

15 Annex - Energy

59. ENERGY LAW

Pursuant to Article 88 item 2 of the Constitution of the Republic of Montenegro, I hereby issue the

Decree Promulgating the Energy Law

I hereby promulgate the Energy Law passed by the Parliament of Montenegro at the second sitting of the first ordinary session in 2003 on 25 June 2003.

No 01-330/2

Podgorica, 26 June 2003

The President of the Republic of Montenegro

Filip Vujanović, m.p.

ENERGY LAW

Official Gazette of the Republic of Montenegro 39/03 of 30 June 2003

CHAPTER I

GENERAL PROVISIONS

Scope and Objectives

Article 1

1. This Law shall define the basic principles for the implementation of energy policy and strategy, the framework of the Energy Sector, the competencies of the Government in the Energy Sector and the duties and responsibilities of the energy regulatory body with respect to implementation of this Law.
2. This Law shall regulate the following activities in the energy sector:
 - 1) generation, transmission, distribution and supply of electricity in the market and/or as a public service;
 - 2) organisation and functioning of the electricity market;
 - 3) production and the market of coal for the needs of electricity generation;
 - 4) transportation, distribution, storage, wholesale and retail trade and supply of oil products and gas.
3. Energy Sector activities are activities of public interest.
4. This Law shall not apply to coal mining, gas or oil exploration, development, production or refining of crude oil or gas.
5. The objectives of this Law are to ensure a safe, secure, reliable quantity and quality supply of energy at fair prices, taking into account
 - 1) efficient and economic use of natural resources that meets the needs of the country;
 - 2) environmental protection;
 - 3) efficient use of energy;
 - 4) promotion of market competition;
 - 5) tariff customer protection;

- 6) the need for energy undertakings to realise a reasonable profit in the market;
 - 7) the need for energy undertakings to promote private sector participation;
 - 8) the enforcement of contractual obligations;
 - 9) integration of activities of the Energy Sector of Montenegro with those of the rest of Europe.
6. Regulation of the energy sector shall be objective, transparent and non-discriminatory and shall comply with relevant international standards, including the European Energy Charter Treaty and European Union provisions in the field of energy.

Definitions

Article 2

Wherever the following terms appear in this Law, they shall have the meanings as stated below:

1. **access to the grid** means the right of a producer or contract customer to use the transmission grid and the distribution grid in compliance with conditions provided for by the acts of the Energy Regulatory Agency;
2. **energy regulatory agency** means the entity created in pursuance with this law to regulate the energy sector of Montenegro.
3. **ancillary services** means services necessary for operation of transmission or distribution grids which include the supply of reactive power, frequency and voltage regulation, spinning reserve, cold reserve, black start up and back-up capability and regulating load fluctuations.
4. **authorisation** means the approval issued by the Agency for construction of new energy facilities or modification of the existing energy facilities and new connection with other systems;
5. **auto producer** means a natural or legal person generating power essentially for its own use.
6. **connection** means one or more meeting places between licence holders or between grids and facilities owned by a contract customer or between a grid and another grid at a different voltage level or under a different pressure.
7. **contract customer** means any natural or legal person that obtains energy pursuant to a contract at wholesale or retail prices, excluding the transmission operator or market operator.
8. **direct line** means a power line connecting a producer directly to a tariff customer, such line being complementary to the transmission and distribution grids.
9. **dispatching** means the management of electricity flows in the system, taking into account the exchange with other systems and the selection of generating units according to economic precedents.
10. **distribution** means the transportation of electricity via a corresponding distribution grid in order to deliver it to customers.
11. **distribution operator** means the energy undertaking that is legally or functionally unbundled and responsible for use, reliability, management maintenance and the development of the distribution grid.
12. **economic precedence** means the type of dispatching where the transmission operator first selects the lowest marginal cost for the available electricity generation, followed by selection of more costly generation and so forth in the ascending order;
13. **energy balance** includes
 - a) generation of primary, secondary and all other forms of transformed energy up to and including the final energy;
 - b) acquisition of all types of energy; and
 - c) supply of energy for a determined time period.
14. **energy sector** means the activities that include generation, transmission, distribution and

supply of electricity, marketing, trade, storage or supply of oil, oil products, or gas.

15. **environmental costs** means the costs required to be borne by an energy undertaking in order to comply with all existing environmental laws and regulations, which shall be considered by the Agency in the tariff setting process.

16. **energy undertaking** means any legal person carrying out electricity-related activities governed by this law.

17. **functional unbundling** means structural separation of energy activities within an integrated energy undertaking, including accounting separation, management separation and information separation.

18. **gas** means natural gas and substances recovered from natural gas, crude oil or coal for transmission in a gaseous condition.

19. **gas storage** means stocking of liquefied natural gas and liquefied oil gas.

20. **generation** means the physical or chemical process whereby fuel and energy of renewable energy resources are transformed into electricity, heat and other forms of energy.

21. **producer** means any energy undertaking generating electricity for sale.

22. **integrated electricity undertaking** means a vertically or horizontally integrated energy undertaking.

23. **inherited costs** means liabilities and costs incurred before the enactment of this law;

24. **interim licence** means the licence granted to existing energy undertakings permitting them to operate until issuance of an ordinary licence or until a date determined by the Agency.

25. **interruptible rate** means a price, agreed in advance between an energy undertaking and a contract customer which takes into account interruptions of electricity supply.

26. **legal unbundling** means the functions performed within an integrated energy undertaking are legally separated from the integrated energy undertaking so that every energy undertaking becomes a separate legal entity and operates independently from all other undertakings.

27. **licence means** the document issued by the Energy Regulatory Agency by which legal entities from the country or legal entities from abroad are permitted to carry out an activity in accordance with this law.

28. **market operator** means the energy undertaking legally or functionally unbundled from an integrated energy undertaking and legally responsible for the organisation and administration of electricity trade and payment settlements among producers and suppliers.

29. **market rules** means the rules regulating the operation and management of the market.

30. **ministry** means the ministry responsible for energy business.

31. **grid** means a system of connected lines, devices, facilities, installations and devices for energy measurement, intended for transmission or distribution of electricity or gas from a producer to an end customers.

32. **oil** means liquid hydrocarbons or mixture of hydrocarbons and compounds.

33. **oil products** means products made from crude oil.

34. **producer of coal** means the entity that produces coal for generation of electricity.

35. **public services** means the services of energy undertakings which provide security, including security of supply, regularity, quality and price of supplies, as well as protection of the environment;

36. **renewable energy sources** means renewable non-fossil energy sources, including in particular hydropower, wind energy, solar energy, geothermal energy, wave energy, tidal energy, biomass, landfill gas, waste water treatment plant gas and biogas.

37. **secondary legislation** means all enabling legislation issued by the Energy Regulatory Agency pursuant to this law.

38. **security of supply** means technical safety as well as provision of an adequate quantity of energy to service the needs of tariff customers.
39. **supplier** means a legal person engaged in the delivery and/or sale of energy, as well as in reselling of energy to tariff customers;
40. **small power plants** means power plants with respective capacities not greater than ten (10) MW.
41. **supply** means the delivery and sale, including reselling of electricity to tariff customers.
42. **tariff** means the price of the electricity for generation, transmission, distribution, and supply of electricity and gas to tariff customers.
43. **tariff customer** means any natural or legal person supplied with energy for their own use by an energy undertaking.
44. **transit** means the transportation of electricity across the territory of Montenegro, where such electricity originates in another country and is intended to be transported to a third country or back to the country of origin;
45. **transmission** means the transportation of electric power or gas via the transmission grid to the distribution grid or to installations of tariff customers directly connected to the transmission grid or to another transmission grid;
46. **transmission operator** means the energy undertaking legally or functionally unbundled from an integrated energy undertaking and responsible for usage, reliability, maintenance, management and development of the transmission grid, dispatching, balancing of generation and consumption, reserves, matching physical supply and demand in real time.

CHAPTER II

COMPETENCIES

Competencies of the Government of Montenegro in the Energy Sector

Article 3

1. The Government of the Republic of Montenegro (hereinafter referred to as the "Government") shall do as follows in the energy sector:
- 1) establish and implement:
 - the national energy policy and the national energy strategy;
 - the annual and long-term energy balance and policy for implementation thereof;
 - 2) provide implementation of measures for environmental protection;
 - 3) promote and facilitate:
 - investment in the energy sector of Montenegro;
 - competition within the energy sector of Montenegro based on transparency and non-discrimination;
 - connection of the energy system of Montenegro with systems of other countries, taking into account economic trends and energy needs;
 - private sector participation in the energy sector;
 - 4) define the policy and strategy for construction of new capacities or modification of the existing capacities and, in this respect, adopt appropriate procedures.
2. For the purpose of fulfilling its obligations under this Law and other applicable laws, the Government shall, through the Ministry competent for energy affairs:
- 1) realise the policy of energy efficiency and conservation of energy resources;
 - 2) encourage and advise on energy efficiency and the rational use of energy;

- 3) develop and promote incentives for efficient use of energy and renewable resources;
- 4) promote the increased use of renewable energy sources for generation in the internal market; and
- 5) manage funds earmarked for energy saving and energy efficiency.

