

The people halt privatisation

HÉCTOR BÉJAR



The privatisation of electric energy services guaranteed the buyers that they would obtain large profits on their operation at the expense of the State and consumers. The State delivered captive consumer markets and converted a public monopoly into private ones. This process has nothing to do with a market economy, but rather with profitable commercialism, which the present government has maintained under pressure from the International Monetary Fund and other financial bodies.

Until 1990, electric lighting and drinking water services in Peru were supplied by public companies. In 1990, the government launched the privatisation process, converting public monopolies into private ones under a system that could be described as profitable commercialism, in which the cost of electricity to the consumer has increased 14 times. Following the departure of the autocrat Alberto Fujimori in 2000, civil society has so far managed to halt new privatisations that the Toledo administration wishes to carry out.

By the end of 1990, Peru had managed to instal a national energy network, mainly using hydroelectric energy fed by Andean mountain water and, in other cases, thermal oil plants. This network resulted from the cycle of nationalisations and public investment developed in Peru between 1968 and 1975 under the government of General Juan Velasco Alvarado and from prior private investments. Subsequent governments maintained state administration but neglected the financial health of the companies, maintaining low tariffs for electoral purposes, while the rate of inflation grew. Between 1985 and 1990, the administration of Alan Garcia subsidised industry, giving it cheap energy, thus causing enormous losses to the State's electricity companies. Following a period of hyperinflation that took place at the end of Garcia's term in office, public companies generating and distributing electricity were unable to invest in extending and modernising their services and, like the country's whole productive apparatus, found themselves in a disastrous situation.

Furthermore, the terrorist action triggered by Shining Path between 1980 and 1990, sabotaged the country's electric network as a method of war. Consequently, in 1990 most of the network was out of service as many transmission pylons had been blown up.

The disastrous condition of the electric network and the financial difficulties of the public companies that administered it served as a pretext for their sale. Alberto Fujimori won the elections in July 1990 and reopened relations with the World Bank, the Inter American Development Bank and the International Monetary Fund that had been suspended by President Garcia. In April 1992, Fujimori closed down Congress, annulled the regional governments and intervened the courts in an alliance with the Armed Forces. This illegal government fulfilled the instructions from Washington to sell the public companies, starting with the telephone, electricity and drinking water services.

In 1992, Decree-law 25844 divided the electric network into production, transmission, distribution and marketing activities in order to sell it in parts. The state company, *Electrolima*, was separated into three private law state companies. In 1994, it became *Edegel* (a production company), and *Edelnor* and *Edelsur* (distribution companies). *Edegel* was sold to the United States *Energy Corp.*; *Edelnor* was sold to the Chilean *Enersis* and the Spanish *Endesa*; and *Edelsur* was sold to the Canadian *Ontario Hydro* and to the Chilean *Chiquinta*. The country's main generating plant, the Mantaro Hydroelectric Plant, was to be sold later on.

In the process of selling the distributors, refunding the contributions made by underprivileged populations in Lima in the purchase of poles, networks and metres was not considered. Thus, in fact, goods were confiscated. A fact that the population accepted among the confusion and lack of transparency of the whole process. In addition, the State funded 560 electrification projects for the privatising companies for an amount (in July 2000 figures) of USD 104 million using the National Housing Fund (Fondo Nacional de Vivienda - FONAVI) composed of worker contributions from the whole country. At the end of this process, the companies did not reimburse the State for these funds, which in fact belonged to FONAVI. In June 2002, conciliation meetings took place between the State and *Edelnor*, which questioned this debt. An agreement was reached whereby *Edelnor* paid only USD 28 million, less than 40% of its debt. Similarly, *Luz del Sur* paid only USD 10 million, less than 27% of its debt. Congress has requested criminal trial of the State officials involved in such arrangements, but nonetheless the contributors to FONAVI have been adversely affected.¹

Under the present regime, the production of electricity rose due to the combination of high state production (expected to be sold during the next privatisation programme) and low private production and distribution of energy.² Although no private investment took place, the State continued its effort to increase distribution to Andean poorer areas in particular.

