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THE ENERGY LAW

of April 10, 1997

(Journal of Laws of June 4, 1997)

Chapter 1

General Provisions

Article 1.1. The Act defines the principles of development of national energy policy, the principles and terms of supply and use of fuels and energy, including heat, and operation of energy enterprises, as well as determines authorities in charge of fuels and energy economy.

2. The purpose of the Act is to create 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 environmental protection requirements, obligations arising from international agreements, protection of customers' interests and minimization of costs.

3. The Act does not apply to:

1) mining of fuels from deposits and their storage in the scope regulated by the Geological and Mining Law of February 4, 1994 (Journal of Laws No. 27, item 96, No 106, item 496 of 1996, No. 88, item 554, No. 111, item 726 and No. 133, item 885 of 1997, No 106, item 668 of 1998, No. 109, item 1157 and No. 120, item 1268 of 2000, No 110, item 1190, No 115, item 1229 and No 154, item 1800 of 2001, No. 113, item 984, No. 117, item 1007, No 153, item 1271, No 166, item 1360 and No. 240, item 2055 of 2002);

2) use of nuclear energy in the scope regulated by the Atomic Law of April 10, 1986 (Journal of Laws No 12, item 70, of 1987 No. 33, item 180, of 1991 No.8, item 28, of 1994 No.90, item 418, of 1995 No 104, item 515 and of 1996 No 24, item 110 and No 106, item 496).

Article 2.⁽¹⁾ (deleted)

Article 3. Whenever used in the Act the following terms shall have the following meaning:

1) energy - any form of processed 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,
- 4) transmission - transport of fuels or energy by means of a grid,
- 5) distribution – distribution and supply of fuels and energy to customers by means of a grid,
- 6) trade - economic activity consisting in wholesaling or retailing of fuels and energy,
- 7) energy processes - technical processes in scope of production, transformation, transmission, storage, distribution and/or use of energy or fuels,
- 8)⁽²⁾ heat, electric energy and gaseous fuels supply – processes related to supply of heat, electric energy and gaseous fuels to customers,
- 9) equipment - technical equipment used in energy processes,
- 10) installations - equipment with interconnecting facilities,
- 11) grid - interconnected and cooperating installations used to transmit or distribute energy or fuels, belonging to energy enterprises,
- 12)⁽³⁾ energy enterprise - a business entity that produces, transforms, stores, transmits or distributes energy or fuels or trades in fuels and energy,
- 13) customer – anyone who receives or offtakes energy or fuels under a contract with an energy enterprise,
- 14)⁽⁴⁾ commune – communes and communal associations and societies in the scope regulated by the Local Government Act of March 8, 1990 (Journal of Laws of 2001 No 142, item 1591, No 23, item 220, No 62, item 558 No 113, item 984 No 153, item 1271 and No. 214, item 1806 of 2002, and No 80, item 717 of 2003
- 15) regulation - application of legal instruments determined by the Act, including licensing, in order to ensure energy security, appropriate fuel and energy economy and protection of customers' interests,
- 16) energy security – the condition of the economy that enables full coverage of customers' current and anticipated demand for fuels and energy in a technically and economically justified manner, in compliance with environmental protection requirements,
- 17)⁽⁵⁾ tariff – a set of prices and rates of charges, as well as conditions of their application prepared by an energy enterprise, introduced as binding for specified groups of customers, according to the procedure determined in the Act,
- 18) illegal offtake of fuels or energy - offtake of fuel or energy without entering into a contract with an energy enterprise, or contrary to such contract,
- 19) grid operation - grid work management,
- 20)⁽⁶⁾ renewable energy source – a source which uses wind power, solar power, geothermal energy, sea wave and tidal energy, river fall energy, biomass energy, energy from landfill biogas and biogas produced in the process of sewage disposal and treatment or decomposition of plant and animal remains,
- 21)⁽⁷⁾ justified expenses – expenses necessary for the fulfillment of obligations arising in connection with a conducted business activity for the production, transformation, transmission and distribution of fuels and energy, trade in fuels and energy, and used by an energy enterprise for the calculation of prices and rates of charges set in the tariff in a manner that is justified economically, exercising due care necessary to protect customers' interests; justified costs are not tax-deductible expenses under tax regulations,
- 22)⁽⁸⁾ financing of lighting – the financing of costs of electric energy taken by lighting points and costs of their construction and maintenance,
- 23)⁽⁹⁾ gas system or electric energy system – gas or electric energy grids and equipment and installations connected to them and interoperating with them,
- 24)⁽¹⁰⁾ gas or electric energy transmission system operator – an energy enterprise that holds a license for the transmission or the transmission and distribution of gaseous fuels or electric

energy, responsible for the transmission grid operation in the territory of the Republic of Poland,

