

Public Policy Analysis

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Statization of the Electricity Market in Honduras Socialist Government Reverts Liberalization and Reinstates a 65-year-old Monopoly in the Energy Sector

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The recently elected government of Honduras, led by President Xiomara Castro de Zelaya of the socialist LIBRE Party, has reinstated a now 65-year-old State monopoly in the electric industry, eliminating a nascent private market that had been slowly developing after free market reforms in 1994 and 2014.

The story starts in the early 20th century when Honduras had a diversified electricity market composed of private companies, municipal projects, and public-private partnerships. Most of them operated as isolated systems to serve their communities.

On October 21st, 1956, however, the Armed Forces of Honduras led a coup against the civil government, and the following year, on 1957, the military triumvirate brought the electric industry under State control by establishing the *Empresa Nacional de Energía Eléctrica*

(*ENEE*), which was granted a national monopoly over the generation, transmission, distribution, and commercialization of electricity¹.

The energy market liberalization

Due primarily to electric shortages at the start of the 1990s and the ENEE’s lack of capacity to meet national demand, the Honduran Government authorized the private generation of electricity in 1994, and while the law provided for further participation of the private sector in the electricity market, the State

¹ Ley Constitutiva de la Empresa Nacional de Energía Eléctrica (ENEE) (Military Decree Law No. 48-1957), published on February 27th, 1957 in Diario Oficial “La Gaceta”.

https://www.tsc.gob.hn/web/leyes/LEY_CONSTITUTIVA_ENEE.PDF.

monopoly was kept in place with the ENEE as the sole purchaser and seller of electricity².

High prices, terrible service, corruption, and massive indebtedness by the ENEE paved the way for a second, more comprehensive effort to liberalize the electricity market in 2014, when the *Ley General de la Industria Eléctrica (LGIE)* was enacted and 57 years of State monopoly were formally ended (though not in practice), and a path forward was established for the slow development of a competitive private market in the generation, transmission, distribution, and commercialization areas of the industry³.

The 2014 law created the *Comisión Reguladora de Energía Eléctrica (CREE)* as an independent market regulator, and the *Operador del Sistema (ODS)* as the independent operator of the Interconnected National System, the national electric grid, and the administrator of the National Electric Market, composed of a contracts market and a spot market.

² Ley Marco del Subsector Eléctrico (Legislative Decree No. 158-94, published on November 26th, 1994 in Diario Oficial “La Gaceta”. <http://www.enee.hn/pdfs/leyesenergeticas/LeyMarcoSubsectorElectrico.pdf>

³ Ley General de la Industria Eléctrica (Legislative Decree No. 404-2013), published on May 20th, 2014 in Diario Oficial “La Gaceta”. <https://www.tsc.gob.hn/web/leyes/LEY%20GENERAL%20E%20LA%20INDUSTRIA%20EL%20C%89CTRICA.pdf>.

⁴ Acuerdo Cree 20-2021, published on May 20th, 2021 in Diario Oficial “La Gaceta”. <https://www.cree.gob.hn/wp->

In 2021 the CREE lowered the threshold to participate in the energy market by adopting a criterion that allowed users with an electrical consumption over 400kw to register as “qualified consumers”, which enabled them to purchase energy directly from generators, distributors, or trading companies, through freely negotiated contracts⁴. A previous regulation from the CREE deemed any user that was connected to the high voltage grid as a “qualified consumer”, without regard to its consumption⁵.

By 2022, private participants in the electricity included, at least, 85 generation companies, 3 commercialization companies, 1 transmission company, 5 isolated systems, 9 qualified consumers, and 23 more entities in the process registering as qualified consumers before the CREE⁶.

