

# **THE ACT of 10 April 1997**

## **The Energy Law<sup>1</sup>**

### **Chapter 1. General Provisions**

#### **Article 1.1**

1. The Act defines the principles of development of state energy policy, principles and terms of supply and use of fuels and energy, including heat, and operation of energy enterprises, as well as determines organs in charge of fuel and energy economy .
2. The purpose of the Act is the creation of the conditions for sustainable development of the country, energy security, efficient and rational use of fuels and energy, development of competition, counteracting negative consequences of natural monopolies, consideration of natural environment protection requirements and obligations stemming from international agreements and balancing the interests of energy enterprises and fuel and energy customers.
3. The Act does not apply to:

Based on the Journal of Laws of 2003 No. 153, Item 1504, No. 203, Item 1966, of 2004 No. 29, Item 257, No. 34, Item 293, No. 91, Item 875, No. 96, Item 959, No. 173, Item 1808, of 2005 No. 62, Item 552.

ad. point 2 – at present Article 1 (3) has the following wording: the Atomic Law Act of 29 November 2000 (Journal of Laws of 2001 No. 3, Item 18)

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<sup>1</sup> By means of its regulations, this Act implements the following European Community directives:

Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids (O.J.EC L 313 of 13.11.1990, with subseq. amendments),

Directive 91/296/EEC of 29 October 1990 on the transit of natural gas through grids (O.J.EC L 147 of 12.06.91, with subseq. amendments),

Directive 96/92/EC of 19 December 1996 concerning common rules for the internal market in electricity (O.J.EC L 27 of 30.01.1997),

Directive 98/30/EC of 22 June 1998 concerning common rules for the internal market in natural gas (O.J.EC L 204 of 21.07.1998, with subseq. amendments),

Directive 2001/77/EC of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (O.J.EC L 283 of 27.10.2001).

On the date of the accession of the Republic of Poland to the European Union, the information on the publication of the legal acts of the European Union, published herein shall apply to the publication of those acts in the Official Journal of the European Union – special edition.

- 1) extraction of fossil fuels from deposits and containerless storage of fuels regulated by the Act of February 4, 1994 - "Geological and Mining Law" (Journal of Laws No. 27, Item 96, with subseq. amendments)<sup>2</sup>;
- 2) use of nuclear energy in the scope regulated by the Act of April 10, 1986 – "Atomic Law" (Journal of Laws No. 12, Item 70, of 1987 r No. 33, Item 180, of 1991 No. 8, Item 28, of 1994 No. 90, Item 418, of 1995 r No. 104, Item 515 and of 1996 No. 24, Item 110 and No. 106, Item 496).

## **Article 2 deleted**

## **Article 3**

The terms used herein shall have the following meaning:

- 1) energy – any form of transformed energy;
- 2) heat – thermal energy in hot water or steam or other carrying agents;
- 3) fuels – solid, liquid and gaseous fuels that serve as chemical energy carrying agents;
  - 3a) gaseous fuels – high-methane or nitrified natural gas, including the liquefied natural gas and propane-butane or other types of flammable gas, supplied by means of a gas grid, regardless of their purpose;
- 4) transmission – transport;
  - a) of gaseous fuels and electricity by means of transmission grid in order to deliver them to distribution grids or to final customer connected to transmission grids,
  - b) liquid fuels by means of a pipeline grid,
  - c) heat by means of a heating grid to the customers connected to that grid – with the exclusion of the sale of such fuels or energy;
- 5) distribution:
  - a) transport of gaseous fuels and electricity by means of distribution grids in order to supply them to the customers,
  - b) to distribute liquid fuels to the customers connected to the pipeline grid,
  - c) distribution of heat to the customers connected to the heating grid – excluding the sale of such fuels or energy;
- 6) trade – a business activity consisting in wholesaling or retailing of fuels or energy;
  - 6a) sale – direct sale of fuels or energy by the entity generating them or sale of such fuels or energy by the entity trading in them;

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<sup>2</sup> The amendments to that Act were published in the Journal of Laws of 1996 No. 106, Item 496, of 1997 No. 88, Item 554, No. 111, Item 726 and No. 133, Item 885, of 1998 No. 106, Item 668, of 2000 No. 109, Item 1157 and No. 120, Item 1268, of 2001 No. 110, Item 1190, No. 115, Item 1229 and No. 154, Item 800, of 2002 No. 113, Item 984, No. 117, Item 1007, No. 153, Item 1271, No. 166, Item 1360 and No. 240, Item 2055, of 2003 No. 223, Item 2219 and of 2004 No. 96, Item 959, No. 173, Item 1808 and No. 273, Item 2703.

- 7) energy processes – the technical processes in the scope of generation, transformation, transmission, storage, distribution and use of fuels or energy;
- 8) supply in heat, electricity, gaseous fuels – the processes related to supply of heat, electricity or gaseous fuels to the customers;
- 9) equipment – the technical equipment used in energy processes;
- 10) installations – the equipment with interconnecting installations;
- 10a) storage installation – an installation used for storing gaseous fuels, including containerless storage of natural gas, constituting property of an energy enterprise or used by such an enterprise, including the part of LNG installations used for its storage, with the exclusion of the part of the installation used for production activity and the installation used exclusively for the tasks of gas transmission system operators;
- 10b) LNG installation – a terminal used for: a) liquefaction of natural gas, or b) import, unloading and regasification of liquefied natural gas, including the auxiliary installations and storage containers used in the process of regasification and supply of natural gas to the transmission system – with the exclusion of the part of the terminal used for storage purposes;
- 11) grids – interconnected and cooperating installations, used for transmission or distribution of fuels or energy, belonging to energy enterprises;
- 11a) transmission grid – high pressure gas grid, with the exclusion of upstream pipelines and direct pipelines, or an electricity grid of highest or high voltage whose operation is controlled by a transmission system operator;
- 11a) distribution grid – high, medium and low pressure gas grid, with the exclusion of upstream pipeline network and direct pipelines, or an electricity grid of high, medium and low voltage whose operation is controlled by a distribution system operator;
- 11c) upstream pipeline network (of a complex, collector or expedition type) – a gas pipeline or a grid of gas pipelines used for the transport of natural gas from the location of its extraction to the cleaning and processing plant or to the terminal, or used to transport natural gas to the final coastline loading terminal;
- 11d) intersystem gas pipeline – a transmission gas pipeline crossing the borders of the Member States of the European Union or the border of the member states of the European Free Trade Agreement (EFTA), the parties of the European Economic Zone agreement, solely with the purpose of interconnecting the national transmission systems of these countries;
- 11e) direct pipeline – a gas pipeline built in order to supply gaseous fuels directly to the installation of the customer, without using the gas system;
- 11f) direct line – an electricity line interconnecting a specific electricity generation unit directly to the customer or an electricity line interconnecting the electricity generation unit with the installations belonging to that energy enterprise, or the installations belonging to their subsidiaries;
- 11g) coordinated 110 kV grid – the part of a 110 kV distribution grid in which the flows of electricity depend upon the conditions of work of the transmission grid;
- 12) energy enterprise – an entity performing business activity consisting in the generation, transformation, storage, transmission, distribution of fuels or energy or trade in them;
- 12a) a vertically integrated undertaking – an energy enterprise or a group of enterprises whose mutual relationships are specified in Article 3 (2) of Regulation No. 139/2004 of 20 January

2004 on the control of enterprise concentration (O.J. EC L 024 of 29.01.2004), dealing with: a) with respect to gaseous fuels: – transmission or distribution or storage or liquefaction and generation or sale of such fuels or b) with respect to electricity: - transmission or – distribution - and generation or sale of such energy;

12b) system user – an entity supplying gaseous fuels to the gas system or receiving supply from that system or an entity supplying electricity to the electricity system or receiving supply from that system;

13) customer – any person who receives or obtains fuels or energy on the basis of an agreement with an energy enterprise;

13a) final customer– a customer who purchases fuels or energy for their own use;

13b) household gaseous fuels customer or household electricity customer – a final customer who purchases gaseous fuels or electricity exclusively for the purpose of its use in his household;

14) commune – communes and associations or agreements between communes in the scope governed by the law of 8 march 1990 on the local government (Journal of Laws of 2001 No. 142, Item 1591, of 2002 No. 23, Item 220, No. 62, Item 558, No. 113, Item 984, No. 153, Item 1271, and No. 214, Item 1806, and of 2003 No. 80, Item 717);

15) regulation – application of legal instruments determined by the Act, including licensing, in order to ensure security of energy supply, correct fuel and energy management and protection of customers' interests;

16) energy security – the condition of the economy which enables full coverage of the customer's ongoing and prospective demand for fuels and energy in a technically and economically justified manner, with the observance of the environment protection requirements;

17) tariff – a set of prices and fee rates and the conditions of their applicability prepared by an energy enterprise and introduced as binding for specified groups of customers, according to the procedure determined in the Act ;

18) illegal drawing of fuels and energy – obtaining fuels or energy without having concluded an agreement, completely or partially evading the metering and settlement system or by interfering with that system in a way that falsifies the measurements taken by the metering and settlement system;

19) grid operation – grid work management;

20) renewable energy source – a source which uses wind power, solar power, geothermal energy, sea wave, sea current and tidal energy, or energy obtained from the fall of rivers and biomass energy, energy from landfill biogas as well as biogas produced in the process of sewage disposal and treatment or decomposition of plant and animal remains;

21) justified expenses – the expenses which are indispensable to perform the obligations arisen due to the activity of an energy enterprise in the field of generation, transformation, storage, transmission or distribution and trade in fuels or energy; such expenses are considered by an energy enterprise in their calculations of prices and rates specified in the tariff in an economically justifiable way, exercising due diligence aimed to protect the interest of the customers; the justified expenses are not revenue costs as defined by the tax law;

22) financing of lighting – financing the costs of the electricity drawn by lighting points and the costs of their construction and maintenance;

- 23) gas system or electricity system – the gas or electricity grids and the installations connected to them as well as the installations interacting with the grid;
- 23a) system balancing – a business activity performed by the transmission or distribution system operator as part of their transmission or distribution services, consisting in compensating the demand for gaseous fuels or electricity with the supply of such fuels or energy;
- 23b) system restrictions management – a business activity performed by the transmission or distribution system operator as part of their transmission or distribution services in order to ensure a secure operation of the gas or electricity system and to ensure the technical parameters of gaseous fuels or electricity required by the regulations of law issued pursuant to Article 9 (1) through (4), should any technical restrictions with respect to the capacity of those systems occur;
- 24) transmission system operator – an energy enterprise dealing with the transmission of gaseous fuels or electricity, responsible for grid operation in the gas or electricity transmission system, the ongoing long term operational security of that system, the use, maintenance and repair and the necessary expansion of the transmission grid, including its connections to other gas or electricity systems;
- 25) distribution system operator (DSO) – an energy enterprise dealing with the distribution of gaseous fuels or electricity, responsible for grid operation in the gas or electricity distribution system, the ongoing long term operational security of that system, the use, maintenance and repair and the necessary expansion of the distribution grid, including its connections to other gas or electricity systems;
- 26) storage system operator – an energy enterprise dealing with the storage of gaseous fuels, responsible for the use and maintenance of the storage installation;
- 27) LNG system operator – an energy enterprise dealing with liquefaction of natural gas, the import, unloading or regasification of liquefied natural gas, responsible for the use and maintenance of the natural gas installations;
- 28) interconnected system operator – an energy enterprise managing the interconnected gas or electricity systems, including the transmission and distribution system, or the natural gas transmission, distribution, storage or liquefaction system;
- 29) last resort supplier – an energy enterprise granted a licence for trade in gaseous fuels or electricity, providing universal services to household customers of gaseous fuels or electricity, who do not use the right to choose the supplier;
- 30) universal service – a service provided on the basis of an agreement which includes sale agreement provisions and agreements on providing the services of transmission or distribution of gaseous fuels or energy, or a sale agreement, an agreement on providing the services of transmission or distribution of gaseous fuels and an agreement on the gaseous fuels storage services;
- 31) normal grid operation setup – a setup of grid operation and the generation sources connected to it which provides optimal technical and economic conditions for the transmission of electricity and meets the grid reliability criteria and the criteria of quality of the electricity supplied to grid users;
- 32) cross-subsidising – covering the costs of one type of business activity or the costs related to one group of customers with the revenue obtained from a different type of business activity or earned from a different group of customers.

## Article 4

1. An energy enterprise whose activity consists in the transmission and distribution of fuels or energy, storage of gaseous fuels, including liquefied natural gas, natural gas liquefaction or regasification of liquefied natural gas shall be obliged to maintain the operability of equipment, installations and grids to provide supply in a continuous and reliable manner, with the observance of binding quality requirements.

2<sup>3</sup>. An energy enterprise whose activity consists in the transmission or distribution of gaseous fuels or energy shall be obliged to provide the services of transmission or distribution of gaseous fuels or energy on the terms of equal treatment and in compliance with the provisions of the relevant act of law to all the customers and companies dealing with the sale of gaseous fuels; the services of transmission or distribution of those fuels or energy shall be provided on the basis of an agreement governing the provisioning of such services.

## Article 4a (repealed)

## Article 4b (repealed)

## Article 4c<sup>4</sup>

An energy enterprise whose activity consists in the storage of gaseous fuels shall be obliged to provide the services of storage of gaseous fuels in the storage installations to the customers and enterprises selling gaseous fuels, on the terms of equal treatment; the storage services referred to shall include the use of the storage capacity of pipelines and shall exclude the part of the storage capacity of the pipelines which is required to allow the transmission system operators to perform their tasks; the gaseous fuels storage services shall be provided on the basis of an agreement governing the provision of such services.

## Article 4d

1. An enterprise whose activity consists in the transport of the extracted natural gas shall be obliged to provide the services of transport of the natural gas using upstream pipeline networks to the destination chosen by the customer or by the enterprise dealing with the sale of gaseous fuels, the customers and enterprises dealing with the sale of gaseous fuels, on the terms of equal treatment and observing the rules of safety, the terms of use of the deposits connected, the terms of the implementation of the agreements concluded with respect to the sale of the fossil fuels and with consideration of the available or potentially available capacity of the upstream pipeline networks and the environment protection requirements. The natural gas

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<sup>3</sup> ad Article 4 (2) – in the scope pertaining to household consumers of gaseous fuels or electricity – applicable since 1.07.2007 ;

<sup>4</sup> ad Article 4c and Article 4d (1) – in the scope pertaining to household consumers of gaseous fuels or electricity – applicable since 1.07.2007

transport services referred to herein shall be provided on the basis of an agreement governing the provision of such services.

2. Provision (1) shall not be applicable to those parts of upstream pipeline networks and installations which are used for local extraction activity within the area of the deposit where the natural gas is extracted.

3. An enterprise whose activity consists in the transport of the extracted natural gas may refuse to provide the services referred to in (1):

1) if there exist inconsistencies with respect to:

a) a discrepancy between the technical parameters of upstream pipeline networks and the technical parameters of the grid or installation which would be connected to the upstream pipeline networks, or

b) a discrepancy between the quality parameters of the natural gas transported and the quality parameters of the natural gas which is to be the subject of the natural gas transport service requested, provided the elimination of that discrepancy is technically or economically groundless; or

2) if providing the service of natural gas transport:

a) could potentially reduce the present or planned rate of extraction of natural gas or crude oil for the purpose of which the upstream pipelines in question have been built, or

b) would be in conflict with the justified needs of the owner or the grid user of upstream pipeline networks or the enterprise providing extracted natural gas transport services regarding the transport or transformation of the natural gas.

#### **Article 4e**

1. An energy enterprise whose activity consists in the liquefaction of natural gas or regasification of liquefied natural gas using LNG installations shall be obliged to ensure natural gas liquefaction or liquefied gas regasification services to the customers and the enterprises who sell gaseous fuels, provided it is necessary for technical or economic reasons; such services shall be provided on the basis of an agreement governing the provision of natural gas liquefaction services.

2. Provision (1) shall not be applicable to the terminals of liquefied natural gas used for its storage.

ad Article 4e (1) – in the scope pertaining to household customers of gaseous fuels or electricity – applicable since 1.07.2007 ;

#### **Article 4f**

1. The provision of the services referred to in Article 4 (2), Article 4c, Article 4d (1) and Article 4e (1) may not reduce the reliability of supply or the quality of gaseous fuels or energy below a level specified in separate regulations of law, and may not result in an unfavourable change of prices or fee rates for the supply of gaseous fuels or energy or the scope of their supply to the customers connected to the grid; furthermore, it may not prevent the energy enterprises from fulfilling their obligations with respect to the protection of the interest of the customers and environment protection.

2. Article 4 (2), Article 4c, Article 4d (1) and Article 4e (1) shall not be applicable to the provision of services of transmission or distribution of gaseous fuels or energy, the storage of those fuels or liquefaction of natural gas for the customers, if the fuels or energy in question were to be supplied from a gas or electricity system of another country, which has not imposed an obligation to provide such services on the enterprises operating in that country, or if the customer to whom the gaseous fuels or electricity were to be supplied is not considered to be a customer eligible to use such services in that country.

3. In case the services referred to in Article 4 (2), Article 4c, Article 4d (1) and Article 4e (1) are denied for the reason of considering the customer ineligible to select the supplier in one of two European Union Member States or in an EFTA member state which is a party to the European Economic Area Agreement, the Chairman of ERO may address the European Commission through the minister in charge of economic affairs, upon a justified request from the customer or supplier, to oblige the state in which the provision of the services has been denied, to allow such service to be provided.

#### **Article 4g**

1. Should the energy enterprise or the enterprise whose activity consists in the transport of extracted natural gas by means of a grid of upstream pipeline networks refuse to conclude an agreement on the provision of services or on the transmission or distribution of gaseous fuels or energy, an agreement in the provision of natural gas transport services, an agreement on gaseous fuels storage services or an agreement on the natural gas liquefaction services, it shall be obliged to notify the Chairman of ERO and the requesting entity in writing without delay, specifying the grounds for the refusal.