Fujimori and the fettered State

The Fujimori administration fettered the State's capacity for regulation. Legislative Decree 662, for the Promotion of Foreign Investment, passed on 2 September 1991, and Legislative Decree 757, Framework Law for Private Investment, passed on 13 November 1991, granted purchasing companies the following advantages under legal stability agreements: special income taxes; unlimited availability of foreign currency; tax-free remission of profits, dividends and other income; use of the most favourable exchange rate; and the right to hire and fire workers at any time (2,000 workers from the former state company *Electrolima*, which was divided into several privatised electric companies, were forced to resign.³) It was also established that this agreement could not be affected by any law for a minimum of 10 years, with a maximum of 15. Arbitration would be resorted to in the event of controversy regarding the interpretation of the contract between the corresponding company and the

1 Investigation Commission on Economic and Financial Crimes Committed Between 1990 and 2001. *Informe Final de Investigación*. June 2002, p. 46.

2 According to data from the *Instituto Cuánto* using figures from the Ministry of Energy and Mines and the National Statistics and Computer Science Institute (INEI), in 1990 Peru produced a total of 13,162 gigawatts/hour, of which 10,170 corresponded to hydraulic energy and 2,992 to thermal energy. In the year 2000, Peru produced 19,027 gigawatts/hour, of which 14,571 corresponded to hydroelectric energy and 4,456 to thermal energy. *Instituto Cuánto. Anuario Estadístico Perú en Números 2001*, Lima, 2001, p. 437.

3 Investigation Commission on Economic and Financial Crimes Committed Between 1990 and 2001. *Op. cit.* p. 45.

State. OSINERG, the body regulating electric tariffs, is not empowered to intervene in tax matters.

The major advantage for the companies was the increase in tariffs. While the administrations of Belaunde (1980-1985) and Garcia (1985-1990) had forced them to work with tariffs below their operational costs for the benefit of industry and urban consumers, after privatisation, the companies were entirely free to increase rates because OSINERG had no political leverage and did not provide for users' representation. As the economist Alan Fairlie has pointed out, once inflation had been controlled in 1992, the consumers paid 2,64 Soles (approximately USD 1.76) per 100 kw/hour in that year. In 2002 they had to pay 36,97 Soles at values readjusted for the exchange rate and inflation,⁴ an increase of more than 14 times.⁵

Supreme Decree 120 enabled the companies to experience double depreciation of their assets, resulting in very low tax payments. For example, a study by the National Tax Administration Superintendence (Superintendencia Nacional de Administración Tributaria - SUNAT) of 110 major companies showed that under the terms of the benefits of this decree, tax collecting on income tax dropped from USD 281 million to USD 71 million between 1997 and 2000.

Article 33 of the Income Tax Law Regulations promulgated by Fujimori is sufficiently vague to allow companies to deduct from the net taxable income what they consider to be «tax losses» due to untaxed expenditures according to the «generally accepted accounting principles». For example, a company with a profit of USD 100 million, would be able to distribute up to USD 70 million tax free, or 70% because it includes accounting profits, among its shareholders. However, the company would not necessarily pay tax to the State as it has tax losses. This is the case with *Edgegel*, which has shown accounting profits and tax losses between 1997 and 2000, enabling it to avoid paying taxes.

Furthermore, when a small company merges with a large one, the large company changes its name to that of the small company. As the assets of the large company are reassessed, the law enables it to deduct these depreciated assets from its income tax. The small company, which was formerly worth one, upon merging with the big company, worth 100, deducts as if it were worth 100, and therefore the merger does not pay income tax for a whole decade.⁶

Due to this systematic evasion – which employs mechanisms established by the government itself –, the State's capacity to collect revenue dropped, compromising funding of the national budget. While the GDP grew by 3.8%, tax income dropped from 14.1% to 12.3% of the GDP between 1997 and 2001.⁷ Additionally, because of privatisation, 650 contracts for legal stability were signed with the State whereby tax conditions were frozen for ten years. Regardless of whether the rate of income tax went up or down, what these companies paid could not be changed.⁸

Inequity and deforestation: firewood for the poorest people

Meanwhile, the characteristic inequity of the electricity consumer market was maintained. In Metropolitan Lima, private companies enjoyed a monopolistic service, exploiting a captive audience of consumers without rights. As from

1993, the State expanded electricity to small villages in rural areas as part of the fight against poverty, but stumbled over peasant families' insolvency, which made it impossible for them to pay the costs. In spite of the growth of production and the expansion of the electricity network, only 42% of those in extreme poverty have electricity in their homes.⁹

The high cost of tariffs makes electricity unattainable for poor people. This continues to worsen the living conditions of underprivileged families, especially women and girls. In the city, the poor are obliged to use kerosene, a highly polluting fuel, for their lighting and cooking. Firewood is used by 67% of the extremely poor families, forcing girls in rural areas, following traditional customs, to carry the firewood on their backs for long distances. The daily consumption of firewood by peasants is one of the factors contributing to deforestation in the Andes while the lack of electricity prevents development and doubles women's workload.

