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EVALUATION OF THE REFERENCE COST METHODOLOGY APPLIED IN ANEEL/ STATE AGENCY TARGET CONTRACTS

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Abstract: Since 2012, the National Electricity Agency (ANEEL) has reshaped the parameters used in the delegation of powers to meet the requirements of Law 12.111/2009. The act amended, among other things, articles 20 and 22 of Law No. 9,427/1996, introducing the concept of associated management of public services. This provision established that the activities delegated by ANEEL should be governed by target contracts signed with the partner state agencies, observing certain pre-defined parameters, such as control of results aimed at management efficiency and consideration based on reference costs. The guidelines for complying with this legal provision were outlined with the publication of Normative Resolution No. 417/2010, which established the methodology for reference costs and quality indicators, to be applied to activities decentralized by ANEEL to partner state agencies as of 2012. A case study was carried out analyzing data on the main parameters of the aforementioned methodology adopted in the target contracts. The impacts on the selected state agency were also assessed. The results show that not only ANEEL, but also the state agencies, could obtain quality gains by adjusting some aspects of the reference cost methodology. In particular, giving state agencies greater freedom to negotiate target contracts, taking into account the cost of human resources in financial transfers and pricing the products demanded and not carried out.

Keywords: state agencies; decentralization; reference costs; ANEEL.

INTRODUCTION/OBJECTIVES

Given the current and innovative nature of the subject, the decentralization of activities by regulatory agencies lacks related publications and information, which is why this work was developed. It is aimed at those interested in understanding the relationship between state and federal regulatory agencies, linked to cooperation agreements whose service consideration is based on reference costs.

The core of this research is the decentralization of activities carried out by ANEEL, whose lack of regional units gives it a significant disparity when compared to other federal regulatory agencies. The agency's nationwide operations would certainly justify a comprehensive presence in the states. However, ANEEL currently has a single headquarters in Brasília-DF, a scenario imposed by the legislator, who opted for decentralization of activities associated with electricity, as opposed to expansion through regional offices.

The following bibliographical review highlights publications on agreements, decentralization and associated management of public services that were used as a reference for this work.

Pereira and Palotti (2020) (2021) discussed the legal and political-institutional formats for decentralizing public services in Brazil. Pereira (2020), based on an analysis of the institutional arrangement and incentive structure put in place by ANEEL, sought to understand why the levels of adherence to the federal program are relatively low. According to Pereira, the incentives designed by ANEEL are not always enough to overcome the obstacles to decentralization and induce state governments to join, especially when considering the requirements set by ANEEL. For Pereira, the federal agency concentrates the resources and legal powers that enable it to centralize decisions on regulatory and supervisory matters, giving state agencies little freedom to act.

Fonseca (2017) addressed the repercussions of the political discourse on the decentralization of ANEEL's activities to partner state regulatory agencies. Fonseca discussed the theoretical apparatus that distinguished between political and technical discourses in ANEEL's decentralization instruments. According to Fonseca, ANEEL's regulations have evolved to enable the associated management of public services, and in his work he sought to demonstrate the strategic relevance of political discourse in the signing of Cooperation Agreements.

Nogueira (2011) discussed the legal nature of the administrative agreement, taking the administrative contract as a parameter. For Nogueira, understanding involves analyzing the various currents regarding the legal nature of the administrative agreement and debating the criteria pointed out as differentiating them from contracts. Of the conclusions drawn from Nogueira's research, the following stand out: (i) cooperation agreements and agreements are distinct institutes; (ii) agreements are on the same level as contracts; and (iii) agreements and contracts are species of the genus adjustment or agreement. With regard to the first item, Nogueira defines a cooperation agreement as an agreement signed between federated entities and a covenant as an agreement signed between public authorities and private entities.

