

ENERGY LAW

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ENERGY LAW

CHAPTER I. GENERAL PROVISIONS

Scope and Objectives

Article 1

1. This Law defines 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 the implementation of this Law.
2. This Law regulates the following Energy Sector activities:
 - a) Generation, Transmission, Distribution and Supply of electricity in the market and/or as a Public Service;
 - b) organization and functioning of the electricity market;
 - c) production and the market of coal for the needs of electricity generation;
 - d) Transportation, Distribution, storage, wholesale and retail trade and supply of Petroleum Products and Gas.
3. Energy Sector activities are activities of public interest.
 - 1 This Law does not apply to coal exploitation, Gas or oil exploration, the development and production of crude oil or Gas refining.
4. The objectives of this Law are to ensure a safe, secure, reliable quantity and quality supply of Energy at fair prices, taking into account:
 - a) efficient and economic use of natural resources that meets the needs of the country;
 - b) environmental protection;
 - c) the efficient use of energy;
 - d) promotion of market competition;
 - e) Tariff and Contract Customer protection;
 - f) the need for Energy Undertakings to realize a reasonable profit in the market;
 - g) the need to promote private sector participation;
 - h) the enforcement of legally binding obligations; and
 - i) integration of the Energy Sector activities of Montenegro with those of the rest of Europe.

- 1 The regulation of the Energy Sector shall be objective, transparent and non-discriminatory and shall comply with relevant international norms including international standards, the 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 stated below:

1. **Access to the Network** means the right of a Generator or Contract Customer to use the Transmission network and the right of any Tariff Customer or a Supplier to use the Distribution network during a specifically determined time period pursuant to this Law.
2. **Energy Regulatory Agency** means the entity created by this Law to regulate the Energy Sector of Montenegro.
3. **Ancillary Services** means support services necessary for the operation of Transmission or Distribution networks. In the electricity sector this includes, but is not limited to, 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. **Authorization** means the approval issued by the Agency for the construction of new energy facilities or the modification of existing energy facilities.
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 license holders or between networks and facilities owned by a Contract Customer or between a network and another network on a different voltage level or 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 Generator directly to a Tariff Customer, such line being in addition to the Transmission and Distribution networks.

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 by way of a corresponding distribution network in order to deliver energy to Tariff 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 network.
12. **Economic Precedence** means the ranking of sources of electricity supply in accordance with economic criteria.
13. **Energy Balance** means:
 - a) the production of primary, secondary and all other types of transformed energy up to and including final energy;
 - b) the acquisition of all energy types; and
 - c) the 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, Petroleum Products, or Gas.
15. **Environmental Costs** means the costs required for an Energy Undertaking to comply with applicable environmental laws and regulations and that shall be considered by the Agency in the Tariff setting process.
16. **Energy Undertaking** means any legal person carrying out electricity and/or heat activity regulated by this Law.
17. **Functional Unbundling** means the 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 state.
19. **Gas Storage** means the stocking of liquefied natural Gas and liquefied petroleum Gas.
20. **Generation** means the physical or chemical process whereby fuel and renewable energy resources are transformed into electricity, heat and other forms of energy.

21. **Generator** 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 made before the enactment of this Law that could not be entirely covered in market conditions of operation.
24. **Interim License** means the license granted to existing Energy Undertakings permitting them to operate until issuance of an ordinary License 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 to be applicable for stoppages 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. **License means** the document issued by the Energy Regulatory Agency by which legal entities from the country or legal entities from abroad can carry out an activity in accordance with this law.
28. **Market Operator** means the Energy Undertaking legally responsible for the organization and administration of electricity trade and payment settlements among Generators 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. **Network** means a system of connected lines devices, facilities installations and devices for energy measurement intended for the transmission or distribution of electricity, heat or Gas from the Generator to Tariff Customers.
32. **Petroleum** means liquid hydrocarbons or mix of hydrocarbons and compounds.
33. **Petroleum Products** means products made from crude oil.

34. **Producer of Coal** the entity that produces coal for the generation of electricity.
35. **Public Services** means the services of Energy Undertakings which provide security, including Security of Supply, regularity and quality and price of supplies for the Tariff or Contract Customers.
36. **Renewable Energy Sources** means renewable non-fossil energy sources, including: hydropower, wind, solar geothermal, wave, tidal, biomass, landfill Gas, sewage treatment plant Gas and biogases.
37. **Secondary Legislation** means all enabling legislation issued by the Agency pursuant to this law.
38. **Security of Supply** means technical safety as well as the 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.
40. **Small Power Plants** means power plants of not greater than ten (10) MW.
41. **Supply** means the delivery, supply and sale, including resale of electricity and heat to Tariff Customers.
42. **Tariff** means the price of the electricity and/or heat for Tariff or Contract Customers for the Generation, Transmission Distribution, and Supply of electricity, heat and Gas.
43. **Tariff Customer** means any natural or legal person that receives energy from an Energy Undertaking for its own use.
44. **Transit** means the transportation of electricity across the territory of Montenegro; where such electricity:
- a) originates in another country; and
 - b) is intended to be transported to:
 - (i) a third country; or
 - (ii) back to the country where such electricity originated.
45. **Transmission** means the transportation of electric power or Gas over a transmission network to Distributors or to installations of Tariff and/or Contract Customers directly connected to the transmission network.
46. **Transmission Operator** means the Energy Undertaking responsible for dispatch, network reliability, maintenance, the management and development of the

transmission network and the balancing and reserve of electricity, Generation and consumption, matching physical supply and demand in real time.

CHAPTER II COMPETENCIES

Competencies of Government of Montenegro in the Energy Sector

Article 3

1. The Government of the Republic of Montenegro (“the Government”) shall, in the Energy Sector:
 - a) establish and implement:
 - (i) the national energy policy and the national energy strategy of Montenegro; and
 - (ii) the annual and long term Energy Balance and policy for the achievement thereof;
 - b) provide measures for environmental protection;
 - c) promote and facilitate:
 - (i) investment in the Energy Sector of Montenegro;
 - (ii) competition within the Energy Sector of Montenegro based upon transparency and non-discrimination;
 - (iii) the connection of the Montenegro energy system with Europe or systems of other countries, taking into account economic trends and energy needs;
 - (iv) private sector participation in the Energy Sector;
 - d) define the policy and strategy for construction of new capacity or modification of existing capacity and adopt appropriate procedures therefor.
2. For the purpose of fulfilling its obligations under this Law and other applicable laws, the Government shall, through the Ministry:
 - a) realize Energy efficiency policies and encourage the conservation of Energy resources;
 - b) encourage and advise on energy efficiency and the rational use of Energy;
 - c) develop and promote incentives for the efficient use of Energy and renewable resources;

- d) promote the increased use of Renewable Energy Sources and alternative energy sources for Generation in the internal market; and
- e) manage funds contributed for the purpose of Energy conservation and Energy efficiency.

Competencies of the Ministry in the Energy Sector

Article 4

The Ministry shall:

- a) prepare and propose the national energy policy and the annual and long-term Energy Balance to the Government for approval;
- b) fulfill its obligations:
 - (i) arising under this Law;
 - (ii) arising under legally binding international agreements;
 - (iii) related to membership in international organizations;
 - (iii) related to demand and supply of electricity and
 - (iv) in regard to inspection supervision.
- c) review and recommend:
 - (i) the need for natural Gas, coal and Petroleum Products trade with neighboring countries;
 - (ii) options for the use of available domestic Energy resources; and
- d) promote:
 - (i) domestic research in and use of new Energy-related technologies;
 - (ii) private sector participation in the Energy Sector of Montenegro and the privatization of state-owned Energy Undertakings; and
 - (iii) the use of Renewable Energy Sources.