Competencies of the Ministry in the Energy Sector

Article 4

The Ministry competent for energy affairs (hereinafter referred to as the “Ministry”) shall

- 1) prepare and propose the national energy policy and the annual and long-term energy balance and submit those to the Government for adoption;
- 2) fulfil its obligations
 - arising under this Law;
 - arising under legally binding international agreements;
 - related to membership in international organisations;
 - related to demand and supply of electricity and
 - in regard to inspection supervision.
- 3) recommend and consider
 - the need for trading in natural gas, coal and petroleum products with neighbouring countries;
 - options for use of available domestic energy resources;
- 4) promote:
 - use of new energy-related technologies;
 - private sector participation in the energy sector of Montenegro and privatisation of state-owned energy undertakings or parts thereof;
 - use of renewable energy sources.

CHAPTER III

ENERGY BALANCE

Energy Balance

Article 5

1. The Energy Balance comprises as follows:
 - 1) the Electric Power Balance, which identifies
 - anticipated consumption of electricity;
 - the possibilities for generation and acquisition of electricity;
 - electricity exchange, including transit of electricity as well, with other electric power systems;
 - required maintenance of electric power facilities; and
 - other issues important for functioning of the electric power system.
 - 2) the Coal Balance, which identifies
 - anticipated consumption;
 - coal production potential;
 - use of coal for electricity generation, industrial and general consumption);

- delivery of coal outside of Montenegro;
 - other issues that are important for realisation of the coal balance.
- 3) c) Balance of Oil, Oil Products and Gas, which identifies
- anticipated consumption of oil, oil products and natural gas;
 - potentials for production and acquisition of oil, oil products and gas;
 - use of oil, oil products and gas.
2. Energy undertakings shall prepare and submit to the Ministry the relevant energy balance not later than 15 November of the current year for the subsequent year.
3. The Government shall adopt the annual Energy Balance not later than 1 December of the current year for the subsequent year.
4. Subject to existing contractual obligations, all energy undertakings and contract customers shall harmonise their energy balances with the Energy Balance of Montenegro, not later than 31 December of the year of its adoption.

CHAPTER IV

THE ENERGY REGULATORY AGENCY

Establishment and Objectives

Article 6

1. The Energy Regulatory Agency is hereby established as an autonomous, functionally independent and non-profit organisation that shall carry out its public authorisations in accordance with this Law. The Agency is a legal entity and it shall be registered in a relevant register of a competent body.
2. The Agency shall operate under the name of the “Energy Regulatory Agency” (hereinafter referred to as the “Agency”). The head office of the Agency shall be in Podgorica.
3. The objectives of the Agency are to ensure
- 1) that the principles, policies and programmes established and promulgated by the Government are implemented and enforced on the basis of the principles of objectivity, transparency, and non-discrimination;
 - 2) a reliable, safe and environmentally sound supply of energy to the tariff customers in Montenegro at fair prices;
 - 3) that energy undertakings may recover their costs at a reasonable rate of return on their investment;
 - 4) balancing of the interests of customers and energy undertakings;
 - 5) promotion of stability, competency and efficiency by energy undertakings;
 - 6) realisation of other tasks in pursuance with this Law.
4. The bodies of the Agency are as follows:
- 1) the Board of the Agency (hereinafter referred to as the “Board”);
 - 2) the Agency’s Director;
5. The Agency shall adopt a Statute and submit it to the Government for its approval.

Composition

Article 7

1. The Board shall consist of three members that shall, by majority vote, make decisions within the scope of competencies of the Agency, pursuant to this Law and Secondary legislation.
2. The Charter of the Agency shall define in particular

- a) the rights and duties of the Board and election of the Chair;
 - b) the internal organisation of the Agency;
 - c) the process to be employed for appointment of the Board and the Director.
3. The first-elected Director and the first-elected Deputy Director shall be appointed not later than ninety days after the date of entry into force of this Law.
4. The Director shall represent and act for and on behalf of the Agency in accordance with the Law and the Statute of the Agency.
5. A competition shall be announced for the positions of the Member of the Board, the Director and the Deputy Director, while an announcement shall be published in public media for the employees, with an application submission period not shorter than thirty (30) days for the former and eight (8) days for the latter. The Ministry shall issue a public advertisement for the initial appointments and elections.
6. The Members of the Board, the Director, the Deputy Director and the employees shall exercise their employment rights and obligations in accordance with applicable labour regulations.

Selection Commission

Article 8

1. Candidates for election of Members of the Board shall be selected by a selection commission (hereinafter referred to as the "Commission") established by the Government pursuant to the terms of this Law. The Commission shall nominate candidates for the position of the first-elected Director and the first-elected Deputy Director
2. The Commission shall consist of the representatives appointed by
- the Government of Montenegro– one representative;
 - the Montenegrin Academy for Science and Arts - one representative;
 - the University of Montenegro two representatives, one of whom shall be appointed by the Faculty of Electrical Engineering;
 - the Chamber of Commerce of Montenegro - one representative.
- (3) Appointed members of the Commission may not be
- civil servants or the Government appointees, except in the case defined in paragraph (2) indents 1 and 3;
 - persons employed or under the contract for service(s) with any energy undertaking in Montenegro.
4. Members of the Commission shall be appointed pursuant to the terms of this Law not later than thirty (30) days after the entry into force of this Law,. The names of the members of the Commission shall be made public in the Official Gazette of Montenegro.
5. The Commission's decisions shall be taken by a majority vote.
6. The Commission shall submit for adoption a list of nominations for members of the Board to the Government not later than fifteen (15) days after the conclusion of the advertisement referred to in Article 7 paragraph 5 of this Law, stating as follows:
- (a) three (3) primary candidates;
 - (b) other candidates fulfilling the requirements set forth in the public advertisement, in rank order, as determined by the Commission.
7. The Government shall select three (3) candidates for the members of the Board from the Commission's list.
8. In the event that the Government does not select three (3) members of the Board from the list of primary candidates referred to in paragraph 6 item (a), the Government shall select the

remaining candidates for the members of the Board from the list of candidates referred to in paragraph 6 item (b), considering them in the rank order in which they were proposed.

9. The Government shall submit to the Parliament of Montenegro (hereinafter referred to as the "Parliament") the proposal for selection of members of the Board.

10. The Parliament's decision on selection of the members of the Board shall be published in the Official Gazette of Montenegro.

11. The Commission shall submit a list of nominations for the position of the first-elected Director and the first-elected Deputy Director of the Agency to the Government for its approval, as follows:

- a) one (1) candidate per each position referred to in this paragraph,
- b) other candidates fulfilling the requirements of the public advertisement for the positions of the Director and the Deputy Director in rank order as determined by the Commission.

12. The Government shall appoint one (1) candidate to be the first-elected Director and one (1) candidate to be the first-elected Deputy Director from the list of nominations referred to in the provisions of paragraph 11 hereof.

13. In the event that the Government fails to appoint one (1) candidate to be the Director and one (1) candidate to be the Deputy Director from the list of primary candidates referred to in paragraph 11 item (a), the Government shall appoint the first-elected Director and the first-elected Deputy Director from the list of candidates referred to in paragraph 11 items (b), considering them in the rank order in which they were proposed.

14. The Government's decision on appointments to the positions of the first-elected Director and the first-elected Deputy Director of the Agency shall be published in the Official Gazette of Montenegro.

15. Upon the prior consent of the Government, and pursuant to the provisions of this Law, the Agency's Board shall appoint the Director and the Deputy Director. The decision on the appointment shall be published in the Official Gazette of Montenegro.

Terms of Office

Article 9

(1) The term of office for the Board Members shall last four (4) years, and upon expiration of such term all members of the Board shall have the right to be reappointed for maximum one additional term of four (4) years.

(2) Notwithstanding paragraph 1 hereof, the terms of office for the first-elected members of the Board shall be as follows:

- the term of office for one (1) member shall be four (4) years;
- the term of office for one (1) member shall be three (3) years;
- the term of office for one (1) member shall be two (2) years.

(3) The terms of office of the first-elected members of the Board shall be determined by drawing lots in presence of the President of the Parliament or his or her assignee.

(4) The term of the first-elected Director and the first-elected Deputy Director shall be four (4) years.

(5) The Director and the Deputy Director may not be appointed for more than two four-year terms of office.

