
AES	Panama	AES Panama	Electricity generation	100
AES	Panama	Chiriqui hydro	Electricity generation	49

In El Salvador, AES restructured the companies in 2003-2005, and in the process cut 142 jobs. In 2006 it states that it reached a new collective agreement. In 2006 it had 947 employees in the country.

AES sees considerable business opportunities arising in central America because of the SIEPAC initiative to create a single electricity market with as unified transmission grid, and guaranteed access to private investors. The regional trade area, CAFTA, also requires the liberalisation of electricity sector.

Table 7. AES in other countries

AES	Chile	Gener	Electricity generation	99
AES	Colombia	Chivor	Electricity generation	99

The Venezuelan government renationalised the distribution company Electricidad de Caracas (EdC), paying AES \$739 million in compensation.¹⁹

2.3. Enel/Endesa

Endesa is the largest Spanish electricity company, and operates in 13 countries in total. It is the leading private electricity multinational in Latin America, where it has been active since the early 1990s.²⁰ In October 2007 it was finally taken over by the Italian electricity company Enel. It is not clear what effect this will have on Endesa's activities in Latin America.

It is the leading electricity supplier in Chile, Argentina, Colombia and Peru, the third electric utility in Brazil and distributes power in five of the six main cities in the region (Buenos Aires, Bogotá, Santiago de Chile, Lima and Río de Janeiro). In 2006 ENDESA had a total capacity of 14,317 MW and a total of 11.6 million clients.. Endesa has subsidiaries in all three subsectors – generation, distribution, and transmission, including a 60% stake in the major Chilean company Enersis.

Endesa emphasises the objective of further financial restructuring, by withdrawing some capital and extracting dividends, and by reducing debts and using local debt to minimise currency risks. Endesa has dropped its ICSID claims against Argentina.

Endesa owns 14% of Empresa Propietaria de la Red, which is developing the Siepac project, an electricity interconnection connecting Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama through a 1,880 km 230 kV trunk line scheduled for completion in 2006. The estimated budget for this project is US\$ 320 million.

The map and table below show Endesa's subsidiaries in Latin America in 2006. The number of employees in each country have increased significantly since 2004, although Endesa's holdings are largely unchanged. One possible explanation would be if Endesa had started to reverse its use of outsourcing and casualisation.

Table 8. Table: Endesa investment and employees by country in Latin America, 2006

Country	Employess	% of Endesa investment in Latin America
Chile	2739	36%
Colombia	1,602	21%
Brazil	3,335	25%
Peru	1,146	11%
Argentina	3,091	8%
TOTAL	11,913	

Source: Endesa Annual Report 2006

Table 9. Endesa subsidiaries in Latin America 2006

Country/pais	Company/empresa	Sector	% owned by Endesa
Argentina	Costanera	Electricity generation	64.3
Argentina	Dock Sud	Electricity generation	69.8
Argentina	Edesur	Electricity distribution	99.4
Argentina	El Chocon	Electricity generation	65.2
Argentina	Yacylec	Electricity transmission	22.2
Brazil	Cachoeira Dourada	Electricity generation	99.6
Brazil	Ampla	Electricity distribution	91.9
Brazil	Cien	Electricity transmission	100
Brazil	COELCE	Electricity distribution	58.9
Brazil	Fortaleza	Electricity generation	100
Chile	Chilectra	Electricity distribution	98.2
Chile	Energis	Electricity generation	60
Colombia	CODENSA	Electricity distribution	48.5
Colombia	EMGESA	Electricity generation	48.5
Dominican Republic	CEPM	Electricity generation	40
Peru	Edegel	Electricity generation	63.6
Peru	Edelnor	Electricity distribution	60

Source: Endesa Annual Report 2006

2.4. Iberdrola

Iberdrola is the second largest electricity company in Spain, and one of the largest in Europe since it bought the UK energy company Scottish Power and the USA company Energy East. It has a number of operations in Latin America, in Bolivia, Brazil, Chile, Guatemala and Mexico. In the past it has attempted to reduce its holdings in Latin America - it tried to sell Iberener in 2004, for example – but it has now made them profitable, and also reduced risk for its own shareholders by refinancing operations with local capital in both Brazil and Mexico..²¹