This paper presents a quantitative and qualitative "case study" based on an analysis of the target contracts agreed in the cooperation agreements signed between the Federal Government, represented by ANEEL, and the State of Mato Grosso do Sul, represented by the MS State Public Services Regulation Agency - AGEMS. In the period 2012 to 2022, the main parameters of the reference cost methodology adopted in the target agreements were evaluated, as well as the financial transfers of two different cooperation agreements: the first in the period 2008 to 2011 and the second in the period 2012 to 2022.

The aim of the study is to present the impacts of applying the reference cost methodology on management efficiency, from the perspective of the partner state agency.

MATERIAL AND METHODS

The research method used to carry out this work consists of a quantitative and qualitative assessment of the target contracts signed between ANEEL and AGEMS between 2012 and 2022. We used public data from the target contracts made available by AGEMS, data available in ANEEL's rules, supplemented by information obtained from bibliographical research.

We analyzed the decentralization model prior to Normative Resolution 417/2010, the contractual changes brought about by this regulation and the changes to the parameters of the reference cost methodology since its approval in 2011.

REFERENCE COST METHODOLOGY

The Reference Cost Methodology was developed by working groups set up by ANEEL between 2010 and 2011. Firstly, a benchmark was proposed to be adopted for the valuation of activities decentralized to State Agencies, followed by the creation of the methodology, encompassing the analysis of costs for all State Agencies. In the valuation of activities, the main difference between the methodology adopted and the model applied until then in ANEEL's Cooperation Agreements was the linking of the transfer of financial resources to the execution of activities one by one, rather than globally, as previously defined.

The cost of each activity began to be valued on the basis of the time spent on the activity, defined as man-hours (Hh), in addition to per diems, tickets, vehicle rentals, etc. State agencies were then paid the same amount of man-hours to carry out the same activity, regardless of which agency performed it.

The cost of the activity was also valued by an administrative percentage, calculated for each state agency. The Methodology was based on the premise that the costs of each state agency differ from state to state. On the other hand, the salaries and bonuses of state agency employees also differ, as they are established by law. As a result, the final value of the same product differs for each partner agency.

CHANGES TO COOPERATION AGREEMENTS

This study compared the main characteristics of the last two Cooperation Agreements signed by the Federal Government, represented by ANEEL, with the State of Mato Grosso do Sul, represented by AGEMS. To this end, Agreements 004/2007 and 023/2011 were analyzed, the main differences between which are shown in Table 1.

RESULTS/DISCUSSION

The results, presented below, were obtained by analyzing the main indicators of the activities carried out by AGEMS under the cooperation agreement with ANEEL. The period evaluated was from 2012 to 2022, from the implementation of the reference cost methodology. Graphs show the evolution of the number of man hours (Hh) in the target contracts with the SFG and SFE superintendencies¹, as well as the evolution of the financial transfers of the target contracts of all the units that decentralized activities in the period 2008 to 2022.

HH AMOUNTS CONTRACTED VS. REALIZED

The graph in Figure 1 shows the evolution of the amounts of Hxh agreed in AGEMS' target contracts with the SFG Superintendence, from 2012 to 2022, highlighting the amounts contracted at the start of the period and those realized at the end of each annual contract.

In the case of the SFG, although the first Hh amount contracted (in green) in 2012 increased in 2013, there was a continuous reduction until 2018. However, the main impact for AGEMS was the gap between the amounts contracted (in green) and those actually demanded by SFG (in gray), especially in the years 2017, 2020 and 2021, the latter two impacted by the COVID-19 pandemic². As for the contracted amounts, the graph in Figure 1 suggests that it has been difficult to find a suitable Hxh model for contracts with the SFG.

The graph in Figure 2 shows the evolution of the Hxh amounts agreed in AGEMS' target contracts with the SFE Superintendency, from 2012 to 2022.

For SFE, the first modeling in 2012 resulted in the first target contract with 8,144 Hxh contracted. From 2012 to 2022, this amount was continuously reduced, a fact that became drastically evident in 2013, and reached 2,024 Hxh in 2017. The figures for 2012 correspond to the first modeling of the reference cost methodology, and were based on the history of activities carried out by AGEMS in 2008, 2009 and 2010. In this modeling, the amounts of Hxh for each contracted product were evaluated.