Government Retakes Control of the Electric Industry

Following Lenin’s doctrine of retaining State control over the commanding heights of the

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⁵ Reglamento General de la Ley General de la Industria Eléctrica (Acuerdo CREE-073), published on July 2nd, 2020 in Diario Oficial “La Gaceta”. <https://www.tsc.gob.hn/web/leyes/Acuerdo-CREE-073.pdf>

⁶ <https://www.cree.gob.hn/documentos-de-registro-publico-empresas/>; https://portalunico.iaip.gob.hn/portal/ver_documento.php?uid=MTI4ODA4ODg5MzQ3NjM0ODcxMjQ2MTk4NzIzNDI=; <https://www.cree.gob.hn/certificados-consumidores-calificados/>; <https://www.cree.gob.hn/sistemas-aislados/>

economy (which includes strategic sectors such as energy), the LIBRE Party's *"Governmental Plan for the Refoundation of the Homeland and the Construction of the Socialist and Democratic State 2022-2026"* expressly called for the energy sector to be taken over the State, at least predominantly⁷.

Following through on its socialist agenda, the Castro de Zelaya-controlled Congress enacted *Legislative Decree No. 46-2022*⁸, which declared electric energy "a public good of national security" and a "social and economic human right". The Decree reinstated the ENEE as the national monopoly in the electric industry and, despite the ENEE's high indebtedness and a pressing need for investment to improve the national electric grid, the new law caps private investment to 49% of total investment in the electric industry. In other words, private investment capital can never exceed the total governmental investment in the electric industry⁹.

The new law raises to 5-MW the minimum electrical consumption required for a user to be classified as a "qualified consumer", thus

increasing barriers for entry into the electricity market, hampering competitive forces, and disincentivizing further private investment into the sector¹⁰.

Projects with smaller electrical consumption will not be allowed to contract directly with generators and distributors, forcing them to continue buying electricity from the ENEE, an unreliable State monopoly. Conversely, the market to which energy could be sold directly is substantially reduced, as the ENEE reinforces its monopsony position as the sole buyer.

A debt-ridden State monopoly/monopsony, internationally renowned for falling behind on payments due and which is legally empowered to expropriate power plants if renegotiations of supply contracts don't go its way, pushes much needed private investment out of the electric industry due to the increased risk and lack of legal certainty and protection¹¹.

Further, the decree eliminates the independent Operator of the System (ODS) and replaces it

⁷ Section 7.2.1.

<https://libertadeconomicaorg.files.wordpress.com/2021/11/pla-n-de-gobierno-xiomara-castro.pdf>

⁸ Ley Especial para Garantizar el Servicio de la Energía Eléctrica como un Bien Público de Seguridad Nacional y un Derecho Humano de Naturaleza Económica y Social (Legislative Decree No. 46-2022), published on May 16th, 2022 in Diario Oficial "La Gaceta".
https://www.tsc.gob.hn/web/leyes/Decreto_46-2022.pdf

⁹ Article 3, Legislative Decree No. 46-2022.

¹⁰ Article 19, Legislative Decree No. 46-2022 (amending article 10 of the LGIE).

¹¹ <https://www.energiaestrategica.com/asociaciones-exhortan-al-gobierno-a-saldar-deudas-con-generadores-privados-y-honrar-sus-contratos/>;
<https://www.laprensa.hn/economia/deuda-enee-generadores-energia-suma-16-409-millones-honduras-BC7004434>;
<https://www.elheraldo.hn/elheraldoplus/data/honduras-98-perdidas-en-empresas-publicas-recaen-enee-BN8843740>;

with an internal office of the ENEE¹²; and it overrides the CREE's independence by allowing the President to freely appoint and replace the Commissioners, eliminating the Nomination Board and the rigorous procedures for removal of a CREE commissioner that were originally in place¹³; the decree introduces several other changes granting the State broader control over the electric industry and eroding the market processes that were taking place.

Threats of Expropriation and Institutional Harassment

Not only does the new law reinstate a national monopoly that erodes market dynamics in the energy sector, but it also threatens to expropriate private companies and drops the weight of the State apparatus against private participants in the energy market, contravening every notion of due process and fair and equitable treatment.

The new energy law orders the ENEE to renegotiate contracts with power generation companies within a 60-day period and, if no renegotiation is possible, to proceed with the expropriation of the companies or the power plants themselves¹⁴. The 60-day period to

renegotiate the power supply contracts has passed and an agreement is yet to be reached between the ENEE and power generators, flooding the industry with uncertainty.