25)⁽¹¹⁾ gas or electric energy distribution system operator – an energy enterprise that holds a license for the transmission and distribution of gaseous fuels or electric energy, responsible for a distribution grid operation in the area specified in the license,

26)⁽¹²⁾ gas or electric energy transmission grid – a gas grid with a pressure exceeding 0.5 MPa or electric energy grid with a rated voltage exceeds 110 kVolts.

27)⁽¹³⁾ gas or electric energy distribution grid – a gas grid with a pressure not exceeding 0.5 MPa or electric energy grid with a rated voltage not exceeding 110 kVolts.

Article 4. 1. Energy enterprises engaged in transmission and distribution of fuels and energy to customers shall be obliged to maintain the ability of the equipment, installations and grids to provide gas or energy supplies in a continuous and reliable manner, in compliance with applicable quality requirements.

2.⁽¹⁴⁾ Energy enterprises engaged in transmission and distribution of gaseous fuels, electric energy or heat are obliged to provide all entities, on the equal treatment basis, with services of transmission of fuels and energy from a selected supplier of gaseous fuels, electric energy or heat, on the principles and within the scope specified in the act; the transmission services are rendered under a transmission services agreement, hereinafter referred to as a “transmission contract”.

3. The provision of services mentioned in Section 2 must not reduce reliability of supplies or quality of fuel and energy below the limit determined in separate legislation and may not cause unfavorable changes in price or scope of supply of fuels and energy to other entities connected to the grid.

4.⁽¹⁵⁾ Section 2 shall not apply to rendering transmission services that consist in transmission of gaseous fuels, electric energy or heat from the system of other country unless appropriate authorities of such country put the energy enterprises operating in such country under obligation to provide transmission services or the customer to whom gaseous fuels, electric energy or heat are to be delivered is not eligible for using transmission services in this country.

5.⁽¹⁶⁾ Section 2 shall apply to rendering transmission services that consist in transmission of gaseous fuels that are mined, or electric energy or heat that is produced in the territory of the European Union member states.

6.⁽¹⁷⁾ If an energy enterprise that deals with the transmission and distribution of gaseous fuels, electric energy or heat refuses to conclude a transmission contract, it shall be obliged to notify the President of the Energy Regulatory Authority and the interested entity in writing without delay, giving reasons of such refusal.

Art 4a.⁽¹⁸⁾ 1. At a request of an energy enterprise that refuses to conclude a transmission agreement, the President of the Energy Regulatory Authority may, by way of a decision, temporarily exclude or limit obligations mentioned in Article 4 Section 2 imposed on energy enterprises which are engaged in the transmission and distribution of gaseous fuels, where the rendering of transmission services may cause serious financial difficulties related to the performance of obligations of such enterprise under previously concluded contracts, which obliges the enterprise to pay for the quantity of gaseous fuels as set forth in the contracts, regardless of the quantity of gaseous fuels actually taken.

2. When taking the decision mentioned in Section 1, the President of the Energy Regulatory Authority shall consider:

- 1) the overall financial situation of an energy enterprise,
- 2) the date of conclusion of contracts, and their terms and conditions,

- 3) impact of provisions of contracts on the financial standing of energy enterprises which are engaged in the transmission and distribution of gaseous fuels, and their customers,
 - 4) strength of competition in the gaseous fuels market,
 - 5) performance by energy enterprises which are engaged in the transmission and distribution of gaseous fuels of their statutory obligations,
 - 6) measures taken by energy enterprises engaged in the transmission and distribution of gaseous fuels to enable the rendering of transmission services mentioned in Article 4, Section 2.
3. The President of the Energy Regulatory Authority, via the minister responsible for economy, shall immediately notify the European Commission of the decision mentioned in Section 1.