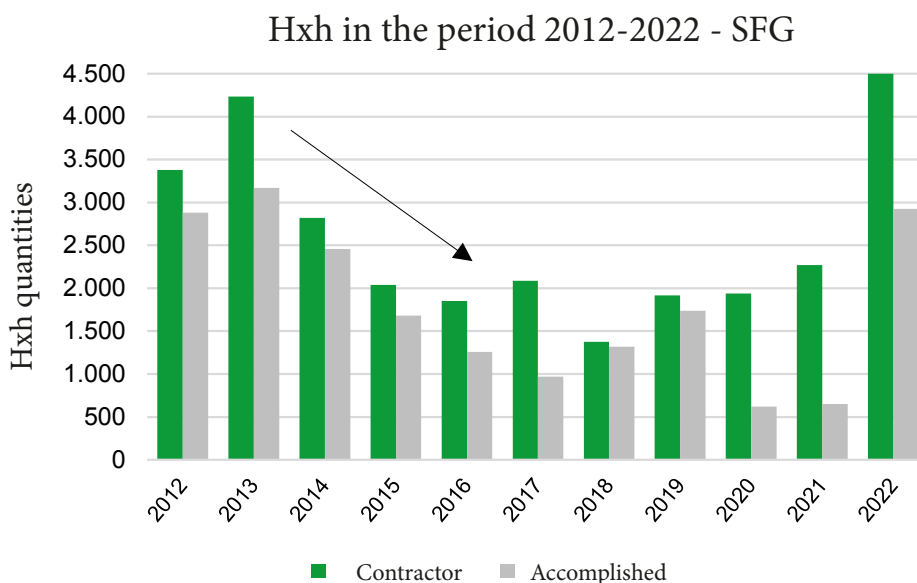
The graphs presented in this item show the instability in the hiring of human resources by ANEEL's decentralizing superintendencies in the state agencies. This instability makes it difficult to plan human resources, especially full-time civil servants who are assigned to the activities inherent in ANEEL's agreement with the state agencies.

1. Superintendence for the Supervision of Generation Services - SFG and Superintendence for the Supervision of Electricity Services - SFE

2. During the COVID-19 pandemic, most on-site inspections at power plants were suspended.

	AGREEMENT 004/2007 Term: 05 years, with established values.	AGREEMENT 023/2011 Term: indefinite with no values.
Legal basis	ANEEL Resolution 276/2007 ¹ , and Annex with Organizational Standard No. 003, which provides for the management and monitoring of activities.	ANEEL Resolution No. 417/2010 ² , which establishes the procedures for delegation and ANEEL Ordinances ³ with the methodology for reference costs and quality indicators.
Management efficiency	<i>On-site</i> audit of decentralized processes.	Products evaluated by IQP quality indicators that assess the product's time, form and content.
Activities	Established annually on the basis of an Activities and Targets Plan (PAM) containing the activities agreed with ANEEL's Superintendencies and linked to the Annual Decentralization Terms (TAD).	Established annually by means of a Goals Contract, agreed with ANEEL's Superintendencies, linked to the Decentralization Terms of Reference (TRD).
Financial transfers	Based on the proportional costs of the Partner Agency's human and material resources.	Based on reference costs for the products produced by the AEs, modeled in man-hours (Hh).

Table 1 - Main characteristics of Agreements 004/2007 and 023/2011 AGEMS and ANEEL



TRADUZIR:

Figure 1 - Evolution of the amounts of Hxh contracted and realized in the target contracts with the SFG from 2012 to 2022

Source: Own elaboration with data provided by AGEMS.

1. ANEEL Normative Resolution No. 276 of August 21, 2007, whose annex contained ANEEL Organization Standard 003, provided for the management and monitoring of ANEEL's decentralized activities until November 23, 2010, when it was revoked by Aneel Normative Resolution No. 417/2010.