Table 10. Iberdrola subsidiaries in Latin America, 2007

Country/pais	Company/empresa	Sector	%
Bolivia	Elfeo (Cade?)	Electricity distribution	59.3
Bolivia	Electropaz	Electricity distribution	56.8
Brazil	Celpe	Electricity distribution	40
Brazil	Coelba	Electricity distribution	42.6
Brazil	Cosern	Electricity distribution	9.5
Brazil	Neoenergia (formerly Guaraniana)	Electricity	39
Brazil	Itapebi	Electricity	40.5
Chile	Ibner	Electricity generation	95
Chile	Peuchen	Electricity generation	95
Chile	Mampil	Electricity generation	95
Chile	Essal	Water	51
Guatemala	Eegsa	Electricity distribution	39.6
Guatemala	Trelec	Electricity transmission	39.6
Mexico	Altamira III/IV	Electricity generation	100
Mexico	Enertek	Electricity generation	100
Mexico	Femsa-Titan	Electricity generation	100
Mexico	Monterrey	Electricity generation	100
Mexico	La Laguna	Electricity generation	100

Mexico	Altamira V	Electricity generation	100
Mexico	Tamazunchale	Electricity generation	100

Its presence in Brazil is a group of distribution companies in the northeast of Brazil: Coelba, Cosern, and Celpe, and a generating company, Neoenergia, which supplies these distributors. The business is growing and very profitable. In 2006 revenues in Brazil rose by 27.8% as a result of growing demand and price increases; the gross profit margin increased to €592.4million. Coelba and Cosern have issued bonds worth \$143m and \$40m respectively: this is local money borrowed by the local operators, who all (including the third one, Celpe²²) have their own independent credit ratings, not funds from Iberdrola.^{23 24} Iberdrola holds 39% of the generation company Neoenergia which owns a number of generators, all of the output from which will be bought by Iberdrola's distribution companies. The cost of this investment is also all derived from the surplus of the Brazilian energy operations, not from capital from Spain.²⁵

Iberdrola is the largest independent generator of electricity in Mexico, with six combined cycle plants with a total capacity of 3,815 MW, and in 2006 produced more than 8% of the total energy generated in Mexico, the great majority of which is sold to the state utility CFE under 25-year agreements. In 2006 Iberdrola carried out a complete refinancing, with the Mexican subsidiaries themselves taking on a new \$1.7billion loan - \$500m. of which may be refinanced by a bond issue in Mexico – and using it to repay loans from the parent company, Iberdrola, and loans from development banks which had been guaranteed by Iberdrola. The net effect is to shift the debt onto the local companies, and raise more finance locally. This was designated 'Latin American Power Deal of the Year' by Project Finance magazine.²⁶

2.5. Union Fenosa

The Unión Fenosa Group is Spain's third largest electricity company. In Latin America it is present as an operator in electricity generation and distribution in Colombia and Panama; in the generation markets of Mexico and the Dominican Republic; and in electricity distribution in Guatemala and Nicaragua. Its distribution operations in Dominican Republic were re-nationalised in 2003 (with compensation).²⁷ Unión Fenosa's total international business has installed generating capacity of 2,773 MW, and electricity is distributed to 5.2 million customers.²⁸

Union Fenosa's profits in Latin America increased in 2006, and contributed over a quarter of the group profits, due to price rises, growth in demand, and cuts in employment: "The increased demand and the rate revisions, together with the constraint on staff expenses and improvements in technical and operating processes have allowed for an improved joint EBITDA of 15.5%, 26.7% of the total for the UNION FENOSA Group"²⁹

Table 11. Union Fenosa subsidiaries in Latin America 2006

Country/pais	Company/empresa	Sector	%
Colombia	Electricaribe	Electricity distribution	71.5
Colombia	Electrocosta	Electricity distribution	71
Colombia	EPSA	Electricity	62.6
Dominican Republic	Generadora Palamara La Vega	Electricity generation	100
Guatemala	Distribuidora Eléctrica de Oriente	Electricity distribution	92.8
Guatemala	Distribuidora Eléctrica de Occidente	Electricity distribution	90.8
Mexico	Union Fenosa (Mexico)	Electricity generation	100
Nicaragua	Disnorte	Electricity distribution	79.5
Nicaragua	Dissur	Electricity distribution	79.5
Panama	Chiriqui	Electricity distribution	51
Panama	Metro-oeste	Electricity distribution	51

Source: Union Fenosa Annual Report

2.6. Suez/Electrabel/Tractebel

Suez is merging with Gaz de France, to form a new and larger energy company. The water and waste sections will be floated as a separate company. It is active in energy internationally, including Europe, North America and Asia as well as Latin America. It has strengthened its Spanish connections, and now has an

11% stake in Gas Natural.

