

EXTRAJUDICIAL NOTIFICATION

NOTIFIER:

NOTIFIED: Banco Nacional de Desenvolvimento Econômico e Social – BNDES, CNPJ 33.657.248/0001-89, with headquarters at Av. República do Chile, 100 – Centro, CEP 20031-917 - Rio de Janeiro – RJ, in the person of their President and legal representative, Sr. Luciano Coutinho

INTENT OF THE PRESENT NOTIFICATION:

By way of the present particular instrument and in the most appropriate way admitted by law, the NOTIFIERS, through the numerous attorneys here subscribed, hereby formally and respectfully NOTIFY regarding the following facts, which are expounded upon in the following:

It is public knowledge that the Banco Nacional de Desenvolvimento Econômico e Social (BNDES) intends to act as the principal financier of the project denominated *Aproveitamento Hidrelétrico de Belo Monte*, on the Xingú River, State of Pará, independent of its financial, economic, social, or environmental cost¹. It has already been publicly announced that the bank is disposed to directly contribute a minimum of R\$ 12.000.000.000 (12 billion reais), which would be the largest individual investment of the financial institution to date².

It is worth observing that the public announcement that BNDES would be the principal project financier was made even before the project's provisional environmental license was approved, and before the project's socioenvironmental implications had been evaluated by the corresponding institution. This attitude is not only an affront to article 10 of the bank's Social Statute, which requires a “*technical and economic-financial examination of the infrastructure, project, or business plan, including an evaluation of its social and environmental implications*” in order to approve any financial transaction. It also denotes a certain hurried rush in dealing with a question of such relevance, not only due to the volume of the resources involved, but above all due to the socio-environmental risks associated with the investment, which have always been public knowledge.

¹ <http://www.agenciabrasil.gov.br/?q=node/403>

² <http://www.energiahoje.com/online/eletrica/hidro/2009/09/22/394348/bndes-financia-belo-monte.html>

This same hurried rush caused the Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis, IBAMA, to grant on 02/01/2010 the provisional license of the project (LP nº 342/2010), even while reports of the team responsible for the technical analysis of the project's environmental viability had recommended that it not be granted due to a lack of clarity regarding the magnitude of the impacts resulting from the project. This conduct not only infringed upon the principle of morality and the motivations of the team's administrative acts and decisions (art.37, *caput*, CF; art.2º, Lei Federal 9784/99)— being, therefore, of doubtful juridical validity— it also generated immense risk for the investment, as the provisional license irresponsibly ignored problems of great magnitude that should already have been resolved, and that could affect not only the economic viability of the project but also the possibility of its implementation.

In effect, in their Technical Note 04/2010, signed two days before the granting of the provisional license, the technical team of IBAMA expressly and unequivocally affirmed “**there are insufficient elements to attest to the environmental viability of the project**, until the pending questions listed in the conclusions of Report 06/2010 have been resolved”. These pending questions are not related to secondary problems of the project nor its impacts, but to central problems.

Water quality of the Xingú River

One of the gravest problems relates to the definition, with any degree of certainty, of the quality of water in the reservoir lakes to be formed and in the channels to be constructed. Facing the inconsistency of the information presented in the EIA, IBAMA contracted a team of specialists from the University of Brasília (UnB) to report a calculated opinion on the matter utilizing the same data used constantly throughout the licensing process. In the report on 27/01/2010, after having carefully analyzed each of the presented studies, this team affirmed that the modeling used by those responsible for the data of the Environmental Impact Assessment (EIA) was incorrect and insufficient to make a future prediction. On its own, this would render unviable the granting of the provisional license.

But this is not all. Reconstructing part of the analyses elaborated by the project developer, the report mentioned above concluded that, to the contrary of what was stated in the EIA or the LP, there are great chances (62% probability) that there will be eutrophication in the reservoir lakes. This would make the water quality inferior to the minimum parameters demanded by the Conselho Nacional do Meio Ambiente, CONAMA (Resolution 357), with terrible consequences for aquatic fauna and the regional population throughout an extended stretch of 144km along the Xingú River (including facing the city of Altamira) and for the channels to be created. Based on this, the report concluded, “according to the study and the model selected by the report under analysis, **the hydroelectric project Belo Monte should not be constructed unless the indicated risks associated with eutrophication in the reservoirs are absorbed**”. Since the water quality of the river cannot be inferior to class 2, as demanded

by CONAMA Resolution 357, and since the eutrophication of the reservoirs would imply a water quality inferior to this *standard* (whereby aquatic community management, fishing, recreation, and human subsistence is not permitted), it is not a matter of absorbing risks: if there is a large chance of eutrophication occurring in the lakes, the project cannot be authorized. This conclusion, as such, was rejected by the Presidency of IBAMA upon granting the provisional license.