The case of water: risky and not very lucrative

The privatisation process for drinking water was more complicated because the most important state company, SEDAPAL, had no way of controlling illegal extraction of water taking place in many parts of Lima, especially in marginalised neighbourhoods. Thus, acquiring water utilities was too risky and unattractive to investors during the initial stages of privatisation when companies that were more appealing, such as electric or telephone utilities, were available. Consequently, privatisation of water services was put on hold while other more desirable companies, such as *Petroperú* and the Peruvian Telephone Company, were sold.

People's reaction and an open future

Public opinion has started to oppose privatisation because of its lack of transparency and the damage it has caused consumers and the State, while the government has continued to sell various other companies. The discovery of the mafiosi network established by Fujimori and his «right-hand», Vladimiro montesinos, which was unable to account for the USD 8 billion obtained from the sale of public companies, discredited the whole privatisation process.

Nevertheless, the Paniagua and Toledo administrations, which succeeded Fujimori, did not vary the privatisation policy of their predecessor and continue without any major objection to obey the pressure of the IMF, the World Bank and IDB. However, although the model has not changed, the political and social conditions have. Poverty and unemployment have increased, and Congress is more independent from the executive branch than before. In addition, the public, which was mobilised to restore representative democracy, remains vigilant, demanding transparency and accountability.

Consequently, although Toledo's government has insisted on continuing to sell companies during 2002 to fund the budgetary deficit, resistance by trade unions and the people have paralysed his objectives. Popular demonstrations and regional strikes promoted by the Light and Energy Workers Federation of Peru, regional fronts and mayors from the South and the Centre, have prevented the sale of the Mantaro Hydroelectric Plant and the Arequipa and Tacna electric companies. In June 2002, Toledo decided to postpone these privatisations following an agreement with the authorities of the department of Arequipa. The prospect of selling the *Egasa* (Arequipa) and *Egesur* (Tacna) electricity companies to the Belgian company *Tractebel* sparked violent disturbances in southern Peru, resulting in two deaths and over 100 injured, and forcing the militarisation of Arequipa, the second largest city in the country. The future is still to come. ■

Comité de Iniciativa de la Conferencia Nacional sobre Desarrollo Social (CONADES)
-chebejar@yahoo.com>

4 Statement by the economist Alan Fairlie to the newspaper *La República*, quoted in Federation of Light and Energy Workers of Peru, *Diagnóstico del Proceso de Privatización Eléctrica*, Lima, June 2002.

5 USD 1 = 3.36 Soles at 30 June 2002.

6 Investigation Commission on Economic and Financial Crimes Committed Between 1990 and 2001. *Op. cit.*

7 Ministry of Economy and Finance. *Presupuestos de la República 1997 y 2001*.

8 It is being discussed whether the arbitration clause is appropriate for tax disputes, because only the State can decide on the payment of taxes in accordance with its *ius imperium*. With *Edelnor* and *Edelsur*, the State has lost a total of USD 300 million in tax collection since privatisation. Furthermore, during a talk to congressional representatives for the Perú Posible government party held at the end of 2001, the head of SUNAT, Beatriz Merino, maintained that the State annually lost some USD 1 billion, due to the application of various tax exemptions. She reported that the electric companies owed around USD 20 million. In the same year, the Controller Commission and Economic Crimes Commission passed a sentence ruling in favour of *Luz del Sur* and *Edelnor* making payment. The ministers of Economy, Energy and Justice, backed by President Toledo and the opposition leaders, Alan Garcia and Lourdes Flores Nano, objected to the decision of Congress and stated that they were in favour of arbitration (which should not have applied as this was a tax issue), thus backing the companies' position. As expected, at the beginning of 2001 arbitration passed a sentence ruling against the State. The alternative of the judicial power could have been used, where the rulings of arbitration could have been questioned because they were addressing a prohibited issue, but the State abstained from appealing.

9 *Encuesta Nacional sobre Medición de Niveles de Vida* (ENNIV) 1994-1997.