

A New Architecture for Venezuela's Electricity Sector

Opening, concessions, and the true challenge of attracting long-term private investment

Manuel Rojas Pérez and Alfredo Martínez

Executive Summary

The Draft Law for the Partial Reform of the Organic Law on the Electricity System and Service represents a significant shift: it moves from absolute State exclusivity to a model open to private participation through concessions, mixed-capital companies, companies with minority State participation, and private companies domiciled in Venezuela. The change is important because it recognizes that the collapse of the electricity system cannot be resolved with the same institutional architecture that produced it: State monopoly, blanket subsidies, politically suppressed tariffs, low investment, insufficient maintenance, and the absence of credible economic signals. However, the draft still retains features that may seriously limit the attraction of foreign capital: the abstract state ownership of the activity, presidential approval of concessions, the possibility of mixed-capital companies with a state majority, the reversion of assets upon expiration, and the lack of operational clarity regarding the setting, indexation, and periodic review of tariffs. The real challenge is not to announce an opening, but to build bankability: bankable contracts, sufficient tariffs, regulatory stability, protection against unilateral changes, dispute resolution mechanisms, fiscal discipline, and payment guarantees. In electricity infrastructure, capital is not attracted by rhetoric, but by verifiable legal security.

1. The paradigm shift: from absolute State reservation to indirect management

The National Assembly of Venezuela approved in its first discussion, on June 2, 2026, the Draft Law for the Partial Reform of the Organic Law on the Electricity System and Service. The political and legal fact is relevant: after almost two decades of centralized state control, the legislature begins to admit that the electricity sector requires private capital, technology, operational discipline, and long-term financing. The legislation in force since 2010 responded to a model of public service understood in a subjective or organic sense: the State not only retained ownership of the activity but also concentrated management in CORPOELEC and excluded private participation.

The reform breaks, at least partially, with that logic. It authorizes the provision of the service by the Ministry of Electrical Energy in direct management, by mixed-capital companies with a state majority, by companies with minority State participation, and by private companies domiciled in Venezuela. This transition does not imply a full privatization of the system, but a conditioned opening. The State retains abstract ownership, regulatory power, planning capacity, and the final decision on the granting of concessions. The private company does not enter as the sovereign owner of a free economic activity, but as an operator authorized by a contractual administrative title, subject to public-law prerogatives and the traditional logic of the administrative concession.

This distinction is essential so as not to overestimate the scope of the reform. The draft does not eliminate the role of the State; it reconfigures it. The State ceases to be the exclusive operator but

intends to remain the ultimate owner of the system, regulator, planner, grantor, and, in some cases, business partner. This accumulation of roles can generate conflicts of interest and risks of political capture if it is not accompanied by a technical, independent, and transparent regulatory authority. Ultimately, in our opinion, the draft opens spaces to private capital, but it does so under an architecture where the State remains the political owner of the system, grantor, regulator, sanctioner, tariff setter, and final beneficiary of the reversion of assets. This concentration of functions limits investor confidence and reduces the possibility of financing projects.

2. Electricity as a system: why some degree of regulation is inevitable

The electricity sector is not an ordinary economic activity. Electricity presents a defining technical characteristic: production, transmission, distribution, and consumption must be coordinated practically in real time. Unlike other goods, electrical energy cannot be stored on a massive scale under normal economic conditions to substitute for poor systemic planning. Therefore, the grid requires coordination, dispatch, load balancing, continuous investment, and homogeneous technical standards.

From this perspective, state intervention should not necessarily be confused with nationalization. In modern electricity markets, regulation can fulfill legitimate functions: guaranteeing non-discriminatory access to grids, preserving service continuity, preventing abuses in naturally monopolistic segments, organizing dispatch, setting technical standards, and protecting vulnerable users. The Venezuelan problem has not been the existence of regulation, but its conversion into political control, operational monopoly, budgetary opacity, and the destruction of economic signals. The reform must be evaluated under this conceptual difference. The country needs technical regulation, not discretionary interventionism. It needs an institutional architecture that allows private investment and competition where possible, independent regulation where necessary, and explicit, targeted subsidies financed by the budget when there is a social decision to protect the user.