CHAPTER III. ENERGY BALANCE

Energy Balance Obligations

Article 5

1. The Energy Balance is comprised of the following:
 - a) the electro energy and heat balance which identifies:
 - (i) the possibility for the generation and acquisition of electricity;
 - (ii) forecast consumption of electricity;
 - (iii) electricity exchanges with other electro energy systems;
 - (iv) required maintenance of energy **electro energy facilities**; and
 - (v) other important issues for the functioning of the electro energy systems.
 - b) the coal balance which identifies:
 - (i) the coal production potential;
 - (ii) forecast consumption;
 - (iii) usage for electricity generation, industrial consumption and general consumption);
 - (iv) the delivery to the Contract Customers outside of Montenegro; and
 - (v) other important issues for the functioning of the coal balance.
 - c) oil balance which identifies:
 - (i) forecast oil production;
 - (v) forecast consumption; and
 - (vi) usage of Petroleum Products and natural gas.
2. Energy Undertakings shall prepare and submit to the Ministry the relevant Energy Balance not later than November 15th of the current year for the subsequent year.
3. The Government shall adopt the annual Energy Balance not later than the 1st of December, of the current year for the subsequent year.
4. Subject to existing contractual obligations, all Energy Undertakings and Contract Customers shall harmonize 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 independent, functionally independent and non-profit organization that shall carry out its public authorizations 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 conduct its business under the name of the “Energy Regulatory Agency” (“Agency”). The head office of the Agency is in Podgorica.
3. The objectives of the Agency are to ensure:
 - a) that the principles, policies and programs established and promulgated by the Government under this Law are implemented and enforced based upon principles of objectivity, transparency, and non-discrimination;
 - b) a reliable, safe and environmentally sound Supply of Energy to the Tariff Customers of the Republic of Montenegro at fair prices;
 - c) that Energy Undertakings may recover their costs, including a reasonable rate of return on their investment;
 - d) the balancing of the interests of Tariff Customers and Energy Undertakings;
 - e) promotion of safety, competency and efficiency on the part of Energy Undertakings;
 - f) promotion of renewable, sustainable or alternative energy source; and
 - g) protection and enforcement of contractual obligations pursuant to its competency.
4. The bodies of the Agency are:
 - a) the Board of the Agency (“the Board”);
 - b) the Agency’s Director;
5. The Agency shall deliver a charter to the Government for its approval.

Composition

Article 7

1. The Board shall consist of three (3) members that shall, by majority vote, make all decisions necessary to carry out the duties and responsibilities of the Agency pursuant to this Law and Secondary Legislation.
2. The Charter of the Agency shall define:
 - a) the rights and duties of the Board;
 - b) the internal organization of the Agency; and
 - c) the process to be employed to select a Board and a Director.
3. The initial Director and the initial Deputy Director shall be appointed not later than ninety (90) days after the entry into force of this Law.
4. The Director shall represent the Agency in accordance with the Law and the charter, and Secondary Legislation.
5. Each position of Member, Director and Deputy director shall be advertised, and for the position of employees shall be by way of an announcement by way of the public communication systems for a period of not less than thirty (30) days and eight (8) days respectively. The Ministry authorized to conduct Energy Sector activities shall issue a public advertisement for the initial appointments.
6. The Members of the Board, Director and Deputy Director and employees of the Agency shall exercise their employment rights and obligations in accordance with applicable labor regulations.

Selection Commission

Article 8

1. Members of the Board, and the Director and Deputy Director shall be selected by a Selection Commission ("the Commission") established by the Government pursuant to the terms of this Law.
2. Composition:
 - a) The Commission shall be comprised of nominees that shall be nominated by:

- (i) the Government – one representative;
 - (ii) the Montenegrin Academy for Science and Arts - one representative;
 - (iii) two (2) nominees from the University of Montenegro, one of whom shall be nominated by the Electro-Technical Faculty; and
 - (iv) the Chamber of Commerce of Montenegro - one representative.
- (b) Nominees to the Commission shall not be:
 - (i) state officials or Government appointees, with the exception of sub-paragraphs (a)(i) and (iii); or
 - (ii) employees of or contracting parties with any Energy Undertaking in Montenegro.
- 3. Not later than thirty (30) days after the entry into force of this Law, the members of the Commission shall be appointed pursuant to the terms of this Law. The Government shall publish the names of the members of the Commission in the Official Gazette of Montenegro.
- 4. The Commission’s decisions shall be taken by a majority vote.
- 5. Not later than fifteen (15) days after the conclusion of the advertisement described in Article 7 (5), the Commission shall submit a list of nominations for members of the Board to the Government for its approval:
 - (a) three (3) primary candidates; and
 - (b) other candidates fulfilling the conditions described in the public advertisement, in rank order, as determined by the Commission.
- 6. The Government shall select three (3) candidates for the members of the Board from the **Commission’s list of primary candidates**.
- 7. In the event that the Government does not select three (3) members of the Board from the list of primary candidates described in sub-paragraph (5)(a), the Government shall select the remaining candidates for the members of the Board from the list of candidates described in paragraph (5)(b), considering them in the rank order in which they were proposed.
- 8. The Government shall submit to the Parliament **of Montenegro (“Parliament”)** for its final approval its recommended list of members for the members of the Board.
- 9. The Parliament’s decision on the selection of the candidates shall be published in the Official Gazette of Montenegro.

10. The Commission shall submit a list of potential candidates for the position of initial Director and initial Deputy Director of the Agency to the Government for its approval:
 - a) one (1) candidate each for the positions described in this paragraph; and
 - b) other candidates fulfilling the conditions of the public advertisement for the positions of Director and Deputy Director in rank order as determined by the Commission.
11. The Government shall appoint one (1) person to be initial Director and one (1) person to be initial Deputy Director from the nominations submitted pursuant to the terms of paragraph (10).
12. In the event that the Government fails to appoint one (1) person to be Director and one (1) person to be Deputy Director from the list of primary candidates described in sub-paragraph (10)(a), the Government shall appoint the initial Director and the initial Deputy Director from the list of candidates described in paragraph (10)(b), considering them in the rank order in which they were proposed.
13. The Government's decision on appointments to the positions of initial Director and initial Deputy Director of the Agency shall be published in the Official Gazette of Montenegro.
14. Upon the prior consent of the Government, and pursuant to procedures that are in accordance with this Law and the charter of the Agency, the Board shall make each subsequent appointment to the position of Director and Deputy Director. The decision on the appointment shall be published in the Official Gazette of Montenegro.

Terms

Article 9

1. **Terms for the Board Members shall be for four (4) years, and upon expiration of such term all members of the Board shall have the right to be reappointed for one additional term of four (4) years.**
2. **Notwithstanding with the paragraph (1), the terms for** initial members of the Board shall be:
 - a) the term for one (1) member shall be for **four (4)** years;
 - b) the term for one (1) member shall be for three (3) years; and
 - c) the term for one (1) member shall be for **two (2)** years.

3. The term of the initial members of the Board shall be determined by drawing lots in presence of the President of the Parliament or his or her appointee.
4. The term of initial Director and initial Deputy Director shall be four (4) years.
5. Each subsequent Director and Deputy Director shall not be appointed for more than two (2) four (4) year terms.