2. Upon a refusal to conclude an agreement on the electricity transmission or distribution services, the electricity system operator shall provide the entity requesting such an agreement with significant information about the actions which need to be taken to improve the grid in a way that will allow such an agreement to be concluded; the preparation of such an information may be subject to a fee which should reflect the costs of its preparation.

#### **Article 4h**

1. An energy enterprise which constitutes part of a vertically integrated undertaking may refuse to provide natural gas transmission, distribution, transport, storage or liquefaction services, if providing such a service may result in financial or economic problems for the vertically integrated undertaking due to the obligations resulting from the formerly concluded agreements which require them to pay for the specific amount of natural gas regardless of the amount extracted, or if providing such a service makes it impossible for the vertically integrated undertaking to meet their obligations with respect to the protection of the interests of customers or the environment protection.

2. An energy enterprise which is part of a vertically integrated undertaking which refused to provide gas transmission, distribution, transport, storage or liquefaction services, for reasons referred to in (1) should apply to the Chairman of ERO without delay to temporarily discharge them from the obligations defined in Article 4 (2), Article 4c, Article 4d (1) and Article 4e (1), or to limit the scope of those obligations, providing the reasons for the refusal.



3. The Chairman of ERO, on the basis of a substantiated application referred to in (2), may issue a decision which will temporarily suspend the obligations referred to in Article 4 (2), Article 4c, Article 4d (1) and Article 4e (1) imposed on the energy enterprise offering gas transmission, distribution, transport, storage, liquefaction or regasification services or to limit such obligations for that enterprise.

4. While issuing the decision referred to in (3), the Chairman of ERO shall take the following into consideration:

- 1) a general financial condition of the enterprise referred to in (1);
- 2) the dates of the conclusion of the agreements and the terms on which they were concluded;
- 3) the impact of the provisions of the agreements on the financial condition of the enterprise referred to in (1) and of the customers;
- 4) the degree of development of the competition on the gaseous fuels market;
- 5) the implementation of the obligations imposed by the act of law;
- 6) the actions undertaken to allow the services referred to in (1) to be provided;
- 7) the impact of that decision on a correct operation and the development of the gaseous fuels market;
- 8) the degree of interconnection between the gas systems and their interoperability.

5. Upon approval of the application of the energy enterprise, the Chairman of ERO shall notify the European Commission without delay of the standpoint taken with respect to the application referred to in (2) and shall enclose the information on the standpoint taken to the notification referred to above.

6. Should the European Commission require the standpoint referred to in (5) to be amended, or request that it be changed, the Chairman of ERO shall address such amendments or request of the European Commission within 28 days from the date of their receipt.

7. The standpoint of the Chairman of ERO consulted and agreed with the European Commission with respect to the application of the energy enterprise shall constitute the basis for the Chairman of ERO to issue the decision referred to in (3).

8. The Chairman of ERO shall immediately announce the decision referred to in (3) along with its publication in the ERO Bulletin.

#### **Article 4i**

1. Upon a justified request of the energy enterprise, the Chairman of ERO may issue a decision to discharge the enterprise from the obligations to provide the services referred to in Article 4 (2), Article 4c, Article 4d (1) and Article 4e (1), and the obligation to submit their tariffs for approval, referred to in Article 47 (1), if such services are provided using the elements of the gas system or gas installations whose construction had not been completed by 4 August 2003 or has been started later than on that date, which will hereafter be called “new infrastructure” such as intersystem gas pipelines, storage installations and LNG installations.

2. An enterprise may be discharged from the obligations referred to in (1) provided all of the following conditions have been fulfilled:

- 1) the new infrastructure increases the competitiveness of supply of gaseous fuels and the safety of its supply;
  - 2) due to the risk related to the construction of the new infrastructure the construction would not have been completed without such a discharge;
  - 3) the new infrastructure is or will be the property of an entity independent at least with respect to its legal form from the gas system operator in which the new infrastructure has been or will be built.
  - 4) the users of the new infrastructure have been charged for using it;
  - 5) The discharge referred to in (1) shall not adversely influence the conditions of the competition and the efficiency of the operation of the gaseous fuels market or of the gas system in which the new infrastructure has been or will be built.
3. Provisions (1) and (2) shall also be applicable to infrastructures whose construction had been completed by 4 August 2003, provided that after that date changes have been or will be introduced to it that will allow a considerable increase of the transmission capacity of that infrastructure or the development of new sources of gaseous fuels.
4. When deciding on the application referred to in (1), the Chairman of ERO shall consider the non-discriminative access to intersystem gas pipelines, the term for which the agreements for the use of the new infrastructure or infrastructures referred to in (3) have been concluded, an increase of the transmission capacity, the planned period of use of the infrastructure and the national factors applicable in the particular case.
5. If the application referred to in (1) refers to intersystem gas pipelines, the Chairman of ERO takes a standpoint upon consulting the relevant bodies of the EU Member States involved.
6. Having approved the application referred to in (1), the Chairman of ERO shall immediately notify the European Commission the standpoint taken; the Chairman of ERO shall enclose the following information to that notification:
- 1) the reasons for discharging from the obligations listed in (1), including financial information which justifies such a decision;
  - 2) the analysis of the impact of discharging from the obligations referred to in (1) on the competitiveness and efficient operation of the gaseous fuels market;
  - 3) the term for which the entity has been discharged from the obligations referred to in (1);
  - 4) the size of the share of the transmission capacity of the infrastructure the discharge from the obligations referred to in (1) applies to, with respect to the total transmission capacity of that infrastructure;
  - 5) the course and effects of the consultation with the appropriate bodies of the EU Member States involved;
  - 6) the impact of the new infrastructure or the changes to the infrastructure referred to in (3) on the diversification of gas supply.
7. Should the European Commission require the standpoint referred to in (6) to be amended, or request that it be changed, the Chairman of ERO shall address such amendments or request of the European Commission within 28 days from the date of their receipt.

8. The standpoint of the Chairman of ERO consulted and agreed with the European Commission with respect to the application of the energy enterprise shall constitute the basis for the Chairman of ERO to issue the decision referred to in (1).

9. The Chairman of ERO shall issue the decision referred to in (1) separately for each new infrastructure or each infrastructure referred to in (3); in the decision, the Chairman of ERO specifies the scope at which the discharge from the obligations listed in (1) applies and the period the discharge was granted for.

10. The Chairman of ERO shall immediately announce the decision referred to in (1) along with its publication in the ERO Bulletin.

## **Article 4j**

The customers of gaseous fuels or energy shall have the right to purchase such fuels or energy from the supplier of their choice.

**ad Article 4j – with respect to household gaseous fuels or electricity customers – applicable since 1.07.2007**

## **Chapter 2 Supply of Fuels and Energy**

### **Article 5**

1. Gaseous fuels or energy shall be delivered upon prior connection to the grid referred to in Article 7, on the basis of a sale agreement and an agreement on transmission or distribution services or on the basis of a sale agreement, an agreement on transmission or distribution services and an agreement on gaseous fuels storage services, or on the basis of an agreement on gas liquefaction services.

2. The agreements referred to in (1) should include at least:

1) a sale agreement – the provisions which specify: the location to which the gaseous fuels or energy should be delivered to the customer and the quantity of those fuels or energy, broken down into contractual terms, contractual effectiveness and the terms of introducing amendments to the agreement, the price or the tariff group applied in the settlements and the terms of introducing changes to that price or tariff group; the billing method, the amount of discount for the failure to meet the qualitative standards of the customer service; the responsibility of the parties for breach of the terms of the agreement and the term of the agreement and the terms of its termination;

2) an agreement on the transmission or distribution of gaseous fuels or energy should include the following provisions: the contractual effectiveness and the terms of amending it, the amount of the gaseous fuels or energy transmitted broken down by contractual terms, the locations to which the gaseous fuels or energy should be delivered to the grid and the locations where it should be collected from the grid, quality standards, the terms of securing reliability and continuity of the gaseous fuels or energy supply, the fee rates or the tariff group applied in the settlements and the terms of introducing changes to those rates and tariff group; the billing method, the technical parameters of the gaseous fuels or energy and the amount of discount for the failure to maintain such parameters or meet customer service quality standards,

the responsibility of the parties for breach of the terms of the agreement and the term of the agreement and the terms of its termination;

3) an agreement on the provision of gaseous fuel storage services should include the following provisions: the contractual effectiveness and the terms of amending it, the amount of the gaseous fuels, the location, the period and the method of their storage, the fee rate or the tariff group used in the settlements and the terms of introducing changes to that fee rate or tariff group; the billing method, the responsibility of the parties for breach of the terms of the agreement and the term of the agreement and the terms of its termination;

4) an agreement on the liquefaction of natural gas should include the following provisions: the contractual effectiveness and the conditions of introducing changes in it, the amount of the natural gas liquefied or the amount of the liquefied natural gas regasified, the fee rate specified in the tariff, the terms of the introduction of changes to that rate, the billing method, the responsibility of the parties for breach of the terms of the agreement and the term of the agreement and the terms of its termination;

3. Gaseous fuels or energy may be delivered on the basis of an agreement including the provisions of the sale agreement or an agreement on the transmission or distribution of such fuels and energy, hereafter called "a universal agreement"; a universal agreement on the supply of gaseous fuels may also include provisions of an agreement for storage of such fuels, and in case of heat, if it is purchased from other energy enterprises, it should also specify the terms on which the prices and fee rates are applied in those enterprises.

4. A universal agreement may also contain provisions governing the sale of gaseous fuels or energy, or provisions of an agreement for gaseous fuels or energy transmission or distribution services, or provisions of an agreement for storage of such fuels, concluded by the supplier on behalf of and to the benefit of the final customer with the energy enterprise whose activity consists in the transmission, distribution of gaseous fuels or energy or storage of such fuels.

5. Drafts of the agreements referred to in (1), (3) and (4) or the drafts of the amendments to the agreements already concluded, with the exception of changes of the prices or fee rates specified in approved tariffs should be immediately sent to the customer; if the agreements concluded are to be amended, a written information about the right to terminate the agreement should be enclosed to the draft of the agreement amended.

6. A supplier of gaseous fuels or energy should notify the customers of an increase of the prices or fee rates for the supply of gaseous fuels or energy specified in the approved tariffs within one billing period from the date of that increase.

7. The agreements referred to in (1), (3) and (4) should also include provisions which specify the course of action applicable in case the customer loses the ability to comply with the obligation of issuing payments for the gaseous fuels or energy supplied or for the services related to their supply.

## **Article 5a**

1. A last resort supplier shall be obliged to ensure the provision of the universal service and to conclude a universal agreement, on the terms of equal treatment, with the household customer of gaseous fuels or electricity who does not have the right of a free choice of the supplier and is connected to the grid of the energy enterprise indicated in the licence granted to the last resort supplier.

2. An energy enterprise whose activity consists in the transmission or distribution of gaseous fuels or electricity shall be obliged to conclude an agreement for the supply of transmission or distribution of gaseous fuels or electricity with the last resort supplier in order to supply those fuels or energy to the household customer of gaseous fuels or electricity to whom the last resort supplier shall be obliged to provide a universal service.
3. The energy enterprise whose activity consists in the transmission or distribution of heat shall be obliged to conclude a universal agreement with the final customer connected to the heating grid of such an enterprise upon the request of that customer.
4. A household gaseous fuels or electricity customer may cancel the universal service provided by the last resort supplier. The household customer of gaseous fuels or electricity who cancels the universal service provided to him upon the contractual period of notice may not be charged by the last resort supplier with any additional costs for that reason.

## Article 6

1. Authorized representatives of the energy enterprise whose activity consists in the transmission and distribution of gaseous fuels or electricity shall inspect and audit the metering installations, conformity with concluded agreements and correctness of settlement.
2. Upon the presentation of an ID card and a written authorisation notice issued by an appropriate body of the energy enterprise whose activity consists in the transmission or distribution of gaseous fuels or energy, the representatives referred to in (1) shall have the following rights:
  - 1) the right to enter the real estates and premises where the inspection is conducted, unless separate regulations provide otherwise;
  - 2) the right to conduct the necessary overhaul of the equipment which constitute the property of the energy enterprise as part of their inspection tasks, and the right to perform activities related to the maintenance or repair of such installations as well as the right to perform research and take measurements;
  - 3) the right to collect and secure evidence of customer breaching the terms of use of metering and settlement systems or the terms of the agreement concluded with the energy enterprise.
3. The energy enterprise referred to in (1) may suspend the supply of gaseous fuels, electricity or heat if an inspection referred to in (2) allowed them to confirm that:
  - 1) the installation located at the customer presents a direct threat to life, health or environment;
  - 2) an illegal use of gaseous fuels, electricity or heat had taken place.
- 3a. The energy enterprises referred to in (1) may suspend the supply of gaseous fuels, electricity or heat if the customer delays the payment for the gaseous fuel, electricity, heat or the services received for at least a month after the due date of payment in spite of a prior written notification of the intention to terminate the agreement and a designation of an additional two-week long term of settlement of the outstanding and current liabilities.
- 3b. The energy enterprise shall be obliged to restore the supply of gaseous fuels, electricity or heat suspended for reasons referred to in (3) and (3a) immediately after the reasons justifying its suspension have ceased to exist.
- 3c. Provision (3a) shall not be applicable to the objects used for national defence.

4. The minister in charge of economic affairs shall determine, by way of ordinance, detailed rules of inspection as well as templates of inspection minutes and authorizations to inspect and templates of identity cards for the inspectors.
5. The ordinance referred to in (4) should particularly specify the following: 1) the subject of the inspection;
- 2) detailed rights of the authorised representatives referred to in (1);
- 3) the procedure of the inspection.

## **Article 6a**

1. The energy enterprise may install a prepayment metering and settlement system used for the settlement of the supply with gaseous fuels, electricity or heat if the customer: 1) has at least twice delayed the payment for the gaseous fuel, electricity or heat or the services received for a period of at least one month within 12 subsequent months;
  - 2) does not have a legal title to the real estate, installation or premises to which the gaseous fuels, electricity or heat is supplied;
  - 3) uses the real estate, installation or premises in a way that renders regular inspections of the metering and settlement system impossible.
2. The costs of the installation of the metering and settlement system referred to in (1) shall be borne by the energy enterprise.
  3. Should the customer not agree to the installation of the metering and settlement system referred to in (1), the energy enterprise may suspend the supply of electricity or terminate the electricity sale agreement.

## **Article 7**

1. Energy enterprise whose activity consists in the transmission and distribution of gaseous fuels or electricity have an obligation to conclude grid connection agreement with entities requesting connection to the grid, on terms of equal treatment, if it is technically and economically feasible to supply energy or fuels and the applicant meets the requirements for being connected to the grid and taking supply. Should the energy enterprise reject concluding a grid connection agreement, it shall be obliged to notify the Chairman of ERO and the entity requesting the connection in writing of the refusal without delay, stating the reasons for the refusal.
2. The grid connection agreement should include provisions governing at least the following issues: the date of connecting, the amount of the connection fee, the border point separating the grid owned by the energy enterprise and the installation of the party connected, the scope of work necessary to make the connection, the requirements regarding the location of the metering and settlement system and its parameters, the terms on which the energy enterprise is to have access to the real estate owned by the party connected for purposes of the construction or expansion of the grid required to make the connection, the expected date of conclusion of the agreement on the basis of which the gaseous fuels or energy will be supplied, the amount of gaseous fuels or energy to be received, the connection power, the responsibility of the parties for the breach of the terms of the agreement, in particular for the delays of completion of the

work in comparison to the connection date agreed and the term of the agreement and the terms of its termination.

3. The obligation referred to in (1) does not apply to a situation in which the requesting entity does not have a legal title to the installation to which gaseous fuels or energy is to be supplied.

4. The enterprise referred to in (1) shall be obliged to fulfill the technical conditions of supply of energy or gaseous fuels on the terms specified in the provisions of law issued on the basis of Article 9 (1)-(4), (7) and (8) and in separate provisions and the licence.

5. An energy enterprise whose activity consists in the transmission and distribution of gaseous fuels or energy shall be obliged to provide for implementation and financing of the entire construction and expansion of the grid, including the needs to connect the entities applying for connection on the terms specified in the provisions of law issued on the basis of Article 9 (1)-(4), (7) and (8) and Article 46 and in assumptions or plans referred to in Article 19 and 20.

6. The construction and expansion of the sections of the grid used to connect to the installations belonging to the entities which apply for connection to the grid shall remain within the responsibilities of the energy enterprise referred to in (1), also allowing them to be constructed by another enterprises which employ staff of appropriate qualifications and expertise in that area according to the rules of competition.

7. The entities which apply for connection to the grid shall be grouped by grid parameters, quality standards of gaseous fuels or energy and the type and size of the equipment, installations and grids to be connected.

8. The fee for the connection to the grid shall be calculated according to the following rules: 1) the fee for the connection to high pressure gas transmission or distribution grid or to electricity grid of a rated voltage of more than 1 kV and not higher than 110 kV, except for the connection of sources and grids, shall be determined on the basis of a fourth part of the investment incurred in relation to the connection;

2) the fee for the connection to a gas distribution grid other than the one referred to in point 1, or to an electricity grid of a rated voltage not higher than 1 kV or to a heating grid, except for the connections to sources or grids, shall be determined on the basis of the fee rates included in the tariff, calculated on the basis of a fourth part of average annual costs of investment in the construction of the grid sections used to connect such entities, specified in the development plan referred to in Article 16; those rates may be calculated allowing for the connection power, a unit of length of the grid used for connecting or the type of that grid section;

3) the fee collected for the connection of sources cooperating with the grid or the grids of energy enterprises whose activity consists in the transmission or distribution of gaseous fuels or energy is calculated on the basis of the actual costs of investments incurred in relation to the connection, except for the renewable energy sources of not more than 5 MW of capacity of electricity production, and for the sources of energy which cogenerate electricity and heat of not more than 5 MW of capacity of electricity generation and a designed total average annual conversion efficiency not lower than 70 per cent, whose connection to the grid shall be subject to a fee equal to a half of the fee calculated on the basis of the actual costs of investment incurred.