3. Concession regime: legal progress, but not an automatic guarantee of investment

Proposed articles 32 to 38 introduce extensive regulation on concessions. In the Venezuelan context, this is a substantive change: the concession figure had been practically emptied of content under the 2010 model. The new scheme allows private parties to execute reserved activities through a qualifying title, with terms of up to twenty-five years and successive extensions for an additional fifteen years.

The contractual duration is relevant because electricity projects are capital-intensive and have slow recovery rates. A generation plant, a transmission grid, or a distribution infrastructure are not financed with short-term horizons. The investor and the financier need a sufficient period to recover capital, obtain a reasonable return, refinance debt, absorb demand risks, face operational contingencies, and comply with technical standards.

However, the term alone does not make a concession financeable. For the contract to be financeable, the investor must be able to affirmatively answer several basic questions: how will the tariff be calculated?, who will review it?, how frequently will it be adjusted?, what happens in the event of inflation, devaluation, or changes in demand?, what compensation exists if the State

unilaterally modifies essential conditions?, what remedies are activated in the event of non-payment by public-sector users or State distributors?, what court or arbitral mechanism will resolve disputes?. If these answers are not precise, the 25-year term can become a contractual illusion.

4. Reversion of assets: the point that can cool investment

One of the most delicate aspects of the draft is the reversion clause. The proposal envisions that, upon the conclusion of the concession, physical assets and operational data will pass to the Republic, without compensation, except for the undepreciated portion in case of natural expiration. In terms of classical administrative law, reversion can be justified because the infrastructure remains allocated to a public service. But in financial terms, reversion at zero cost radically changes the risk profile of the project.

The practical consequence is evident: the investor must recover all of their capital within the contractual window, with a depreciation, tariff, and return structure that allows them not to leave relevant economic value in the hands of the State upon expiration. This can increase the required tariff, raise the cost of capital, limit the interest of international financiers, or restrict investment to faster-recovery assets—precisely the opposite of what a deteriorated electricity system needs. The risk is not theoretical. In countries with a history of expropriations, abrupt regulatory changes, public-sector defaults, and litigation with investors, such as Venezuela, a reversion clause is not read in isolation. It is interpreted along with the country's institutional memory. Foreign capital's question will not only be what the draft law says, but what guarantees exist that the State will not change the rules of the game again once the investment is already sunk.

5. Tariffs, reasonable return, and the need for an independent authority

Article 61 of the draft introduces a correct signal by requiring that the tariff design consider real costs and allow a reasonable return comparable to activities bearing similar risk. This formula approaches the regulatory principle applied in different jurisdictions to ensure that public service operators can recover efficient costs and obtain a fair return on invested capital. The progress is significant compared to the model of blanket subsidies and politically suppressed tariffs.

However, the draft must resolve an essential problem: who sets the tariff, with what methodology, with what degree of technical independence, and with what protection against political pressure?. A tariff that exists in the law, but can be frozen by political decision, is useless for financing infrastructure. Comparative experience shows that the tariff is not just a number: it is the basis of the economic contract between the State, users, operator, and financiers. Without stable tariff methodology, reasonable indexation, periodic review, regulatory accounting, and pass-through mechanisms for uncontrollable costs, the draft runs the risk of formally opening the market without closing the credibility deficit that prevents attracting long-term capital.

"Reasonable profitability": a necessary guarantee, but insufficient if it depends on State criteria. One of the most relevant aspects of the draft is the reference that the tariff regime must allow a "reasonable return" for the operator. In the abstract, the idea is correct: no private investor, domestic or foreign, will commit intensive capital in a sector with slow recovery, high sunk costs,

and elevated regulatory risk if there is no legally protected expectation of recovering the investment and obtaining a profit compatible with the assumed risk.