In 2006 the international energy division had total sales of €6.2 billion, with 3,983 employees, 1050 in south America. In Latin America it has major stakes in generating companies in Brazil, Chile, and Peru and Mexico (as well as some gas distribution companies in Mexico), and has just acquired a generation company in Panama. It also has investments in gas pipelines. Suez suspended investment in Brazil between 2002 and 2005, complaining that the current policies put Tractebel “in an unfair position by forcing it to compete with state-controlled generators”³⁰

Its current strategy is that Brazil, Chile and Peru are seen as the core countries, with future growth possible in Panama and central America.

Table 12. Suez Energy in Latin America

Parent	Country	Company	Sector	Percent
Suez	Argentina	Litoral gas	Gas distribution	
Suez	Argentina	Gasoducto Nor Andino	Gas transmission	
Suez	Brazil	Cana Brava	Electricity generation	
Suez	Brazil	Itasa	Electricity generation	
Suez	Brazil	Ocirala Participacoes	Electricity generation	
Suez	Brazil	Tractebel Energia	Electricity generation	
Suez	Chile	Electroandina	Electricity generation	
Suez	Chile	Edelnor	Electricity generation	
Suez	Chile	Distrinor	Gas distribution	
Suez	Chile	Gasoducto Nor Andino	Gas transmission	
Suez	Mexico	Tractebel gas	Gas distribution	
Suez	Mexico	Tractebel (Monterey)	Electricity generation	
Suez	Panama	Bahia las Minas	Electricity generation	51
Suez	Peru	Enersur	Electricity generation	
Suez	Peru	TGP	Gas transportation	

2.7. Other international investors

2.7.1. CMS

CMS, which won a large compensation award from ICSID, is in the process of selling all its assets in Latin America, comprising 895 MW of capacity in Argentina, a 20% stake in the Transportadora de Gas del Mercosur gas pipeline linking Argentina and **Brazil**, to a USA investment fund, Lucid Energy for \$180 million., and auction its other holdings.³¹

2.7.2. Duke Energy

Duke Energy continues to hold stakes, notably in Brazil and Peru. It has been seeking compensation through ICSID over tax demands from the Peruvian government which it regards as unreasonable and in breach of the investment treaty between the USA and Peru.

2.7.3. EdF

Electricite de France (EdF) was a major multinational investor in Latin America from the mid-1990s. It has now, in effect, sold all its stakes in subsidiaries.

2.7.4. CDC/Globeleq

Globeleq, the subsidiary of the UK-state-owned investment fund, CDC, has sold all its investments in the electricity sector in Latin America to a consortium of D.S. Constructions Limited of India and Israel Corporation Limited, except for some minority interests sold to AEI. It continues to invest in new power stations in Latin America.

2.7.5. Kappa/D.C.Constructions/Israel Corporation

Globeleq’s Latin American holdings were sold to a consortium of D.S. Constructions Limited of India and Israel Corporation Limited, except for some minority interests sold to AEI. The new owners are an Indian

construction company and an Israeli investment fund. Apart from Gliberleq's former companies, they are already investing in electricity in Peru through a joint venture, Kappa Generation, which is building the gas-fired 180MW Kalpa power station in Lima.³²

2.7.6. LG&E/E.on

E.ON subsidiary Louisville Gas & Electric (LG&E) is slowly exiting Argentina. In June 2007 it sold its stake in Gas Natural BAN, but still retains stakes in gas distributors Gas Cuyana and Gas del Centro.³³

2.7.7. PPL

Pennsylvania Power and Light (PPL), a USA company, is selling its Latin American assets. In 2007 it has sold Empresa Emel, a distribution company in Chile for \$660 million to a local company, and has also sold distributors in Bolivia and El Salvador.

2.7.8. PSEG/Sempra

PSEG has just sold Electroandes in Peru, and is looking to sell its stakes in Peruvian and Chilean distributors (where another USA company, Sempra, is the other main shareholder). It owns three Venezuelan power plants that serve industrial users, which the Venezuelan government plans to nationalise.³⁴ PSEG also owns SAESA, a Chilean holding company with 120 MW of generation and five distribution units serving 617,000 customers, which it says it has no plans to sell.