9. Should the energy enterprise refuse to connect to the grid for reasons of insufficient economic conditions referred to in (1), and the Chairman of ERO does not object to the refusal within 2 months from the date of receipt of the notification referred to in (1), the enterprise may

collect a fee for the connection at the amount agreed with the requesting entity in a grid connection agreement; provision (8) shall not be applicable.

10. The costs resulting from the investments in the connection of the entities requesting to be connected, in the scope at which they had been covered with the revenue from the payments of the grid connection fees referred to in (8) and (9), shall not constitute a basis for calculation of the tariff fee rates for the transmission or distribution of gaseous fuels or energy .

11. The heating grid connection agreement may specify lower grid connection fees than those specified on the basis of the rules laid down in (8).

12. The entity connected to the grid shall be obliged to allow the energy enterprise referred to in (1) to perform grid construction and expansion work within the real estate belonging to that entity in the scope necessary to connect the entity to the grid, and to provide rooms and locations for the installation of metering systems on the terms specified in the grid connection agreement.

13. The energy enterprise referred to in (1) shall be obliged to notify the entity connected of the dates of the work activities referred to in ( 12) in sufficient time in advance so as to allow the entity to be connected to prepare the real estate or premises for the activities to be performed and for the commissioning of the results of those activities.

14. Upon request from the entity involved, the energy enterprise shall be obliged to issue a statement referred to in the provisions of the construction law which will confirm the guarantee of supply of gaseous fuels or energy and stating the terms on which the building is connected to the grid.

## **Article 7a**

1. The equipment, installations and the grids of the entities requesting to be connected to the grid which are to be connected must fulfill technical and maintenance conditions, thus ensuring:

1) the safety of operation of the gas or electricity system or heating grid and the equipment or installations connected to that grid and used for the generation or collection of heat, hereafter called ‘the heating system’;

2) security of the gas or electricity system or the heating system against damage due to the faulty operation of the equipment, installations and grids connected to it;

3) securing the equipment, installations or the grids connected against damage in case of a failure or as a result of the introduction of restrictions in the collection or supply of gaseous fuels or energy;

4) maintaining the quality parameters of gaseous fuels and energy at the point of connection of the equipment, installations and grids;

5) meeting the environment protection requirements laid down in relevant separate provisions;

6) the capability to perform measurements of the values and parameters necessary to operate the grid and ensure the settlement of the fuels or energy received.

2. The equipment, installations and grids referred to in (1) must also meet the requirements specified in separate provisions, included but not limited to the following: the provisions of the construction law, the fire protection regulations, the requirements of the compliance evaluation



system and the provisions pertaining to the technologies of generation of gaseous fuels or energy and the type of the fuel used.

3. A construction of a direct pipeline or a direct line requires a permission from the Chairman of ERO granted by decision prior to the construction permit decision required by the construction law.

4. While granting the permission referred to in (3), the Chairman of ERO shall take the following factors into account:

1) the use of the transmission potential of the existing gas or electricity grid;

2) a refusal to provide the services of transmission or distribution of gaseous fuels or electricity using the existing gas or electrical grid to the entity applying for the permission and the rejection of the complaint against that refusal submitted by it.

## **Article 8**

1. Any disputes over refusal to conclude a grid connection agreement, sale agreement, fuel or energy transmission or distribution agreement, natural gas transport agreement, gaseous fuels storage agreement, natural gas liquefaction agreement or universal agreement, as well as in cases of non-substantiated suspension of supply of gaseous fuels or energy shall be resolved by the Chairman of ERO, upon request of a party.

2. Upon request of one of the parties of the disputes referred to in (1), the Chairman of ERO may issue a statement in which they will specify the terms of commencing or continuing supply until the time of the final resolution of the dispute.

## **Article 9**

1. The minister in charge of economic affairs shall determine, by way of ordinance, detailed terms of operation of the gas system, taking the following factors into consideration: the security and the reliable operation of the system, an equal treatment of the gas system users, the environment protection requirements and the requirements applicable to the construction and use of the equipment, installations and grids specified in separate provisions.

2. The ordinance referred to in (1) should particularly specify the following:

1) the criteria for grouping the entities requesting to be connected to the grid;

2) the terms of connecting to the grid, including the technical requirements applicable to connecting LNG installations, storage installations, transmission or distribution grids and direct pipelines to the grid;

3) the methods of trade in gaseous fuels;

4) the terms of provision of the services of transmission, distribution and storage of gaseous fuels and the natural gas liquefaction services; the terms of grid operation and use as well as the terms of use of the gas system and the intersystem connections;

5) the scope, the conditions and the method of gas system balancing and of the settlement with the system users which result from the unbalanced gaseous fuels delivered to and collected from the system;

6) the scope, the terms and the method of management of the restrictions applicable to the gas system;

7) the terms of cooperation between gas system operators, including other energy enterprises, with regard to grid operation and emergency procedures;

8) quality parameters of gaseous fuels and quality standards of customer service;

9) methods of complaint handling.

3. The minister in charge of economic affairs shall determine, by way of ordinance, detailed terms of operation of the electricity system, taking the following factors into consideration: the security and the reliable operation of the system, an equal treatment of the electricity system users, the environment protection requirements and those applicable to the construction and use of the equipment, installations and grids specified in separate provisions.

4. The ordinance referred to in (3) should particularly specify the following:

1) the criteria for grouping the entities requesting to be connected to the grid;

2) the terms of connecting to the grid, including the technical requirements for connecting generation equipment, distribution grids, final customer equipment, intersystem connections and direct lines to the grid;

3) the methods of trade in electricity;

4) the terms of the services of transmission and distribution of electricity, grid operation, grid use and the use of the electricity system and the intersystem connections;

5) the scope, the terms and the method of the electricity system balancing and those governing the settlements with the system users resulting from the unbalanced electricity delivered to and collected from the system;<sup>1</sup>

6) the scope, the terms and the method of management of the restrictions of the system;

7) the method of coordination of planning of the development of the electricity system;

8) the terms of cooperation between electricity system operators, including other energy enterprises, with regard to grid operation, flow management, generating units capacity planning and emergency procedures ;

9) the scope and method of communication between energy enterprises and between energy enterprises and customers;

10) the scope and method of communicating the information about the structure of the fuels consumed for electricity generation purposes in the preceding year by the supplier to the customers;

11) the method of informing customers by the supplier about the location at which information is available on the impact of the generation of the electricity sold by the supplier in the preceding year on the environment, at least with respect to carbon dioxide emissions and radioactive waste;

12) quality parameters of the electricity and the quality standards of customer service;

13) methods of complaint handling.

5. The scope, the terms and the method of balancing referred to in (4) point (5) for the wind energy sources located on the territory of the Republic of Poland shall be specified differently than for other energy sources, taking the following factors into consideration:

- 1) the share of electricity generated by wind power sources in the amount of electricity generated in the country;
- 2) the time at which the electricity sale agreements are to be submitted for fulfilment to the transmission system operators in comparison to the period they cover.
6. The costs resulting from the application of separate balancing referred to in (5) to wind power sources shall be allowed for in the costs which constitute the basis for the calculation of the transmission fee rates in the tariffs of electricity system operators.
7. The minister in charge of economic affairs shall determine, by way of ordinance, detailed terms of operation of heating systems, taking the following factors into consideration: the security and the reliable operation of those systems, an equal treatment of heat customers, the environment protection requirements and the requirements applicable to the construction and use of the equipment, installations and grids specified in separate provisions.
8. The ordinance referred to in (7) should particularly specify the following:
  - 1) the criteria for grouping the entities requesting to be connected to the grid;
  - 2) the terms of connection to the grid, including the technical requirements applicable to connecting the generating equipment and customer installations to the grid;
  - 3) the methods of trade in heat;
  - 4) the terms of services of transmission and distribution of heat, grid operation and use;
  - 5) the scope and method of communication between energy enterprises and between energy enterprises and customers;
  - 6) the quality parameters of the heat carrier and the quality standards of customer service;
  - 7) methods of complaint handling.
9. Once in every two years, the minister in charge of economic affairs related to gaseous fuels and electricity shall notify the European Commission by 30 June of the given year of all the changes in the actions aimed to perform the obligation to protect the customers and the natural environment and of the impact of such changes on the national and international competition.

### **[Article 9a<sup>5</sup>**

1. Any energy enterprise whose activity consists in the electricity generation or trade in electricity, which sells electricity to customers who purchase it for their own needs on the territory of the Republic of Poland shall be obliged to the following, in the scope specified by the provisions issued pursuant to (6):
  - 1) purchase the electricity generated using renewable energy sources, or 2) generate electricity in their own renewable energy sources located on the territory of the Republic of Poland and connected to the grid.
2. An energy enterprise whose activity consists in electricity generation or trade in electricity, which sells that electricity to the customers who purchase it for their own needs on the territory of the Republic of Poland shall be obliged to purchase the electricity offered cogenerated with

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<sup>5</sup> Article 9a shall become effective on 1.10.2005 (Journal of Laws of 2005 No. 62, Item 552). Article 9a (3) shall become applicable on 1.01.2007 (Journal of Laws of 2005 No. 62, Item 552).

heat in the energy sources connected to the grid and located on the territory of the Republic of Poland, in the scope specified by the provisions issued pursuant to (7).

3. An energy enterprise whose activity consists in the trade in heat and the sale of that heat shall be obliged to purchase the heat offered generated using renewable energy sources connected to the grid and located on the territory of the Republic of Poland at the quantity not larger than the demand of the customers of that enterprise connected to the same grid to which the renewable energy sources are connected, in the scope specified by the provisions issued pursuant to (6)

4. An energy enterprise whose activity consists in the transmission or distribution of electricity and whose grid is connected to renewable energy sources shall be obliged to accept the entire electricity generated in those sources and included in the sale agreements submitted to that enterprise by the entity generating that electricity.

5. The purchase or the generation of the electricity in order to fulfil the obligation referred to in (1) shall be substantiated by means of redeemed certificates of origin referred to in Article 9e (1).

6. The minister in charge of economic affairs shall determine, by way of ordinance, the detailed scope of obligations referred to in (1) and (3), including the following: 1) the types of renewable energy sources, 2) the technical and technological parameters of generation of electricity or heat using renewable energy sources, 3) the requirements related to the measurements, recording and methods of calculation of electricity or heat generated using renewable energy sources using the installations which generate energy using the energy carriers referred to in Article 3 point 20 and other fuels, 4) the size and the method of calculation of the share of the electricity generated using renewable energy sources the purchase or generation of which shall be an obligation of the energy enterprise in the sale of electricity within 10 subsequent years, 5) a method of reflecting the costs of the purchase or electricity and heat generation to the purchase or generation of which the energy enterprises referred to in (1) and (3) shall be obliged in the prices of electricity and heat defined in their tariffs – allowing for the assumptions of the state energy policy and the obligations arising from international agreements.

7. By way of ordinance, the minister in charge of economic affairs shall determine the detailed scope of the obligation referred to in (2), including the following: 1) the technical and technological parameters of electricity cogenerated with heat, 2) the size and the method of calculation of the share of the electricity cogenerated with heat, including that generated in the energy enterprise's own sources, to the purchase of which the energy enterprise shall be obliged to in the sale of electricity, 3) the method of reflecting the costs of the purchase of the electricity to the purchase of which the energy enterprises referred to in (2) shall be obliged in the calculation of the electricity prices defined in the tariffs of the energy enterprises – allowing for the assumptions of the state energy policy and the obligations arising from international agreements.]

#### Article 9a

1. Any energy enterprise whose activity consists in electricity generation or trade in electricity, which sells the electricity to the final customers connected to the grid on the territory of the Republic of Poland shall be obliged to the following, in the scope specified by the provisions issued pursuant to (9): 1) acquire the certificate of origin referred to in Article 9e (1) and present it to the Chairman of ERO for redemption, or 2) pay a substitute fee, calculated as specified in (2).

2. The substitute fee shall be calculated according to the following formula:  $Oz = Ozj \times (Eo - Eu)$ , where the respective symbols denote the following:  $Oz$  – a substitute fee expressed in Polish zloty,  $Ozj$  – a substitute fee unit of 240 zloty per 1 MWh,  $Eo$  – the amount of electricity expressed in MWh which is based on the obligation to acquire and present certificates of origin for redemption referred to in Article 9e (1) in the given year,  $Eu$  – the amount of electricity expressed in MWh which has been documented in the certificates of origin referred to in Article 9e (1) presented by the energy enterprise for redemption in the given year.
3. The substitute fee unit referred to in (2) as  $Ozj$  shall be subject to an annual revaluation using the average annual total customer goods and services price index for the calendar year preceding the year for which the substitute fee is calculated specified in the announcement of the Chairman of GUS<sup>6</sup> in “Monitor Polski”, the Official Journal of the Republic of Poland.
4. The Chairman of ERO shall announce the revalued substitute fee unit referred to in (3) in the Bulletin of the Energy Regulation Office by 31 March each year.
5. The substitute fee for the preceding calendar year referred to in (1) point 2 shall constitute the revenue of the National Fund for Environmental Protection and Water Management and shall be liable to a separate bank account of the Fund by 31 March each year.
6. In the scope specified in the provisions issued on the basis of (9), the last resort supplier shall be obliged to purchase the electricity generated in the renewable energy sources connected to the grid on the area of operation of the last resort supplier offered by the energy enterprises which were granted licences for their generation; the purchase shall be made at the average electricity sale price in the preceding calendar year, referred to in Article 23 (2) point 18 letter b.
7. An energy enterprise whose activity consists in the trade in heat and the sale of that heat shall be obliged to purchase the heat offered generated using renewable energy sources connected to the grid and located on the territory of the Republic of Poland at the quantity not larger than the demand of the customers of that enterprise connected to the same grid to which the renewable energy sources are connected, in the scope specified by the provisions issued pursuant to (9).
8. An energy enterprise whose activity consists in electricity generation or trade in electricity, which sells that electricity to the final customers connected to the grid on the territory of the Republic of Poland shall be obliged to purchase the electricity offered cogenerated with heat in the energy sources connected to the grid and located on the territory of the Republic of Poland, in the scope specified by the provisions issued pursuant to (10).
9. By way of ordinance, the minister in charge of economic affairs shall determine the detailed scope of obligations referred to in (1), (6) and (7), including the following: 1) the types of the renewable energy sources, 2) the technical and technological parameters of generation of electricity or heat generated using renewable energy sources, 3) the requirements related to the measurements, recording and the method of calculation of the amount of electricity or heat generated using renewable energy sources using the installations which generate energy using the energy carriers referred to in Article 3 point 20 and other fuels, 4) the size and the method of calculation of the share of the electricity generated using renewable energy sources as a result of the obligation to acquire and present the certificates of origin for redemption referred to in Article 9e (1), in the sale of electricity to final customers, during 10 subsequent years, 5)

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<sup>6</sup> The Central Statistical Office (transl.)

the method of reflecting the following factors in the calculation of the prices of electricity and heat defined in the tariffs of energy enterprises and referred to in (1), (6) and (7): a) the costs of acquiring and presenting the certificates of origin for redemption, referred to in Article 9e (1), b) the substitute fee incurred pursuant to (1) point 2, c) the costs of the purchase of the electricity or heat to the purchase of which the energy enterprise shall be obliged – considering the state energy policy and the obligations arising of international agreements.

10. By way of ordinance, the minister in charge of economic affairs shall determine the detailed scope of the obligation referred to in (8), including the following:

- 1) the technical and technological parameters of electricity and heat in cogeneration,
- 2) the size and the method of calculation of the share of the electricity cogenerated with heat to the purchase of which the energy enterprise shall be obliged to – including the purchase of such energy in the enterprise's own sources, in the sale of electricity,
- 3) the method of reflecting the costs of purchase of the electricity to the purchase of which the energy enterprises shall be obliged to in the calculation of the prices of electricity specified in the tariffs of the energy enterprises referred to in (8) – considering the state energy policy and the obligations arising of international agreements.

### **Article 9b**

Energy enterprises whose activity consists in the transmission and distribution of heat shall be responsible for the grid operation and securing the grids in their possession and for their cooperation with other energy enterprises and the customers who use the grid, on the terms specified in an ordinance issued on the basis of Article 9 (7) and (8).