Conditions for the Conduct of Business

Article 10

(1) Candidates for the positions of Member, Director and Deputy Director shall fulfil the following requirements:

- 1) for a Member: he/she is a citizen and permanent resident of Montenegro; he/she holds a university degree in engineering, law or economics; he/she has minimum seven (7) years of professional experience in his or her chosen field; he/she is not subject to any of the limitations referred to in Article 15 of this Law;
 - 2) for the Director: he/she is a citizen and permanent resident of Montenegro; he/she holds a university degree engineering, law or economics; he/she has minimum five (5) years of professional experience in his or her chosen field; he/she has experience in managing positions; he/she is not subject to any of the limitations referred to in Article 15 of this Law;
 - 3) for the Deputy Director: he/she is a citizen and permanent resident of Montenegro; he/she holds a university degree in engineering, law or economics; he/she has minimum three (3) years of professional experience in his or her chosen field; he/she has experience in managing positions; he/she is not subject to any of the limitations referred to in Article 15 of this Law.
2. The Members of the Board, Director and Deputy Director may not simultaneously be
 - members of the Parliament;
 - members of any city council;
 - elected, appointed and assigned persons in the Government.
 3. No person shall be elected to be a member of the Board of the Agency, or serve as Director or Deputy Director if such person:
 - has been convicted of a crime that is punishable by imprisonment of minimum six (6) months or more;
 - has been declared bankrupt or insolvent;
 - holds personal, spousal or direct family interest up to the third (3rd) order of heirs in the licence awarded under the provisions of this Law;
 - is a major stakeholder or shareholder, current member of a managing body, current employee or person under contract for service(s) with an entity that has a legal interest in any energy undertaking.

Termination of Office

Article 11

1. A member of the Board, the Director and the Deputy Director may be discharged i.e. deposed from office prior to the expiration of his or her term of office by the body that appointed such member of the Board, Director or Deputy Director if such person:
 - 1) is incapable of performing his or her duties for a continuous period of more than three (3) months;
 - 2) ceases to be a resident of Montenegro;
 - 3) has misrepresented his or her qualifications;
 - 4) has been convicted of a crime punishable by imprisonment;
 - 5) has submitted a written resignation;
 - 6) is found to have a conflict of interest;
 - 7) has been absent and unexcused from three (3) consecutive official and ordinary meetings of the Agency;
 - 8) h) has been excluded or suspended from the exercise of his profession on the basis of the Agency's Code of Conduct;
 - 9) has provided false financial statements referred to in Article 15 paragraph 1 of this Law.
2. In the event that a member of the Board resigns or wishes to vacate the position of chair, a new nominee for the position of chair shall be appointed in accordance with the Statute of the Agency.

Work of the Agency

Article 12

1. The Agency shall supervise all energy undertakings and may request information or to inform itself on matters it deems relevant for the purpose of ensuring that energy undertakings comply with their obligations under this Law.
2. The Agency shall have the following powers, functions and responsibilities:
 - 1) to make and issue all rules and regulations required to:
 - carry out its obligations under this Law;
 - to carry out and enforce the energy policies;
 - revision and approval of market rules; technical codes, terms and conditions for connection and access to grids;
 - 2) to issue Licences to conduct activities and to interconnect energy sector facilities, grids and equipment for generation, transmission, distribution, supply and sale of energy;
 - 3) to issue authorisations for construction of new or modification of the existing energy facilities;
 - 4) to set tariffs and prices pursuant to the terms of this Law and secondary legislation;
 - 5) to issue orders to energy undertakings pursuant to this Law and secondary legislation;
 - 6) to modify, suspend, revoke, monitor, control and enforce compliance with licences issued pursuant to this Law and secondary legislation issued pursuant thereto.
 - 7) to establish or amend rules and regulations:
 - that define the Energy market structure;
 - for market operation;
 - for unbundling of energy undertakings;
 - for the rights and obligations of all energy undertakings;
 - 8) to establish rules and regulations related to:
 - public hearings and findings conducted by the Agency in accordance with the terms of this Law and secondary legislation;
 - monitoring of energy undertakings;
 - safety of energy facilities, personnel, the public and the property ,
 - compliance of energy undertakings with environmental regulations;
 - 9) to ensure protection of tariff customers, that provides for
 - fair and non-discriminatory treatment of tariff customers by energy undertakings;
 - the delivery of high quality service by energy undertakings;
 - the establishment of mechanisms that will encourage public participation in development of rules and policies that affect tariff customers;
 - 10) to promote competitive conduct in the energy sector, including
 - fair and non-discriminatory transit of energy;
 - increase in sources of energy for generation, improvement of the possibilities for transmission, distribution and supply;
 - 11) to establish secondary legislation related to:
 - requirements pursuant to which all books, accounts, papers and records shall be kept by energy undertakings;

- in accordance with applicable laws, secondary legislation, agreements and other internationally recognised norms, to resolve disputes among or involving:

- tariff customers and energy undertakings; or
 - energy undertakings;

12) pursuant to its powers under this Law and secondary legislation, to ensure that tendering procedures related to construction of new generating capacities comply with applicable Law.

13) establish rules and regulations related to the transportation, storage, distribution, sale and delivery of oil Products;

14) pursuant to the terms of this Law and secondary legislation, publish

- annual reports required by this Law;
- other reports and findings;

15) subject to the requirements of this Law related to the publication of confidential information, to ensure that information relating to the energy sector is made publicly available;

16) to hire consultants and experts to assist the Agency in its activities; and

17) to join international associations related to the energy sector.

3. The Agency has the right, at any time, to examine, inquire into and determine the extent, condition and value of the whole or any portion of the property and assets, of any energy undertaking that provides services at prices that are regulated by the Agency pursuant to Article 18 hereof. In determining the value of such property and assets, the Agency shall ensure that the valuation methods used, and the determination of base annual and accrued depreciation, comply with generally accepted international accounting standards.

4. The Agency may conduct inspections of energy undertakings, pursuant to this Law and secondary legislation established pursuant thereto.

Funding

Article 13

1. The Government shall provide the initial funding required for establishing the Agency; thereafter the Agency shall be funded through fees it shall establish pursuant to this law and other secondary legislation.

2. Not later than the thirtieth (30th) day of September in each year, the Agency shall adopt its detailed budget for the subsequent year. The Agency shall deliver the budget referred to in this paragraph to the Parliament for adoption and to the Government for inspection and make it available to the public pursuant to regulations adopted by the Agency.

3. Pursuant to its adopted regulations, each year the Agency shall publish schedule of fees for each year that shall be due from each energy undertaking. The fees referred to in this paragraph shall be designed to cover the estimated expenses of the Agency during the year.

4. The fees referred to in paragraph 3 hereof shall be paid by the energy undertakings from which such funds are due into an account established by the Agency for its exclusive use. In the event that funds in the account referred to in this paragraph are not fully expended during the fiscal year in which they are collected, the Agency shall carry such funds forward to the subsequent year, and the schedule of fees published for such subsequent year shall be reduced accordingly.

Transparency

Article 14

1. The proceedings of the Agency shall be open to the public, except in extraordinary circumstances where confidential information or trade secrets are involved, as determined by regulations adopted by the Agency.

2. All decisions and orders of the Agency shall be in writing and shall have all required information, and provide all reasons for decisions made.

3. Documents, decisions, orders and licences, as well as records of all proceedings shall be maintained in accordance with Agency's secondary legislation.
4. Documents, decisions, orders, licences and records shall be made publicly available, except in circumstance where confidentiality has been established by this Law or Secondary legislation.

Conflict of Interest

Article 15

1. Not later than at the time of appointment, and on an annual basis during their terms, members of the Board, the Director and the Deputy Director shall file personal income and asset disclosure statements thereby confirming that they hold no interests in any energy undertakings.
2. Neither members of the Board, the Director, the Deputy Director, the employees of the Agency, nor members of the household of such persons shall have the following relationship to any energy undertaking:
 - presidents;
 - managers;
 - members of boards of directors;
 - owners of a material interest, financial or otherwise;
 - majority shareholders;
 - major holder of any funds;
 - major creditors;
 - employees;
 - contractors.
3. Nothing in this article shall be construed to prevent any member of the Board, the Director, the Deputy Director or any employee of the Agency from being a customer of any energy undertaking. However, such persons shall not accept free or discounted service(s) from any such energy undertaking at other than the rates and conditions applicable to any other tariff customer or contract customer group pursuant to this Law or secondary legislation.
4. No member of the Board, Director, Deputy Director or any employee of the Agency shall accept paid employment, nor shall such person be compensated in any way by any energy undertaking during such person's term of office and for a period of one (1) year after the expiration of such person's term, or dismissal from such person's position.
5. No member of the board of directors of an energy undertaking may be a member of the board of directors of any contract customer or tariff customer of such Energy Undertaking. If it is determined that the person is a member of the Board of either a tariff customer or contract customer, such person shall be required to resign from either of the two positions that he/she holds.