Before the law was passed, several lawmakers made threats of expropriation in the media, and a rally of LIBRE Party supporters chanted for the expropriation of power generation companies during a speech of fmr. President José Manuel “Mel” Zelaya, husband of current President Xiomara Castro and Chairman of the LIBRE Party¹⁵.

The law also calls for an interagency audit of the financial statements of all electric power generation companies, including a review of their enjoyment of fiscal benefits¹⁶. And goes as far as to persecute a specific private investment by expressly ordering the ENEE to publish “all the irregularities” related to an electricity distribution concession contract with *Empresa Energía Honduras (EEH)*, a private concessionaire of Colombian capital predominantly.

Additionally, the law instructs the ENEE to file a criminal complaint against EEH for the *Ministerio Público* (prosecuting agency) to

¹² Article 11, Legislative Decree No. 46-2022

¹³ Article 19, Legislative Decree No. 46-2022 (amending article 3 of the LGIE).

¹⁴ Articles 4, 5, 6, and 16, Legislative Decree No. 46-2022.

¹⁵ <https://twitter.com/Canal6Honduras/status/1521136201205432320?t=AxK7ZK5kibrFt65t94RxhA&s=08>;

<https://hondudiario.com/portada/alerta-y-reproche-por-voces-que-proponen-nacionalizar-las-termicas-en-honduras/>;
<https://proceso.hn/voces-altisonantes-hablan-de-nacionalizacion-y-expropiacion-hay-algo-detras-de-ese-eco/>.

¹⁶ Article 17, Legislative Decree No. 46-2022

investigate the dealings of EEH's investors before, during, and after the concession contract was granted, including private intra-company share purchase agreements¹⁷. The EEH has denounced expropriation attempts from the current and previous administrations of the Honduran government¹⁸.

One of Several Industries Under Attack

The electric industry is not the only economic sector under attack from the socialist government, as it is also threatening to expropriate private investment in three special economic zones and in the logistics, transport, and mining sectors of the economy. Several hundred million dollars invested in three *Special Zones for Employment and Economic Development (ZEDE)*, predominantly from the US, have received direct threats of expropriation from public officials in both the Executive and Legislative Powers, despite the projects being protected by 50-year legal stability agreements and the CAFTA-DR.

The government has also announced a ban on open pit mining, causing economic uncertainty

for workers and companies operating in the sector. While originally threatening to cancel the exploitation permits, the government has clarified that it will not renew the permits¹⁹. Additionally, the administration is publicly targeting the Palmerola International Airport by accusing the developer of being a monopoly and of having engaged in corruption with the previous administration. Recently, the administration sent a congressional committee to “review” the concession contract²⁰.

The transport industry has also fallen victim to bad economic policies, as the Castro de Zelaya administration has frozen entry into the transport market by declaring a 2-year moratorium on the issuance of transport permits, further cartelizing an already deficient sector characterized by insecurity, informality, low quality, and high barriers for entry²¹.

Price controls on gas and electricity, attacks on Judicial and Legislative independence, and geopolitical alignment with Cuba, Venezuela, and Nicaragua are also playing a key role in LIBRE's advance towards building a Socialist State in Honduras, all while wreaking political and economic havoc in the country.

¹⁷ Article 8, Legislative Decree No. 46-2022.

¹⁸ <https://www.latribuna.hn/2022/07/20/eeh-denuncia-nuevas-expropiaciones-de-inversion-extranjera/>;
<https://hondudiario.com/portada/eeh-solicito-ante-la-cidh-medidas-cautelares-que-respeten-derechos-a-la-propiedad-privada/>

¹⁹ <https://www.france24.com/en/live-news/20220312-honduras-clarifies-stand-on-open-pit-mines>

²⁰ <https://ellibertador.hn/2021/12/11/palmerola-es-ilegal-xiomara-anuncia-revision-de-golpe-aeroportuario/>;
<https://www.elheraldo.hn/honduras/en-julio-congreso-nacional-presentara-informe-sobre-acropuerto-palmerola-CA8741985>;

²¹ Resolución Interna CD-IHTT-003-2022, published on May 30th in Diario Oficial “La Gaceta”.