### **Article 9c**

1. Depending on the scope of their activity, a transmission system operator, distribution system operator, gaseous fuels storage system or LNG system operators as well as an interconnected gas system operator, shall use objective and transparent rules which ensure equal treatment of the system users and meet the environment protection requirements, and shall be responsible for:
  - 1) the security of supply of gaseous fuels by securing the operation of the gas system and by executing the agreements concluded with the system users;
  - 2) a coordinated and effective grid operation applying the required reliability of supply of gaseous fuels and their quality;
  - 3) the use, maintenance and repairs of the grid, installations and equipment, including the connections of the grid with other gas systems, in a way that guarantees the reliability of the operation of the gas system;
  - 4) ensuring the long term capability of the gas system to satisfy the substantiated needs with respect to the national and international transmission of gaseous fuels, their distribution and storage or natural gas liquefaction, as well as with respect to the expansion of the gas system and, where applicable, the expansion of the connections of the gas system with other gas systems;
  - 5) cooperation with other gas system operators or energy enterprises to ensure a reliable and effective operation of gas systems and their coordinated development;

- 6) managing the capacity of storage installations and LNG installations;
  - 7) managing the flows of gaseous fuels and maintaining the quality parameters of those fuels within the gas system and on its connections to other gas systems;
  - 8) providing services indispensable to a correct operation of the gas system;
  - 9) balancing the system and managing the restrictions within the gas system as well as conducting settlements with the system users which result from the unbalanced gaseous fuels delivered to and collected from the system;
  - 10) supplying the system users and other gas system operators with information on the terms of provision of gas transmission or distribution, gaseous fuels storage services or natural gas liquefaction services, including the information about the cooperation with the interconnected gas systems;
  - 11) implementing the restrictions in the supply of gaseous fuels, introduced pursuant to the provisions issued on the basis of Article 11 (6) and (7).
2. An electricity transmission system operator or a connected electricity system operator within the scope of the transmission system shall apply objective and transparent rules which ensure an equal treatment of the system users and meet the environment protection requirements, and shall be responsible for:
- 1) the security of electricity supply by ensuring the secure operation of the electricity system and an appropriate transmission capacity in the electricity transmission grid;
  - 2) operation of the transmission grid in an effective manner, maintaining the required reliability of electricity supply and the quality of supply as well as coordinating the operation of the coordinated 110 kV grid in cooperation with the electricity distribution grid operators;
  - 3) the use, maintenance and repairs of the grid, installations and equipment, including the connections of the grid with other electricity systems, in a way that guarantees the reliability of the operation of the electricity system;
  - 4) ensuring long term operability of the electricity system in order to satisfy the substantiated needs of national and cross-border transmission of electricity, including the expansion of the transmission grid, and – where applicable – the expansion of the connections of the grid to other electricity systems;
  - 5) cooperation with other electricity system operators or energy enterprises to ensure a reliable and effective operation of electricity systems and their coordinated development;
  - 6) using the generating units capacity connected to the transmission grid and the generating units of maximum capacity of 50 MW or higher connected to the coordinated 110 kV grid with a consideration for the agreements with the transmission system users and the technical restrictions of that system;
  - 7) managing the transmission capacity of the connections to other electricity systems;
  - 8) purchasing system services indispensable to the correct operation of the electricity system, its reliability and the maintenance of quality parameters of electricity;
  - 9) balancing the electricity system, including the balancing of the ongoing electricity demand with the supply of electricity in the national electricity system, the management of the system restrictions and conducting a settlement system with the system users as a result of: a) unbalanced electricity supplied to and collected from the national electricity system, b) managing the system restrictions;

10) managing the electricity flows in the electricity transmission system in coordination with other connected electricity systems and in cooperation with the electricity distribution system operators in the coordinated 110 kV grid, with a consideration for the technical restrictions of that system;

11) purchasing electricity in order to compensate the losses suffered in the transmission grid during the transmission of electricity in that grid, as well as using transparent and non-discriminative market procedures while purchasing that energy;

12) supplying the grid users and other electricity system operators with which the transmission system is connected with information on the terms of provision of the electricity transmission services, including the services of the cross-border exchange and grid management services as well as electricity balancing services, necessary to obtain access to the transmission grid and to use it;

13) developing action plans for large-scale electricity system failure scenarios and the plans of contingency reconstruction of the system after such a failure;

14) implementing the restrictions in the supply of electricity, introduced pursuant to the provisions issued on the basis of Article 11 (6) and (7).

15) developing a normal transmission grid operation system and cooperating with the electricity distribution system operators on the development of the normal operation system for the coordinated 110 kV grid.

3. An electricity distribution system operator or an electricity system operator connected with respect to distribution systems shall apply objective and transparent rules which ensure an equal treatment of the system users and meet the environment protection requirements, and shall be responsible for: 1) operation of the distribution grid in an effective manner, maintaining the required reliability of electricity supply and the quality of supply as well as coordinating the operation of the coordinated 110 kV grid in cooperation with the electricity transmission grid operator;

2) the use, maintenance and repair of the distribution grid in a way that ensures the reliability of the operation of the distribution system;

3) ensuring an expansion of the distribution grid, and – where applicable – expanding the intersystem connections within the area of their operation;

4) cooperation with other electricity system operators or energy enterprises to ensure a consistent operation of electricity systems and their coordinated development, as well as a reliable and effective operation of those systems;

5) managing the generating units capacity connected to the distribution grid, except for the generating units of capacity equal to 50 MW or higher connected to the coordinated 110 kV grid;

6) balancing the electricity system, except for the balancing of the ongoing electricity demand with the supply of the electricity; the management of the system restrictions and conducting a settlement system with the system users as a result of: a) unbalanced electricity supplied to and collected from the distribution system, b) managing the system restrictions;

7) managing the electricity flows in the distribution grids and cooperating with the electricity transmission system operator with respect to the management of electricity flows in the coordinated 110 kV grid;



- 8) purchasing electricity in order to compensate the losses suffered in the distribution grid during the distribution of electricity in that grid, as well as using transparent and non-discriminative market procedures while purchasing that energy;
  - 9) supplying the grid users and other electricity system operators to which the system is connected with the information on the terms of provision of electricity distribution and grid management services indispensable for the access to the distribution grid and the use of that grid;
  - 10) cooperation with the electricity transmission system operator on the development of the plans referred to in (2) point 13;
  - 11) planning the development of the distribution grid with a consideration for the projects related to energy efficiency, energy demand-side management and the development of the generating capacity connected to the distribution grid;
  - 12) complying with the terms of cooperation with the electricity transmission system operator with respect to the operation of the coordinated 110 kV grid;
  - 13) developing a new normal grid operation system in agreement with the adjacent electricity distribution system operators and in cooperation with the electricity transmission system operator with respect to the development of the normal grid operation system for the coordinated 110 kV grid.
4. While performing their business activity, the system operators referred to in ( 1)-(3), shall be obliged in particular to comply with the provisions governing the protection of confidential information and other information protected by the law.
  5. Should the execution of the tasks referred to in (1)-(3) necessitate the use of the grid, installations or other equipment belonging to other system operators or energy enterprises by the transmission or distribution system operator, such grids, installations or equipment shall be made available on the terms specified in Act and on the conditions included in the gaseous fuels or electricity transmission or distribution agreement.
  6. Within the field of his activity, the electricity system operator shall be obliged to ensure that all the entities have the priority in the services of transmission of electricity generated using renewable energy sources and in cogeneration with heat, at the same time ensuring the reliability and security of the national electricity system.
  7. Within the field of their activity, the electricity system operator shall be obliged to accept the electricity cogenerated with heat using the sources located on the territory of the Republic of Poland and connected directly to the grid of that operator.
  8. The transmission or distribution system operator shall collect charges for the use of the national electricity system on the terms specified in the provisions issued on the basis of Article 46 (3) and (4) and may additionally request that its customers connected to the electricity system provide them with information on the amount of the electricity used by those customers, which will be used to calculate that charge.
  9. Depending on the scope of their activity, by 31 March each year the transmission system operator shall report to the minister in charge of economic affairs on the execution of the tasks in the field of security of operation of the gas or electricity system for the preceding calendar year; such a report shall include the following issues: 1) the transmission capacity of the grid and the power of the energy sources connected to it;  
2) the quality and the maintenance level of the grid;

3) the actions taken in order to cover the peak demand for gaseous fuels or electricity, and if the supply of those fuels or electricity to the grid had been interrupted, the report should include

4) the plans developed in the scope specified in points 1 through 3.

10. The transmission system operators shall cooperate with the European Commission in the field of the development of transeuropean transmission grids.

11. By the fifteenth day of the month following the end of the quarter, the electricity transmission system operator reports to the Chairman of ERO on the amount of the electricity imported in the past quarter from the countries which are not Member States of the European Union.

12. Within their field of activity, the electricity system operator shall be obliged to report to the Chairman of ERO on the amount of electricity generated using renewable energy sources connected to their grid and introduced to the electricity system, broken down by the individual types of sources, not later than on: 1) 31 July – for the period between 1 January and 30 June of the current year;

2) 31 January – for the period between 1 July and 31 December of the preceding year.

#### **[Article 9d**

In order to ensure the secure operation of the electricity grid, the energy enterprise whose activity consists in generating electricity and which are connected to the grid shall be obliged to generate the electricity or remain ready to generate it if it is required to ensure the quality, continuity and reliability of supply.]

**Article 9d – in the scope referring to the obligation to gain independence in terms of the legal form from the distribution system operators – shall be applicable since 1.07.2007 (Journal of Laws of 2005 No. 62, Item 552).**

#### **Article 9d**

1. The transmission system operator, the distribution system operator and the interconnected system operator which is part of a structure of a vertically integrated undertaking should remain independent with respect to their legal and organisational form and decision-making capabilities from other activities not related to: 1) transmission, distribution and storage of gaseous fuels or liquefaction of natural gas, or 2) transmission or distribution of electricity.

2. In order to ensure the independence of the operators referred to in (1), all of the following conditions must be fulfilled: 1) the persons responsible for the management may not participate in the management structures of the vertically integrated undertaking or of an energy enterprise whose activity consists in the business activity not related to gaseous fuels or electricity, nor may they be directly or indirectly responsible for the ongoing business activity other than that which is a result of the tasks of the operators;

2) the persons responsible for the management of a gas system or electricity system should have a guaranteed capability to act independently;

3) operators should have the right to issue independent decisions in relation to the assets managed that are required for their operation, including the use, maintenance, repairs or expansion of the grid;

4) the managers of vertically integrated undertakings should not command the operators on in the field of their ongoing operation nor issue decisions with respect to the construction of the grid or its modernisation, unless such commands or decisions pertained to the actions of the operators which would otherwise exceed an approved financial plan or another equivalent document.

3. Any actions intended to ensure the independence of operators should allow the operation of such coordination mechanisms that will ensure the protection of proprietary rights with respect to the inspection of the management activity of the operators and their business activity with respect to the financial viability of the assets they manage, particularly in relation to the way they manage the profit from capital investments or approve the annual financial plan or an equivalent document or specify restrictions for the total indebtedness of their enterprise.

4. The operators shall develop and be responsible for the implementation of programmes in which they define the projects which need to be undertaken in order to ensure a non-discriminative treatment of the system users, including the detailed obligations of the staff which are a consequence of such programmes.

5. Until 31 March each year, the operators shall submit reports to the Chairman of ERO which shall contain the descriptions of the actions taken in the preceding year in order to implement the programmes referred to in (4).

6. The Chairman of ERO shall announce the reports referred to in (5) in the ERO Bulletin at the expense of the operators.

7. Provisions (1)-(6) shall not be applicable to the following distribution system operators: 1) the electricity distribution system operator, if the number of customers connected to the grid does not exceed one hundred thousand;

2) the operator managing an electricity system of an annual electricity consumption of less than 3 TWh in 1996, in which less than 5 per cent of the annual electricity consumption originated from other electricity systems connected to it;

3) the gas system operators, if the number of customers connected to the grid does not exceed one hundred thousand and the sale of gaseous fuels within a year does not exceed 100 million c.m.

## **Article 9e**

1. The energy generated at renewable energy sources shall be certified to have originated there by means of the so called “certificate of origin”, which confirms its origin.

2. A certificate of origin shall particularly contain the following information: 1) the name and address of the energy enterprise which generates energy in the renewable energy source;

2) the details of the location, type and capacity of the renewable energy source in which the electricity has been generated;

3) the data on the quantity of the electricity generated in the specific renewable energy source the certificate of origin at hand refers to;

- 4) the period in which the electricity has been generated.
3. The certificate of origin shall be issued by a decision of the Chairman of ERO upon a motion of the energy enterprise whose activity consists in generating electricity using renewable energy sources, submitted via the electricity system operator within 7 days of the date of receipt of the request.
4. The request referred to in (3) shall contain as follows: 1) the name and address of the energy enterprise which generates energy in the renewable energy sources;
  - 2) the name of the location, type and capacity of the renewable energy source in which the electricity has been generated;
  - 3) the data on the amount of the electricity generated in the renewable energy source at hand;
  - 4) the period in which the electricity has been generated.
5. The electricity system operator submits the request referred to in (3) to the Chairman of ERO along with the confirmation of the data on the amount of electricity introduced into the grid, acquired on the basis of indications of metering and settlement equipment within 3 days from the date of its receipt.
6. An energy enterprise which generates electricity using renewable energy sources or trades in it and sells that electricity to customers other than those listed in Article 9a (1) shall be obliged to submit the certificates of origin possessed which refer to the energy sold to the energy enterprise which purchases it.
7. The certificate of origin shall be redeemed by the Chairman of ERO by means of a decision.]

### **Article 9e<sup>7</sup>**

1. The energy generated at renewable energy sources shall be certified to have originated there by means of the so called “certificate of origin”, which confirms its origin.
2. A certificate of origin shall particularly contain the following information: 1) the name and address of the energy enterprise which generates electricity in the renewable energy sources;
  - 2) the name of the location, type and capacity of the renewable energy source in which the electricity has been generated;
  - 3) data on the quantity of the electricity generated in the specific renewable energy source the certificate of origin at hand refers to;
  - 4) the specification of the period in which the electricity was generated, broken down by calendar quarters.
3. The certificate of origin shall be issued by a decision of the Chairman of ERO upon a motion of the energy enterprise whose activity consists in generating electricity using renewable energy sources, submitted via the electricity system operator within 14 days of the date of receipt of the request. Certificates of origin are subject to the relevant provisions of the Administrative Procedure Code regarding the issue of certificates.

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<sup>7</sup> The new wording of art. 9e becomes effective on 1.10.2005 (Journal of Laws of 2005 No. 62, Item 552)

4. The request referred to in (3) shall contain as follows: 1) the name and address of the energy enterprise which generates electricity in the renewable energy sources;
  - 2) the name of the location, type and capacity of the renewable energy source in which the electricity has been generated;
  - 3) the data on the amount of the electricity generated in the renewable energy source at hand;
  - 4) the specification of the period in which the electricity was generated, broken down by calendar quarters.
5. The electricity system operator submits the request referred to in (3) to the Chairman of ERO along with the confirmation of the data on the amount of electricity introduced into the grid, acquired the basis of indications of metering and settlement equipment within 14 days from the date of its receipt.
6. The property rights arising of the certificate of origin are transferable and constitute an exchangeable commodity, referred to in Article 2 point 2 letter d of the Act of 26 October 2000 on the commodity exchanges (Journal of Laws No. 103, Item 1099, with subsequent amendments)<sup>8</sup>.
7. The property rights arising from the certificate of origin come into existence at the moment the certificate of origin is first registered on the basis of the information about the certificates of origin issued referred to in ( 17) on the account of the Register of Certificates of Origin maintained by the entity referred to in (9), and are assigned to the person who is the owner of that account.
8. The property rights arising of the certificate of origin are transferred at the moment an appropriate entry is made in the Register of Certificates of Origin.
9. The Register of Certificates of origin is maintained by the entity which manages the commodity exchange as defined in the Act of 26 October 2000 on commodity exchanges and which organizes the trade in property rights on that exchange which are derived from certificates of origin.
10. The entity referred to in (9) shall be obliged to maintain the Register of Certificates of Origin in a way that ensures the following is possible: 1) identification of the entities which hold the property rights derived from the certificates of origin;
- 2) identification of the property rights arising from the certificates of origin and the amount of electricity equivalent to those rights;
- 3) the consistency of the amount of electricity covered by the certificates of origin registered and the amount of electricity equivalent to the property rights arising from those certificates.
11. Upon a motion of the energy enterprise referred to in Article 9a (1), the entity referred to in (9) shall be obliged to issue a document confirming the property rights arising from the certificates of origin the requesting entity is entitled to and the amount of electricity those rights pertain to.

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<sup>8</sup> The amendments to that Act referred to were published in the Journal of Laws of 2002 No. 200, Item 1686, of 2003 No. 50, Item 424, No. 84, Item 774, and No. 223, Item 2216, and of 2004 No. 64, Item 594, and No. 273, Item 2703. The new wording of Article 9e shall become effective on 1.10.2005 (Journal of Laws of 2005 No. 62, Item 552).

12. An entry in the Register of Certificates of Origin and the changes introduced in the Register shall be subject to a fee at the amount reflecting the costs of maintaining the Register.
13. Upon a motion of the energy enterprise referred to in Article 9a (1), which is the holder of the property rights arising from the certificate of origin, the Chairman of ERO redeems the certificate of origin by a decision, completely or partially.
14. A certificate of origin redeemed by 31 March of the given calendar year shall be taken into consideration in the course of the verification of the compliance of the entity with the obligation referred to in Article 9a (1) applicable for the preceding calendar year.
15. The property rights arising from the certificate of origin expire upon its redemption.
16. While submitting the request for redemption of the certificate of origin to the Chairman of ERO, the energy enterprise referred to in Article 9a (1) shall be obliged to enclose the document referred to in (11).
17. The Chairman of ERO shall inform the entity which maintains the Register of Certificates of Origin referred to in (9) about the certificates of origin issued and redeemed.
18. The energy enterprise which generates electricity using renewable energy sources of a total capacity which does not exceed 5 MW shall be discharged from: 1) the fees referred to in ( 12); 2) the treasury fee applicable for issuing the certificate of origin; 3) the treasury fee applicable for issuing the licence for the generation of electricity using renewable energy sources referred to in Article 32 (1) point 1.

## **Article 9f**

1. Every five years, the minister in charge of economic affairs shall present a report to the Council of Ministers which will define the objectives regarding the share of the electricity generated using renewable energy sources located on the territory of the Republic of Poland in the national electricity consumption during the ten subsequent years, following the obligations related to climate protection arising from international agreements and the measures designed to attain those objectives.
2. The national consumption of electricity shall be calculated as the sum of the national production of electricity, including the production of that electricity for the domestic needs and the import of electricity, minus the amount of the electricity exported.
3. Upon a motion of the minister in charge of economic affairs, the Council of Ministers shall accept the report referred to in (1).
4. Every two years, on the basis of the report submitted by the Chairman of ERO referred to in Article 24 (1), the minister in charge of economic affairs shall issue a report containing an analysis of the pursuit of the quantitative objectives and the achievements in the field of generation of electricity using renewable energy sources. A report required by the international agreements on environment protection shall be issued in agreement with the minister in charge of the environment.
5. The minister in charge of economic affairs announces the reports referred to in (1) and (4) in "Monitor Polski", the Official Journal of the Republic of Poland by 27 October of the year in which an obligation to present a report is applicable. The report referred to in (1) shall be announced upon its adoption by the Council of Ministers.

## Article 9g

1. The transmission system operator and the distribution system operator shall respectively be obliged to develop the instructions on the operation and use of the transmission grid and the instructions on the operation and use of the distribution grid, hereafter referred to as "the instructions".