Ecological flow in the Stretch of Reduced Instream Flow

Beyond having consciously ignored the risks relating to water quality in the reservoirs, the Presidency of IBAMA, upon granting the LP, contradicted the decision of its own technical team expressed in Technical Report 06/2010. The decision related to the ecological flow to be maintained along the stretch of reduced instream flow (TVR) that will be created on the Xingu River, more than 100km long.

In this important stretch of the river (known as the “Big Bend of the Xingu), there live hundreds of families, including some that live in 2 indigenous territories, and these depend directly on the river for food, drink, and transportation among other fundamental daily activities. According to the engineering design of the project, this stretch will suffer a “permanent drought” since a large part of the instream flow of the river will be deviated through built channels that will direct the water straight to the turbine houses to generate energy. As it is not permitted to dry the entire stretch of the river, the project would foresee the release of a determined amount of water in this stretch, sufficient enough to maintain the basic ecological processes and livelihoods of the population that will remain in the area.

The developer’s proposal for the ecological flow of the TVR, named “consensual hydrogram”, was expressly rejected by the IBAMA team in Technical Report 06/2010. According to the report, “the consensual hydrogram, due to the occurrence of years of flood-level instream flow inferior to 8,000 m³/s, does not present a secure option relative to the maintenance of the ecosystem, in terms of the recruitment of the majority of species that depend on flood rates. The consensual hydrogram would lead to severe negative impacts, including compromising the diet and livelihoods of the population of the Big Bend”. For this reason, it concludes that “based on the most recently available information, this team considers necessary an affluence of at least 8,000 m³/s, the average monthly instream flow for the month of April, in the Stretch of Reduced Instream Flow; consequently, we recommend the rejection of Hydrogram A and the Consensual Hydrogram”.

Despite this clear and unequivocal technical conclusion, the Provisional License not only did not take this conclusion into consideration, it contradicted it. Item 2.1 of the *specific conditionalities* defines the instream flow of the TVR to be that stipulated by the “consensual hydrogram”, which would be “tested” during the first six years of operation of the dam in order to evaluate its consequences and eventually reform the Operation License.

Now, according to the predictions made by the EIA, the most probable consequences are known, and because of exactly this the technical team rejected the “consensual hydrogram”. If what was foreseen in the EIA and by IBAMA were to happen – a compromising of the life cycles of diverse species and consequently of the diet and livelihoods of the population of the Big Bend – and the project were still constructed, there would not only be juridical obstacles regarding the very operation of the project, but also elevated costs in compensation, fines, and resettlement that were not calculated by the EIA, the provisional license, nor the Economic Viability Study – EVE of the project. If, on the other hand, the hydrogram approved by the Provisional License were reformed in light of its harmful effects on life in the Big Bend, the very production of energy of the project would be affected, a point which was not foreseen by either the EVE nor any official calculation elaborated to date.

Transmission lines were not licensed

Beyond what has already been mentioned, the granted license did not analyze the impacts of transmission lines to be constructed to carry the total energy generated to the National Electricity Grid System. The transmission lines were not even contemplated during the process of environmental licensing, which directly contradicts CONAMA Resolution 01/86. Grave socioenvironmental risks would be caused due to the lack of knowledge about the impacts as well as the costs involved in their mitigation and compensation.

Responsibilities of BNDES

It is public knowledge, indeed it is widely displayed by the institution, that BNDES and other public finance institutions signed in 1995 and renewed in 2008 a voluntary commitment of Intentions in Socioenvironmental Responsibility, known as the *Green Protocol*. The Protocol affirms “*the signatory banks of this Protocol recognize their ability to fulfill a fundamental role in the search for a sustainable development model that presupposes environmental preservation and a continual improvement in the well-being of society*”.

Beyond this, BNDES has a responsibility in the eyes of the law to assume the consequences of its investments that carry socioenvironmental impacts.

Article 192 of the Federal Constitution defines the national financial system as having been founded on two fundamental pillars: promotion of the balanced development of the Union, and utility for its collective interests; among which, obviously, is included the maintenance of an “ecologically balanced environment, of use for the common good of the people and essential for a healthy quality of life”, as stipulated by art. 225 of our Magna Carta.