However, the central question is not whether reasonable return should exist, but who determines what profitability is reasonable, under what methodology, with what institutional independence, and with what review or arbitration mechanisms. If reasonableness is ultimately defined by the granting State, by the sectorial ministry, or by a regulator lacking real autonomy, the concept can transform into a legally elegant but economically insufficient formula.

The Venezuelan experience requires being particularly prudent. In infrastructure and energy sectors, profitability cannot depend on the discretionary appreciation of an official nor on the political sensitivity of the current government regarding the final price of the service. The tariff is the economic heart of the electrical project. If the tariff does not reflect real costs, asset replacement, country risk, cost of capital, depreciation, inflation, convertibility, exchange risk, technical and non-technical losses, taxes, financing, and expected return, the project may be formally authorized, but materially unfinanceable.

Here Friedrich A. Hayek's perspective helps us better explain this idea, as this problem is even deeper. In *"The Use of Knowledge in Society"*, Hayek explained that relevant economic knowledge is not concentrated in a central authority, but dispersed among millions of agents: consumers, producers, financiers, suppliers, technicians, operators, workers, and investors. Free prices fulfill precisely the function of transmitting that dispersed information and coordinating economic decisions that no central planner could efficiently anticipate. Applied to the Venezuelan electricity sector, this means that a bureaucrat, no matter how competent, can hardly determine by decree what the "reasonable" profitability of a project is in a country with severe past inflation, high political risk, deteriorated infrastructure, a history of tariff controls, investment litigation, devaluations, sanctions, legal uncertainty, and massive capital needs.

Reasonable profitability is not an abstract figure; it is the result of a complex economic negotiation between risk, term, financing cost, contractual stability, demand expectations, technology, system losses, and institutional trust. Therefore, the draft is correct in recognizing that there must be profitability compatible with similar risk activities, but it falls short if it does not establish an objective and verifiable methodology to determine it. The legal reference should be accompanied, at a minimum, by explicit technical criteria: weighted average cost of capital, expected internal rate of return, international comparison, country risk, automatic adjustment clauses, indexation, independent periodic review, protection against tariff freezes, pass-through mechanisms for unavoidable costs, and access to arbitration or specialized technical review.

Otherwise, the risk is evident: reasonable return is promised, but the State's capacity to unilaterally define what profitability it considers acceptable is preserved. And if whoever sets the tariff is the same State that seeks to contain prices for political reasons, the investor will quickly notice that the economic equation of the contract may be subordinated to fiscal, electoral, or ideological objectives.

The contemporary liberal critique, taken up by President Javier Milei in his defense of free prices and his rejection of state controls, coincides on this point: when the State replaces market signals with administrative decisions, it destroys essential economic information, disrupts coordination between supply and demand, and ends up generating scarcity, deterioration of service quality, or

underinvestment. Beyond the political assessment that can be made of that stance, its warning is pertinent to Venezuela: it is not enough to formally open the sector to private capital if the price of the service continues to depend on a public authority that does not bear the economic risk of the project.

Consequently, the expression "reasonable return" must be seen as a starting point, not as a sufficient guarantee. To attract relevant foreign direct investment, especially in a long-term sector like electricity, Venezuela would need to offer much more than a general clause. It must offer objective tariff rules, contractual stability, regulatory independence, investment protection, effective dispute resolution mechanisms, and a clear renunciation of the temptation to turn the electricity tariff into an instrument of political control.

The underlying question, then, is uncomfortable but inevitable: can a massive inflow of foreign capital be expected if profitability is defined by the same State apparatus that has historically used prices, tariffs, concessions, and controls as public policy instruments?. The answer should be cautious. The draft represents progress compared to the absolute State monopoly, but it will hardly be sufficient if it does not transform the underlying logic: moving from a model where the State authorizes, regulates, grants, reviews, sanctions, and defines profitability, to a model where the market, contracts, and a truly independent regulator generate reliable signals for investment.