2. The transmission system operator and the distribution system operator shall inform the system users in writing or by means of other communication means used by the system operator about the public access to the draft of the respective instructions or their changes and about the possibility to submit comments which specify the location and the date of their submission, not shorter than 14 days from the date the draft or its amendments become publicly available .

3. The instructions prepared for gas grids shall specify the detailed terms of use of those grids by the system users and the terms and the methods of grid operation, use and the planning of the development of those grids, including but not limited in their scope to:

- 1) connection of distribution grids, final customer equipment, intersystem connections and direct pipelines;
- 2) technical requirements for the equipment, installations and grids including the necessary auxiliary infrastructure;
- 3) the criteria of the security of operation of the gas system;
- 4) the cooperation between the gas system operators;
- 5) the transfer of information between energy enterprises and between energy enterprises and customers;
- 6) the quality parameters of gaseous fuels and the quality standards of the services provided to the system users.

4. The instructions prepared for electricity grids shall specify the detailed terms of use of those grids by the system users and the terms and the methods of grid operation, use and the planning of the development of those grids, including but not limited to: 1) connection of generation equipment, distribution grids, the final customer equipment, intersystem connections and direct lines;

- 2) technical requirements for the equipment, installations and grids including the necessary auxiliary infrastructure;
- 3) the criteria of security of operation of an electricity system, including the cooperation on the plans referred to in Article 9c (2) point 13;
- 4) cooperation between the electricity systems operators, including the cooperation in the field of coordinated 110 kV grid;
- 5) the transfer of information between energy enterprises and between energy enterprises and customers;
- 6) the quality parameters of electricity and the quality standards of the services provided to the system users.

5. The distribution system operator shall include the requirements specified in the instructions of operation and use of the transmission grid developed by the transmission system operator in his instructions of the operation and use of the distribution grid.

6. The instructions issued by the transmission system operator should also include a separate section dealing with system balancing and the management of system restrictions, which should specify: 1) the conditions which have to be fulfilled with respect to system balancing and the management of system restrictions;
- 2) the following procedures: a) the procedure for submitting and accepting of sale agreements and the electricity supply and collection programmes for execution by the electricity transmission system operator, b) the procedures for submitting gaseous fuels or electricity transmission agreements to the transmission system operator, c) the system balancing procedures, including the methods of settlement of the costs of its balancing, d) the procedures governing the management of system restrictions, including the method of settlement of the costs of those restrictions, and e) the emergency procedures;
- 3) the procedures for circumstances which threaten the security of supply in gaseous fuels or electricity;
- 4) the procedures and the scope of the information exchanged necessary for system balancing and the management of system restrictions;
- 5) the criteria of the management of electricity generating units capacity and the management for the connections of gas or electricity systems.
7. The transmission system operator shall submit the part of the instructions which deals with the transmission system balancing and the management of system restrictions for approval by a decision to the Chairman of ERO, including the information on the comments from system users submitted and the procedure of their analysis.
8. The Chairman of ERO shall announce the approved part of the instructions referred to in (7) in the ERO Bulletin at the expense of the system operator.
9. Within 60 days from the date of announcement of the approved part of the instructions, the distribution system operator referred to in (7) shall present the part of the instructions which deals with the distribution system balancing and the management of system restrictions to the Chairman of ERO for approval, including the information on the comments from system users submitted and the procedure of their analysis.
10. The transmission system operator and the distribution system operator shall publish the binding instructions on their Web sites and shall make them available to the public at their head offices.

## **Article 9h**

1. Upon a motion of the owner of the transmission grid, or the distribution grid, or a gaseous fuels storage installation, or a natural gas liquefaction installation, the Chairman of ERO shall issue a decision designating the following operators for a specific time not longer than the term of validity of the licences the operators of transmission systems, distribution systems, gaseous fuels storage systems, LNG systems or the interconnected system operators, and shall specify the area on which the business activity shall be performed.
2. While designating the operators pursuant to (1), the Chairman of ERO shall allow for their economic efficiency and the effectiveness of their management of gas or electricity systems.

## **Article 9i**



1. The last resort suppliers shall be designated by the Chairman of ERO by means of a tender. The participation in the tender is open to energy enterprises with valid licences for trade in gaseous fuels or electricity.
2. The Chairman of ERO shall announce, organise and conduct the tender.<sup>9</sup>
3. The announcement about the tender shall specify:
  - 1) the scope of the universal services which are the subject of the tender;
  - 2) the name and the location of the head offices of the transmission or distribution system operator and the area of the Republic of Poland for which the last resort supplier is to be designated;
  - 3) the place and the date at which the tender documentation will be made available.
4. The Chairman of ERO shall publish the announcement about the tender in the Bulletin of the Energy Regulatory Office.
5. The Chairman of ERO shall specify in the tender documentation the conditions which should be fulfilled by an energy enterprise participating in the tender; the documentation shall also specify the requirements the offer should meet as well as the offer evaluation criteria; the tender documentation may also specify the terms of business activity in the field of provision of universal services by the last resort supplier.
6. The Chairman of ERO shall base the offer evaluation criteria and the choice of the offer of the last resort supplier on the following criteria:
  - 1) the experience of the offering party and the economic efficiency of their business activity;
  - 2) the technical conditions and the amount of financial assets in possession of the offering party necessary to perform the tasks of an last resort supplier.
7. The tender documentation shall be made available upon a fee which may not exceed the costs of the preparation of that documentation; the fee shall be collected by the Energy Regulatory Office.
8. The Chairman of ERO shall issue a decision which renders the tender null and void if the provisions of the law have been materially breached.
9. The Chairman of ERO shall issue a decision declaring the tender unresolved if:
  - 1) none of the participants fulfilled the conditions for participation in the tender;
  - 2) no energy enterprise took part in the tender by the date indicated in the tender documentation.
10. Should the last resort supplier fail to be designated by means of a tender, the Chairman of ERO shall appoint such a last resort supplier by means of a decision for a period of 12 months.
11. After a last resort supplier has been designated by means of a tender or appointed, the Chairman of ERO shall introduce changes in the licence granted to the energy enterprise designated as the last resort supplier, supplementing it with the following information:
  - 1) the terms on which the economic activity shall be performed in the scope of the provision of universal services;

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<sup>9</sup> Article 9i (2) shall become effective on 1.07.2007 (Journal of Laws of 2005 No. 62, Item 552).

2) the energy enterprise whose activity consists in the transmission or distribution of gaseous fuels or electricity which is the operator of the system to which household customers of gaseous fuels or electricity are connected who do not have the right to choose the supplier.

12. The minister in charge of economic affairs shall determine, by way of ordinance, the procedure of announcing tenders which will ensure that the entities interested in the tender are informed about it, and shall detail the requirements regarding the content of the tender documentation as well as the terms and the procedure of organising and conducting the tender. The regulation shall be guided by the desire to ensure transparent tender conditions and criteria and to ensure the equal treatment of its participants.

## Article 9j

1. An energy enterprise whose activity consists in foreign trade in natural gas shall be obliged to maintain a reserve of that gas at the size of 3 per cent of the annual import volume of the natural gas planned by such an enterprise.
2. The energy enterprise referred to in (1) shall be obliged to ensure the availability of the reserve of the natural gas referred to in (1) in case of an unpredicted increase of consumption of natural gas by the customers, interruptions of supply of the imported natural gas, failure of the grids of other gas system operators or a threat to the security of operation of that system.
3. In order to ensure the security of operation of an electricity system, an energy enterprise whose activity consists in the electricity generation and which is connected to the electricity grid belonging to that system shall be obliged to generate electricity or remain in readiness to generate it if it is necessitated to ensure the quality of the energy supply and the continuity and reliability of that energy for customers or to avoid a threat to the safety of persons or material loss.
4. In case of a serious and unpredicted failure or destruction of equipment, installations, grids or buildings which causes an interruption in their use and the loss of their properties which jeopardizes the security of the operation of the gas or electricity system, the transmission system operator shall take the necessary measures in cooperation with the other entities involved to restore a correct operation of that system according to the procedures specified in Article 9g (6).
5. The actions referred to in (4) shall consist in the following:
  - 1) supplying the gaseous fuel to the system or maintaining readiness to supply it;
  - 2) generating electricity or maintaining readiness to generate it;
  - 3) activating an additional a) supply of gaseous fuels, including such that is kept as the reserve referred to in (1), b) electricity generating units;
  - 4) introducing a restriction of or suspending the consumption of gaseous fuels or electricity by the customers of those fuels or energy on the specific area of the Republic of Poland;
  - 5) using the telecommunications grid used to operate the grid;.
6. The gas transmission system operator or the electricity transmission system operator shall inform the minister in charge of economic affairs and the Chairman of ERO about the occurrence of the circumstances referred to in (4).
7. The costs borne by the energy enterprise in relation to the actions taken in response to the obligation referred to in (1) shall be considered as operational costs referred to in Article 45 (1).

## Article 9k

The transmission system operator shall have the legal form of a stock company whose sole shareholder is the State Treasury.

## Article 10

1. An energy enterprise whose activity consists in electricity or heat generation shall be obliged to maintain a reserve of the fuels at the amount which will allow it to maintain the continuity of electricity or heat supply to its customers.
2. The energy enterprise referred to in (1) shall be obliged to allow inspections with respect to their compliance with the requirements regarding the size of fuel reserves specified in the ordinance referred to in (6).
3. The inspection referred to in (2) shall be conducted on the basis of a written authorisation issued by the Chairman of ERO which should include the following information:
  - 1) a designation of the person who performs the inspection;
  - 2) the name of the energy enterprise inspected;
  - 3) a definition of the scope of the inspection.
4. The persons authorised by the Chairman of ERO to perform inspections shall be considered as authorised to:
  - 1) enter the premises and the locations where the reserves are collected and stored;
  - 2) analyse the documents containing the records of the reserves maintained.
5. The inspection conducted shall be followed by a report which shall be presented to the bodies of the enterprise inspected.
6. By way of ordinance, the minister in charge of the economic affairs shall determine the size of the fuel reserves referred to in (1), the method of their collection and a detailed procedure of inspection of the status of such reserves, considering the type of the business activity performed and the technical and organisational capabilities with respect to reserve accumulation.

## **Article 11**

1. Under the circumstances of:
  - 1) a threat to the energy security of the Republic of Poland consisting in a long term lack of balance on the fuel and energy market,
  - 2) a threat to the safety of people,
  - 3) a threat of significant material loss – restrictions in the sale of solid or liquid fuels as well as in the supply and consumption of gaseous fuels, electricity or heat may be introduced for a specified period of time on the territory of the Republic of Poland or its part.
2. The restrictions in the sale of solid or liquid fuels shall consist in the sale of those fuels on the basis of purchase authorisation documents issued to the customer which authorise them to purchase a stated amount of such fuels.
3. The restrictions in the supply and consumption of gaseous fuels, electricity or heat shall consist in:
  - 1) limiting the maximum hourly and daily consumption of gaseous fuels;
  - 2) limiting the maximum electricity consumption used and a restriction of the daily electricity consumption;
  - 3) a reduction or interruption of heat supply.
4. The restrictions introduced on the terms specified in (2) and (3) shall be subject to inspection with respect to their application.
5. The application of the restrictions may be inspected by the following bodies:
  - 1) the Chairman of ERO – in relation to the gaseous fuels and electricity supplied by means of energy grids;

- 2) the heads of the voivoidship level authorities {Pol. *województwa*} – in relation to the solid and liquid fuels and heat;
- 3) the authorities relevant for fuel and energy regulation of the economy referred to in Article 21a – with respect to the units referred to therein.
6. The Council of Ministers shall determine, by way of ordinance, detailed terms and procedures of introduction of the restrictions referred to in (1), considering the significance of the customers to the economy and the operation of the state, and particularly in the context of the tasks performed by such customers.
7. Upon a motion of the minister in charge of economic affairs, the Council of Ministers may issue an ordinance which introduces restrictions in the sale of solid or liquid fuels and in the supply and consumption of gaseous fuels, electricity and heat on the territory of the Republic of Poland or its part for a limited period of time should the threats referred to in (1) occur.
8. Energy enterprises shall not be held responsible for the consequences of the restrictions introduced by way of the ordinance referred to in (7).
9. The minister in charge of economic affairs shall immediately inform the European Commission and the Member States of the European Union and the Member States of the European Free Trade Agreement (EFTA), the parties to the European Economic Zone agreement, about the restrictions introduced referred to in (7) in relation to the supply and consumption of natural gas and electricity.

## Chapter 3 Energy Policy

### Article 12

1. The main body of the government relevant for the issues of energy policy shall be the Minister of Economy<sup>10</sup>.
2. The tasks of the Minister of Economy with respect to the energy policy shall include the following:
  - 1) preparation of the proposal of the state energy policy and coordination of its implementation;
  - 2) specifying the detailed terms of planning and operation of fuel and energy supply systems according to the procedure and in the scope specified in the act of law;

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<sup>10</sup> At present, in Article 12 and in Article 13 in (1) and (2): the minister in charge of economic affairs

- 3) supervising the security of supply in gaseous fuels and electricity and the supervision of the operation of the national energy systems to the extent specified in the act of law;
- 4) coordination with the voivoidship governor and local authorities in the issues related to planning and construction of fuel and energy supply systems;
- 5) coordination of the cooperation with international government organisations to the extent specified in the act of law;
- 6) repealed.

**{ (3) in Article 12 deleted }**

### **Article 13**

The objective of the state energy policy is to ensure the energy security of the country, to increase the competitiveness of the economy and its energy efficiency as well as to protect the environment.

### **Article 14**

The state energy policy shall particularly specify the following: 1) the fuel and energy balance of the country;

- 2) the generating capacity of the national sources of fuels and energy;
- 3) the transmission capacity, including the cross-border connections;
- 4) the energy efficiency of the economy;
- 5) the actions related to the environment protection;
- 6) the development of the use of renewable energy sources;
- 7) the size and the types of fuel reserves;
- 8) the directions of the restructuring processes and the property transformation of the fuel and energy sector;
- 9) the fields of the research and development work;
- 10) international cooperation.

### **Article 15**

1. The state energy policy shall be prepared following the rules of the sustainable development of the country and shall include: 1) an assessment of the implementation of the state energy policy in the preceding period; 2) a forecast part which shall cover a period not shorter than 20 years ahead;

3) an executive programme for at least 4 years, including the instruments of its implementation.

2. The state energy policy shall be prepared once in every 4 years.

### **Article 15a**

1. Upon the request of the minister in charge of economic affairs the Council of Ministers shall adopt the state energy policy.
2. The minister in charge of economic affairs shall announce the state energy policy adopted by the Council of Ministers by publishing it in “Monitor Polski”, the Official Journal of the Republic of Poland.

### **Article 15b**

1. By 30 June of each year, the minister in charge of economic affairs shall prepare reports on the results of the supervision of the security of supply in natural gas and electricity.
2. The reports referred to in (1) shall particularly include the following information:
  - 1) the demand and supply of natural gas and electricity;
  - 2) the sources and directions of supply of the national economy in natural gas and electricity and the potential to dispose of those sources;
  - 3) the condition of the technical infrastructure of the gas and electricity sector;
  - 4) the actions taken to cover the peak demand for natural gas and electricity and the procedures to be followed in case of a shortage of supply;
  - 5) the impact of the gas and electricity sector on the natural environment;
  - 6) the level of reserves a) of natural gas, b) of the fuels used to generate electricity;
  - 7) the economic condition of energy enterprises, including the price competitiveness of the natural gas and electricity;
  - 8) the effectiveness of the measures taken in order to ensure the security of supply of natural gas and electricity;
  - 9) the expected demand for natural gas and electricity;
  - 10) the new planned or currently constructed sources of electricity or natural gas transmission capacity.
3. The reports referred to in (1) shall also include the conclusions made as a result of the supervision of the security of supply in natural gas and electricity.
4. The minister in charge of economic affairs shall announce the reports referred to in (1) in Monitor Polski, the Official Journal of the Republic of Poland, by 31 July of the given year.
5. The minister in charge of economic affairs submits the reports referred to in (1) to the European Commission by 31 August:
  - 1) of each year – in the case of reports on natural gas;
  - 2) every 2 years – in the case of reports on electricity.

### **Article 15c**

1. In cooperation with the minister in charge of the State Treasury and the Chairman of the Office of Competition and Consumer Protection, the Chairman of ERO and shall prepare a report about cases of misuse of the dominating position by energy enterprises and their behaviours in breach of the rules of competition on the electricity market and shall submit the report to the European Commission by 31 July each year.

2. The report referred to in (1) shall contain the following information:

- 1) a change of the property structure of energy enterprises operating on the electricity market;
- 2) the actions taken to ensure a sufficient diversity of market players and to increase the competition;
- 3) the connections to the systems of other countries.

## **Article 16**

1. The energy enterprises whose activity consists in the transmission or distribution of gaseous fuels or energy shall prepare development plans for their respective areas of operation aimed to satisfy the current and the future demand for gaseous fuels or energy, with a consideration of the local land utilisation plan or the directions of development of the communes specified in the study of conditions and directions of the spatial planning of the commune area.

2. The enterprises referred to in (1) shall prepare the development plans of response to the current and the future demand for gaseous fuels, electricity or heat for the periods not shorter than three years.

3. The plans referred to in (1) should particularly specify the following: 1) the expected scope of supply of gaseous fuels, electricity or heat;

2) the projects aimed at the modernisation, expansion or construction of grids and possibly the new sources of gaseous fuels, electricity or heat, including renewable ones;

2a) the projects aimed at the modernisation, expansion or construction of connections to gas systems or electricity systems of other countries;

3) the projects which rationalise the use of fuels and energy by the customers;

4) the intended method of investment funding;

5) the expected revenue necessary to implement the plans;

6) the expected investment implementation schedule.

4. The plans referred to in (1) should minimise the costs of the investments and the costs borne by the energy enterprise so as to ensure that the expenses and the costs associated with them do not cause an extensive increase of prices and fee rates of gaseous fuels, electricity or heat in the individual years, while ensuring the continuity, reliability and quality of the supply.