Conditions for the Conduct of Business

Article 10

1. Candidates for the positions of Member, Director and Deputy Director shall fulfill the following conditions:
 - a) for a Member:
 - (i) be a citizen and permanent resident of Montenegro;
 - (ii) hold an advanced university degree engineering, law or economics;
 - (iii) have a minimum of **ten (10)** years experience in his or her chosen field;
 - (iv) be free from any of the burdens to the carrying out of his or her work, as described in Article **15 of this Law**.
 - b) for the Director:
 - (i) be a citizen and permanent resident of Montenegro;
 - (v) hold an advanced university degree engineering, law or economics;
 - (ii) have a minimum of **seven (7)** years experience in his or her chosen field
 - (iii) be free from any of the burdens to the carrying out of his or her work, as described in Article **15 of this Law**.
 - c) for the Deputy Director:
 - (i) be a citizen and permanent resident of Montenegro;
 - (ii) hold a university degree in engineering, law or economics;
 - (iii) have a minimum of **five (5)** years experience in his or her chosen field;
 - (iv) be free from any of the burdens to the carrying out of his or her work, as described in Article **15 of this Law**..
2. **The Members of the Board, Director and Deputy Director can not be at the same time:**
 - a) members of Parliament;
 - b) members of any city council;
 - c) appointed and assigned persons in the Government.
3. No person shall be selected to be a member of the Board of the Agency, or serve as Director or Deputy Director if such person:
 - a) has been convicted of a crime that is punishable by imprisonment of a

- minimum six (6) months or more;
- b) has been declared bankrupt or insolvent;
- c) holds personal, spousal or direct family interest up to the third (3d) order of heirs in a License awarded under the provisions of this Law;
- d) is a major stakeholder or shareholder, current member of a managing body, current employee or person under contract that has a legal interest in any Energy Undertaking in Montenegro.

Discharge

Article 11

1. A member of the Board, the Director and the Deputy Director may be removed prior to the expiration of his or her office by the body that appointed such member of the Board, Director or Deputy Director if such person:
 - a) is incapable of performing his or her duties for a continuous period of more than three (3) months;
 - b) ceases to be a resident of Montenegro;
 - c) has misrepresented his or her qualifications;
 - d) has been convicted of a crime punishable by imprisonment;
 - e) has submitted a written resignation;
 - f) is found to have a conflict of interest;
 - g) has been absent and unexcused from three (3) consecutive official and ordinary meetings of the Agency;
 - h) has been excluded or suspended from the exercise of his profession on the basis of the Agency's Code of Conduct;
 - i) has provided false financial statements described in Article 15 (1).
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 charter of the Agency.

The Work of the Agency

Article 12

1. The Agency shall supervise all Energy Undertakings and shall be entitled to 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;
- a) to make and issue all rules and regulations required to:
 - (i) carry out its obligations under this Law; and
 - (ii) to carry out and enforce the **energy** policies;
 - (iii) revision and approval of market rules; technical codes, terms and conditions for connection and access to networks;
 - b) to issue Licenses to conduct activities and to interconnect Energy Sector facilities, networks and equipment for the Generation, Transmission, Distribution, Supply and sale of Energy;
 - c) to issue Authorizations for the construction of new or the modification of existing energy facilities;
 - d) to set Tariffs and prices pursuant to the terms of this Law and Secondary Legislation;
 - e) to issue orders to Energy Undertakings pursuant to this Law and Secondary Legislation;
 - f) to modify, suspend, revoke, monitor, control and enforce compliance with Licenses issued pursuant to this Law and Secondary Legislation **issued pursuant thereto**.
 - g) to establish, or amend **rules and regulations**:
 - (i) that define the Energy market structure;
 - (ii) for market operation;
 - (iii) for the unbundling of Energy Undertakings;
 - (iv) for the rights and obligations of all Energy Undertakings;
 - h) to establish **rules and regulations** related to:
 - (i) public hearings and findings conducted by the Agency **in accordance with the terms of this Law and Secondary Legislation**;
 - (ii) monitoring of Energy Undertakings;
 - (iii) safety of Energy facilities, personnel and the public, generally, and
 - (iv) compliance of Energy Undertakings with environmental regulations;
 - i) to ensure consumer protection that provides for:

- (i) fair and non-discriminatory treatment of Tariff Customers and Contract Customers by Energy Undertakings;
 - (ii) the delivery of high quality service by Energy Undertakings; and
 - (iii) the establishment of mechanisms that will encourage public participation in the development of rules and policies that affect Tariff Customers;
- j) to promote competitive conduct in the Energy Sector, including:
- (i) fair and non-discriminatory transit of Energy; and
 - (ii) additional sources of Energy for Generation, **improvement of the possibilities for the** Transmission, Distribution and Supply;
- k) to establish Secondary Legislation related to:
- (i) requirements pursuant to which all books, accounts, papers and records shall be kept by Energy Undertakings;
 - (ii) in accordance with applicable laws, Secondary Legislation, treaties and other internationally recognized norms, to resolve disputes and/or hear complaints among or involving:
 - (A) Tariff Customers and Energy Undertakings; or
 - (B) Energy Undertakings;
- l) pursuant to its powers under this Law and Secondary Legislation, to ensure that tendering procedures related to the construction of new generating capacity comply with applicable Law.
- m) establish rules and regulations related to the transportation, storage, distribution, sale and delivery of Petroleum Products;
- n) pursuant to the terms of this Law and Secondary Legislation, publish:
- (i) annual reports required by this Law; and
 - (ii) other reports and findings;
- o) 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;
- p) to hire consultants and experts to assist the Agency in its activities; and
- q) 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 is providing services at prices that are regulated by the Agency pursuant to Article 18. 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 valuation and accounting standards.

4. The Agency shall be entitled to conduct its own inspections of Energy Undertakings, pursuant to this Law and Secondary Legislation **established pursuant thereto**.
5. Pursuant to its authority under this Law and Secondary Legislation, the Agency shall be entitled to engage independent experts to conduct inspections related to Energy Undertakings.

Funding

Article 13

1. The Government shall provide the initial funding required to establish 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 approve its detailed budget for the subsequent year. The Agency shall deliver the budget described in this paragraph to the Government and make it available to the public pursuant to Secondary Legislation.
3. Pursuant to Secondary Legislation, each year the Agency shall publish a schedule of fees that shall be due from each Energy Undertaking. The fees described in this paragraph shall be designed to cover the estimated expenses of the Agency during the year.
4. The fees described in paragraph (3) 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 described 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 Secondary Legislation.
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 licenses, as well as records of all proceedings shall be maintained in accordance with Secondary Legislation.
4. Documents, decisions, orders, licenses 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 Deputy Director shall file personal income and asset disclosure statements that shall reflect all interests that are held in any Energy Undertakings.
2. Neither members of the Board, the Director, Deputy Director the employees of the Agency, nor members of the household of such persons shall have the following relationship to any Energy Undertaking:
 - a) presidents;
 - b) managers;
 - c) members of boards of directors;
 - d) members of supervisory boards or other relevant governing bodies;
 - e) owners of a material interest, financial or otherwise;
 - f) majority shareholders;
 - g) major holder of any funds;
 - g) major creditors;
 - i) employees; or
 - j) contractors.

3. Nothing in this article shall be construed to prevent any member of the Board, the Director, Deputy Director or any employee of the Agency from being a Tariff Customer of any Energy Undertaking, provided, however, that such persons shall not accept free or discounted service 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 and for a period of not less than 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 shall be a member of the board of directors of any Contract Customer or Tariff Customer of such Energy Undertaking. **If its determined that the person is a member of the Board is either a Tariff Customer or Contract Customer, such person shall be required to resign from such position.**

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 and make publicly available an annual report for the previous calendar year that shall include:
 - a) an overview of the Energy Sector of Montenegro during the previous year; and
 - b) the Agency's financial report audited by an internationally recognized auditing firm selected by the Agency by way of open tender.
2. The financial report described in paragraph (1) shall include an accounting of:
 - a) all fees received by the Agency during the prior calendar year;
 - b) all Agency expenses during the prior calendar year; and
 - c) other funds made available to or used by the Agency.