Annual Report

Article 16

1. Not later than the end of the second quarter of each calendar year, the Agency shall submit to the Parliament for adoption and make publicly available an annual report for the previous calendar year that shall include
 - 1) an overview of the situation in the energy sector of Montenegro during the previous year;
 - 2) the Agency's financial report audited by an internationally recognised auditing firm selected by way of open tender.
2. The financial report referred to in paragraph 1 hereof shall include an accounting of
 - 1) all fees received by the Agency during the prior calendar year;
 - 2) all Agency expenses during the prior calendar year;

- 3) other funds made available to or used by the Agency.

Settlement of Disputes

Article 17

1. The Agency shall resolve disputes between the energy undertakings or between tariff or contract customers and energy undertakings, as well as receive complaints related to third party access to the distribution or transmission system and act upon them in accordance with the rules of the general administrative procedure.
2. The Agency shall ensure that the tariff customers and energy undertakings rights are realised, and shall consider and make decisions upon complaints of tariff customers and energy undertakings.
3. While complaints referred to in paragraph (3) are pending, the Agency may determine temporary terms for commencement or continuation of provision of service or access, pursuant to the Agency's regulations.
4. Parties in dispute shall have the right to resolve disputes arising from contractual obligations in the energy sector through arbitration.
5. Decisions of the Agency shall be final.
6. All Agency decisions shall be subject to administrative appeal.
7. Any legal or physical entity shall have the right to lodge an appeal against
 - 1) a decision of the Agency not to issue a licence;
 - 2) any term or condition of a licence issued, or a refusal by the Agency to specify a term or condition in a licence;
 - 3) a refusal by the Agency to renew a licence;
 - 4) any amendment of a licence or a refusal by the Agency to amend a licence;
 - 5) any decision to revoke a licence;
 - 6) any decision of the Agency to grant or to refuse to grant a licence or an authorisation in accordance with this Law;
 - 7) the decision of arbitration or mediation of a dispute pursuant to paragraph 4 of this Article before the Competent Court;
 - 8) a decision of the Agency with respect to prices or tariffs;
 - 9) any other decision of the Agency.

Prices and Tariffs

Article 18

1. The Agency shall establish tariffs pursuant to the following principles:
 - 1) prices shall be: fair; non-discriminatory; based upon objective criteria established by the Agency; and determined in a transparent manner;
 - 2) on a periodic basis, based upon the energy undertakings' requests submitted to the Agency, pursuant to the Agency's rules and procedures, and such requests shall include
 - operating costs, including depreciation, interest payments, tax liabilities,
 - environmental costs and tariff customer protection;
 - costs of maintenance, replacement, construction and reconstruction of facilities;
 - annual return on net investments;
 - 3) performance of the energy undertaking when adjusting prices and tariffs or incentives;

- 4) Interruptible rates, load balancing costs and other mechanisms intended to improve energy efficiency;
- 5) encouragement of the use of demand side management principles as well as pricing that takes into account environmental and tariff customer protection costs;
- 6) the use of seasonal and time of use prices and tariffs where appropriate pursuant to secondary legislation to be established by the Agency;
- 7) cross subsidies of tariff customer groups should be minimized, and where possible, eliminated. Any direct subsidisation of Tariff Customers or Contract Customers shall be the responsibility of the Government and shall not be taken into consideration when establishing the prices and tariffs;
- 8) obligations under international agreements.

2. The Agency shall approve tariffs as proposed by energy undertakings in accordance with procedures it shall establish. Energy undertakings shall submit rate schedules for each service area and each class of contract customer for approval by the Agency, and such undertaking may adjust such rate schedules for good cause upon approval by the Agency. The Agency shall approve or disapprove tariff applications not later than ninety (90) days after receipt of such application. The Agency shall not be entitled to establish prices for any fuel with the exception of coal.

3. Pricing for generation, transmission, distribution and supply shall be regulated by a tariff system, or unregulated depending upon the existence of an organised competitive market. The Agency shall be entitled to release undertakings from the regulated tariff system.

Upon its own motion, the Agency may require an energy undertaking to amend a tariff that the Agency considers as inadequate, unfair or unjustified and may amend such Tariff pursuant to the rules and procedures established by the Agency.

Licences

Article 19

1. The following activities shall be licensed pursuant to the procedures established by the Agency:

- 1) Generation of electricity for purchase and sale, including auto producers that are connected to the grid;
- 2) transmission, distribution or supply of electricity for purchase or sale to third parties;
- 3) commercial transportation, storage, distribution, sale or supply of gas, oil or oil products;
- 4) the market operator;
- 5) the distribution operator;
- 6) transmission system operator.

2. The Agency shall not unreasonably withhold the grant of any licence.

3. The Agency shall establish secondary legislation pursuant to which certain energy undertakings may be exempted from their obligation to obtain a licence.

4. Any foreign or domestic undertaking may submit a request to the Agency for a Licence. Upon receipt thereof, the said undertaking may provide services in the energy sector pursuant to the licence terms and conditions.

5. The Agency shall establish licence requirements based on the following criteria:

- 1) harmonisation of facilities, energy grid, installations and equipment with the technical conditions and standards;
- 2) protection of public health and safety;
- 3) protection of the environment;

- 4) land use and siting;
 - 5) use of public property;
 - 6) electric energy efficiency and saving;
 - 7) the nature of primary energy sources,
 - 8) the technical, economic and financial capabilities of the applicant.
6. Licences shall be issued pursuant to the terms of Article 14.
7. The Agency shall issue a licence for a defined period of time.
8. Upon expiration of a licence, the Agency may require a licensee to provide service on a temporary basis pursuant to the Agency's secondary legislation and international best practices.
9. Pursuant to this Law and acts adopted under this Law, licensees and affiliates of licensees shall allow the Agency to inspect their facilities, records, books and other information as deemed relevant by the Agency.

Modification, Suspension and Revocation of Licences

Article 20

1. Upon the application of a Licensee based on a good cause, and after notice and hearing, the Agency may modify a Licence on the grounds of exigencies created by a clear and unforeseen change of circumstances.
2. The Agency may release a Licence holder from its licence obligations for a temporary but specifically stated period of time to be determined by the Agency
 - 1) upon the licensee's request;
 - 2) or if the Agency deems it necessary.
3. The Agency may revoke a licence:
 - 1) upon the licensee's request;
 - 2) if the licensee fails to remedy deficiencies identified by the Agency within the time frame specified by the Agency, or
 - 3) if the licensee is in breach of its licence.
4. In the event that the Agency temporarily releases a licensee from its licence obligations, or in the event that the Agency revokes a licence, the Agency shall appoint a legal or natural person to carry out the licensee's operations on the Licensee's premises and facilities with appropriate compensation as determined by the Agency.

CHAPTER V

COMPETITION AND UNBUNDLING

Competition

Article 21

1. An energy undertaking shall not take part in any anti-competitive conduct, including, but not limited to:
 - 1) cross-subsidisation;
 - 2) manipulation of prices or markets;
 - 3) any other trade practice detrimental to encouragement and protection of competitive markets.
2. The Agency shall:
 - 1) establish and enforce limitations on ownership;
 - 2) impose any other limitation deemed necessary to prevent abuse of market powers in

competitive areas of the energy sector or harmful consequences to tariff customers.

3. The Agency shall adopt rules and regulations pertaining to
 - 1) promotion of competition;
 - 2) encouragement of market development and encouragement of a tariff customer's right to choose a supplier;
 - 3) discourage and penalise abuse of market powers;
 - 3) discourage any anti-competitive or discriminatory behaviour.
4. The rules referred to in paragraph 3 shall
 - 1) define the relevant markets for purposes of prevention of abuse or misuse of a monopoly or market position;
 - 2) identify service areas where the number of energy undertakings is limited;
 - 3) establish periodic reporting requirements for energy undertakings in the energy sector necessary to enforce this Article.
5. The Agency shall establish dispute settlement procedures to enable aggrieved parties to seek redress for anti-competitive activities. On its own motion the Agency may initiate investigations of anti-competitive activities.

Unbundling

Article 22

1. Not later than eighteen (18) months after the entry into force of this Law, the existing integrated electricity undertaking shall be functionally unbundled. Functional unbundling shall include:
 - 1) accounting unbundling, in such way as that vertically integrated electricity undertaking shall separate accounts in the internal accounting for generation, transmission, distribution and supply activities. In the event that such an entity also performs other non-energy-related activities, such other activities shall be accounted for separately, as if they were separate undertakings. The vertically integrated electricity undertaking shall publish a separate balance sheet, profit and loss account, a cash flow statement and all other statements required for each function within the energy sector pursuant to the Law on Accounting and Auditing.
 - 2) management unbundling, meaning that during the time that energy activities (functions) within an energy undertaking are not legally unbundled, the day to day management of each separate function within the vertically integrated entity shall also be separated, regardless of commercial interest of the vertically integrated electricity undertaking. In particular, it means that the managers of one function within a vertically integrated entity may not sit on the board of directors of the vertically integrated entity and that the staff shall be assigned to work within one function of the vertically integrated entity only.
 - 3) information separation, meaning that commercially sensitive information related to a third party possessed by one function of a vertically integrated entity shall not be shared with other parts of such entity. Information separation shall be ensured by internal codes of conduct that shall be adhered to by all the employees within an undertaking.
2. Legal unbundling of energy undertakings may be carried out any time after the entry into force of this Law.
3. At its discretion, the Agency may exempt certain energy undertakings from the cross-ownership and unbundling provisions of this Law for isolated grids that are not connected to the high voltage transmission system.