5. In order to rationalize the investment projects, while preparing the plans referred to in (1) the energy enterprises whose activity consists in the transmission or distribution of gaseous fuels or energy shall be obliged to cooperate with the entities and communes connected to their grids, on the area of which those enterprises perform their business activity; such a cooperation should particularly consist in: 1) informing the connected entities about the investments planned in a scope at which such investments will have an impact on the operation of the equipment connected to the grid or the change of the terms of connection to or supply of gaseous fuels or energy;

2) ensuring consistency between the plans of energy enterprises and the assumptions and plans referred to in Articles 19 and 20.

6. The proposals of the plans referred to in (1) are to be agreed with the Chairman of ERO, except for the plans of development of the energy enterprises which perform their business



activity in the field of transmission or distribution of: 1) gaseous fuels to fewer than 50 customers, to whom the enterprise supplies less than 50 million of c.m. of such fuels per year;

2) electricity to fewer than 100 customers, to whom the enterprise supplies less than 50 GWh of that energy per year;

3) heat.

### **Article 16a**

1. In case of a potential shortage being possible in the long term electricity supply, after the minister in charge of economic affairs determines on the basis of the report referred to in Article 15b (1) that the generating units existing and currently under construction along with the projects which rationalise the energy use do not ensure the long term security of that energy supply, the Chairman of ERO shall announce, organise and conduct a tender for the construction of new electricity generating units or for the implementation of measures which will decrease the electricity demand.

2. The tender announcement shall specify the subject of the tender, its scope, terms of participation, the types of economic and financial instruments specified by means of separate provisions which will allow the new generating units to be constructed or the electricity demand reduction projects to be implemented on preferential terms, as well as the time and place at which the tender documentation will be available.

3. The tender shall be governed by the provisions of Article 9i (3) and (4) and (6)-(8) as appropriate.

4. Before the tender announcement is published in the Bulletin of the Energy Regulatory Office, the Chairman of ERO shall consult the types of the instruments referred to in (2) with the minister in charge of public finance and with other relevant bodies of government administration, referred to in (2).

5. While specifying the offer evaluation criteria in the tender documentation and while selecting the offer for the construction of new electricity generating units or implementation of the projects which reduce the electricity demand, the Chairman of ERO shall take the following factors into consideration: 1) the state energy policy;

2) the security of the electricity system;

3) the requirements of protection of health, environment and the public security;

4) the energy efficiency and the economic efficiency of the project;

5) the location of the construction site of the new electricity generating units;

6) the type of the fuels intended for use in the new electricity generating units.

6. The Chairman of ERO shall submit the terms of the tender to the European Commission at a date early enough to allow publishing them in the Official Journal of the European Union at least in 6 months prior to the end date of the tender offer submission period .

7. The Chairman of ERO shall conclude an agreement with the participant of the tender whose offer has been selected which specifies the obligations of the participant, the types of the instruments referred to in (2) and the terms of settlement of the financial support granted by those instruments.

8. The minister in charge of economic affairs shall determine, by way of ordinance, the procedure of announcing tenders for the construction of new electricity generating units or for the implementation of measures which will reduce the electricity demand, which will ensure that the entities interested in the tender are informed about it, and that the detailed requirements regarding the content of the tender documentation as well as the terms and the procedure of organising and conducting the tender are provided. The regulation shall be guided by the desire to ensure transparent tender conditions and criteria and to ensure an equal treatment of its participants.

### **Article 17**

1. The local authorities of the voivodship shall take part in the energy and fuel supply planning for the area of the voivodship in the scope specified in Article 19 (5).
2. The voivodship governor shall investigate the consistency of the energy and fuel supply plans with the state energy policy and with the existing provisions.

### **Article 18**

1. The dedicated tasks of the commune {gmina - local administrative district} with respect to the electricity, heat and gaseous fuels supply shall include as follows:
  - 1) planning and the organisation of heat, electricity and gaseous fuels supply on the territory of the commune;
  - 2) planning of lighting of the public places and the roads located on the territory of the commune;
  - 3) covering the costs of lighting of the streets, squares and public roads located on the territory of the commune;
2. The commune shall be responsible for the implementation of the tasks referred to in (1) in accordance with the state energy policy, the local land utilisation plans or the provisions contained in the study of conditions and directions of the spatial planning of the commune area.
3. Provisions (1) point 2 and 3 are not applicable to motorways and expressways as defined by the provisions of toll motorways.

### **Article 19**

1. The borough leader (mayor, city president) shall prepare a proposal of the assumptions for the heat, electricity and gaseous fuels supply plan, hereafter referred to as the “proposal of assumptions”.
2. The proposal of assumptions shall be prepared for the area of a commune or its part.
3. A proposal of assumptions should specify the following:
  - 1) an evaluation of the existing condition and the expected changes of demand for heat, electricity and gaseous fuels;
  - 2) the projects which rationalise the use of heat, electricity and gaseous fuels;

### **Provisions (3a) and (4) in Article 18 repealed**

3) the potential to use the existing surplus and the local resources of fuels and energy with a consideration for the electricity and heat generated using renewable energy sources, and the electricity cogenerated with heat as well as the utilisation of waste heat from industrial installations;

4) the scope of cooperation with other communes.

4. Energy enterprises shall share their plans referred to in Article 16 (1) free of charge to the head of the borough leader (mayor, city president) at the extent pertaining to the area of the commune in questions, including the proposals necessary to prepare the proposal of assumptions.

5. The proposal of assumptions shall be subject to review by the local authorities at the voivodship level with respect to the coordination of cooperation with other communes and to review by the voivodship governor with respect to its compliance with the state energy policy.

6. The proposal of the assumptions shall be made available for the public for a period of 21 days, which should be announced in a way customary to the local conventions.

7. The persons and organizational units interested in the supply of heat, electricity and gaseous fuels on the area of the commune have the right to submit their remarks, opinions and comments related to the proposal of the assumptions.

8. The Commune Council shall adopt the assumptions to the heat, electricity and gaseous fuels supply plan, and shall review the remarks, comments and opinions received while the proposal of the assumptions was publicly available.

## **Article 20**

1. If the plans of energy enterprises do not satisfy the assumptions referred to in Article 19 (8), the borough leader (mayor, city president) shall prepare a heat, electricity and gaseous fuels supply plan for the entire area of the commune or for its part. The proposal of the plan shall be prepared on the basis of the assumptions passed by the Commune Council and should be compliant with them.

2. The proposal of the plan referred to in (1) should comprise the following: 1) the proposals for the development and modernisation of the specific heat, electricity and gaseous fuels supply system, including its economic substantiation;

1a) proposals of use of renewable energy sources;

2) a task implementation schedule;

3) the expected costs of implementation of the measures proposed and the source of its funding.

3. The borough leader (mayor, city president) shall present the proposal of the plan referred to in (1) to the voivodship governor in order to confirm its compliance with the assumptions referred to in Article 19.

4. The Commune Council shall adopt the supply plan referred to in (1).

5. In order to implement the plan referred to in (3), the commune may conclude agreements with energy enterprises.

6. If it is not possible to implement the plan on the basis of the agreements, in order to ensure the supply of heat, electricity and gaseous fuels the Commune Council may issue a statement

which shall indicate the part of the plan with which all the actions undertaken on the area of the commune have to comply.

## **Chapter 4 The fuel and energy economy regulation body**

### **Article 21**

1. The tasks of the regulator of the fuel and energy economy and the tasks aimed at the promotion of competition shall rest upon the Chairman of the Energy Regulatory Office (ERO), hereafter referred to as the “Chairman of ERO”.
2. The Chairman of ERO is a central body of government administration designated for a term of 5 years by the Prime Minister upon the request of the minister in charge of the issues of economy.
3. The Chairman of ERO may be recalled by the Prime Minister prior to the completion of the term of the office they have been designated for in case of an illness which permanently prevents them from performing their tasks, a blatant misuse of their competences, committing a crime confirmed by a final and binding court sentence, or as a result of their resignation.
4. The Chairman of ERO shall perform the tasks referred to in (1) with the aid of the Energy Regulatory Office, hereafter referred to as “ERO”.
5. The Deputy Chairman of ERO shall be designated and recalled by the minister in charge of economic affairs upon a motion of the Chairman of ERO.
6. The minister in charge of economic affairs shall publish an order which grants a statute to ERO which defines its internal structure and organisation.

### **Article 21a**

The bodies responsible for the regulation of fuel and energy economy for: 1) the organisational entities controlled by the Minister of National Defence or supervised by them, the organisational units of the Police Forces, the Fire Forces, the Border Guard and the Government Security Office and for the organisational units of the Prison Service controlled by the Minister of Justice – shall be the energy economy inspection units established by the relevant ministers in agreement with the Chairman of ERO;

2) the organisational units of the Internal Security Agency and the Foreign Intelligence Agency – shall be the energy economy inspection units established by the directors of those agencies in agreement with the Chairman of ERO.

### **Article 22**

1. The structure of Energy Regulatory Office comprises the Central Department in Warsaw and the following regional branches: 1) the North-western Branch with head offices in Szczecin;
- 2) the Northern Branch with head offices in Gdańsk;
- 3) the Western Branch with head offices in Poznań;

- 4) the Eastern Branch with head offices in Lublin;
  - 5) the Central Western Branch with head offices in Łódź;
  - 6) the South-western Branch with head offices in Wrocław;
  - 7) the Southern Branch with head offices in Katowice;
  - 8) the South-eastern Branch with head offices in Kraków.
2. The minister in charge of economic affairs shall determine, by way of ordinance, a detailed territorial range and relevance {of the individual Branches of ERO – transl.} drawn along powiat borders.
3. The Directors of the branches of ERO shall be designated and recalled by the Chairman of ERO.

### Article 23

1. The Chairman of ERO regulates the activity of the energy enterprises on the basis of the act of law and the state energy policy, aiming at balancing the interests of the energy enterprises and the fuel and energy customers.
2. The terms of reference of the Chairman of ERO shall be as follows: 1) granting and revoking licences;
  - 2) approval and supervision of application of tariffs of gaseous fuels, electricity and heat with respect to their compliance with the rules laid down in Article 44, 45 and 46, including the analysis and verification of the costs accepted by energy enterprises as substantiated and reflected in the process of calculation of the prices and fee rates in the tariffs;
  - 3) defining: a) the corrective coefficients which define the proposed improvement of efficiency of operation of the energy enterprise and a change of the terms on which such an enterprise performs the stated types of business activity, b) the period of validity of the tariffs and the corrective coefficients referred to in letter a), c) the amount of the justifiable return on investment referred to in Article 45 (1) point 1 for the energy enterprises which submit the tariffs for approval, d) the maximum share of the fixed fees in the total fees for the provision of transmission or distribution services for the various groups of customers in the tariffs applicable to gaseous fuels and energy, in the cases in which the protection of the interests of customers makes it necessary;
  - 4) verification of the compliance with the obligations referred to in Article 9a;
  - 5) discussing the proposal of the plans referred to in Article 16;
  - 6) designation of the system operators referred to in Article 9h (1);
  - 7) granting and revoking permission for the obligation to provide the services referred to in Article 4 (2), Article 4c, Article 4d (1) and Article 4e (1);
  - 8) approving the instructions of grid operation and use with respect to the aspects of system balancing and the management of system restrictions;
  - 9) organising and conducting tenders the subject of which is: a) designation of last resort suppliers, b) construction of new electricity generating units and implementation of measures which reduce the electricity demand;

- 10) control over the quality standards of services provided to the customers and inspecting the compliance with the quality parameters of gaseous fuels and electricity upon request from the customer;
- 11) supervising the implementation of the duties resulting from the Regulation of the European Parliament and of the Council no. 1228/2003/EC of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (O.J. EC L 176 of 15.07.2003);
- 12) resolution of disputes in the scope specified in Article 8 (1);
- 13) imposing financial penalties on the terms provided in the act of law;
- 14) cooperating with adequate bodies in order to counteract any practices of energy enterprises which adversely influence market competition;
- 15) specifying the methods of inspection and taking actions aimed to improve the efficiency of energy enterprises;
- 16) defining and publishing indices and index prices important for the tariff shaping process;
- 17) publishing information used to increase the efficiency of use of fuels and energy;
- 18) collecting and transforming information related to the energy enterprises, including the calculation and announcing of the following information by 31 March each year: a) an average price of sale of electricity cogenerated with heat, b) an average prices of sale of electricity on the competitive market – in the preceding calendar year;
- 19) collecting information on the investment projects which are within the scope of interest of the European Union and its submission to the European Commission by 15 April of each year, as well as providing the European Commission with the information referred to in Article 9c (11);
- 20) monitoring the operation of the gas and electricity system at the following extent:
  - a) the rules governing the management and distribution of capacity of intersystem connections in cooperation of the proper bodies of the Member States of the European Union or the member states of the European Free Trade Agreement (EFTA) – the parties to the European Economic Area Agreement,
  - b) the balancing mechanisms designed for the gas or electricity system and the management of the restrictions in the national gas and electricity system,
  - c) the terms of connecting entities to the grid and the establishment of such connections and the repairs of such grids,
  - d) compliance of transmission and distribution system operators with the obligation to publish information on the intersystem connections, the grid use and the distribution of the transmission capacity to the parties of the gaseous fuels or energy transmission or distribution agreement, observing the requirement to treat that information as confidential for commercial reasons,
  - e) the terms of provision of the gaseous fuels storage services, natural gas liquefaction services and other services offered by energy enterprises,
  - f) security of supply of gaseous fuels and electricity,
  - g) compliance of transmission and distribution system operators with the tasks they shall be obliged to perform,

- h) compliance of energy enterprise with the obligations referred to in Article 44;
  - 21) issuing and redeeming the certificates of origin referred to in Article 9e (1);
  - 22) performing other tasks specified in the act of law and in separate laws.
3. In the issues referred to in (2) point 1 and 5, except for the issues listed in Article 32 (1) point 4, an opinion of the locally relevant voivodship authority is required.
4. The failure to present an opinion on the issues referred to in (2) point 1 and 5 by the voivodship authorities within 14 days from the date of receipt of the issue to be reviewed shall be considered equivalent to an affirmative opinion.

## **Article 24**

1. By the end of the first quarter each year, the Chairman of ERO shall report to the minister in charge of economic affairs on their activity, including an evaluation of the security of supply of gaseous fuels and electricity, in a manner appropriate to the scope of activity referred to in Article 23 (2). Upon a motion of the same minister, the Chairman of ERO shall also present information belonging to the scope of their activity.
2. The report referred to in (1) shall also include an evaluation of the measures taken to pursue the objectives specified therein, referred to in Article 9f (1), with respect to their compliance with the obligations arising of international agreements.

## **Article 28**

The Chairman of ERO has the right to review the accounting books of an energy enterprise and may request that the enterprise present information related to its business activity, including the information on its investment projects, applying the relevant provisions on the protection of classified information and other information protected by the law.

## **Article 29**

By way of ordinance, the Prime Minister shall determine the rules of remuneration of ERO employees.

## **Article 30**

1. The proceeding conducted by the Chairman of ERO shall be subject to the provisions of the Code of Administrative Procedure, subject to paragraphs (2)–(4).
2. The decision of the Chairman of ERO is subject to appeals to the District Court in Warsaw – the anti-monopoly court within two weeks from the date of receipt of the decision issued.<sup>11</sup>

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<sup>11</sup> Article 25-27 deleted, in Article 30 (2) at present: The District Court in Warsaw – the court for consumer and competition protection.

3. An appeal procedure against the decision of the Chairman of ERO shall follow the provisions of the Code of Civil Procedure pertaining to the procedure in commercial cases.
4. Provisions (2) and (3) are applicable as appropriate to the decisions of the Chairman of ERO which are subject to complaints, whereas the term for lodging a complaint shall be limited to 7 days.

### **Article 31**

1. ERO publishes the Bulletin of the Energy Regulatory Office, hereafter referred to as “the ERO Bulletin”.
2. ERO uses the ERO Bulletin to announce the reports referred to in Article 24 (1).
3. ERO publishes the following information in the ERO Bulletin: 1) the information on the entities which apply for a licence;
  - 2) the information about the decisions on issues of licences and tariffs including their publication;
  - 3) the decisions resolving the disputes arbitrated by the Chairman of ERO;
  - 4) the average prices referred to in Article 23 (2) point 18.
4. The information referred to in (3) with respect to heat shall be published in the locally appropriate official journal.
5. The Chairman of ERO may establish by way of an order a local or industry-specific issue of the ERO Bulletin and define the scope, the range and the terms of publication of announcements.

## **Chapter 5 Licences and Tariffs**

### **Article 32**

1. A licence shall be required to perform business activity of the following scope: 1) the generation of fuels or energy, except for: generation of solid or gaseous fuels; generation of electricity using electricity sources of the total capacity of not more than 50 MW other than renewable energy sources; cogeneration of electricity and heat using sources of the total capacity of not more than 5 MW other than renewable energy sources; generation of heat using the sources of the total capacity of not more than 5 MW;
  - 2) storage of gaseous fuels in storage installations, liquefaction of natural gas and regasification of liquefied natural gas at LNG installations, as well as the storage of liquid fuels, except for: the local storage of liquid gas at installations of the capacity of less than 1 MJ/s capacity and the storage of liquid fuels in retail trade;
  - 3) the transmission or distribution of fuels or energy, except for: the distribution of gaseous fuels in grids of less than 1 MJ/s capacity and the transmission or distribution of heat if the total capacity ordered by customers does not exceed 5 MW;
  - 4) the trade in fuels or energy, except for: the trade in solid fuels; the trade in electricity using installations of voltage lower than 1 kV owned by the customer; the trade in gaseous fuels if



their annual turnover value does not exceed the equivalent of EUR 100,000; the trade in liquid gas, if the annual turnover value does not exceed EUR 10,000; and the trade in gaseous fuels and electricity performed on commodity exchanges by brokerage houses which conduct the brokerage activity on the exchange commodities on the basis of the Act of 26 October 2000 on commodity exchanges, as well as the trade in heat if the capacity ordered by the customers does not exceed 5 MW.

2. The licences for the activity referred to in (1) point 4 with respect to the foreign trade in natural gas shall be granted with a consideration for the diversification of the sources of gas and the energy security.