For this reason, the National Law of the Environment (Law 6.938/81) stipulates, in its art. 12, that “*entities or organs of finance and governmental incentives will condition the approval of enabled projects to these benefits of licensing, according to the Law, and upon the*

fulfillment of the norms, criteria, and models expedited by CONAMA". This mechanism, more than simply demanding the presentation of a formal document, has as its objective to avoid the financing of projects that are unviable from a socioenvironmental point of view. This is because, in light of the PNMA, the agent that finances projects and/or activities that cause damaging impacts to the environment would be exercising cooperation in or even co-authoring those activities, and is therefore liable to respond to the environmental degradation provoked by those directly responsible for the project finance (art. 30 of Law 6938/81). Above all, as it is widely known, in environmental material the responsibility for damage is objective.

Conclusion

Given the information that has been expounded upon, let it be known to the NOTIFIED:

- a) that the Provisional License 342/2010, referring to the hydroelectric project AHE Belo Monte, has grave errors, as a result of having ignored and contradicted conclusions made by the technical team of IBAMA that pointed to the impossibility of deciding, according to the information at hand, about the viability of the project;
- b) the very high probability that, if the project is installed and enters into operation in the future, socioenvironmental impacts of large magnitude will occur which, as a result of the previously mentioned, will not have been adequately measured, and therefore, the costs of prevention, mitigation, compensation, and payment will have been incorrectly calculated and internalized into the total cost of the project.

The NOTIFIERS see fit to advise the NOTIFIED that:

1. The granting of Provisional License 342/2010 should not be understood by the NOTIFIED as sufficient guarantee that grave socioenvironmental problems of the project AHE Belo Monte were adequately evaluated and balanced, and, therefore, that the project was apt to receive finance;
2. It should not finance the installation of the project AHE Belo Monte without first seeing the grave socioenvironmental problems resolved; in other words, without having first recognized the nullity of the license now in effect, and without a new decision conducive to the conclusions of the technical team of IBAMA having been taken.
3. If the problems remained unresolved and the NOTIFIED were to finance the project as announced, it would automatically assume responsibility in solidarity for the totality of environmental impacts that were to occur, under the terms of articles 12 and 14, § 1º, of Law 6.938/81, including those unforeseen or assumed by LP 342/2010.
4. If the damaging events announced by the technical reports of IBAMA were effectively to occur, some of which have been here reiterated, the NOTIFIERS would charge the NOTIFIED, in judicial and extrajudicial arenas, for all of the costs of the project's

impacts on fauna, flora, and the people of the region, whatever resulting values may be, including those that are impossible to value.

The present EXTRAJUDICIAL NOTIFICATION, published in 02 (two) signed and documented media, represents the safeguard of the legitimate rights of the NOTIFIER.

Certain that we will be quickly attended to in this cordial request, we thank you for your comprehension.

Attentively,

Altamira, 22 March, 2010

Signature (name of organization): _____

Name of legal representative:

Personal RG or CPF

Organizações locais que assinaram a notificação (22 entidades) :

1. Sindicato dos Trabalhadores e Trabalhadoras Rurais de Senador José Porfírio
2. Movimento de Mulheres Campo e Cidade – Para - MMCC
3. Fundação Elza Marques
4. Prelazia do Xingu
5. Sindicato dos Trabalhadores em Educação Pública do Para Regional Xingu - SINTEPP
6. Sindicato dos Trabalhadores e Trabalhadoras Rurais de Altamira
7. Associação dos Índios Moradores de Altamira – AIMA
8. Associação dos Pequenos Produtores da Gleba Paquiçamba
9. Radio Comunitária Araweté – Vitoria do Xingu
10. Fundação Tocaia
11. Conselho Indígena de Altamira – COIA
12. Sociedade Criativa Literária São Francisco de Assis – SOCALIFRA
13. Sindicato das Trabalhadoras Domesticas de Altamira e Região
14. Geoambiente
15. Sindicato dos Trabalhadores em Educação Pública do Para Subsede Altamira – SINTEPP
16. Comitê em Defesa da Vida das Crianças Altamirenses
17. Associação dos Pilotos de Voadeiras e Barcos de Altamira
18. Sindicato dos Trabalhadores e Trabalhadoras Rurais de Vitoria do Xingu
19. Fórum Popular de Altamira
20. Sindicato dos Trabalhadores e Trabalhadoras Rurais de Porto de Moz
21. Grupo SOS Vida
22. Movimento de Mulheres Trabalhadoras de Altamira Campo e Cidade – MMTA/CC