6. Critical authorship section: parallels with hydrocarbons and the real limits to attracting foreign investment

6.1 Parallels with the hydrocarbons reform of January 2026

The electricity reform cannot be analyzed in isolation. It is part of a sequence of economic opening that includes the partial reform of the Organic Hydrocarbons Law published in the Extraordinary Official Gazette No. 6.978 on January 29, 2026. Both reforms share the same logic: recognizing that the Venezuelan State, on its own, cannot finance, operate, or rebuild strategic sectors that require capital, technology, professional management, and access to international markets.

The most obvious parallel is the replacement of the State monopoly with private participation schemes. In hydrocarbons, the 2026 reform reopens spaces that had been closed by the nationalization cycle initiated between 2006 and 2007, including the forced migration of association agreements and risk exploration projects to mixed-capital companies. In electricity, the draft attempts to overcome the absolute reservation consolidated in 2010, allowing concessions and private operators in generation, transmission, distribution, and commercialization. In both cases, the legislature seems to admit that nationalization produced a loss of capabilities.

However, also in both cases, a structural tension remains: the State seeks private capital, but retains broad instruments of control. It wants investment, but does not totally renounce its prerogative. It wants private efficiency, but maintains the temptation to politically decide prices, authorizations, project approvals, and exploitation conditions. The oil precedent is particularly instructive. The so-called oil opening of the 1990s was designed to attract private investment under schemes that promised legal stability and long-term returns. That stability was later disregarded when the State, under the government of Hugo Chávez, substantially modified the

rules of the game and forced the migration of projects to mixed-capital companies. For any energy investor, that history is not academic data: it is a component of the Venezuelan cost of capital.

6.2 The credibility problem: Venezuela does not compete from scratch

Venezuela does not enter the international capital market as a neutral jurisdiction. It enters with a heavy history: nationalizations, price controls, arbitrations, defaults, institutional deterioration, administrative discretion, and regulatory changes adopted when the investor had already sunk capital. Therefore, it is not enough to pass a law allowing private participation. The country must rebuild credibility.

The competition for foreign direct investment is tougher today than twenty years ago. Global flows of productive investment have shown signs of weakness, caution, and concentration in jurisdictions with better institutional conditions. In infrastructure, moreover, projects face higher interest rates, geopolitical risks, financing restrictions, and greater compliance scrutiny. In practical terms, Venezuela would have to offer extraordinarily competitive conditions if it wants to attract investment that does not depend exclusively on Washington's diplomatic, political, or commercial pressure on US investors. Put bluntly: the country is not in a position to demand regulatory niceties or to preserve old statist reflexes. If it aspires to serious capital, it must offer serious legal security.

6.3 Reversion and tariff: two risks that can destroy bankability

From the investor's perspective, the two most sensitive points of the draft are the reversion of the concession and the setting of the service price. Both directly affect the financial model. Reversion defines what happens to the assets at the end of the concession; the tariff defines whether the investor recovers their capital during the life of the contract.

If reversion operates at zero cost and the tariff is subject to political discretion, the project can become financially unviable. The operator would have to assume the risk of building, rehabilitating, or modernizing assets that will end up in the hands of the State, without sufficient guarantee that the tariffs allow recovering investment and obtaining a reasonable return. That combination may attract opportunistic operators, short-term capital, or contractors dependent on political agreements, but it will hardly attract long-term institutional investors.

The solution does not necessarily consist in eliminating all reversion, but in regulating it with precision: depreciation methodology, compensation for unamortized investments, treatment of mandatory improvements, independent valuation, protection against early termination, extension rights if additional investment was required by the State, and dispute resolution mechanisms outside of local administrative discretion. Zero-cost reversion is not a minor technical detail. In long-term infrastructure projects, the existence or not of residual value is a central element for financial modeling. If the assets must pass to the State without full compensation at the end of the concession, the investor will demand to recover capital, debt, return, and risk within the contractual window. This can raise the necessary tariff, reduce the possibility of financing the project, or directly discourage projects whose recovery depends on horizons longer than the concession term.