2. Normative Resolution No. 417, of November 23, 2010, established the main characteristics of the delegation of ANEEL's powers regarding decentralized activities until February 23, 2021, when it was revoked by Aneel Normative Resolution No. 914/2021.

3. The Methodology for Reference Costs was defined in ANEEL Ordinance 1,968/2011, and subsequently amended by ANEEL Ordinances 2,458/2012, 2,856/2013 and 3,366/2014.

Hxh in the period 2012-2022 - SFE

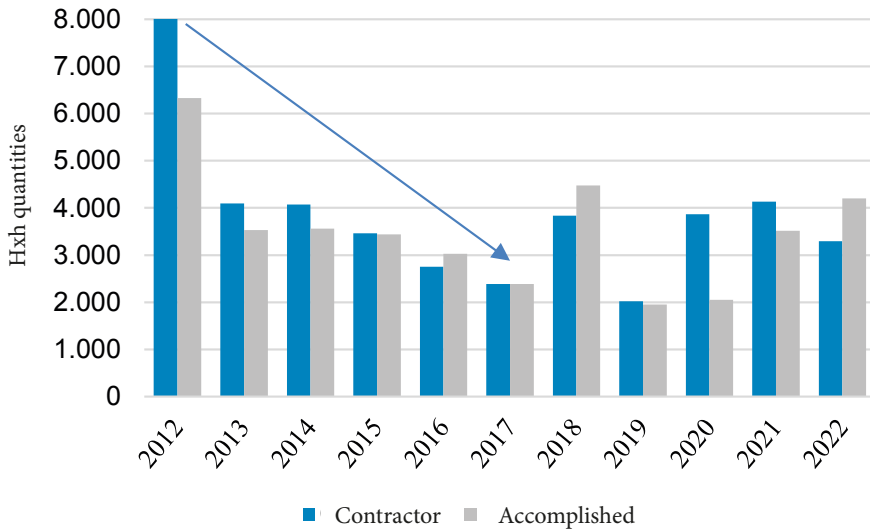


Figure 2 - Evolution of the amounts of Hxh contracted and realized in the target contracts with SFE from 2012 to 2022

Source: Own elaboration with data provided by AGEMS.

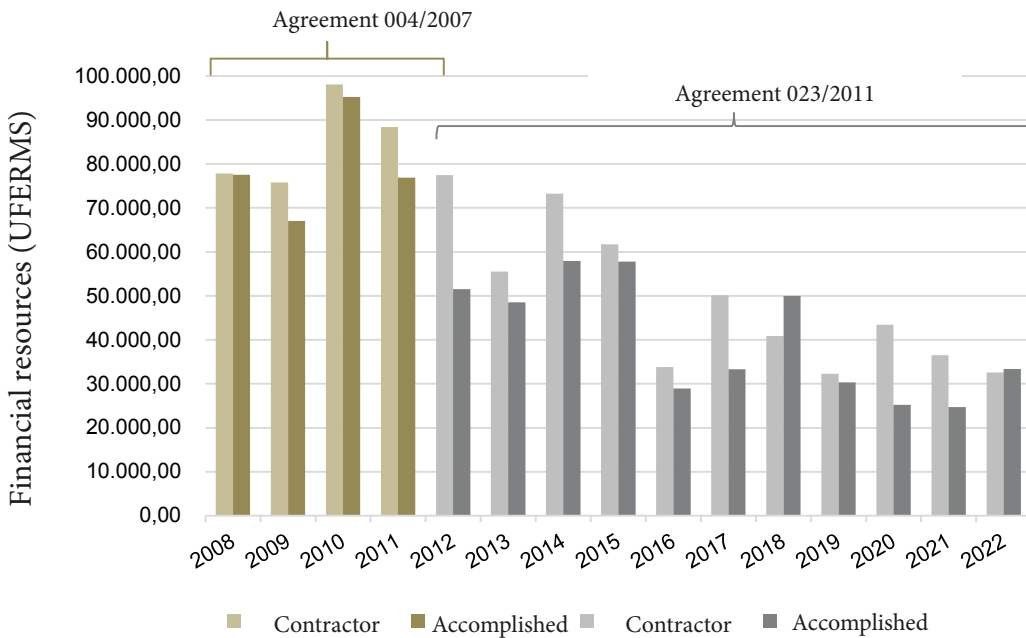


Figure 3 - Changes in financial transfers from ANEEL to AGEMS from 2008 to 2022

Source: Own elaboration with data provided by AGEMS.