Dispute Resolution

Article 17

1. The Agency shall resolve disputes between the Energy Undertakings or between Contract Customers and Energy Undertakings, as well as receive objections related to third party access to the Distribution or Transmission system in accordance with the rules of general administrative proceeding.
2. The Agency shall ensure that the Contract Customers and Energy Undertakings rights are realized, and shall make decisions upon complaints of Tariff Customers and Energy Undertakings.
3. While complaints made under paragraph (3) are pending, the Agency may determine temporary terms for commencing or continuing service or access, pursuant to Secondary Legislation.
4. Parties shall have the right to resolve Energy Sector disputes arising from contractual obligations 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:
 - a) a decision of the Agency not to issue a license;
 - b) any term or condition of a license issued, or a refusal by the Agency to specify a term or condition in a license;
 - c) a refusal by the Agency to renew a license;
 - d) any amendment of a license or a refusal by the Agency to amend a license;
 - e) any decision to revoke a license;
 - f) any decision of the Agency to grant or to refuse to grant a License or an Authorization in accordance with this Law;
 - g) the decision of arbitration or mediation of a dispute pursuant to the paragraph 4 of this Article before the Competent Court;
 - h) a decision of the Agency with respect to prices or Tariffs; or

- i) any other decision of the Agency.

Prices and Tariffs

Article 18

1. The Agency shall establish Tariffs pursuant to the following principles:
 - a) prices shall be:
 - (i) fair;
 - (ii) non-discriminatory;
 - (iii) based upon objective criteria established by the Agency; and
 - (iv) determined in a transparent manner;
 - b) on a periodic basis, based upon the Energy Undertaking's submissions received by the Agency, pursuant to **Agency's rules and procedures**, and such application shall include:
 - (i) operating costs, including depreciation, interest payments, an allowance for taxes,
 - (ii) Environmental Costs and tariff customer protection;
 - (iii) maintenance, replacement, construction and reconstruction of facilities; and
 - (iii) annual return on net investments;
 - c) performance of the Energy Undertaking when adjusting prices and Tariffs or incentives;
 - d) Interruptible prices and Tariffs, load balancing prices and Tariffs and other mechanisms intended to improve energy efficiency;
 - e) the encouragement of the use of demand side management principles as well as pricing that takes into account environmental and Tariff Contract Customer protection costs;
 - f) the use of seasonal and time of use prices and Tariffs where appropriate pursuant to Secondary Legislation to be established by the Agency;
 - g) cross subsidies should be minimized, and where possible, eliminated. Any direct subsidization 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; and

- h) international treaty obligations.
2. The Agency shall approve Tariffs as proposed by Energy Undertaking 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 shall be entitled to 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 a competitive market. The Agency shall have the right to release undertakings from the regulated Tariff system.
 4. Upon its own motion, the Agency shall be entitled to require an Energy Undertaking to justify an approved Tariff that the Agency now considers to have been based on inaccurate, fraudulent or misleading cost information and shall be entitled to amend such Tariff pursuant to Secondary Legislation.

Licenses

Article 19

1. The following activities shall be licensed pursuant to procedures issued by the Agency:
 - a) Generation of electricity for purchase and sale, including Auto Producers that are connected to a network;
 - b) Transmission, Distribution or Supply of electricity for purchase or sale to third parties;
 - c) commercial transportation, storage, Distribution, sale or Supply of Gas, petroleum or Petroleum Products;
 - d) **the Market Operator;**
 - e) **the Distribution Operator; and**
 - f) **Transmission System Operator.**
2. The Agency shall not unreasonably withhold the grant of any License.

3. The Agency shall establish Secondary Legislation pursuant to which Energy Undertakings shall be exempted from their obligation to obtain a License.
4. Any foreign or domestic Undertaking shall be entitled to apply to the Agency for a License and, upon receipt thereof, shall be entitled to provide Energy Sector services pursuant to the License terms and conditions.
5. The Agency shall establish License requirements based upon the following criteria:
 - a) harmonization of facilities, energy network, installations and equipment with the conditions and standards;
 - b) protection of public health and safety;
 - c) protection of the environment;
 - d) land use and siting;
 - e) use of public property;
 - f) energy efficiency and conservation of electricity;
 - g) the nature of primary energy sources, and
 - h) the technical, economic and financial capabilities of the applicant.
6. Licenses shall be issued pursuant to the terms of Article 14.
7. The Agency shall issue a License for a defined period of time.
8. Upon the expiration of a License, the Agency may require a Licensee to provide service on a temporary basis pursuant to Secondary Legislation that shall be based on international best practices.
9. Pursuant to terms of this Law and Secondary Legislation, 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 Licenses

Article 20

1. Upon the application of a Licensee based upon good cause, and after notice and hearing, the Agency shall be entitled to modify a License on the grounds of exigencies created by a clear and unforeseen change of circumstances.
2. The Agency shall be entitled to release a License holder from its License obligations for a temporary but specifically stated period of time to be determined by the Agency:
 - a) upon the Licensee's request;
 - b) if the Agency deems it necessary.
3. The Agency shall be entitled to revoke a License:
 - a) upon the Licensee's request;
 - b) if the Licensee fails to remedy deficiencies identified by the Agency within the time frame specified by the Agency, or
 - c) if the Licensee is in breach of its License.
4. In the event that the Agency temporarily releases a Licensee from its License obligations, or in the event that the Agency revokes a License, the Agency shall be entitled to 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 engage in any anti-competitive conduct, including, but not limited to:
 - a) cross-subsidization;

- b) manipulation of prices or markets; or
 - c) any other trade practice that damages the encouragement and protection of competitive markets.
2. The Agency shall:
- a) establish and enforce limitations on ownership;
 - b) impose any other limitation deemed necessary to prevent: abuse of market power in competitive areas of the Energy Sector; or that may be harmful to Contract or Tariff Customers.
3. **The Agency shall promulgate rules and regulations to:**
- a) promote competition;
 - b) encourage market development and Tariff Customer choice with respect to Supply;
 - c) discourage and penalize abuse of market power; and
 - d) discourage any anti-competitive or discriminatory behavior.
4. The Secondary Legislation described in paragraph (3) shall:
- a) define the relevant markets for purposes of establishing abuse or misuse of a monopoly or market position;
 - b) identify service areas where the number of Energy Undertakings is severely limited; and
 - c) establish periodic reporting requirements for Energy Undertakings necessary to enforce this article.
5. The Agency shall establish dispute settlement procedures to enable aggrieved persons to seek redress for anti-competitive activities. On its own motion the Agency shall be entitled to initiate investigations of anti-competitive activities.