Regarding tariffs, the law should be more explicit. It is not enough to invoke reasonable return. It must establish principles of sufficient tariff, periodic review, indexation for inflation and exchange rate when appropriate, recognition of efficient costs, pass-through of uncontrollable regulatory or fiscal costs, protection against political freezes, and transparency in subsidies. Subsidies, if they exist, must be paid from the public budget and not imposed as a mandatory loss on the operator.

Mixed companies and State participation: the risk of repeating history

The draft allows mixed-capital companies with majority State participation. From a political perspective, this formula can facilitate the transition from a public monopoly to openness. From an economic perspective, it can be a problem if the mixed-capital company becomes a vehicle to transfer investment costs to the private sector without granting it real management control.

In long-return sectors, the investor needs operational control, clear corporate governance rules, veto rights over critical decisions, protection against imposed indebtedness, budgetary discipline, independent auditing, and freedom to hire efficient personnel, technology, and suppliers. If the State majority allows political interference or cash-flow capture, the mixed-capital company will be less attractive than a pure private concession.

The lesson from hydrocarbons is direct: when the State forces the investor to coexist with a dominant public partner, the risk is not only economic but institutional. The private operator can get trapped between investment obligations, management limits, regulatory interferences, and difficulties in repatriating dividends. This design precisely discourages the patient capital that Venezuela needs.

6.5 The underlying thesis: more market, less discretion

The reform goes in the right direction, but it is insufficient if evaluated as an instrument for the massive reconstruction of the electricity system. Venezuela needs a more radical turn: allowing market forces to participate broadly in generation, commercialization, energy efficiency, self-generation, bilateral contracts, renewable solutions, microgrids, storage, smart metering, and auxiliary services.

The State should concentrate on functions that do add public value: indicative planning, technical standards, protection of vulnerable users, defense of competition, system integrity, and environmental control. But it should not reserve spaces to intervene discretionally in prices, selection of operators, corporate governance, or economic exploitation of projects because that would destroy investor confidence. The question is not whether the State should disappear from the electricity sector. The question is whether it should retain powers capable of driving capital away again. In an economy with a memory of defaults, institutional design must start from an uncomfortable premise: the investor does not believe the Venezuelan State by default. The law must be written to overcome that distrust, not to demand an act of faith.

7. Tax incentives and tax architecture: opportunity and risk

The draft abandons the general default tax exemption and subjects operators to the ordinary tax regime, but empowers the National Executive and municipalities to grant targeted exemptions or reductions. This approach can be reasonable if used to encourage high-impact projects,

renewable energies, rural electrification, importation of critical technology, or rehabilitation of strategic infrastructure.

However, the fiscal design must be coordinated with the tariff. Excessive or unpredictable tax pressure can destroy the project's economic equation. If the operator pays income tax, regulatory fees, special contributions, municipal taxes, public domain usage rights, and labor or parafiscal charges without tariff recognition, the principle of reasonable return will be neutralized.

The solution is to incorporate a comprehensive fiscal matrix right from the bidding terms and contracts: applicable taxes, exemptions, regime stability, treatment of imports, accelerated depreciation, deductibility of investments, Value Added Tax, municipal fees, Income Tax withholdings, sectoral contributions, and adjustment mechanisms if new taxes are created during the concession. Fiscal architecture must be part of the project's bankability, not a secondary annex.

8. Administrative sanctions: indexation, proportionality, and due process

The reform replaces the Tax Unit as the unit of account for fines and adopts a base linked to the official exchange rate of the highest-value currency published by the Central Bank of Venezuela. The intention is to preserve the real value of the sanction against inflation and devaluation. From a technical point of view, indexation can be reasonable; from a legal point of view, it requires clear limits.

Fines calculated on gross income, which can reach up to ten percent for serious infractions and up to two percent for minor faults, must be applied under strict criteria of proportionality, typicality, culpability, gradation, and due process. In a sector of regulated margins, a fine on gross revenues can be economically devastating if it does not consider utility, real severity, recidivism, damage caused, and capacity for correction. To attract investment, the sanctioning regime must be firm, but not confiscatory; technical, but not arbitrary; dissuasive, but not politically usable. The independence of the sanctioning body and the possibility of effective judicial or arbitral review will be determining factors.