2.7.9. Red Electrica Espana REE

Red Electrica de Espana (REE) is the Spanish national **electricity** grid operator. It is already present in Peru and Bolivia, and says that it wants to become active in Brazil.³⁵

2.7.10. SN Power

Statkraft Norfund Power Invest (SN Power), the Norwegian state-owned electricity company, has bought the Peruvian generating company Electroandes in September 2007.³⁶

2.8. Latin American companies

The most significant group of Latin American companies remains the public sector companies which were not privatised, or only partly so. In some cases, public sector companies have also expanded into other countries, most notably Brazilian companies. There are also a few examples of private companies. Brazil is the country with the most active group of public and private companies.

Electrobras in Brazil, remains the dominant generator of electricity in the country. Another Brazilian state company, Petrobras, has invested in electricity and gas companies in Argentina, partly in partnership with Enron. These have experienced problems, but Petrobras is having difficulty in extracting itself from these investments. Another example is Cemig, the utility which remains majority owned by the state of Minas Gerais, which has won a concession in Chile to build and operate transmission lines: it also wants to expand within Brazil, with a target of generating 20% of all the electricity in the country. There are also private companies active in Brazil, including CPFL and Andres Gutierrez.

3. Issues

3.1. International companies

The holdings of the largest companies have remained fairly stable over the last three years, although there have been exits and withdrawals by other major companies including EdF. Nevertheless, more multinationals remain in Latin America than seemed likely a few years ago, when nearly all of them – including the Spanish companies – announced their intention to retreat.

The main reason for their continued presence is simply that it was very difficult to find buyers, and so they have been forced to stay. Renationalisation would have been an attractive solution for many of the

companies, but governments have been constrained by borrowing limits and political considerations: it is notable that the multinationals with investments in Venezuela are not protesting at the nationalisation of their assets, and AES even seemed pleasantly surprised at the amount of compensation paid.

Despite more profitable conditions (as discussed in the next section), most would clearly still prefer to exit. AES, for example, has already demonstrated that it is ready to abandon companies anywhere in the world when they become unprofitable. This short-term perspective is damaging for employees as it makes companies much less likely to negotiate long-term benefits such as pensions and training. The typical experience of employment practices resulting from electricity privatisation in Latin America is casualisation of workers and the extensive use of outsourcing, detailed in a previous PSIRU report.³⁷

3.2. Private investment and public restructuring

Northern investors are currently interested in investing in Latin American energy again. There has been a global rise in private investment in electricity since about 2003, with financial investors playing an increasing role. In Latin America, private investment has averaged \$4.5 billion per year since 2002, concentrated mainly in Brazil and Mexico. Investors are most interested in investing in 'greenfield' investment in new plants, in the expectation of higher economic growth, population growth and extension to new customers will lead to a greater growth in demand for electricity than in the north. In addition to the growing demand for electricity, investment has been attracted by stronger local currencies and better credit ratings for countries, which enable debt to be raised at lower interest rates. Some Latin American companies now have shares traded on the New York and/or Madrid stock exchanges, such as CEMIG (Brazil) and Edenor (Argentina): shares in Latin American utilities provide dividend yields of 5%-10%, above the return on USA utilities.

The privatisation process itself often involved a great degree of financial support from the public sector. In Colombia, for example, by 1995 the electricity company of Bogota, Empresa de Energía de Bogotá (EEB), was heavily indebted to the government and multilateral banks. It was transformed into a plc, and the debt was refinanced by the government injecting equity and writing off debt. It was then unbundled into a distribution company (Codensa) and a generation company (Emgesa), and 48.5% of each company was sold to a private company, in both cases to subsidiaries of Endesa and Enersis., with the state-owned EEB retaining 51.5% of each.

A similar pattern of state involvement can be seen in the last 5 years. Distribution and generating companies privatised in the 1990s, which became unprofitable, have been financially restructured, with a lot of investments being written off in the period 2001-2004. The cost of this was partly borne by the companies, but partly by local agencies such as the Brazilian state development bank BNDES. The restructuring has generally involved a greater use of local debt, and some local equity invested by industrial companies, investment funds, and also by state-owned corporations. The increased role of local capital, whether public or private, may help mitigate the impact of future short-term downswings in investment.