Unbundling Article 22

1. Not later than **eighteen (18) months** after the entry into force of this Law, existing Integrated Electricity Undertakings shall be Functionally Unbundled. Functional Unbundling shall include:
 - a) accounting separation, meaning that vertically Integrated Electricity Undertakings shall separate accounts and financial records for Generation, Transmission Distribution and Supply activities and, in the event that a such entity also performs one or more non-Energy related activity, such other activity shall also be accounted for separately. The vertically Integrated Electricity Undertaking shall publish a separate balance sheet, profit and loss statement, a cash flow statement and all other statements required for each separate activity pursuant to the Law on Accounting and Auditing.
 - b) management separation, meaning that during the time that functions within an Energy Sector Undertaking are not legally unbundled, the day to day management of each separate function within the vertically integrated entity shall also be separated. In addition, it means that the managers of one function within a vertically integrated entity shall not be entitled to 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.
 - c) 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 adopted within each separate function of each vertically integrated entity.
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 shall be entitled to 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 SUPERVISION

Inspection Supervision in the Energy Sector

Article 23

1. The Ministry shall carry out the work of inspection supervision through inspectors.
2. The inspectors shall be entitled to conduct inspections related to:
 - a) the design, construction, maintenance, start-up and functional testing, and trial operation of Energy facilities, plants, lines, installations and devices;
 - b) the measurement, protection and use of other devices intended to generate, transmit, distribute, and consume electricity or heat, including meters;
 - c) the application of technical regulations and quality standards, products and services related to:
 - (i) electricity supply, stoppage and restrictions in the supply of electricity or heat; and to
 - (ii) the rational and economic utilization of electricity and heat and other Energy by Energy Undertakings;
 - d) with respect to steam, hot and warm water facilities, including oil-fired boilers, steam heaters, water heaters and high pressure plants and vessels:
 - (i) technical regularity and security; and
 - (ii) trial operation; and
 - e) all vessels, fixed or moveable, for compressed, liquid and dissolved Gases under pressure;
 - f) the construction, maintenance and use of boiler plants and other types of plants intended to heat:
 - (i) boiler plants in thermal power stations, heating plants or combined heat and power plants;
 - (ii) heating plants under pressure in the facilities for Generation and Transmission of electricity and heat; and
 - (iii) plants for the production and storage of Gas and Petroleum Products;
 - g) with respect to Generation, Transmission and Distribution facilities and

installations, ensuring the qualification of Energy Undertaking employees to:

- (i) design;
- (ii) construct;
- (iii) supervise;
- (iv) conduct maintenance; and
- (v) **handling**.

3. Inspection supervision shall be carried out pursuant to the Law on Inspection Supervision.
4. Inspector's reports and other written data related to inspection activities described in this article shall be submitted to:
 - a) the Energy Undertakings; and
 - b) 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 a market where electricity can 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 shall be subject to regulation by the Agency for the benefit of the Contract and Tariff Customer.
4. If at any time an Energy Undertaking demonstrates to the Agency its ability to provide services in a competitive market at the same or more favorable conditions, the Agency shall be entitled to release such Energy Sector Undertaking from regulation under the Agency's regulated tariff system.
5. The purchase and sale of all electricity in the electricity market shall be by way of lawfully concluded bi-lateral contracts, with the exception of those made by way of spot market or balancing arrangements.

6. Energy Undertakings shall be entitled to request the right to collect Inherited Costs by way of Tariffs approved by the Agency.

Third Party Access

Article 25

1. Generators and Suppliers shall have access to the Transmission and Distribution networks on a non-discriminatory and regulated basis, pursuant to rules and procedure determined by the Agency.
1. A Contract Customer shall have the right to connect to the networks pursuant to the terms of its:
 - a) connection contract; and/or
 - b) the grid code; and
 - c) other rules promulgated by the Agency.
2. Access to the Transmission and Distribution networks shall only be refused on the basis of a lack of capacity and such refusal shall be justified only on the grounds of security of supply, regularity of supply and quality of supply. In the event of a lack of capacity, Transmission and Distribution network users shall be entitled to 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 network or that objects to conditions imposed by the Transmission or Distribution Operator in exchange for such access shall be entitled to file a complaint with the Agency pursuant to Secondary Legislation.

Generation

Article 26

1. Not later than six (6) months after the entry into force of this Law, each Generator providing Generation services at the date of the entry into force of this Law shall apply to the Agency for an Interim License.

2. The Interim License described in paragraph (1) shall be valid for a period of **eighteen (18) months**. Not less than six (6) months prior to the expiration of such Interim License, all Generators described in paragraph (1) shall apply to the Agency for an ordinary License pursuant to the Secondary Legislation.
3. Generators shall be Functionally Unbundled from the Integrated electro energy Undertaking and shall be managed and operated pursuant to the rules Secondary Legislation.
4. Pursuant to Secondary Legislation including the market rules, the Transmission Operator rules and the Distribution Operation rules, Generators shall be entitled to:
 - a) use such primary energy sources as they deem appropriate, taking into consideration their License requirements;
 - b) enter into contracts to purchase or sell electricity in order to fulfill their contractual obligations;
 - c) have access to the Transmission and Distribution networks; and
 - d) receive remuneration for electricity delivered.
5. Generators shall:
 - a) comply with the terms of their Licenses;
 - b) have metering equipment that measures electricity flows to the network; and
 - c) comply with all Secondary Legislation.

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 License.
2. The Interim License described in paragraph (1) shall be valid for a period of **eighteen (18) months**. Not less than six (6) months prior to the expiration of the Interim License described in paragraph (1), the Transmission Operator shall apply for an ordinary

License in accordance with Agency regulations.

3. The Transmission Operator shall be Functionally Unbundled from the Integrated **electro energy** Undertaking and shall be managed and operated pursuant to **Agency's** Secondary Legislation.
4. The Transmission Operator shall:
 - a) comply with the terms of its License;
 - b) have metering equipment that measures electricity flows through the network;
 - c) comply with Secondary Legislation **issued by the Agency**.
5. The Transmission Operator shall:
 - a) not provide Generation services;
 - b) not engage in electricity trading; and
 - c) operate independently pursuant to the following rules:
 - (i) 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.
 - (ii) Transmission Operator shall:
 - (A) have full control over all any and all assets required to maintain and develop the network, and
 - (B) establish a program, 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 program.
6. The Transmission Operator shall:
 - a) **maintain**, modernize, upgrade and develop the Transmission System;
 - b) manage network energy flows taking into account exchanges with other interconnected systems;
 - c) arrange the availability of Ancillary Services;
 - d) provide **services** to the Market Operator and to any other system operators necessary to ensure:
 - (i) safe and efficient operation;
 - (ii) coordinated development and operation of interconnected systems; and
 - (iii) regulation of frequency and exchange of power;

- e) coordinate the quality of delivered electricity with the Market Operator and with other Transmission and Distribution systems;
- f) expedite delivery of electricity sector services through **communication** between:
 - (i) domestic and international Generators;
 - (ii) the Transmission Operator;
 - (iii) **Distribution Operator**;
 - (iv) Suppliers; and
 - (v) Tariff Customers
- g) provide:
 - (i) Energy metering; and
 - (ii) purchase/sale and reporting of system balances to the Market Operator on a real-time basis;
- h) the physical dispatch of Generation;
- i) determine the use of interconnections with other systems;
- j) on a quarterly basis and following consultation with the Market Operator, report to the Agency on:
 - (i) scheduled maintenance outages;
 - (ii) requirements for expansion to or changes in the Transmission System;
 - (iii) data and/or other information that demonstrates the viability of the Transmission network; and
 - (iv) contracts, either concluded or being negotiated for backup and reserve supplies and other Ancillary Services;
- k) facilitate the settlement of accounts by the Market Operator; and
- l) comply with the terms and conditions of its License.