CHAPTER VI

INSPECTION

Inspection Supervision in the Energy Sector

Article 23

1. The Ministry shall carry out the work of inspection supervision through inspectors.
2. The inspectors may conduct inspections related to
 - 1) the design, construction, maintenance, start-up and functional testing, and trial operation of energy facilities, plants, lines, installations and devices;
 - 2) measurement, protection and other devices intended to generate, transmit, distribute and consume electricity or heat, including meters;
 - 3) application of technical regulations and quality standards for products and services related to:
 - electricity supply, stoppage and restrictions in the supply of electricity or heat;
 - rational and economic utilization of electricity and other energy by energy undertakings;
 - 4) with respect to steam, hot and warm water facilities, including oil-fired boilers, steam pre-heaters, water heaters and high pressure plants and vessels:
 - technical regularity and security;
 - trial operation;
 - 5) all vessels, fixed or moveable, for compressed, liquid and pressure-dissolved gases ;
 - 6) construction, maintenance and use of boiler plants and other types of plants intended to heat:
 - boiler plants in thermal power stations, heat plants or combined heat and power plants;
 - heating plants under pressure in the facilities for generation and transmission of electricity and heat;
 - plants for the production and storage of gas and oil products;
 - 7) with respect to generation, transmission and distribution facilities and installations, ensuring that the employees of an energy undertaking are qualified to:
 - design;
 - construct;
 - supervise;
 - conduct maintenance;
 - operate.
3. Inspection supervision shall be carried out pursuant to the Law on Inspection Supervision.
4. Inspector's reports and other data related to inspection activities referred to herein shall be timely submitted in writing to:
 - 1) the energy undertakings that have been subjected to inspection;
 - 2) the Agency upon its request.

CHAPTER VII

ELECTRICITY MARKET

Framework

Article 24

1. Pursuant to its authority under this Law and secondary legislation, the Agency shall promulgate secondary legislation to facilitate the establishment of an organised market where electricity shall be traded through a Market Operator.

2. Energy sector activities shall be conducted as public services.
3. Until such time that the Agency determines that a competitive market for the services of generation and supply exists, such services for tariff customers shall be subject to regulation by the Agency.
4. If at any time a tariff customer demonstrates to the Agency its ability to provide electricity in a competitive market at the same or more favourable conditions, the Agency may release such tariff customer from regulation under the regulated tariff system established by the Agency.
5. The purchase and sale of electricity in the electricity market shall be by way of concluded bi-lateral contracts, with the exception of those made by way of spot market or balancing arrangements.
6. Energy undertakings that renders public services may request compensation for inherited costs by way of tariffs approved by the Agency.

Third Party Access

Article 25

1. Producers and suppliers shall have access to the transmission and distribution grids on a non-discriminatory and regulated basis, pursuant to rules and procedure determined by the Agency.
2. A Contract Customer shall have the right to connect to the grid pursuant to the terms of its
 - 1) connection contract and/or
 - 2) the grid code and
 - 3) other rules promulgated by the Agency.
3. Access to the transmission and distribution grids shall only be refused on the basis of a lack of capacity and such refusal shall be justified only on the grounds of security, regularity and quality of supply. In the event of a lack of capacity, transmission and distribution grid users may pay for any required system upgrades provided, however, that the Agency shall not include such payments in its consideration of the energy undertakings' return on net investment.
4. Any natural or legal person that is refused access to a grid or that objects to conditions imposed by the transmission or distribution operator in exchange for such access may file a complaint with the Agency pursuant to the Agency's rules and procedures.

Rights and Obligations of Producers

Article 26

1. Not later than six (6) months after the entry into force of this Law, each Producer providing generation services at the date of the entry into force of this Law shall apply to the Agency for an interim licence.
2. The interim licence referred to in paragraph 1 hereof shall be valid for a period of eighteen (18) months. Not less than six (6) months prior to the expiration of such interim licence, all producers referred to in paragraph 1 hereof shall apply to the agency for an ordinary licence pursuant to the rules and procedure established by the Agency.
3. Producers shall be functionally unbundled from the integrated electricity undertaking and shall be managed and operated pursuant to the rules and procedures established by the Agency.
4. Pursuant to the rules established by the Agency, including the market rules, the transmission operator rules and the distribution operation rules, producers may:
 - 1) use such primary energy sources as they deem most appropriate, taking into consideration their licence requirements;
 - 2) enter into contracts to purchase or sell electricity in order to fulfil their contractual obligations;
 - 3) have access to the transmission and distribution grids;

- 4) receive remuneration for electricity delivered.
5. Producers shall
 - 1) comply with the terms of their licences;
 - 2) have gauging equipment that measures electricity delivered to the grid;
 - 3) comply with all the Agency's rules and procedures

Transmission Operator

Article 27

1. Not later than six (6) months after the entry into force of this Law, the energy undertaking providing transmission services at the entry into force of this law shall apply to the Agency for an interim licence.
2. The interim licence referred to in paragraph 1 hereof shall be valid for a period of eighteen (18) months. Not less than six (6) months prior to expiration of the interim licence referred to in paragraph 1 hereof, the transmission operator shall apply for an ordinary Licence in accordance with Agency regulations.
3. The transmission operator shall be functionally unbundled from the integrated electricity undertaking and shall be managed and operated pursuant to the Agency's rules and procedures.
4. The Transmission Operator shall
 - 1) comply with the terms of its licence;
 - 2) have gauging equipment that measures electricity flows within the grid;
 - 3) comply with rules and procedures established by the Agency.
5. The Transmission Operator shall
 - 1) not provide generation services;
 - 2) not engage in electricity trading;
 - 3) operate independently pursuant to the following rules:
 - transmission operator shall not in any way participate in the company structures of any energy undertaking responsible, directly or indirectly, for the day-to-day delivery of generation, distribution and supply services in Montenegro.
 - transmission operator shall have full control over all any and all assets required to maintain and develop the grid,
 - establish a programme, approved by the Agency, to ensure non-discriminatory conduct on the part of the Transmission Operator. All employees of the Transmission Operator shall comply with such programme.
6. The Transmission Operator shall:
 - 1) maintain, modernise, upgrade and develop the transmission system;
 - 2) manage grid energy flows within the grid and towards other interconnection systems;
 - 3) arrange the availability of ancillary services;
 - 4) provide services to the market operator and to any other system operators necessary to ensure:
 - safe and efficient operation;
 - coordinated development and operation of interconnected systems;
 - regulation of frequency and capacity of exchange;
 - 5) co-ordinate the quality of delivered electricity with the market operator and with other transmission and distribution systems;

- 6) expedite delivery of electricity sector services through communication between:
 - domestic and international producers;
 - the transmission operator;
 - distribution operator;
 - suppliers;
 - tariff customers
 - 7) provide
 - energy metering; and
 - purchase/sale and reporting of system balances to the Market Operator on a real-time basis;
 - 8) the physical dispatch of generation;
 - 9) determine the use of interconnections with other systems;
 - 10) on a quarterly basis and following consultation with the market operator, report to the Agency on
 - scheduled maintenance outages;
 - requirements for expansion to or changes in the transmission system;
 - data and/or other information that demonstrates the viability of the transmission grid;
 - contracts, either concluded or being negotiated for backup and reserve supplies and other ancillary services;
 - 11) facilitate the settlement of accounts by the market operator;
 - 12) comply with the terms and conditions of its Licence.
7. Pursuant to the terms of this Law and Secondary legislation, the transmission operator may:
- 1) receive metering data and other information necessary to regulate frequency, voltage and the exchange of power from:
 - producers;
 - distribution operators;
 - contract customers connected to the transmission grid;
 - other transmission operators
 - 2) obtain information from existing and potential users of transmission grid required to facilitate third party access to the transmission system;
 - 3) in order to facilitate the safe operation of the transmission grid establish conditions for connection to the transmission grid by:
 - distribution grids;
 - power plants;
 - contract customers connected directly to the transmission system.
 - 4) in co-operation and co-ordination with the market operator, provides ancillary services in an efficient and economical manner,
 - 5) to charge a fee for provided management and supervision services, a fee for the connection to the transmission grid, as well as a fee for provision of transmission services in accordance with the rules determined by the Agency.
 - 6) enter any property or premises with a view to ensuring maintenance and development of the transmission system.