Article 4b.⁽¹⁹⁾ 1. The minister responsible for economy shall determine, by way of an ordinance, a timetable according to which customers will become eligible for using transmission services as mentioned in Article 4, Section 2, based on the following criteria:

- 1) documented annual consumption or purchases of gaseous fuels, electric energy or heat by customers,
 - 2) use of fuels or energy,
 - 3) characteristics of building structures to which gaseous fuels, electric energy or heat are to be delivered.
2. The minister responsible for economy shall inform the European Commission of the criteria based on which customers will become eligible for using services mentioned in Article 4, Section 2 in effect during a given calendar year and on the anticipated percentage of the total consumption of gaseous fuels or electric energy by the customers in the total consumption of gaseous fuels or electric energy in the territory of the Republic of Poland.

Chapter 2

Supply of Fuels and Energy

Article 5.⁽²⁰⁾ 1. Supply of fuels, electric energy or heat takes place on the basis of a sale contract or a transmission contract.

2. Contracts mentioned in Section 1 should consider the principles determined in the Act and licenses and should contain at least:

- 1) a sale contract - clauses on the quantity of gaseous fuels, electric energy or heat to be sold, broken down by contractual periods, way of setting prices and terms for their modification, way of settlement, liability of parties for breach of contract, term of contract and conditions for its termination,
- 2) a transmission contract – clauses on quantity of gaseous fuels, electric energy or heat to be transmitted, their destination, quality standards, conditions of ensuring reliability and continuity of supply, way of setting rates of charges and conditions of changing them for a group of customers specified in the tariff, way of settlement, liability of parties for breach of contract, term of the contract and conditions for its termination.

3. An energy enterprise may, at its own discretion, conclude only one contract that includes clauses of a sale contract and a transmission contract with a customer to whom it delivers gaseous fuels, electric energy or heat, based on prices and rates of charges set in the tariff mentioned in Article 45.

4. Energy enterprises engaged in transmission and distribution of gaseous fuels, electric energy or heat may, within a scope of their business activity, set general terms of sale or transmission contracts within the meaning of Article 384 § 1 of the Civil Code.

5⁽²¹⁾ Energy enterprises are required to issue, at a request of the interested party, a declaration referred to in the building law provisions, on ensuring the supplies of energy, heat or gas, and on conditions of interconnection of a facility to a heat, gas or electric energy grid.

Article 6.⁽²²⁾ 1. Authorized representatives of energy enterprises engaged in transmission and distribution of gaseous fuels, electric energy or heat, shall control the metering facilities, compliance with contracts and accuracy of settlements.

2. The authorized representatives mentioned in Section 1, upon presentation of a relevant identification and written authorization issued by an appropriate governing body of an energy enterprise that transmits and distributes gaseous fuels, electric energy or heat, shall have the right to:

- 1) enter the area of a real property or premises where the control is to be done unless separate regulations provide otherwise,
- 2) inspect equipment that is the property of an energy enterprise and also to perform works necessary for its operation or repair and to perform necessary examinations or measuring,
- 3) collect and secure proofs of the breach by a customer of conditions of using metering systems and conditions of a contract concluded with an energy enterprise.

3. The energy enterprise mentioned in Section 1 may discontinue supplies of gaseous fuels, electric energy or heat if the inspection mentioned in Section 2 indicates that:

- 1) customer's installation poses a direct threat to life, health or environment,
- 2) illegal offtake of gaseous fuels, electric energy or heat took place.

3a.⁽²³⁾ Energy enterprises mentioned in Section 1 may discontinue supplies of gaseous fuels, electric energy or heat if a customer delays to pay for taken gaseous fuel, electric energy or heat, or for rendered services for at least one month after expiration of due date, despite a written notification of intention to terminate the contract and setting an additional, two-week period for paying outstanding and current amounts due.

3b.⁽²⁴⁾ An energy enterprise is obliged to resume supply of gaseous fuels, electric energy or heat that was discontinued for reasons mentioned in Section 3 and 3a immediately after reasons justifying such discontinuance cease.

3c.⁽²⁵⁾ Section 3a does not apply to structures used for the State defense purposes.

4. minister responsible for economy shall determine, by way of an ordinance, detailed rules of inspections, samples of inspection reports and control authorizations, as well as sample identification card.