The role of the public sector in guaranteeing profitability remains central to all the private developments in new independent power plants (IPPs). The level of electricity prices agreed with IPPs is crucial – for example, Endesa's planned 350mw TermoFortaleza gas-fired power station in Brazil was subject to 'numerous' renegotiation of tariffs over 4 years before the terms were agreed in 2006, assisted by an IFC loan of \$68m.³⁸

3.3. Private equity and other funds

Northern banks, private equity funds, hedge funds and infrastructure funds are all investing in the sector.³⁹ Different types of investors have different implications. Pension funds and infrastructure funds may be investing for stable returns over a long period. Other private equity and hedge funds are interested in rapid growth and short-term capital gains, which can create further instability:

“Financial investors, unlike corporate investors, are skilled at generating significant returns throughout the cycle.... The increased ownership of assets by investor types that do not hold the

stability of the sector as a priority has catalyzed the upside of the cycle and may very well exacerbate the downside.”⁴⁰

The most significant private equity operator is AEI, which is owned by three private equity funds: Ashmore (UK), Eton Park and D.E.Shaw (both USA), which took over Enron’s former interests. At present, it is expanding and consolidating its position. Another USA fund, Lucid Energy, has taken over CMS’ former assets. Globeleq – which was a state-owned financial investor – has sold its operations to a consortium of an investment fund and a construction company. Most other financial investment is focussed on specific projects, for example the Conduit Capital fund, which invests in small hydroelectric projects in Latin America; Globeleq also remains as a financial investor in new power plants.

There is also some activity by national and local investment funds. Peruvian pension funds have already invested \$1.2 bln (843 mln euro) in development and infrastructure projects, including **electricity** and gas transmission projects as well as roads, ports, and housing, and has a further US\$2 billion available to invest. At present legislation allows only 20 pct of the total sum to be invested abroad, but this may change.⁴¹ In Argentina, the Dolphin and Pampa investment have been involved in buying companies from multinationals.

There is some reaction against private equity investors. In February 2007, ENRE, Argentina's energy regulatory body, advised the government to block the sale by Petrobras of its 50% stake in Citelec, the holding company that controls Transener, to U.S.-based hedge fund Eton Park for \$54m.⁴²

3.4. Public sector

There is much less privatisation of existing companies, so the public sector is no longer shrinking and is playing a stronger role in developments. Even in Colombia, where privatisation has been most encouraged, half of distribution and generation remain in the public sector. The obvious form of public sector revival is through renationalisation, which is happening in Venezuela. Another is through the strengthening of state-owned companies which survived the wave of privatisation and may now be considering expanding in their own right. Another is through financial restructurings, as has been done most notably by the Brazilian development bank BNDES.

One example of this process can be seen in the changing ownership of Light, the distribution company for Rio de Janeiro, which was originally privatised in 1996, when BNDES, AES, , EdF, Houston Industries (later renamed Reliant Energy) and Brazilian steelmaker CSN bought 50% of Light. Since May 2007, when BNDES converting substantial loans into equity, Light has been owned by: Rio Minas Energia consortium: 54.2%; BNDES 31.4%; others 14.4%. The Rio Minas consortium itself consists of 4 equal partners: Cemig, the state-owned power company of Minas Gerais; the Brazilian private company Andrade Gutierrez Concessoes, and local investment banks JLA Participacoes and Banco Pactual.⁴³ This new ownership is local rather than multinational, and dominated by public sector entities.

The role of the public sector continues to be constrained by policy restrictions on public sector borrowing. This factor prevents the Brazilian electricity company Eletrobras from making major investment in its own right, so that much new development has to take the form of PPPs. In general in Latin America, much new generating capacity is being developed through ‘greenfield’ generators built by the private sector.

3.5. Compensation claims and ICSID

Multinationals continue to make compensation claims at international tribunals. These claims are made principally under Bilateral Investment Treaties (BITs), either to the World Bank’s arbitration tribunal (ICSID) or to the International Chamber of Commerce (ICC) or to the United Nations Commission on International Trade Law (UNCITRAL). (For an account of the law and the mechanisms, see Ricardo Ortíz (FOCO): The Bilateral Investment Treaties and the cases at ICSID, 2006 http://www.inpade.org.ar/documentos/FOCO_ICSID_engl_2006.pdf ; for news and developments see http://www.fdimagazine.com/news/categoryfront.php/id/303/IN_DISPUTE.html ; for an investor’s perspective see White and Case International Disputes Quarterly <http://www.whitecase.com/IDQ>)

In energy, most cases have concerned Argentina, with multinationals winning compensation in four cases concerning gas companies.