7. Pursuant to the terms of this Law and Secondary Legislation, the Transmission Operator shall be entitled to:

- a) receive metering data and other information necessary to regulate frequency, voltage and the exchange of power from:
 - (i) Generators;
 - (ii) Distribution Operators; and
 - (iii) Contract Customers connected to the Transmission network; and
 - (iv) **other Transmission Operators**
- b) obtain information from existing and potential users of **transmission network**

required to facilitate third party access to the Transmission system;

c) in order to facilitate the safe operation of the Transmission network establish conditions for the connection to the transmission network by:

- (i) Distribution networks;
- (ii) power plants; and
- (iii) Contract Customers connected directly to the Transmission system.

d) in cooperation and coordination with the Market Operator, **provides** Ancillary Services in an efficient and economical manner, and

e) **to charge a fee for provided management and supervision services, a fee for the connection to the Transmission network, as well as a fee for the provision of transmission services in accordance with the rules determined by the Agency.**

8. **The Transmission Operator shall not discriminate between network users or classes of network users, and shall make no decisions in favor of its shareholders or any affiliated undertakings.**

9. Pursuant to the terms of this Law and Secondary Legislation, 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 License to operate, the Transmission Operator shall submit a grid code to the Agency for approval.

11. The grid code shall:

a) establish technical rules for minimum technical design and operational requirements for connection to the network and interconnection with other networks;

b) identify criteria for dispatch based upon:

- (i) Economic Precedence, without prejudice to the Supply of electricity based upon contractual obligations;
- (ii) technical constraints on the network;
- (i) optimal load balances;
- (ii) the Governments policy on Security of Supply;
- (iii) giving priority to the use of indigenous primary fuel sources not exceeding fifteen percent (15%) of the overall primary Energy necessary to produce electricity consumed in Montenegro in any

- (iv) calendar year; and giving priority to Generators using Renewable Energy Sources, waste or combined heat and power;
 - (v) establish procedures applicable for network operation in contingency or emergency situations.
12. The grid code shall be applied in an objective and non-discriminatory manner.
 13. The Transmission Operator shall be entitled to 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 License.
2. The Interim License described in paragraph (1) shall be valid for a period of **eighteen (18) months**. Not less than six (6) months prior to the expiration of such Interim License, the **all** Distribution Operators shall apply for an ordinary License 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**.
3. Distribution Operator shall:
 - a) operate independently, pursuant to the following rules:
 - (i) 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;
 - (ii) Distribution Operator shall have full control over any and all assets required to maintain and develop the Distribution network, and
 - (iii) establish a program, 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 program.

5. Distribution Operators shall:
- a) maintain, improve, upgrade and develop the distribution network up to and including, where appropriate, the Tariff Customer's meter;
 - b) in order to meet the Contract Customer's needs, apply best practices in operation, maintenance and management principles to ensure:
 - (i) Security of Supply;
 - (ii) reliability of Distribution system operation; and
 - (iii) the non-discriminatory conditions network users and classes of Distribution system users;
 - c) operate the Distribution system and associated interconnections on a regular and continuous basis;
 - d) develop, introduce, operate and maintain the Distribution network's Energy metering system;
 - e) as required by relevant codes and other Agency's Secondary Legislation, measure and report measurements to the Transmission Operator, Suppliers, and Market Operator, as requested;
 - f) pursuant to technical rules and regulations, maintain connections between Generators and Contract Customers' equipment located within its service area;
 - g) comply with the terms and conditions of its License;
 - h) comply with the grid code, market rules and other Secondary Legislation determined by the Agency;
 - i) 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;
 - j) on a quarterly basis, report to the Agency on:
 - (i) supply and demand balances;
 - (ii) scheduled maintenance outages; and
 - (iii) data and/or other information that demonstrates the viability of the Distribution network;
 - k) 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 shall be entitled to:
 - a) receive electricity metering data and other information necessary to assist the Transmission Operator to regulate voltage and the supply of power from Generators and Tariff Customers connected to the Distribution network;
 - b) enter any property or premises to install, read, inspect, alter or replace any meter;
 - c) enter any property or premises for the purpose of disconnecting electricity service where the owner or 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;
 - d) enter any property or premises for the purpose of operating, maintaining and developing the Distribution System;
 - e) receive information from existing and potential users of the Distribution network required to facilitate third party access to the Transmission System; and
 - f) to charge a fee for the activities of Distribution management and supervision of the network and maintenance of measurement devices owned by the Tariff Contract Customer if it performs the activity of Supply in addition to its a fee for the connection to the network.
7. In addition to its application for a License to operate, a Distribution Operator shall submit a distribution code to the Agency for approval.
8. The distribution code described in paragraph (7) shall address, but not be limited to:
 - a) the establishment of technical rules for minimum technical design and operational requirements for connection to the Distribution network and interconnection with other networks;
 - b) the provision of data and information to the Transmission Operator required for its operation.
 - c) the establishment of procedures that shall be approved by the Agency related to network operation in contingency or emergency situations; and
 - d) provide the details of Contract Customer service programs and procedures 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 Network shall be the property of the Distribution Operator.
11. The Agency shall determine by a specific regulation the way 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 License.
2. The Interim License described in paragraph (1) shall be valid for a period of **eighteen (18) months**. Not less than six (6) months prior to the expiration of such Interim License, the Agency may advertise for applications for the position of Market Operator. The applicant for the position of Market Operator shall apply for an ordinary License 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** Secondary Legislation.
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 License, the Market Operator shall submit to the Agency for approval rules that establish:
 - a) the rules and regulations governing participation in the electricity market; and
 - b) a framework and timetable for the creation of an energy supply market.

6. The Market Operator shall:

- a) maintain records, that include all legally binding obligations of Suppliers and Contract Customers;
- b) establish rules and procedures allowing for periodic modification of bidding and other order guidelines established by the Agency in order to ensure that such procedures are objective, transparent and non-discriminatory;
- c) receive bids for the supply of electricity;
- d) receive and manage electricity purchasing bids, including where appropriate, purchase guarantees, as determined by the Agency;
- e) match bids, commencing with the lowest price bid for a specified time period, until demand has been met;
- f) establish an economic dispatch model and transparent system of demand forecast that shall be approved by the Agency;
- g) select Generators and Suppliers for deliveries based on demand and pursuant to the economic dispatch model, the grid and distribution codes and Generation and Supply Licenses;
- h) oversee, maintain and improve the system of economic dispatch;
- i) establish an accounting system for trading based upon the final price received, that accurately reflects the financial activities of Generators and the availability of generating capacity for each time period;
- j) inform market participants and the Transmission Operator regarding the settlement process and planning of network access based on the settlement and the price of the remaining Energy offered and available;
- k) coordinate with the Transmission Operator undertaking the necessary activities to:
 - (i) perform the economic management of the electricity market;
 - (ii) ensure the technical management of the networks; and
 - (iii) arrange Ancillary Services.
- l) on a bi-annual basis and after consultation with other industry participants, report to the Agency on:

- (i) the condition of the Energy Sector in Montenegro;
 - (ii) the operation of the system of market access; and
 - (iii) any recommended changes.
- m) 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.
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 License.
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 licenses shall be provided.

Supplier

Article 30

1. Suppliers shall:
- a) comply with the terms and conditions of their Licenses;
 - b) receive remuneration due them pursuant to legally enforceable obligations;
 - c) purchase or otherwise acquire the Energy required to supply their Contract Customers pursuant to the settlement procedures approved by the Agency;
 - d) have access to networks;
 - e) meter electricity delivered pursuant to Agency's Secondary Legislation and ensure accuracy in the metering and the accessibility of metering equipment;
 - f) encourage the rational use of Energy and implement demand-side management programs; and
 - g) supply Energy to Tariff Customers in accordance with its legally enforceable obligations.
2. Suppliers shall be entitled to disconnect Tariff Customers for non-payment within seven (7) days of the receipt of a notice for non-payment. Tariff 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:
 - a) be connected to the network in accordance with the terms and conditions set out in the consent for connection;
 - b) receive energy in the amount and quality established in the terms and conditions set in the consent for connection; and
 - c) have fair and non-discriminatory conditions for the supply of energy.
2. Tariff Customers shall be obligated to:
 - a) pay obligations based upon services provided for the supply of energy in a timely manner;
 - b) maintain technically operational installations and meters owned by them;
 - c) provide to authorized persons, access to measurement devices and installations for installation, control, reading or repair; and
 - d) prevent connection of other facilities to its own installations.