5. The ordinance mentioned in Section 4 shall specify in particular:

- 1) subject of the inspection,
- 2) detailed rights of authorized representatives mentioned in Section 1
- 3) manner of inspection.

Article 6a.⁽²⁶⁾ 1. An energy enterprise may install a prepayment metering and settlement facility used for settlements of supplied gaseous fuels, electric energy or heat if a customer:

- 1) is in delay of payment for gaseous fuel, electric energy or heat taken, or for rendered services, by at least one month, at least twice during twelve consecutive months,
- 2) has no legal title to a real property, facility or premises to which gaseous fuels, electric energy or heat is supplied,
- 3) uses a real property, facility or premises in a manner that prevents regular readings of metering and settlement facility.

2. Costs of installation of the metering and settlement facility mentioned in Section 1 shall be borne by an energy enterprise.
3. If a customer does not give his/her consent to installation of the metering and settlement facility mentioned in Section 1, the energy enterprise may discontinue supplies of electric energy or terminate the power purchase agreement.

Article 7.⁽²⁷⁾ 1.⁽²⁸⁾ Energy enterprises engaged in the transmission and distribution of gaseous fuels, electric energy and heat are obliged to conclude grid interconnection contracts, energy or fuel purchase contracts or transmission services contracts with customers or entities requesting the interconnection with a grid, on an equal treatment basis if it is technically and economically feasible to supply energy or fuels, and the applicant meets the requirements for grid interconnection and offtake. If an energy enterprise refuses to conclude such contract, it should immediately notify the interested entity in writing, giving reasons for refusal.

1a.⁽²⁹⁾ The obligation to conclude a contract for sale of electric energy mentioned in Section 1 does not apply to an energy enterprise which is also an operator of the electric energy transmission system.

2. The obligation mentioned in Section 1 shall not apply in a situation in which the requesting entity does not have a legal title to the facility to which gaseous fuels, electric energy or heat are to be supplied.

3. Enterprises referred to in Section 1 shall be obliged to meet technical conditions of supply of gaseous fuels, electric energy or heat specified in the separate legal regulations and in a license.

4. Energy enterprises engaged in transmission and distribution of gaseous fuels, electric energy or heat are obliged to provide the implementation and financing of the entire construction and development of the grid, including interconnections of requesting entities, upon the terms determined in the provisions mentioned in Articles 9 and 46 and in the assumptions mentioned in Article 19. Interconnection with a grid provided for in the assumptions referred to in Article 19 is subject to a charge determined on the basis of rates specified in the tariff.

5. Rates of charges for connecting to the grid mentioned in Section 4 are calculated on the basis of one fourth of average annual capital outlays for construction of the grid sections used for the interconnection of requesting entities, as set forth in the development plan mentioned in Article 16.

6. Costs connected with outlays mentioned in Section 5 shall not constitute a basis for the calculation of rates of charges for the transmission and distribution of gaseous fuels, electric energy or heat, to the extent they were covered by charges for the interconnection with a grid.

7. An entity being connected to a grid is required to enable an energy enterprise mentioned in Section 1 to build and develop the grid within that entity's premises to the extent necessary for the interconnection, and to provide rooms or sites for the installation of metering facilities, upon terms set forth in the interconnection contract.

8. An energy enterprise mentioned in Section 1 is obliged to notify an entity being connected of planned dates of works mentioned in Section 7, in advance as necessary for the entity being connected to prepare the property or premises for performance and acceptance of such works.

Article 8. 1. Disputes concerning the determination of conditions of rendering services mentioned in Article 4, Section 2, refusal of interconnection with a grid, refusal of conclusion of an electric energy, gaseous fuels or heat sale contract and unjustified discontinuity of supplies thereof shall be resolved by the President of the Energy Regulatory Authority at a request of one of the parties.

2. In cases referred to in Section 1, the President of the Energy Regulatory Authority, upon request of one of the parties, may determine terms of commencing or continuing supplies until the dispute is finally resolved.

Article 9.⁽³⁰⁾ 1. With respect to gaseous fuels, electric energy and heat the minister responsible for economy will determine, by way of an ordinance, specific terms for connecting entities to the grid, trade of electric energy, gaseous fuels and heat, transmission services, grid traffic and operation and quality standards of customer service.