- In 2005 CMS was awarded \$133m. compensation for their share of the losses of Transportadora Gas del Norte (TGN), based on their claim that when Argentina refused to allow prices to be raised in line with the dollar this was an act of ‘indirect confiscation’. ICSID also ruled that, after the compensation is paid, CMS should give the Argentinean government its shares in TGN.⁴⁴
- In 2007 Enron won \$140m. compensation for its shares in the losses of Transportadora Gas del Sur (TGS). However, Petrobras, which was the majority shareholder, chose instead to pursue the renegotiation of the contract for TGS.⁴⁵
- In July 2007, LG&E, the USA company now owned by E.on of Germany, was awarded \$57.4million compensation for its share in the losses of Gas Natural BAN, a gas distribution company. Gas Natural, the Spanish company which is the majority shareholder, had however suspended its claim for compensation earlier in 2007 in favour of renegotiation.⁴⁶
- In October 2007, Sempra Energy was awarded \$172m. for its share of the losses of two gas distribution companies, Sodigas Pampeana and Sodigas Sur.⁴⁷ However, Camuzzi, the Italian company which owns 57% of the shares, has decided to renegotiate the contract rather than claim compensation.⁴⁸

Similar claims brought to ICSID in relation to electricity companies in Argentina have all now been suspended in favour of renegotiation. This includes the cases originally brought by the major multinationals AES, EdF, Endesa, and Enersis.⁴⁹

Table 13. ICSID Compensation awards: gas companies in Argentina

Company	Claimant	Country	% owned	Award	Date	Majority shareholder	Claim
TGN	CMS	USA	30	\$133m	01/05/2005		
Gas Natural BAN	LG&E/ E.on	USA/ Germany	20	\$57.4m	26/07/2007	Gas Natural (Spain)	No
TGS	Enron	USA		\$140m.	22/05/2007	Petrobras (Brazil)	No
Sodigas	Sempra	USA	43	\$172m	02/10/2007	Camuzzi (Italy)	No

Sources: see text

Two features of these claims are worth noting, as they suggest that compensation is most likely to be sought by companies with no future interest in the operations:

- In each of these cases the compensation was awarded to a company which was a minority shareholder, while the majority shareholder in each company decided to renegotiate the contract and abandon the compensation claim.⁵⁰
- None of the companies claiming compensation have any continuing interest in the companies concerned. CMS will automatically give up its shares in TGN in exchange for the compensation:
 - CMS sold all its other Argentinean investments in February 2007, and would have sold the stake in TGN as well if it had not been covered by the ICSID ruling;⁵¹
 - Enron is already bankrupt, and its shares in Ciesa, the holding company which owns 55% of TGS, have been distributed to its creditors: Petrobras now holds all the voting shares in Ciesa;⁵²
 - LG&E sold its shares in Gas Natural BAN to the majority shareholder, Gas Natural, one month before it was awarded compensation;⁵³
 - Sempra remains as a shareholder in Sodigas, but stated in December 2006, 10 months before the award of compensation, that it intended to sell its stake in Sodigas.⁵⁴

The rulings of ICSID have not been legally consistent: for example LG&E were denied compensation for the period December 2001 to April 2003 because the tribunal accepted that this was a period of national emergency; but CMS were given compensation for losses during that same period.⁵⁵

ICSID has no powers to enforce the awards, and the Argentinean government has stated that it will not pay any of the claims lodged by utility companies against it in the aftermath of the 2001-02 economic crisis.⁵⁶

Two energy-related cases against Argentina at the UNCITRAL, initiated by UK-based companies, appear to have been abandoned. National Grid Transco, former shareholder on the transmission company Transener, claimed US\$151.3m., but sold its 50% stake in Citilec, which controls Transener, to an Argentinean

investment fund Pampa;⁵⁷ United Utilities, owner of 45% in Edea power distribution company, sought US\$100m, but withdrew the case and sold their stake in Edea in 2005.⁵⁸

3.6. Central America: CAFTA and SIEPAC

Central America is moving towards greater liberalisation and privatisation, for two reasons.

The first is the growth of the Central American Free Trade Area (CAFYA), which now includes all the countries in the region since Costa Rica narrowly voted in favour of joining CAFTA on 7th October.⁵⁹ CAFTA requires the liberalisation of the electricity sector (which in Costa Rica is still run by an integrated state monopoly, ICE).

The second is the development of the SIEPAC project for a unified electricity transmission grid joining all the central American countries together, which will then be used as the physical core of a single integrated electricity market.

4. Notes

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