9. Interaction with hydrocarbons, exclusion from public procurement, and institutional coordination

The draft clarifies that when the energy source comes from hydrocarbons, authorization from the Ministry with competence in that matter will be required. This coordination is essential, especially in thermal projects, gas projects, generation associated with oil fields, industrial self-generation, and integrated energy schemes for hydrocarbons, mining, steel, or large users.

Also relevant is the exclusion of the Public Contracting Law for mixed-capital companies, which must implement their own transparent mechanisms. This exclusion can facilitate operational agility, specialized purchases, and international contracting. But it must be accompanied by robust rules for compliance, auditing, conflicts of interest, payment traceability, corruption prevention, sanctions, and contractual transparency. The opening of the electricity sector will not be credible if it reproduces the vices of direct contracting, opacity, and rent capture that characterized much of the public infrastructure collapse. Contractual flexibility should serve to attract efficient suppliers, not to replace the State monopoly with private networks of privilege.

10. Recommendations to turn the reform into a truly bankable framework

Area for improvement	Minimum recommended content
Independent regulatory authority	Create or strengthen a technical regulator with functional autonomy, transparent appointment rules, stable mandates, a prohibition on political instructions in tariff decisions, and mandatory publication of methodologies.
Explicit tariff methodology	Incorporate, either in the law or in regulations of sufficient legal hierarchy, a methodology for efficient costs, reasonable return, periodic review, indexation, pass-through mechanisms, and the explicit treatment of subsidies.
Protection of unamortized investments	Regulate reversion with compensation for undepreciated investments, independent valuation, protection against early termination, and extension rights when the State requires additional investments.
Arbitration and dispute resolution	Allow national or international arbitration mechanisms for contractual, regulatory, and economic-financial equilibrium disputes, especially in externally financed projects.
Fiscal and regulatory stability	Include stabilization clauses, change-in-law rules, compensation for new unforeseen taxes or burdens, and readjustment mechanisms when the economic equation is altered.
Corporate governance in mixed-capital companies	Guarantee operational control rights, veto rights over critical decisions, independent auditing, freedom to contract efficiently, and cash-flow protection to avoid politicizing management.
Complementary markets	Develop rules for self-generation, bilateral contracts, qualified users, renewable energy, storage, smart metering, and microgrids, thereby reducing pressure on the central system.
Transparency and compliance	Require international standards of integrity, corruption prevention, sanctions, auditing, partner due diligence, and contract traceability.

11. Conclusion: a positive opening, but still insufficient

The reform of the Venezuelan electricity sector should be welcomed as a change of direction. It recognizes that the State monopoly failed, that the infrastructure requires private capital, and that the tariff must allow for real costs and a reasonable return. In a country affected by blackouts, industrial deterioration, and fiscal restrictions, that admission is already important.

But the reform should not be sold as a complete solution. The energy investor looks beyond the legal text. They evaluate institutional history, State credibility, respect for contracts, reversion

risk, tariff methodology, dispute resolution, regulatory independence, fiscal protection, and real payment capacity. That is where the Venezuelan challenge lies. Venezuela does not need a cosmetic opening. It needs a legal architecture designed to attract long-term capital under competitive, transparent, and protected conditions.

If the State maintains too much discretion, the reform may produce headlines, but not necessarily megawatts. If, instead, the country dares to reduce political intervention and build credible market rules, the project can become the first step towards a real reconstruction of the national electricity system. Ultimately, in our opinion, the electricity reform is a step in the right direction, but still insufficient to produce a massive inflow of foreign direct investment. As long as the State retains the power to define the return, politically approve concessions, revert assets, and modify the economic equilibrium through regulation or tariffs, the investor will continue to perceive that the central risk is not technical or commercial, but institutional.