Another variation that poses a challenge to the management of the state agencies is the gap between the demand for human resources which, as shown in the graphs, has become variable with the methodology of the reference costs each year and, above all, what has been observed over the ten-year period.

One solution to this problem would be to change the reference cost methodology, inserting two new valued components. One, to reimburse the availability of civil servants seconded by the state agencies to carry out the activities inherent in the contracts with ANEEL; and the other, to reimburse the resources demanded and not carried out, thus protecting the state agencies from the instability caused by sudden variations in financial transfers, seen in detail in the next item.

FINANCIAL TRANSFERS FROM 2008 TO 2022

The graph in Figure 3 shows the evolution of ANEEL's financial transfers to AGEMS, based on Agreement 004/2007, from 2008 to 2011, and Agreement 023/2011, from 2012 to 2022. The total amounts of financial transfers for the reference year were converted into UFERMS³.

The figures shown in Figure 3 reflect all the transfers from the decentralizing superintendencies SRI, SFE, SFG and SMA⁴, relating to Agreement 004/2007 and SCR/AID, SFE, SFG, SMA and SFF⁵, relating to Agreement 023/2012.

It should be noted that the amounts transferred were taken into account at two different times: (i) at the beginning of the establishment of the annual activities in the Activities and Targets Plans (PAM) of

Agreement 004/2007, and in the Targets Contracts of Agreement 023/2011; and (ii) after the consolidation of the products actually delivered at the end of each reference year.

The graph in Figure 3 shows, in principle, a reduction in financial transfers after the change from Agreement 004/2007 to 023/2011.

There has also been a continuous reduction in the financial resources earmarked for activities decentralized by ANEEL since the implementation of the reference cost methodology, which has been evident since 2015, the year that marks the change in the inspection models adopted by ANEEL.

The data also showed the instability of the amounts transferred, highlighting the low amounts realized in 2016, 2020 and 2021, and the discrepancies between contracted and realized amounts in 2012, 2014, 2017, 2020 and 2021. The discrepancy in 2012 is justified by adjustments to the first contracts. For the low figures in 2016, ANEEL's contingency on target contracts in a period of political instability is considered relevant, and in 2020 and 2021 the difficulties arising from the COVID-19 pandemic.

CONCLUSION

The results presented in this paper suggest that the reference cost methodology used by ANEEL fails to take into account the cost of human resources in financial transfers. This methodology is also responsible for unstable transfers with remuneration only for the products delivered.

In addition, there is the risk incurred by the partner state agency, due to the fact that the products demanded and not carried out are not priced. The fixed costs borne by the state

3. The amounts in reais were converted into UFERMS to exclude the effect of inflation on the amounts analyzed. The annual amounts transferred at the end of the Annual Decentralization Term (2008 to 2011) or Target Contract (2012 to 2022) were converted into the UFERMS of January of the reference year.

4. Superintendence of Institutional Relations - SRI, Superintendence of Sectorial Administrative Mediation - SMA.

5. Superintendence of Communication and Institutional Relations - SCR, Institutional Advisory of the Board - AID, Superintendence of Economic, Financial and Market Supervision - SFF.

agency to guarantee the human and material resources to provide the services demanded in the target contracts, which in the end are not converted into products remunerated by ANEEL, may be uncovered.

The conclusion is that both ANEEL and the partner state agencies will be able to obtain quality gains by changing some aspects of the reference cost methodology, particularly if the cost of human resources is taken into account in the financial transfers and also if the products demanded and not carried out are priced.

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