CHAPTER VII GENERATION FROM RENEWABLE ENERGY SOURCES

Article 32

Generation from Renewable Energy Sources and Small Power Plants

1. For the construction of the small hydro power plants, power plants on alternative sources, potential investors shall be required to submit an application for Authorization and for a license pursuant to this Law. For such projects, the Agency shall establish simplified procedures and requirements for Authorization and license applications. The Agency shall

define license terms and conditions that are suitable for such projects, particularly those that provide service to customers who are not connected to the grid.

2. Generators of electricity obtaining electricity from Small Power Plants or power plants on alternative sources shall be entitled to access to the transmission and distribution networks on a non-discriminatory basis pursuant to the requirements of Article 25. The Agency shall define simplified procedures for the exercise of such entitlements, provided, however, that all such plants are required to adhere to the requirements of applicable grid and distribution codes, market and other rules, and legal requirements pursuant to this and other Law.
3. In order to carry out its responsibilities under Article 3 paragraph 2, with respect to energy efficiency, renewable generation and alternative energy sources, the Ministry shall:
 - a) provide information to the public to facilitate project development such as, but not limited to:
 - (i) available sites for such projects;
 - (ii) site specific information such as, but not limited to, wind and solar patterns, river flows for the construction of small hydro power plants, or other renewable sources;
 - (iii) licenses, permits, authorizations and such that may be required for the development of projects interconnection requirements;
 - (iv) other such information, as the Ministry may determine
 - b) require investors of such projects to provide information as may be reasonably required, such as, but not limited to:
 - (i) project location;
 - (ii) project installed capacity;
 - (iii) interconnection requirements;
 - (iv) fuel use, as may be applicable;
 - (v) entities that will construct, own and manage the project; and
 - (vi) other such matters, as specifically identified by the Ministry.
 - c) provision of coordination with other Ministries, including the Agency, so as to:
 - (i) facilitate the process of applying for permits, licenses and authorizations, particularly for those projects that provide service to one or more customers who are not connected to the grid;
 - (ii) simplify the development process, particularly for those projects that provide service to one or more customers who are not

connected to the grid.

4. The Ministry shall define appropriate procedures in order to protect commercially sensitive or other confidential information.
5. Renewable power plants with capacity that is no greater than ten (10) megawatts shall be entitled to sell power to the distribution network. The Ministry shall determine the methodology, including the pricing methodology, for the efficient connection of such projects to the network.
6. Notwithstanding Article 20, Article 28 or any other Article in this Law, the Agency may modify a license to require a licensee to purchase power from renewable power plants, per paragraph 5 of this Article 32. In the event that a license is so modified, or otherwise requires the foregoing purchase, the cost to the licensee of such purchase shall be a cost of operations pursuant to Article 18, and shall be included in the purchasing licensee's tariff.

CHAPTER VIII PETROLEUM AND GAS

Petroleum Products and Gas

Article 33

1. Commercial transportation, storage, distribution, sales or supply of petroleum products and gas, shall be performed in accordance with the terms and conditions of the licenses granted by the Agency for the provision of such activities.
2. Any person or entity engaged in the activities described in paragraph (1) shall be required to apply to the Agency for an interim license no later than six months after the effective date of this Law. Interim licenses 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 shall establish the way, procedure and conditions for granting the licenses. 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 license, the date by which the licensee must apply for its ordinary license. Such ordinary licenses shall last for a term of years to be determined by the Agency.
4. The terms and conditions of any interim or ordinary license shall include such matters as the requirement to comply with:

- a) applicable safety standards;
 - b) applicable environmental laws and regulations;
 - c) quality of product and quality of service standards that are required by law or, as the case may be, determined by the Agency;
 - d) this Law and applicable Secondary Legislation; and
 - e) all other applicable law, regulation, codes, licenses 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, no person or entity may engage in the activities described in paragraph (1) without a license from the Agency.

CHAPTER IX COAL

Coal Supply for Electricity Generation

Article 34

1. All coal required to generate electricity in Montenegro shall be provided pursuant to written coal supply contracts. Coal supply contracts concluded between Generators and producers should include:
 - a) price, quality and quantity of coal to be supplied;
 - b) the requirements established in the Energy Balance;
 - c) the necessity to stockpile coal reserves in a quantity sufficient to provide an uninterrupted Supply of thermal power for not less than fifteen (15) days;
 - d) procedures established by the Agency for the notification of the Tariff Contract Customers in the event of planned or unplanned stoppages in the Supply of coal, or of the delivery of coal in quantities less than that agreed under coal Supply contracts; and
 - e) other criteria as may be specified by the Agency from time to time.

Coal Prices

Article 35

1. The price for coal used in the Generation of electricity shall be set pursuant to Secondary Legislation for a period not to exceed five (5) yeas after the entry into force of this Law. **The setting of such price shall be preceded by an appropriate expertise provided by the recognized organization.**
2. The Secondary Legislation described in paragraph (1) shall be based upon:
 - a) fair, non-discriminatory and transparent prices for the Producer of Coal and the Tariff Contract Customers of electricity;
 - b) incentives to reduce future costs;
 - c) information provided by coal producers related to reasonable operating costs that shall include:
 - (i) taxes
 - (ii) amortization;
 - (iii) other cost-related criteria approved by the Agency;
 - d) encouraging investments to improve coal production;
 - e) improving efficiency and reducing expenses in coal production over the long-term.
3. The Agency shall consider the price for coal supplied for the purpose of electricity Generation as being a justified expense when setting electricity Tariffs.
4. During the five (5) year period described in paragraph (1), the Agency shall establish performance benchmarks for the mine, and measure coal production against such benchmarks.
5. If deemed necessary, the Agency shall be entitled to engage international experts to conduct independent audits of expenses and potential efficiency improvements at coal production facilities.
6. Not less than six (6) months prior to the expiration of the five (5) year period described in paragraph (1) the Agency shall engage recognized international firm and experts from the mining sector to evaluate and report on the operation of the mine. Based on such report the Agency shall determine whether the mine is competitive and coal prices should be deregulated, or coal prices should continue to be regulated for an additional period of

time to be determined by the Agency.

7. The Agency shall deliver the report described in paragraph (6) to the Government and make it publicly available.
8. Upon receipt of the report described in paragraph (6) the Government shall make a final determination on the further status of the mine and the appropriate manner of setting coal prices.

CHAPTER X 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, and Secondary Legislation:

- a) energy facilities;
- b) installations;
- c) electricity lines; and
- d) 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 shall be entitled to use such real estate for the purpose of construction, use and maintenance of energy facilities.
2. In the event that the agreement described in paragraph (1) cannot be reached, the Energy Undertaking shall be entitled to make a claim with the entity responsible under relevant law for the legal disposition of property.