3. Upon a motion of the minister in charge of economic affairs, the Council of Ministers shall issue an ordinance which will specify the minimal level of diversification of gas supply from abroad by means of defining a maximal percentage share of the gas supplied by a single source. The ordinance shall specify the level of diversification for a period of at least 10 years.

4. No licence referred to in (1) point 1 shall be required to perform a business activity in the field of heat generation obtained in industrial technical processes, nor shall it be required if the capacity ordered by the customers does not exceed 5 MW.

### **Article 33**

1. The Chairman of ERO may grant a licence to an applicant who: 1) has the principal place of business or the place of residence on the territory of a Member State of the European Union or a member state of European Free Trade Agreement (EFTA) – a party of the European Economic Area Agreement, 2) can use financial resources at the value which ensures a correct performance of their activity or is able to document the ability to acquire such resources;

3) has the technical potential ensuring the correct performance of their activity;

4) can ensure the employment of persons with appropriate professional competences referred to in Article 54;

5) has obtained a land development conditions decision (a planning permission) for the area.

2. Obtaining a licence referred to in (1) does not discharge the entity from the obligation to acquire other licences or permissions required on the basis of separate provisions.

3. The licence may not be granted to an applicant who: 1) is in the course of insolvency or bankruptcy proceeding;

2) who has had their licence for the statutory activity revoked within the last 3 years for reasons referred to in Article 58 (2) of the law of 2 July 2004 on the freedom of economic activity (Journal of Laws No. 173, Item 1807), hereafter referred to as the "Act on Freedom of Business Activity", or who has been deleted from the business activity register within the last 3 years for reasons referred to in Article 71 (1) of the Act on Freedom of Business Activity;

3) sentenced with a final and binding sentence of a court for a crime related to the subject of their statutory business activity .

#### **4. (repealed)**

5. The Chairman of ERO shall inform the European Commission via the minister in charge of economic affairs about the reasons for the refusal to grant licence to the applicant.

**Article 34**<sup>12</sup>

1. The energy enterprises granted a licence shall contribute annual fees to the state budget, which shall be accounted as the costs of their activity.
3. The Council of Ministers shall issue an ordinance defining the value and the method of collecting the fees referred to in (1) by the Chairman of ERO. The fees shall reflect the amount of revenue of energy enterprises covered by the licence as well as the costs of the regulation.
4. The energy enterprises which generate electricity using renewable energy sources of capacity not higher than 5 MW shall be exempt from the fees referred to in (1) in the scope of the energy generated by them in those sources.

**Article 35**

1. An application for a licence should include in particular the following information: 1) the designation of the applicant and their principal place of business or place of residence, and in case plenipotentiaries have been established to perform legal actions on behalf of the applicant, it should also include the full names of such plenipotentiaries;
  - 2) the subject and the scope of the activity conducted which is to be covered by the licence, and a proposal of the plan referred to in Article 16;
  - 3) information of the hitherto activity of the applicant, including their financial statements for the last 3 years, if the entity performs a business activity;
  - 4) the specification of the time for which the licence is to be granted, including an indication of the start date of the activity;
  - 5) a specification of the resources available to the entity which applies for the licence in order to ensure a correct performance of the activity covered by the application;
  - 6) the number of the entry in the Register of Entrepreneurs or the number of the Business Activity Record as well as the tax identification number (NIP).
3. The Chairman of ERO shall refuse granting a licence if the applicant does not fulfill the conditions specified by the law.

**Article 36**

The licence shall be granted for a limited period of time not shorter than 10 years and not longer than 50 years, unless the enterprise applies for a licence with a shorter period of validity.

**Article 37**

1. The licence should specify the following: 1) the entity and their principal place of business or place of residence;
- 2) the subject and the scope of activity to be covered by the licence;

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<sup>12</sup> Article 34 (2) deleted, Article 35 (2) repealed

- 3) the date of the start of the activity covered by the licence as well as the terms governing that activity;
  - 4) the period of validity of the licence;
  - 5) the detailed terms of the activity covered by the licence, aimed to ensure a proper level of services offered to the customers, at the following extent: a) ensuring the ability to deliver fuels or energy in a continual and reliable way, meeting the quality provisions specified in the regulations issued on the basis of Article 9 ( 1)-(4), (7) and (8), b) ensuring that the Chairman of ERO shall be notified of the failure to start or about ceasing or limiting the activity covered by the licence within the period of its validity;
  - 6) securing the environment protection during and after the end of the period of activity subject to the licence;
  - 7) the number of the entry in the Register of Entrepreneurs or the number of the Business Activity Record as well as the tax identification number (NIP).
2. The licence should also specify the terms on which the energy enterprise may terminate its activity after the licence has been revoked.

### **Article 38**

Granting of the licence may be conditional upon providing a property collateral by the applicant in order to ensure the satisfaction of the claims of third parties which may be made as a result of an improper conduct of the business subject to the licence, including damage of the natural environment.

### **Article 39**

An energy enterprise may apply for a prolongment of the validity of the licence. However, such an application should be submitted not later than 18 months prior to the expiry of the concession.

### **Article 40**

1. The Chairman of ERO may order an energy enterprise to continue its operation in spite of the expiry of the licence for that operation, if the public interest requires it. Such a prolongment may not be longer than 2 years.
2. If the activity of the energy enterprise on the terms specified in (1) brings losses, the energy enterprise shall be entitled to have those losses compensated by the State Treasury at the amount limited to the reasonable operational costs of the activity specified in the licence, exercising due diligence.
3. The costs referred to in (2) shall be subject of approval by the Chairman of ERO.

### **Article 41**

1. The Chairman of ERO may change the terms of a previously granted licence upon a motion of the energy enterprise.
2. The Chairman of ERO shall revoke the licence under the following circumstances:
  - 1) the circumstances specified in Article 58 (1) of the Act on Freedom of Business Activity;
  - 2) if the director of the relevant customs office revokes the permission to maintain a bonded warehouse to the enterprise, according to the procedure and the rules specified in separate provisions, with respect to the activity covered by that permission;
  - 3) in case of a change of the terms of the business activity performed covered by the licence in the scope specified in the act of law.
3. The Chairman of ERO shall revoke the licence or change its scope in the cases specified in Article 58 (2) of the Act on Freedom of Business Activity.

### **(3) in Article 37 repealed**

4. The Chairman of ERO may revoke the licence or change its scope:
  - 1) in the circumstances specified in Article 58 (3) of the Act on Freedom of Business Activity;
  - 2) in case the energy enterprise is divided into or merged with other entities.
5. In the circumstances referred to in (2) point 2, the Chairman of ERO shall notify the director of the customs office relevant for the taxpayer of revoking the licence.

## **Article 42**

A licence granted to the energy enterprise pursuant to the law expires prior to the expiry of the period for which it had been granted, on the date of the deletion of that enterprise from the register or business record.

## **Article 43**

1. Any party intending to conduct activity consisting of: the generation, transformation, storage, transmission, distribution and trade in fuels and energy which is subject to the licence, shall have the right to apply for the issue of a licence promise.
2. A promise shall be issued by the Chairman of ERO by means of an administrative decision.
3. A promise shall include a specification of the period of its validity, which may not be shorter than 6 months.
4. Within the period of validity of the promise it shall not be possible to refuse to grant the licence to the applicant for the activity referred to in the promise, unless the actual or legal condition reported in the application for the promise has changed.
5. The application for the promise shall be subject to Article 35 as appropriate.

## **Article 44**

1. An energy enterprise shall ensure equal treatment of customers and elimination of cross-subsidising and shall be obliged to conduct their accounting records in a way that allows a

separate accounting of the costs and revenues, profits and losses for the business activity performed at the following scope: 1) the supply of gaseous fuels or energy, including the overhead, the variable costs and the revenue, separately for the generation, transmission, distribution and trade in gaseous fuels or energy, the storage of gaseous fuels and the liquefaction of natural gas or regasification of liquefied natural gas, also in relation to the group of customers specified in the tariff, including the sale of gaseous fuels or energy to the customers who have the right to choose the supplier and those who do not hold such a right;

2) not related to the activities referred to in point 1.

2. Energy enterprises shall be obliged to issue and keep financial records for each individual type of business activity related to the supply of gaseous fuels or energy; the records should include a balance and calculation of profits and losses for the reporting periods on the terms and according to the procedures specified in accounting provisions.

3. The energy enterprises which shall not be obliged by separate provisions to publish their financial statements shall make those statements publicly available at their principal place of business.

## **Article 45**

1. Energy enterprises shall determine the tariffs for gaseous fuels or energy following the scope of their business activity referred to in Article 32 (1); the tariffs are to be calculated in a way that ensures:

1) covering the justified expenses of the business activity of the energy enterprises related to the generation, transformation, transmission, distribution and trade in gaseous fuels and energy and the storage, liquefaction or regasification of gaseous fuels, including a justifiable return on investment from such activity;

2) covering the justified expenses borne by the transmission and distribution system operators in relation to the execution of their tasks;

3) protecting the customers against an unjustified increase of the prices and fee rates.

1a. The operational costs of the energy enterprises whose activity consists in the transmission and distribution of electricity referred to in (1) point 1 shall include the costs incurred in relation to the investment projects of the energy enterprises which generated electricity in years 1993–1998, aimed at the improvement of environment protection measures and the efficiency of electricity generation, at the part approved by the Chairman of ERO, reflecting the revenue earned on the sale of electricity on the competitive market referred to in Article 49 (1).

2. The tariffs for gaseous fuels, electricity and heat may include the costs of co-funding by energy enterprises of the projects and services aimed to reduce the consumption of fuels and energy by customers, which economically justify the avoidance of the construction of new energy sources and grids.

3. The tariffs for gaseous fuels, electricity and heat may reflect the costs of co-funding of the development of renewable energy sources by the energy enterprises.

4. Energy enterprises shall diversify the tariff prices and fee rates specified for gaseous fuels, electricity and heat for the different groups of customers solely on the basis of the justified expenses related to the provision of the services, unless the law provides otherwise.

5. The energy enterprises whose activity consists in the transmission or distribution of gaseous fuels or energy shall calculate the fee rates applicable for the transmission and distribution services in such a way that prevents the share of the fixed fees in the total payments for the provision of the transmission or distribution services provided to the given group of customers from exceeding the threshold defined by the Chairman of ERO.

### **Article 45a**

1. An energy enterprise shall calculate the payments for the supply of gaseous fuels, electricity or heat to the customer on the basis of prices and fee rates included in the tariff or on the basis of the prices and fee rates applied on the competitive market referred to in Article 49 (1).

2. The fees referred to in (1), including the discounts and compensations granted to the customer, shall constitute the costs of the purchase of gaseous fuels, electricity or heat supplied to the building in which residential and utility premises are located, inhabited or used by the persons who are not customers.

3. The energy enterprise shall grant discounts or compensations referred to in (2) for the failure to meet the quality standards of the services provided to the customers at the amount specified in the tariff or in the agreement.

4. The costs of the purchase referred to in (2) shall be settled in the fees collected from the persons referred to in (2). The fees should be established in such a way that makes them cover exclusively the costs of purchase of gaseous fuels, electricity or heat borne by the customer.

5. Provision (4) shall be applied as appropriate by the customer – owner and the administrator of the building to specify the fees for the persons referred to in (2) to which the heat is delivered from the customer's own heat sources and heat installations.

6. In case the owner or the administrator of a multi-user building is the exclusive customer of the gaseous fuels, electricity or heat supplied to the building, that entity shall be responsible for the settlement of the total cost of purchase of the gaseous fuels, electricity or heat with the individual users of the building.

7. If the metering and settlement system used for the settlement of the heat supplied with the energy enterprise has been installed at a location common to two or more multi-user buildings, the owners or the administrators of those buildings shall equip them with metering and settlement systems which will allow the costs of the purchase of the heat to be broken down by the individual buildings.

8. The heat purchase costs referred to in (2) shall be settled at their part related to: 1) heating, by means of the methods which use: a) for residential and utility premises: - the indications of heat meters; – the indications of the meters which are not metering devices in terms of their definition in metrological provisions, introduced into the market on the terms and according to the procedure specified by the provisions on the compliance assessment system; - the area or the cubature of those premises, b) for the common parts of the multi-user building used by the persons referred to in (2), the area or the cubature of the parts of the building in proportion to the area or cubature of the premises occupied by those persons;

2) preparation of warm utility water supplied centrally by means of the water system in the multi-user building, by means of the methods which rely on: a) the indications of warm water meters within the premises, b) the number of the persons permanently resident on the premises.

9. The owner or the manager of the multi-user building shall choose the method to be used to settle the total costs of the purchase of heat with the individual apartments and utility premises in that building in such a way that the method of choice should stimulate the energy efficient behaviour of the users and allow specifying the fees referred to in (4) reflecting the consumption of heat for heating and for the preparation of the warm utility water; at the same time, the method adopted should take into account the compensating factors of heat consumption related to the location of the premises in the mass of the building and maintaining correct conditions of use of the building specified in separate provisions.

10. The owner or the administrator of the multi-user building shall introduce the method selected referred to in (9) by means of an internal list of terms and conditions of settlement of the heat use to heat the building and prepare warm utility water supplied centrally using the water system of the building, hereafter called the "heat settlement rules"; the heat settlement rules shall be communicated to the persons referred to in (2) within 14 days from the date of its introduction into force.

11. If the owner or the administrator of the multi-user building has introduced the method referred to in (9) based on heat meters and the equipment referred to in (8) point 1 letter a and point 2 letter a, the person referred to in (2) shall allow access to their premises in order to allow the installation or the replacement of such heat meters or equipment and shall allow them to be inspected and read in order to provide basis for the settlement of the cost of the heat consumed at that building.

12. If the method referred to in (9) based on the readings of the equipment specified in (8) point 1 letter a is used in a multi-user building, the settlement rules should allow an alternative method of settlement of the fees for the heat supplied to residential and utility premises on the basis of their area or cubature and specify the terms of use of such an alternative settlement method.

### **Article 45b (repealed)**

### **Article 46**

1. The minister in charge of economic affairs shall consult the Chairman of ERO and determine, by way of ordinance, the detailed terms of establishing and calculation of tariffs applicable to gaseous fuels as well as the detailed rules of settlement in the trade in gaseous fuels, bearing the following factors in mind: the state energy policy, ensuring the coverage of the justified expenses of the energy enterprises, including the costs of their development, the protection of the customers against a groundless level of the prices and fees, an improvement of the efficiency of supply and use of gaseous fuels, an equal treatment of the customers, eliminating cross-subsidising and the transparency of prices and fee rates.

2. The ordinance referred to in (1) should particularly specify the following:

- 1) the criteria for the categorisation of the customers into tariff groups;
- 2) detailed rules for the establishment of the fees for grid connection, including the method of calculation of the connection fees;
- 3) the types of prices and fee rates for each type of business activity which is subject to a licence and the methods of their calculation;

- 4) the method of reflecting the improvement of efficiency and the change of the terms of the activity performed by the energy enterprises in the tariffs;
- 5) the method of conducting settlements with the customers and among energy enterprises;
- 6) a method of calculation of discounts for the failure to maintain the quality parameters of gaseous fuels or meet the quality standards of customer service;
- 7) the method of establishing fees for the exceeded capacity contracted;
- 8) a method of specifying the penal fees for illegal collection of gaseous fuels;
- 9) the scope of the services provided upon an additional order from the customer and the terms on which fees shall be specified for those services.

3. The minister in charge of economic affairs shall consult the Chairman of ERO and determine, by way of ordinance, detailed terms of establishing and calculation of tariffs applicable to electricity as well as the detailed rules of settlement in the trade in electricity, taking the following into consideration: the state energy policy, ensuring the coverage of the justified expenses of the energy enterprises, including the costs of their development, the protection of the customers against a groundless level of the prices and fees, an improvement of the efficiency of supply and use of electricity, an equal treatment of the customers, eliminating cross-subsidising and the transparency of prices and fee rates.

4. The ordinance referred to in (3) should particularly specify the following: 1) the criteria for the categorisation of the customers into tariff groups;

2) categorisation of the entities connected into connection groups;

3) detailed rules for the establishment of the fees for grid connection, including the method of calculation of the connection fees;

4) the types of prices and fee rates for each type of business activity which is subject to a licence and the methods of their calculation;

5) the method of reflecting of the following in tariffs: a) the costs of obtaining of certificates of origin and their submission for redemption, b) the costs of purchase of electricity referred to in Article 9a (6) and 8, c) the compensations referred to in the Regulation of the European Parliament and of the Council no. 1228/2003/EC of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity; d) the costs referred to in Article 45 (1a);

6) the method of reflecting the improvement of efficiency and the change of the terms of the activity performed by the energy enterprises in the tariffs;

7) the method of conducting settlements with the customers and among energy enterprises, including the settlements in the scope defined in Article 45 (1a);

8) the method of calculating discounts for a failure to maintain the quality parameters of electricity and meet the quality standards of customer service;

9) the method of specifying fees for the consumption of more passive energy that stipulated in the agreement and for exceeding the capacity granted ;

10) a method of specifying the penal fees for illegal collection of electricity;

11) the scope of the services provided upon an additional order from the customer and the terms on which fees shall be specified for those services.



5. The minister in charge of economic affairs shall consult the Chairman of ERO and determine, by way of ordinance, detailed terms of establishing and calculation of tariffs applicable to heat as well as the detailed rules of settlement of the heat supply taking the following into consideration: the state energy policy, ensuring the coverage of the justified expenses of the energy enterprises, including the expenses of their development, the protection of the customers against a groundless level of the prices and fees, an improvement of the efficiency of supply and use of heat, an equal treatment of the customers, eliminating cross-subsidising and the transparency of prices and fee rates.