8. the transmission operator shall not discriminate between grid users or classes of grid users, and shall make no decisions in favour of its shareholders or any affiliated undertakings.
9. Pursuant to the terms of this Law and secondary legislation of the Agency adopted on the same basis, the transmission operator shall preserve the confidentiality of commercially sensitive information as determined by the Agency, obtained in the course of its business.
10. In addition to its application for a licence to operate, the transmission operator shall submit a grid code to the Agency for approval.
11. The grid code shall
- 1) establish technical rules for the minimum technical design and operational requirements for connection to the grid and interconnection with other grids;
 - 2) identify criteria for dispatch based on
 - economic precedence, without prejudice to the supply of electricity based on contractual obligations;
 - technical constraints on the grid;
 - optimal load balances;
 - the government's policy on security of supply;
 - giving priority to the use of indigenous primary fuel sources not exceeding in any calendar year fifteen percent (15%) of the overall primary energy necessary to produce electricity consumed in Montenegro;
 - giving priority to producers using renewable energy sources, waste or combined heat and power;
 - establish procedures applicable for grid operation in contingency or emergency situations.
12. The grid code shall be applied in an objective and non-discriminatory manner.
13. The transmission operator may refuse service to a potential contract customer until such potential contract customer has been licensed by the Agency to provide energy sector services.

Distribution Operator

Article 28

1. Not later than six (6) months after the entry into force of this Law, energy undertaking providing distribution services at the date of the entry into force of this Law shall apply to the Agency for an interim licence.
2. The interim licence referred to in paragraph 1 hereof shall be valid for a period of eighteen (18) months. Not less than six (6) months prior to the expiration of such interim licence, the all distribution operators shall apply for an ordinary licence in accordance with Agency regulations.
3. the distribution operator shall be functionally unbundled from the integrated electro energy undertaking and shall be managed and operated pursuant to secondary legislation determined by the Agency.
4. Distribution Operator shall operate independently, pursuant to the following rules:
 - 1) Distribution operator shall not in any way participate in the management decisions of any energy undertaking responsible, directly or indirectly, for the day-to-day delivery of generation, transmission and supply services in Montenegro;
 - 2) Distribution operator shall have full control over any and all assets required to maintain and develop the distribution grid, and
 - 3) establish a programme, approved by the Agency to ensure non-discriminatory conduct on the part of the distribution operator. All employees of distribution operators shall comply with such programme.
5. Distribution operators shall

- 1) maintain, improve, upgrade and develop the distribution grid up to and including, where appropriate, the tariff customer's meter;
 - 2) in order to meet the customer's needs, apply best practices in operation, maintenance and management principles to ensure
 - security of supply;
 - reliability of distribution system operation;
 - the non-discriminatory conditions for grid users and classes of distribution system users;
 - 3) operate the distribution system and associated interconnections on a regular and continuous basis;
 - 4) develop, introduce, operate and maintain the distribution grid's energy metering system;
 - 5) as required by relevant codes and other agency's secondary legislation and further to the request of the transmission operator, suppliers, and market operator, conduct measurements and report the readings;
 - 6) pursuant to technical rules and regulations, maintain equipment for connections between producers and customers, when such equipment is located within its service area;
 - 7) comply with the terms and conditions of its licence;
 - 8) comply with the grid code, market rules and other secondary legislation determined by the Agency;
 - 9) pursuant to the terms of this law and secondary legislation determined by the Agency, preserve the confidentiality of commercially sensitive information as determined by the Agency, obtained in the course of its business;
 - 10) on a quarterly basis, report to the Agency on
 - supply and demand balances;
 - scheduled maintenance outages;
 - data and/or other information that demonstrates the viability of the distribution grid;
 - 11) supply electricity to the tariff customers to whom it is legally obligated to provide services.
6. Pursuant to the terms of this Law and secondary legislation, the distribution operator may:
- 1) receive electricity metering data and other information necessary to assist the transmission operator to regulate voltage and the supply of power from producers and tariff customers connected to the distribution grid;
 - 2) enter any property or premises to install, inspect, alter or replace any meter;
 - 3) enter any property or premises for the purpose of disconnecting electricity service where the owner or the resident has committed an offence pursuant to this Law, or has not paid for the electricity in accordance with its contractual obligations or the terms and conditions of service;
 - 4) enter any property or premises for the purpose of operating, maintaining and developing the distribution system;
 - 5) receive information from existing and potential users of the distribution grid required to facilitate third party access to the transmission system;
 - 6) to charge a fee for the activities of distribution management and supervision of the distribution grid and maintenance of measurement devices owned by the tariff customer if it performs the activity of supply as well as the fee for connection to the distribution grid.
7. In addition to its application for a licence to operate, a distribution operator shall submit a distribution code to the Agency for approval.
8. The distribution code referred to in paragraph 7 hereof shall address, but not be limited to

- 1) the establishment of technical rules for minimum technical design and operational requirements for connection to the Distribution grid and interconnection with other grids;
 - 2) the provision of data and information to the transmission operator required for its operation.
 - 3) the establishment of procedures that are subject to approval by the Agency related to grid operation in contingency or emergency situations;
 - 4) provide the details of contract customer service programmes and procedures which are available to contract customers and tariff customers.
9. The distribution code shall be applied in an objective and non-discriminatory manner.
10. On the date that this Law enters into force, all new electricity meters installed on any property or premises within the distribution grid shall be the property of the distribution operator.
11. The Agency shall determine by a specific regulation the manner and terms under which previously installed electricity meters shall become the property of energy undertakings.

Market Operator

Article 29

1. Not later than eight (8) months after the entry into force of this Law, the energy undertaking providing market operator services at the date of the entry into force of this Law shall apply to the Agency for an interim licence.
2. The interim licence referred to in paragraph 1 hereof shall be valid for a period of eighteen (18) months. Not less than six (6) months prior to the expiration of such interim licence, the Agency may advertise for applications for the position of the market operator. the applicant for the position of market operator shall apply for an ordinary licence in accordance with Agency regulations.
3. The market operator shall be functionally unbundled from the integrated energy undertaking and shall be managed and operated pursuant to Agency's rules and procedures.
4. The market operator shall not participate in the management decisions of any energy undertaking responsible, directly or indirectly, for the day-to-day delivery of generation, transmission, distribution services in Montenegro and shall be legally unbundled as soon as possible pursuant to the rules and procedures established by the Agency.
5. Not later than two (2) months after the date that the Market operator receives its licence, the market operator shall submit to the Agency for approval rules that establish:
 - 1) the rules and regulations governing participation in the electricity market; and
 - 2) a framework and timetable for creation of an energy supply market.
6. The market operator shall
 - 1) maintain records, that include all legally binding obligations of suppliers and contract customers;
 - 2) establish rules and procedures allowing for periodic modification of bidding and other guidelines established by the Agency in order to ensure that such procedures are objective, transparent and non-discriminatory;
 - 3) receive bids for the supply of electricity;
 - 4) receive and manage electricity purchasing bids, including where appropriate, purchase guarantees, as determined by the Agency;
 - 5) match bids, commencing with the lowest price bid for a specified time period, until demand has been met;
 - 6) establish an economic dispatch model and transparent system of demand forecast that shall be approved by the Agency;
 - 7) select producers and suppliers for deliveries based on demand and pursuant to the economic dispatch model, the grid code, the distribution code and generation and supply

licences;

- 8) supervise, maintain and improve the system of economic dispatch;
- 9) establish an accounting system for trading based upon the final price achieved, that accurately reflects the financial activities of producers and the availability of generating capacity for each time period;
- 10) inform market participants and the transmission operator regarding the settlement process and planning of grid access based on the settlement and the price of the remaining energy offered and available;
- 11) coordinate with the transmission operator with respect to undertaking of the necessary activities to
 - perform the economic management of the electricity market;
 - ensure the technical management of the grids;
 - arrange for ancillary services.
- 12) on a bi-annual basis and after consultation with other industry participants, recommend the necessary modifications and report to the Agency on
 - the condition of the energy sector in Montenegro;
 - the operation of the system of market access;
 - any recommended modifications.
13. in all circumstances, notwithstanding any other provisions in this Law, allow for and facilitate the direct supply and purchase of electricity pursuant to Chapter XI hereof.

7. The market operator shall perform its functions in an objective, transparent and non-discriminatory manner and in accordance with the terms and conditions of its licence.

8. Until such time as the Agency separates the functions of transmission and market operator, transmission operator shall carry out both functions for which separated licences shall be provided.