2. The ordinance mentioned in Section 1 should specify in particular:

- 1) criteria for dividing connected entities or customers into groups,
- 2) procedure for connecting entities to the grid,
- 3) basic elements of an interconnection contract, sale contract and transmission services contract,
- 4) manner of conducting trade in gaseous fuels, electric energy and/or heat, also from renewable sources, and electric energy co-generated with heat,
- 5) ⁽³¹⁾ tasks of energy enterprises responsible for grid traffic and operation, having regards to the principle of equal treatment of entities using or applying for the use of their services and grids,
- 6) technical specifications of energy carrying agents,
- 7) way of settling complaints,
- 8) scope of information exchanged between energy enterprises and between energy enterprises and customers.

3.⁽³²⁾ (deleted)

Article 9a.⁽³³⁾ 1. Within the scope specified in the ordinance issued under Section 4, energy enterprises which are engaged in the trade in electric energy are obliged to purchase electric energy produced in the territory of the Republic of Poland from renewable sources connected to the grid, and to resell such energy directly or indirectly to customers that purchase electric energy for their own needs.

2. Within the scope specified in the ordinance issued under Section 4, energy enterprises that are also operators of an electric energy distribution system are obliged to purchase electric energy co-generated with heat, offered to them, from sources located within the territory of Poland as specified in the license, connected directly or indirectly to the grid owned by such enterprises.

3. An energy enterprise which is engaged in trade, transmission and distribution of heat is obliged to purchase heat offered from renewable sources connected to the grid, produced in the territory of the Republics of Poland in a quantity not exceeding the demand of customers connected to the grid.

4. The minister responsible for economy shall specify, by way of an ordinance, a detailed scope of obligations mentioned in Sections 1 to 3, with consideration to assumptions of the national energy policy and obligations arising from international agreements, and shall specify in particular:

- 1) types, technical and technological specifications of renewable sources producing electric energy or heat
- 2) technical and technological specifications of electric energy from cogeneration,
- 3) percentage of electric energy from renewable sources and co-generated electric energy which energy enterprises are obliged to purchase in the sale of electric energy to customers,
- 4) way of reflecting costs of electric energy and heat covered by obligatory purchase in tariffs.

Article 9b.⁽³⁴⁾ Energy enterprises which are engaged in transmission and distribution of heat are responsible for the operation and maintenance of their grids, and cooperation with other energy enterprises and customers using the grid, on terms set forth in the ordinance issued under Article 9 Section 1.

Article 9c.⁽³⁵⁾ 1. Within the scope of its business, an operator of a gas or electric energy transmission system is responsible for:

- 1) ensuring safe functioning of the transmission system and performance of contracts by proper management of transmission grids,
- 2) operating and maintaining transmission system including interconnections with other systems in a manner ensuring reliability and quality of supplied gaseous fuels or electric energy,
- 3) cooperating with other operators or energy enterprises in order to ensure consistent operation of interconnected grids,
- 4) dispatching gaseous fuels in sources and storage places of natural gas or dispatching capacity of electric energy generation units,
- 5) managing flows of gaseous fuels in gas grids or of electric energy in electric energy grids in order to maintain specific parameters of gaseous fuels or electric energy at interconnection points with other grids,
- 6) ensuring a suitable electric energy transmission capacity for an electric energy grid and suitable capacity of electric energy sources,
- 7) rendering services of electric energy transmission between electric energy systems,
- 8) rendering services necessary for the correct functioning of the electric energy system or gas system, and for the maintenance of specific qualitative parameters of gaseous fuels or electric energy within the system,
- 9) making balances of gaseous fuels in the gas grid or electric energy in electric energy grid on an ongoing basis,
- 10) implementing limitations on supply of gaseous fuels or electric energy, introduced on a basis of provisions mentioned in Article 11.

2. Within a scope of its business, an operator of the gas or electric energy distribution system is responsible for:

- 1) ensuring safe functioning of the distribution system and performance of contracts by correct management of distribution grids,
- 2) operation and maintenance of a distribution system including interconnections with other systems in a manner ensuring reliability and quality of supplied gaseous fuels or electric energy,
- 3) cooperation with other operators or energy enterprises in order to ensure consistent operation of interconnected grids,
- 4) based on arrangements with the operator of the transmission system, management of flows of gaseous fuels in gas grids or of electric energy in electric energy grids in order to maintain specific parameters of gaseous fuels or electric energy at interconnection points with other grids,
- 5) making current balances of gaseous fuels in a gas grid or electric energy in electric energy grid,
- 6) implementation of limitations on supply of gaseous fuels or electric energy, introduced on a basis of provisions mentioned in Article 11.