6. The ordinance referred to in (5) should particularly specify the following: 1) the criteria for the categorisation of the customers into tariff groups;

2) detailed rules for the establishment of the fees for grid connection, including the method of calculation of the connection fees;

3) the types of prices and fee rates for each type of business activity which is subject to a licence and the methods of their calculation;

4) a method of simplified calculation of tariffs applicable to heat generated in the sources whose installed heat capacity does not exceed 5 MW;

5) a method of reflecting the costs of purchase of heat in tariffs, referred to in Article 9a (7);

6) the method of reflecting the improvement of efficiency and the change of the terms of the activity performed by the energy enterprises in the tariffs;

7) the method of conducting settlements with the customers and among energy enterprises;

8) the method of calculating discounts for the failure to maintain the quality parameters of the heat carrier and meet the quality standards of customer service;

9) a method of specifying the penal fees for illegal collection of heat;

## **Article 47**

1. Energy enterprises who have been granted licence shall specify the tariffs for gaseous fuels and energy, which are subject to approval by the Chairman of ERO, and shall suggest the term of their validity. The energy enterprises who have been granted licences present their tariffs to the Chairman of ERO by their own initiative or by request of the Chairman of ERO.

2. The Chairman of ERO shall approve the tariff submitted or refuse to approve it if the tariff is inconsistent with the principles and provisions referred to in Article 44-46.

2a. Upon the request of an energy enterprise, the Chairman of ERO shall approve a tariff of prices and fee rates for a period not longer than 3 years if those prices and fee rates are not higher than those in force prior to the submission of that tariff to the Chairman of ERO, provided the following conditions have been fulfilled: 1) the terms and conditions of application of prices and fee rates specified by the tariff have not changed, 2) the changes of the external conditions of performing the business activity the tariff pertains to by the energy enterprise documented and described in the application do not provide reasons to reduce the prices and fee rates specified by the tariff, 3) no corrective coefficient referred to in Article 23 (2) point 3 letter a has been defined for the tariff validity period suggested in the application or for the part of that period.

2b. In case of a documented change of the external conditions of the business activity performed by the energy enterprise, the Chairman of ERO may define corrective coefficients referred to in Article 23 (2) point 3 letter a by means of a last resort decision; such coefficients shall solely be a result of a change of external conditions and the energy enterprise shall be obliged to apply them with respect to the prices and fee rates specified in the tariff referred to in (2a) by the time a new tariff, introduced according to the procedure specified in (2) becomes effective .

2c. After the expiry of the term the tariff was issued for, until a new tariff becomes effective, the hitherto tariff shall continue to be used, if: 1) the relevant decision of the Chairman of ERO has not been issued, or 2) an appellative procedure against the decision of the Chairman of ERO is taking place.

2d. The tariff applied until the current point in time referred to in (2c) shall not be used if the decision of Chairman of ERO refusing the approval of the tariff has been based on the necessity to reduce the prices and fee rates below the level of those included in the hitherto binding tariff and has been issued on the basis of documented and described external conditions of the business activity performed by the energy enterprise.

3. The Chairman of ERO: 1) shall issue the tariffs approved for gaseous fuels and electricity in the ERO Bulletin at the expense of the energy enterprise – within 14 days from the date the tariffs have been approved;

2) submits the heat tariffs approved for publishing in the locally relevant official journal, at the expense of the energy enterprise – within 7 days from the date the tariffs have been approved.

4. The energy enterprise shall apply the tariff not sooner than after 14 days and not later than on the 45th day from the date of its announcement.

## **Article 48 deleted**

## **Article 49**

1. The Chairman of ERO may discharge the energy enterprise from the obligation to submit the tariffs for approval if they confirm that the energy enterprise is acting in a competitive environment, and may revoke the discharge granted if determined that the conditions which substantiated such a discharge have ceased.

2. The discharge referred to in (1) may be applicable to a specific part of the activity conducted by the energy enterprise in the scope in which that activity is conducted on the competitive market.

3. While issuing a decision referred to in (1), the Chairman of ERO shall consider such properties of the fuels or energy market as: the number of market players and the amount of their shares of the market; the transparency of the structure and the terms of operation of the market, the existence of market access barriers, equal treatment of market participants, access to market information, the effectiveness of supervision and the measures of protection against misuses of the market position which limit the competition, as well as the availability of high efficiency technologies.

## **Article 50**

The issues not governed by the provisions hereof related to the business activity of energy enterprises, including the inspections of consistence of the business activity performed by energy enterprises with the scope of the licence granted by the Chairman of ERO, shall be subject to the provisions of the Act on Freedom of Business Activity.

## **Chapter 6 Equipment, installations and grids and their use**

### **Article 51**

The design, manufacturing, import, construction and use of the equipment, installations and grids should allow a rational and economical consumption of fuels or energy and ensure:

- 1) the reliability of integration with the grid;
- 2) safety of operation and the environment upon meeting the environment protection requirements;
- 3) compliance with the requirements of the separate provisions, including but not limited to the following: provisions of the construction law, fire protection regulations, technical supervision regulations, cultural heritage regulations, regulations pertaining to museums, the Polish Standards<sup>2</sup> introduced for obligatory use or other provisions applicable due to the technology of energy generation and the type of fuel used to that end.

### **Article 52**

1. The producers and importers of the equipment shall specify the value of fuel and energy consumption in their technical documentation, compared to the value of the effect of use of the equipment in normal operational conditions, hereafter referred to as “energy efficiency”.
2. The producers and importers of the equipment introduced on the market shall provide information on the energy efficiency of the equipment on their labels and in their technical specification.
4. By way of ordinance, the minister in charge of economic affairs may determine the energy efficiency requirements which should be met by the equipment referred to in (1), allowing for the necessity to protect the interests of the final customers.
5. The minister in charge of economic affairs may determine, by way of ordinance, the following: 1) requirements pertaining to technical documentation referred to in (1) and to the use of the labels and technical specifications referred to in (2), 2) templates of the labels referred to in (2) – considering the necessity to ensure efficiency of use of the equipment by means of the public access to information on energy efficiency of that equipment.

### **Article 53**

It shall be forbidden to introduce such equipment to the national market that does not meet the requirements specified in Article 52.

## Article 52 deleted

## Article 53a

The provisions of Article 52 and 53 shall not be applicable to the equipment and installations related to the national defence and national security which constitute the integral parts of military technology systems or armament, or to the equipment and installations used for emergency and fire protection purposes as well as for the protection of the state borders and used in the prison service, or belonging to the units referred to in Article 21a.

## Article 54

1. The persons who operate the grids, equipment and installations referred to in (6) shall be obliged to be appropriately qualified, which must be confirmed with adequate certificates issued by qualification commissions.

1a. The qualification requirements are subject to verification performed every five years.

1b. If it is discovered that the equipment, installations or grids are operated in a way which is not compliant with the provisions applicable to their use, the qualification requirements are to be verified again earlier than in five years from the last verification, if requested to do so by the employer, labour inspector, the Chairman of ERO or other regulator of fuel and energy economy referred to in Article 21a.

2. It shall be forbidden to employ nonqualified persons referred to in (1) in the positions responsible for individual operation of the grids, equipment or installations specified in the provisions referred to in (6).

2a. Provisions (1) and (2) shall not be applicable to persons who are citizens of a Member State of the European Union or a member state of the European Free Trade Agreement (EFTA) – a party to the European Economic Area Agreement, who obtained the required qualifications with respect to the operation of the equipment, grids and installations in those states and acquired their confirmation in accordance with the provisions on the acceptance of the qualifications to perform the regulated professions obtained in the Member States of the European Union.

3. The qualification commissions are established for a term of 5 years by: 1) The Chairman of ERO;

2) the relevant ministers and agency directors referred to in Article 21a – with regards to the operation of gas, electricity and heat installations and equipment in the organisational units controlled by those ministers or agency directors or supervised by them;

3) the minister in charge of transport – with respect to the operation of the electrical equipment and installations used in the organisational units of the railway transport.

3a. The body authorised to designate the qualification commissions referred to in (3) may recall a commission member in case of: 1) an illness which permanently prevents them from performing their duties;

2) their resignation from the commission membership;

3) the failure to comply with the obligations of a commission member;

- 4) loss of qualifications which allowed them to be designated a commission member.
- 3b. The body authorised to establish the qualification commissions may recall the qualification commission upon a motion of an organisational unit the commission was established at if: 1) the organisational unit at which the commission has been established decides to discontinue the existence of that commission;
- 2) some members of the qualification commission are recalled which renders the commission incapable of performing its tasks .
4. The verification of the qualifications referred to in (1) shall be subject to fees collected from the persons applying to have their qualifications verified.
5. The fees referred to in (4) shall constitute the revenue of the organisational units at which the qualification commissions have been established.
6. Upon an agreement with the minister in charge of transport and the Minister of National Defence, the minister in charge of economic affairs shall determine, by way of ordinance, detailed terms of verification of qualifications by the persons referred to in (1).
7. While issuing the ordinance referred to in (6), the minister in charge of economic affairs shall particularly determine the following details: 1) the types of work, positions and installations, equipment and grids whose performance or operation requires appropriate qualifications ;
- 2) the scope of the knowledge required to obtain a confirmation of the qualifications appropriate for the specific types of work, positions and installations or equipment referred to in point 1;
- 3) the qualification procedure;
- 4) the organisational units at which the qualification commissions are established and the procedure used for their designation;
- 5) the amount of the fees collected in return for the verification of the qualifications referred to in point 2;
- 6) a template of a qualification certificate.

## **Article 55 deleted**

## **Chapter 7 Financial penalties**

### **Article 56**

1. A financial penalty shall be imposed on anyone who: 1) does not comply with the obligations which arise of the cooperation with the units authorised to control the electricity and gas fuels on the basis of the provisions issued pursuant to Article 9 (1)-(4);

[1a) does not comply with the obligation to purchase or generate electricity or heat, imposed by means of Article 9a;]

1a) does not comply with the obligations to obtain and present a certificate of origin for redemption to the Chairman of ERO or does not settle the substitute fee referred to in Article 9a (1), or does not comply with the obligation to purchase electricity or heat referred to in Article 9a (6)-(8);<sup>3</sup>

1b) does not submit the part of the instructions referred to in Article 9g (7) or (9) to the Chairman of ERO for approval;

1c) does not present the information referred to in Article 9j (6);

1d) does not comply with the obligations resulting from the Regulation of the European Parliament and of the Council no. 1228/2003/EC of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity;

2) does not comply with the obligation to maintain reserves of fuels introduced on the basis of Article 10;

3) does not apply the restrictions of supply of fuels and energy introduced on the basis of Article 11;

4) refuses to conclude an agreement referred to in Article 7 (1) without a justified reason;

5) applies prices and tariffs without having submitted them first to the Chairman of ERO for approval, as required by Article 47;

5a) does not submit the tariff for approval opposing the request of the Chairman of ERO referred to in Article 47 (1);

6) applies prices and tariffs which are higher than those approved;

7) refuses to provide the information referred to in Article 28; 7a) misinforms the Chairman of ERO on purpose or as a result of negligence with respect to the information requested by them referred to in Article 28;

8) conducts accountancy in a manner which is inconsistent with the rules laid down in Article 44;

9) employs persons who do not have the qualifications required by this Act;

10) does not maintain the installations, buildings and equipment in an appropriate technical condition;

11) introduces such equipment to the national market that does not meet the requirements specified in Article 52.

12) does not observe the obligations arising from the licence;

13) performs actions which are inconsistent with the part of the plan referred to in Article 20 (6);

14) suspends or limits the supply of gaseous fuels, electricity or heat to customers for no valid reason ;

15) delays the notification of the Chairman of ERO or the party involved of the refusal to conclude the agreements referred to in Article 4g (1) or Article 7 (1) for no valid reason;

16) does not apply to the Chairman of ERO as specified in Article 4h (2) for no valid reason.

2. The financial penalty referred to in (1) shall be imposed by the Chairman of ERO.

[2a. The amount of the financial penalty imposed in the circumstances referred to in (1) point 1a, with respect to the obligation referred to in Article 9a (1) may not be lower than the doubled product of the average price referred to in Article 23 (2) point 9 and the difference between the amount of electricity whose purchase or generation the energy enterprise shall be obliged and the amount of electricity purchased or generated by the energy enterprise in order to comply with that obligation .]⁴ <2a. The amount of the financial penalty imposed in the circumstances specified in (1) point 1a may not be lower than:

1) in case of a failure to meet the obligation referred to in Article 9a (1), the amount calculated using the formula:  $Ko = 1.3 \times (Oz - Ozz)$ , where the respective symbols denote the following: Ko – the minimal amount of the financial penalty expressed in Polish zloty, Oz – the substitute fee calculated pursuant to Article 9a (2) and expressed in zloty, Ozz – the substitute fee paid expressed in zloty;

2) in case of a failure to meet the obligation referred to in Article 9a (6), the amount calculated using the formula:  $Koz = Cc \times (Eoo - Ezo)$ , where the respective symbols denote the following: Koz – the minimal amount of the financial penalty expressed in Polish zloty, Cc – the average electricity sale price in the preceding calendar year referred to in Article 23 (2) point 18 letter b, expressed in zloty per 1 MWh, Eoo – the amount of the electricity offered for purchase generated using renewable energy sources and expressed MWh, Ezo – the amount of the electricity purchased generated using renewable energy sources in the given year, expressed in MWh;

3) in case of a failure to meet the obligation referred to in Article 9a (8), the amount calculated using the formula:  $Ks = Cs \times (Eo - Ez)$ , where the respective symbols denote the following: Ks – the minimal amount of the financial penalty expressed in Polish zloty, Cs – the average electricity sale price in the preceding calendar year referred to in Article 23 (2) point 18 letter a, expressed in zloty per 1 MWh, Eo – the amount of electricity offered for purchase cogenerated with heat as required by the obligation of the purchase in the given year, expressed in MWh, Ez – the amount of the electricity purchased cogenerated with heat in the given year, expressed in MWh. [2b. The revenue from the penalties imposed in the cases referred to in (1) point 1a with regard to the obligations referred to in Article 9a (1) and (3) shall constitute the income of the National Fund for Environmental Protection and Water Management.] <2b. The revenue from the financial penalties imposed in the cases described in (1) point 1a for the failure to comply with the obligations referred to in Article

9a (1) and (6)-(8) shall constitute the income of the National Fund for Environmental Protection and Water Management.

3. The amount of the financial penalty referred to in (1) may not exceed 15 per cent of the revenue of the enterprise penalized earned in the previous fiscal year and if the financial penalty is related to the activity conducted on the basis of a licence, the amount of the penalty may not exceed 15% of the revenue of the enterprise penalised earned on the activity which is subject to the licence in the previous fiscal year.

4. The financial penalty shall be paid to the bank account of the relevant tax office, subject to (2b).

5. Regardless of the financial penalty specified in provisions (1)–(4), the Chairman of ERO may impose a financial penalty on the manager of the energy enterprise, whereas that penalty may not exceed 300 per cent of their monthly remuneration.

6. The decision of the Chairman of ERO on the amount of the financial penalty shall reflect the level of harm of the action penalized, the level of fault on the part of the enterprise and the hitherto conduct of that entity as well as its financial capabilities.

7. The financial penalties referred to in (1) are subject to enforcement on the basis of the provisions on administrative enforcement proceedings.

8. The Chairman of ERO shall immediately notify the European Commission of any changes of the law related to the financial penalties and about the actions taken in the cases of breach of the provisions of the Regulation of the European Parliament and of the Council No. 1228/2003/EC of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

### **Article 57**

1. In cases of the illegal tapping of fuels or energy from the grid, the energy enterprise shall collect the fees for the illegally tapped fuel or energy at the amount specified in the tariffs or claims damages on general terms.

2. The fees referred to in (1) are subject to enforcement on the basis of the provisions on administrative enforcement proceedings.

## **Chapter 8 Amendments to the existing provisions, transitional provisions and final provisions**

### **Article 62a**

An energy enterprise may make the customer data available on the terms and following the procedure laid down in the Disclosure of Commercial Information Act of 14 February 2003 (Journal of Laws No. 50, Item 424).

### **Article 68**

1. On the date of entry of this Act into force, the District Energy Economy Inspectorates (*Okręgowe Inspektoraty Gospodarki Energetycznej*) established pursuant to the Energy Economy Act of 6 April 1984 shall be dissolved (Journal of Laws No. 21, Item 96, of 1987 No. 33, Item 180, of 1988 No. 19, Item

132, of 1989, No. 35, Item 192, and of 1990 No. 14, Item 89, and No. 34, Item 198).

2. The obligations and tasks of the liquidator of the District Energy Economy Inspectorates shall be ceded on the Ministry of Economy.

3. The liquidator shall issue a closing balance.

Article 58-62 and Article 63, 64, Article 66 and 67 skipped – the present text in the announcement of Article 65 deleted in (2) in Article 68: The minister in charge of economic affairs



## Article 70

2. The qualification certificates issued on the basis of the hitherto provisions shall remain valid until their original expiry dates.

## Article 71

The following legal acts shall hereby be repealed: 1) The Act on the Common Electrification of Villages and Settlements of 28 June 1950 (Journal of Laws of 1954 No. 32, Item 135);

2) the Energy Economy Act of 6 April 1984 (Journal of Laws No. 21, Item 96, of 1987 No. 33, Item 180, of 1988 No. 19, Item 132, of 1989 No. 35, Item 192, and of 1990 No. 14, Item 89, and No. 34, Item 198).

## Article 72

This Act shall become effective after six months from the date of announcement, except for Article 21 which becomes effective on the date of announcement of this Act and with the exception of Article 18 (3) and (4) which comes into force on 1 January 1999.

**Article 69 and Article 70 (1) skipped – to be announced.**

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<sup>1</sup> (5) and (6) in Article 9 shall remain in force until 31.12.2010 (Journal of Laws of 2005 No. 62, Item 552)

<sup>2</sup> ad. Article 51 point 3 – the present wording is as follows: The use of the Polish Standard shall be voluntary.

<sup>3</sup> point 1a in (1) in Article 56 becomes effective on 1.10.2005 (Journal of Laws of 2005 No. 62, Item 552).

<sup>4</sup> Provisions (2a) and (2b) of Article 56 become effective on 1.10.2005 (Journal of Laws of 2005 No. 62, Item 552).