Supplier

Article 30

1. Suppliers shall
 - 1) comply with the terms and conditions of their licences;
 - 2) receive remuneration due to them pursuant to legally enforceable obligations;
 - 3) purchase or otherwise acquire the energy required to supply their contract customers pursuant to the settlement procedures approved by the Agency;
 - 4) have access to grids;
 - 5) measure electricity delivered pursuant to the Agency's rules and procedures and ensure accuracy in the measurement and the accessibility of metering equipment;
 - 6) encourage the rational use of energy and implement demand-side management programmes; and
 - 7) supply energy to tariff customers in accordance with its legally enforceable obligations.
2. Suppliers may disconnect a customer for non-payment within seven (7) days of the receipt of a notice for non-payment. Customer protection procedures shall be established by the Agency and implemented by the suppliers.

Tariff Customer's Rights and Obligations

Article 31

1. Tariff customers shall have the right to

- 1) be connected to the grid in accordance with the terms and conditions set out in the consent for connection;
 - 2) receive energy in the amount and quality established in the terms and conditions set in the connection approval;
 - 3) have fair and non-discriminatory conditions for supply of energy.
2. Tariff Customers shall
- 1) pay obligations based on services provided for supply of energy in a timely manner;
 - 2) maintain in a technically operational condition installations and meters owned by them;
 - 3) enable access to measurement devices and installations to authorised persons for installation, control, reading or repair;
 - 4) prevent connection of other facilities to its own installations.

CHAPTER VIII

GENERATION FROM RENEWABLE ENERGY SOURCES

Generation from Small Hydro Power Plants and Alternative Sources

Article 32

1. For construction of small hydro power plants or power plants on alternative sources, potential investors shall submit an application for authorisation and a licence pursuant to this Law. For such projects, the Agency shall establish simplified procedures and requirements for authorisation and licence applications. The Agency shall define licence terms and conditions that are suitable for such projects, particularly those that provide service to customers that are not connected to the grid.
2. Producers of electricity from small power plants or power plants on alternative sources are entitled to access to the transmission and distribution grids on a non-discriminatory basis pursuant to the requirements of Article 25 hereof. The Agency shall define simplified procedures for the exercise of such entitlements, provided, however, that such power plants fulfil the requirements provided for under codes of the grid and distribution business, market and other rules, as well as legal requirements pursuant to this and other laws.
3. In order to carry out its responsibilities under Article 3 paragraph 2 hereof with respect to energy efficiency, generation from small hydro power plants and alternative energy sources, the Ministry shall
 - 1) provide information to the public to facilitate project development referring but not limited to:
 - available sites for such projects;
 - specific information on lay-out of possible sites suitable for use of solar energy, wind energy and watercourses for construction of small hydro power plants or other renewable sources;
 - licences, permits, authorisations and such details that may be required for implementation of projects;
 - other information, as the Ministry may determine
 - 2) require investors of such projects to provide information referring but not limited to
 - project location;
 - installed capacity;
 - interconnection requirements;
 - type of an energy-generating product used;
 - entities that will build, own and manage the project;
 - other such matters, as specifically identified by the Ministry.

- 3) carry out coordination with other Ministries, including the Agency, so as to
- facilitate the process of applying for permits, licences and authorisations, particularly for those projects that provide service to one or more customers that are not connected to the grid;
 - simplify the development process for those projects that provide service to one or more customers that are connected to the grid.
4. The Ministry shall define appropriate procedures for protection of commercially sensitive or other confidential information.
5. Power plants with the installed capacity that is no greater than ten (10) MW that are based on renewable sources are entitled to sell power to the distribution grid. The Ministry shall determine the methodology, including the pricing methodology, for efficient connection to the grid.
6. Notwithstanding Article 20, Article 28 or any other Article in this Law, the Agency may modify a licence to require a licensee to purchase power from power plants based on renewable energy sources, in pursuance with paragraph 5 of this Article. In such case, the cost to the licensee of such purchase shall be a cost of operations pursuant to Article 18 hereof and shall be included in the licensee's purchasing tariff.

CHAPTER IX

OIL AND GAS

Oil Products and Gas

Article 33

1. Commercial transportation, storage, distribution, sales or supply of oil products and gas, shall be performed in accordance with the terms and conditions of the licences granted by the Agency for provision of such activities.
2. Any person or entity engaged in the activities referred to in paragraph 1 hereof shall be required to apply to the Agency for an interim licence no later than six months after the effective date of this Law. Interim licences may be in effect for no longer than one year from the date of issuance by the Agency. Not later than three (3) months after the entry into force of this law the Agency's rules shall establish the manner, procedure and conditions for granting the licences. The rules of the Agency shall be published in the Official Gazette of Montenegro.
3. The Agency shall determine, at the time of issuance of any interim licence, the date by which the licensee must apply for its ordinary licence. Such ordinary licences shall last for a period of several years to be determined by the Agency.
4. The terms and conditions of any interim or ordinary licence shall include such matters as the requirement to comply with
- 1) applicable safety standards;
 - 2) applicable environmental laws and regulations;
 - 3) quality of product and quality of service standards required under this Law or, as the case may be, determined by the Agency;
 - 4) this Law and applicable secondary legislation; and
 - 5) all other applicable laws, regulations, codes, licences or permits, and such other requirements that the Agency may establish.
5. In the absence of an exemption from the Agency pursuant to Article 19 paragraph 3 hereof, no person or entity may engage in the activities referred to in paragraph 1 hereof without a licence from the Agency.

CHAPTER X

COAL

Coal Supply for Electricity Generation

Article 34

Coal required to generate electricity in Montenegro shall be provided pursuant to written coal supply contracts. Coal supply contracts concluded between a producer of electricity and a producer of coal should include

- 1) price, quality and quantity of coal to be delivered;
- 2) the requirements established in the energy balance;
- 3) the necessity to stockpile coal reserves in a quantity sufficient to provide an uninterrupted operation of the thermal power plant for not less than fifteen (15) days;
- 4) procedures established by the Agency for notification of the tariff customers in the event of planned or unplanned stoppages in supply of coal, or of the delivery of coal in quantities less than that agreed under the coal supply contract;
- 5) other criteria as may be specified by the Agency from time to time.

Coal Prices

Article 35

1. The price for coal used in generation of electricity shall be set pursuant to the rules to be established by the Agency for a period not to exceed five (5) years after the entry into force of this Law. The setting of such price shall be preceded by obtaining an appropriate expert opinion provided by recognized renowned organisation.

2. The rules of the Agency referred to in paragraph 1 hereof shall be based on

- 1) fair, non-discriminatory and transparent prices for producers of coal and the tariff customers of electricity;
- 2) incentives to reduce future costs;
- 3) information provided by coal producers related to reasonable operating costs that shall include
 - taxes
 - amortisation;
 - other cost-related criteria approved by the Agency;

4) encouraging investments to improve coal production;

5) improving efficiency and reducing expenses in coal production over a long period. The Agency shall consider the price for coal delivered for the purpose of electricity generation as a justified expense when setting electricity tariffs.

3. During the period referred to in paragraph 1 hereof, the Agency shall establish performance benchmarks for the mine, and measure coal production against such benchmarks.

4. If deemed necessary, the Agency may engage international experts to conduct independent audit of expenses and potential efficiency improvements at coal production facilities.

5. Not less than six (6) months prior to expiration of the period referred to in paragraph 1 hereof, the Agency shall engage a renowned organisation to evaluate reports on the operation of the mine. Based on such report the Agency shall determine whether the mine is competitive and whether coal prices should be deregulated, or coal prices should continue to be regulated for an additional period

6. to be determined by the Agency.

7. The Agency shall deliver the report referred to in paragraph 6 hereof to the Government and make it publicly available.

8. Upon receipt of the report referred to in paragraph 6 hereof the Government shall make a final

decision on the further status of the mine and on the appropriate manner of setting coal prices.

CHAPTER XI
SECURITY OF SUPPLY
Security of Facilities

Article 36

In order to provide for the security of the people, material goods and the environment, the following shall be constructed and maintained in accordance with applicable laws, codes, rules and regulations:

- 1) energy facilities;
- 2) installations;
- 3) electricity lines; and
- 4) pipelines.

Protection of Energy Facilities

Article 37

1. Pursuant to written agreements between the Energy Undertaking and the landowner, and upon the payment of reasonable compensation, Energy undertakings may use such real estate for the purpose of construction, use and maintenance of energy facilities.
2. In the event that the agreement on a disputed issue referred to in paragraph 1 hereof cannot be reached, the entity competent for legal property relations shall settle the dispute upon request of an energy undertaking.
3. Any appeal filed against the decision referred to in paragraph (2 hereof shall not delay the execution of such decision.
4. Notwithstanding the provision of paragraph 2 hereof, an energy undertaking may construct, use or maintain energy facilities without obtaining prior approval of the entity competent for settlement of legal property relations if the energy undertaking determines that postponement of such activity would
 - 1) place at risk security and quality of supply;
 - 2) pose a threat to human life or property.
5. In the event that an energy undertaking causes any damages as a result of exercise of any of its rights provided for in this Article, such energy undertaking shall make compensation for such damage pursuant to applicable law.
6. It is prohibited to plant vegetation beneath or above energy facilities..
7. Owners or users of land beneath, above or beside energy facilities
 - 1) shall not interfere with or prevent removal of newly grown vegetation that endangers energy facilities or interferes with the use thereof; and
 - 2) are entitled to compensation for damages that arise as a result of the removal thereof.
8. An energy undertaking removing vegetation referred to in this Article above shall:
 - 1) not be required to obtain a permit for such removal;
 - 2) shall bear all costs related thereto.
9. No new construction shall be conducted by any legal entity or natural person in the vicinity of an energy facility in the absence of written permission from the energy undertaking responsible for such energy facility.
10. Pursuant to applicable law, the relevant inspector of works undertaken in contravention of

paragraph 9 hereof shall require termination or demolition of such construction works.