3. Any appeal filed against the decision of the entity responsible for the legal disposition of property described in paragraph (2) shall not delay the execution of such decision, in emergency situations only.
4. Notwithstanding the provisions of paragraph (2), upon approval by the Agency, an Energy Undertaking shall be entitled to construct, use or maintain energy facilities without obtaining the approval of the entity responsible for the legal disposition of property, if the Energy Undertakings determines that the postponement of such activity would:
 - a) place at risk Security of Supply and quality of supply; or
 - b) pose a threat to human life or property.
5. In the event that an Energy Undertaking causes any damages as a result of its exercise of any rights under this Article, such Energy Undertaking shall be required to make compensation for such damage pursuant to applicable law.
6. It is prohibited to plant vegetation beneath or above energy facilities, and the Agency shall establish Secondary Legislation governing the distances away from such facilities where planting shall be permitted, and rules and procedures therefore.
7. Owners or users of land beneath, above or beside energy facilities shall not:
 - a) interfere with or prevent the removal of newly grown vegetation that endangers energy facilities or that interferes with the use thereof; and
 - b) shall be entitled to compensation for damages that arise as a result of the removal thereof.
8. Any Energy Undertaking removing vegetation under this article shall:
 - a) not be required to obtain a permit for such removal; and
 - b) shall bear all costs related thereto.
9. No new construction shall be conducted 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 construction works undertaken in contravention of paragraph (9) shall be entitled to require the termination or demolition of such construction works.

11. Upon the receipt of written permission from an Energy Undertaking, energy facilities can be relocated as a result of, or for the purpose of not interfering with construction or reconstruction.
12. In the event that an Energy Undertaking fails to approve the relocation of an energy facility under paragraph (11), the aggrieved party shall be entitled to file a claim with the Agency.
13. All expenses arising as a result of relocation of an energy facility shall be borne by the party relocating such energy facility.

CHAPTER XI. SUPPLY

Competitive Supply

Article 38

1. Pursuant to the terms of Article 24 (4) and (5), the Agency shall allow competition in Supply.
2. When making its determination to issue orders to allow competition described in paragraph (1), the Agency shall take into account the impact of competition on Energy Undertakings and the Tariff Contract Customers of Montenegro as follows:
 - a) financial viability of the supplier for the distribution area;
 - b) the corporate strategic plan of the suppliers for the distribution area;
 - c) whether competition is an effective regulator of prices in such market
 - d) the technical condition of the Distribution network manage competitive Supply;
 - e) investments forecast by new participants in order to upgrade and improve the Distribution and Supply system.
3. Any qualified foreign or domestic Energy Undertaking shall be entitled to apply for a License to supply electricity or heat to Tariff Customers.
4. The holder of a Supply License 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, all existing Distribution Operators shall be responsible for the 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 of 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 network integrity is threatened, the Government of the Republic of Montenegro and, pursuant to the provisions of this Law and Secondary Legislation, the Agency shall be entitled to introduce temporary measures to:
 - a) restrict the Supply of energy to specific categories of Contract Customers, Contract Customer classes and geographical areas;
 - b) determine a progressive sequence of restrictions;
 - c) stipulate the manner in which energy shall be used;
 - d) require the production of energy; and
 - e) other necessary safeguards.
2. The measures described in paragraph (1) shall:
 - a) cause the least amount of disturbance to the functioning of the market;
 - b) last for the shortest possible period of time necessary to remedy the crisis; and
 - c) not be greater in scope than necessary to remedy the effects of the force majeure event.

Authorizations

Article 40

1. Upon the entry into force of this Law, unless exempted, the following activities shall be subject to authorization by the Agency:
 - a) new construction of Generation capacity;
 - b) modification of existing Generation capacity that significantly improves its capacity; and
 - c) new interconnection with other systems.
2. The Authorization process described in paragraph (1) shall be in compliance with E.U. Directive 96/92.
3. The Agency shall establish criteria for the grant of an Authorization from the paragraph (1) to construct or modify the facility of any Energy Undertaking that shall include, without limitation, the following:
 - a) the safety and security of the electricity system, installations and associated equipment;
 - b) protection of the environment;
 - c) land use and siting;
 - d) use of public property;
 - e) Energy Efficiency;
 - f) the nature of primary resources;
 - g) the technical, economic, financial and operational capacities of the applicant.
4. Licensed Generators and Contract Customers shall have the right to apply to the Agency for permission to construct Direct Lines. An Authorization for such Direct Line shall be issued in the event that the applicant fulfills all legal, technical and economic requirements as determined 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 to any energy undertaking that:
 - a) fails to supply energy in compliance with a signed contract, (Article 24, 25, 27, 28, 29, 30);
 - b) fails to comply with orders from the Market Operator or Transmission Operator, (Article 26, 28, 30);
 - c) does not comply with technical requirements for facilities, plants and installations for the generation, transmission and distribution of energy, representing a condition for obtaining the license, (Article 19, 26, 27, 28);
 - d) suspends supply of electricity to the consumer, without proper justification (Article 26, 28, 27, 38, 39);
 - e) does not connect the consumer to the network to whom was granted the approval for the connection, (Article 28, 31);
 - f) does not comply with a condition of its license; (Article 19, 26, 27, 28, 29, 30);
 - g) does not prepare appropriate part of energy balance or does not prepare it in set timeframe or does not align its balance with the energy balance of the Republic. (Article 5).
2. A cash fine ranging from 3 up to 20 times of minimal salary in the Republic, shall be imposed on an authorized person in the company for an offence laid out in the 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 to any company or any legal person if without prior consent of energy undertaking:

- a) deprives, wastes, diverts, consumes or uses any electricity from a generating, transmission or distribution system, (Article 31);
 - b) interferes with the use of plants, installations, electric lines, or pipelines, (Article 35 and 36);
 - c) disables accurate registration of consumed electricity, (Article 26, 27, 28, 30 and 35);
 - d) connects consumers to the network, (Article 31).
2. A cash fine ranging from 3 up to 20 times of minimal salary in the Republic, to authorized person in the company for an offence defined in the 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 the paragraph 1 of this Article.

Article 43

1. A cash fine ranging from 10 up to 100 times of minimal salary in the Republic, shall be imposed for an offence to any company or any legal person, if:
 - a) without prior consent of energy undertaking executes works, beneath, above or beside energy facilities or plants which disturb generation, transmission, distribution of supply of energy or endanger safety of people and their property, (Article 36);
 - b) not allowing the trespassing to an energy undertaking for the purpose of undisturbed use and maintenance of energy facilities, (Article 36);
 - c) without prior consent of energy undertaking constructs facilities or executes works in the vicinity of energy facilities, (Article 36);
 - d) does not permit Transmission Operator and Distribution Operator to execute technical supervision. (Article 31).
2. A cash fine ranging from 3 up to 20 times of minimal salary in the Republic, shall be imposed to an authorized person in a company, or other legal person for an offence laid out in the paragraph 1 of this Article.

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

XIV TRANSITIONAL AND CONCLUDING PROVISIONS

Transitional Provisions

Article 44

1. On the date that this Law enters into force it shall supersede the Law on Energy (Official Gazette of Montenegro, No. 16/90, 19/91 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, No. 22/93).
2. Not later than six (6) months after the entry into force of this Law, the Agency shall promulgate Secondary Legislation pursuant to the competences from this Law.
3. Until such time as the Secondary Legislation have been promulgated pursuant to the competencies from this Law, the Secondary Legislation currently in force shall be applicable.
4. Members of the Board of the Agency shall be appointed not later than six (6) months after the entry into force of this Law.
5. Not later than eighteen (18) months after the entry into force of this Law, all Energy Undertakings shall submit Tariff proposals that shall include separate Tariffs for each Contract and Tariff Customer class to the Agency 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.

Enforcement

Article 45

This Law shall enter into force on the eighth (8th) day after its publication in the Official Gazette.