11. Upon the receipt of written permission from an energy undertaking, energy facilities may be relocated due to construction or reconstruction of other facilities.

12. In the event that an energy undertaking fails to approve the relocation of an energy facility referred to in paragraph 11 hereof, the aggrieved party may lodge an appeal with the Agency.

13. All expenses arising as a result of relocation of an energy facility shall be borne by the party that requested relocation of such energy facility.

CHAPTER XII

SUPPLY

Competitive Supply

Article 38

1. Pursuant to the terms of Article 24 paragraphs (4 and 5 hereof, the Agency shall issue such orders as to enable competition in supply services.

2. When making its decision to issue orders to allow competition referred to in paragraph 1 hereof, the Agency shall take into account the impact of competition on energy undertakings and the tariff customers in Montenegro as follows:

- 1) financial viability of a supplier on the basis of its financial statements;
- 2) the corporate strategic plan of a supplier for the distribution area;
- 3) whether competition is an effective regulator of prices in such market;
- 4) the technical condition of the distribution grid required to be able to sustain competitive supply;
- 5) investments planned by new participants in order to upgrade and improve the distribution and supply system.

3. Any qualified foreign or domestic energy undertaking may apply to the Agency for a licence to supply electricity to customers.

4. The holder of a supply Licence shall not be deemed to be the grantee of monopoly or exclusive rights in the energy sector.

5. During the period between the entry into force of this Law and adoption of the Agency's decision to allow competition, the existing distribution operator shall be responsible for supply of electricity.

6. All suppliers shall have the right to cut off and/or suspend the supply to the tariff customers for non-payment within seven (7) days from the receipt of a notice of non-payment.

Emergencies

Article 39

1. In the event of a sudden crisis in the energy market caused by a *force majeure* event where the physical safety or security of the people, installations or grid integrity is threatened, the Government and the Agency, pursuant to the provisions of this Law and secondary legislation, are entitled to introduce temporary measures to

- 1) restrict the supply of energy to specific categories of customers or geographical areas;
- 2) determine a progressive sequence of restrictions;
- 3) stipulate the manner in which energy shall be used;
- 4) stipulate the mandatory production of energy;
- 5) other necessary safeguards.

2. The measures referred to in paragraph 1 hereof
 - 1) shall be implemented with the aim to cause the least possible amount of disturbance to the functioning of the market;
 - 2) may not be greater in scope than necessary to remedy the consequences caused by a *force majeure* event;
 - 3) shall last for the shortest possible period of time required to remedy the crisis caused by a *force majeure* event..

Authorisations

Article 40

1. Upon the entry into force of this Law, unless exempted, the following activities shall be subject to authorisation by the Agency:
 - 1) construction of new generation capacities;
 - 2) modification of the existing generation capacities that significantly improves their respective capacities;
 - 3) new interconnection with other systems.
2. The authorisation process referred to in paragraph 1 hereof shall be in compliance with the EU Directive 96/92.
3. The Agency shall establish criteria for granting of an authorisation referred to in paragraph 1 hereof to construct or modify a facility of any energy undertaking. The criteria for granting an authorisation shall include, but not be limited to the following:
 - 1) the safety and security of energy systems, installations and associated equipment;
 - 2) protection of the environment;
 - 3) land use and siting;
 - 4) use of public property;
 - 5) energy Efficiency;
 - 6) the nature of primary resources;
 - 7) the technical, economic, financial and operational capacities of the applicant.
4. Licenced producers and contract customers may apply to the Agency for authorisation to construct a direct line. An authorisation for such a direct line shall be issued in the event that the applicant fulfils all legal, technical and economic requirements as established by the Agency.
5. The construction and modification of energy facilities shall be subject to applicable laws on construction, proprietary relations and other laws regulating this matter.

CHAPTER XIII

PENALTIES

General Penalties

Article 41

1. A cash fine ranging from 50 up to 300 times of minimal salary in Montenegro shall be imposed for an offence on any energy undertaking that
 - 1) fails to supply energy in compliance with a signed contract, (Article 24, 25, 27, 28, 29, 30);
 - 2) fails to comply with orders from the market operator or transmission operator, (Article 26, 28, 30);

- 3) does not comply with prescribed technical requirements for facilities, plants and installations for the generation, transmission and distribution of energy, representing a condition for obtaining the licence, (Article 19, 26, 27, 28);
- 4) suspends supply of electricity to the consumer without proper justification (Article 26, 28, 27, 38, 39);
- 5) does not connect the consumer to the grid to whom the approval for connection was granted, (Article 28, 31);
- 6) does not comply with requirements laid down in its licence; (Article 19, 26, 27, 28, 29, 30);
- 7) does not prepare an appropriate part of energy balance or does not prepare it in the set timeframe or does not align its balance with the energy balance of Montenegro. (Article 5).

2. A cash fine ranging from 3 up to 20 times of minimal salary in Montenegro shall be imposed on a responsible person in the energy undertaking for an offence laid out in paragraph 1 of this Article.

Article 42

1. A cash fine ranging from 10 up to 150 times of minimal salary in Montenegro shall be imposed for an offence on any company or any legal entity if without prior consent of energy undertaking they

- 1) deprive, waste, divert or use any electricity from a generating, transmission or distribution system (Article 31);
- 2) interferes with the use of plants, installations, electric lines or pipelines (Article 35 and 36);
- 3) disables accurate registration of consumed electricity (Article 26, 27, 28, 30 and 35);
- 4) connects tariff consumers to the grid (Article 31).

2. A cash fine ranging from 3 up to 20 times of minimal salary in the Republic shall be imposed on responsible person in the company i.e. other legal entity for an offence referred to in paragraph 1 of this Article.

3. A cash fine ranging from 3 up to 20 times of minimal salary in the Republic shall be imposed on a physical person for an offence laid out in paragraph 1 of this Article.

Article 43

1. A cash fine ranging from 10 up to 100 times of minimal salary in Montenegro shall be imposed for an offence on any company or any legal entity if they

- 1) does not permit a transmission operator and a distribution operator to execute technical supervision (Article 31);
- 2) without prior consent of an energy undertaking, execute works beneath, above or beside energy facilities or plants which disturb generation, transmission, distribution or supply of energy or endanger safety of people and their property (Article 37);
- 3) do not allow trespassing to an energy undertaking for the purpose of construction, undisturbed use and maintenance of energy facilities (Article 37);
- 4) without prior consent of an energy undertaking construct facilities or execute construction works in the vicinity of energy facilities (Article 37);

2. A cash fine ranging from 3 up to 20 times of minimal salary in Montenegro shall be imposed on a responsible person in a company or in other type of legal entity for an offence laid out in paragraph 1 of this Article.

3. A cash fine ranging from 3 up to 10 times of minimal salary in Montenegro shall be imposed on a physical person for an offence laid out in paragraph 1 of this Article.

CHAPTER XIV

TRANSITIONAL AND FINAL PROVISIONS

Transitional Provisions

Article 44

1. Not later than six (6) months after the entry into force of this Law, the Agency shall adopt secondary legislation pursuant to the competences provided for under this Law.
2. Until such time as the secondary legislation has been adopted pursuant to the competencies provided for under this Law, the secondary legislation adopted under the Energy Law (Official Gazette of the Republic of Montenegro 16/90, 13/91 and 21/93) currently in force shall be applicable.
3. Members of the Board of the Agency shall be appointed not later than six (6) months after the entry into force of this Law.
4. Not later than eighteen (18) months after the entry into force of this Law, all energy undertakings shall submit to the Agency tariff proposals that shall include separate tariffs for each contract and tariff customer class for review and adoption. Not later than twenty-four (24) months after the entry into force of this Law, the Agency shall be fully prepared to assume its tariff setting responsibilities under this Law.

Article 45

The Law on Energy (Official Gazette of Montenegro 16/90, 13/91 and 21/93) and the Law on the Determination of Funds for Financing the Construction of Electro Energy Facilities (Official Gazette of the Republic of Montenegro 22/93) shall be repealed on the day of entry into force of this Law.

Entry into Force

Article 46

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of the Republic of Montenegro.