3. An operator of the gas or electric energy system is obliged to manage the grid traffic and to ensure the grid maintenance on the basis of equal treatment of entities, using or applying for using its services and the grid, with consideration to environmental protection requirements

and regulations on protection of classified information and other information protected by law.

4. Management of the grid traffic should not adversely affect performance of concluded contract for supply of gaseous fuels or electric energy if considering technical limitations of the grid.

5. To the extent as necessary for ensuring the effective operation and interoperation of interconnected grids and for their coordinated development, the system operators that manage interconnected grids shall inform each other of functioning of their grids.

6. Management of grid traffic in a gas or electric energy transmission grid should be independent of any other activity carried out by the operator of the gas or electric energy transmission system that is not related to the grid operation.

7. An operator of the gas or electric energy transmission system shall work closely with the European Commission in matters related to the development of Trans-European transmission grids.

8. The President of the Energy Regulatory Authority, by means of an administrative decision, shall appoint for a specified period:

- 1) operators of the gas and electric energy transmission system – for gas and electric energy grids,
- 2) operators of gas and electric energy distribution systems - for gas and electric energy grids, and shall specify area of their operation.

9. When appointing operators in accordance with Section 1, the President of the Energy Regulatory Authority shall consider:

- 1) energy security of the country,
- 2) technical parameters of grids owned by operators,
- 3) assessment of the effectiveness of the grid operation and maintenance by operators.

Article 9d.⁽³⁶⁾ In order to ensure safe functioning of the electric energy grid, an energy enterprise engaged in the production of electric energy and connected to the grid is obliged to produce electric energy or remain in readiness for such production if necessary to ensure quality, continuity and reliability of supplies.

Article 10.⁽³⁷⁾ 1. Energy enterprises, which are engaged in the production of electric energy or heat, are under the obligation to maintain reserves of fuel in the quantity sufficient to ensure the continuity of electric energy or heat supply to the customers.

2. Energy enterprises mentioned in Section 1 are obliged to enable inspection with respect to the consistency of fuel reserves volume with the ordinance mentioned in Section 6.

3. The inspection mentioned Section 2 shall be carried out on a basis of written authorization, issued by the President of the Energy Regulatory Authority that should include:

- 1) name of the person that carries out the inspection,
- 2) name of an inspected energy enterprise,
- 3) scope of inspection

4. Persons authorized by the President of the Energy Regulatory Authority to carry out inspections shall have the right to:

- 1) enter the premises and places where reserves are stored and maintained;
- 2) review documents related to record-keeping of reserves.

5. Upon completion of an inspection, an inspection report shall be prepared and presented to governing bodies of the enterprise.

6. The minister responsible for economy shall set, by way of an ordinance, the volume of fuel reserves mentioned in Section 1, the way of reserve accumulation and a detailed control

procedure of reserve levels with consideration to type of business, technical and organizational capabilities for creation of reserves.

Article 11.⁽³⁸⁾ 1. In case of:

1. threat to the energy security of the Republic of Poland, consisting in the threat of a long-term imbalance in the fuel and energy market,
 2. threat to human safety,
 3. danger of considerable material losses,
- limitations on the sale of solid or liquid fuels and on supply and offtake of gaseous fuels, electric energy and heat may be introduced for a defined period within the entire country or parts thereof.
2. Limitations on the sale of solid or liquid fuels consist in selling such fuels on a basis of permits to purchase a specific quantity of fuels issued to customers.
 3. Limitations on supply and offtake of gaseous fuels, electric energy or heat consist in:
 - 1) limitation of maximum hourly or daily consumption of gaseous fuels,
 - 2) limitation of maximum capacity offtake and daily consumption of electric energy,
 - 3) reduction or discontinuance of heat supply.
 4. Limitations introduced under Sections 2 and 3 are subject to compliance control.
 5. The following bodies are entitled to control the compliance with limitations introduced:
 - 1) the President of the Energy Regulatory Authority – with respect to gaseous fuels and electric energy supplied via grids,
 - 2) voivods – with respect to solid and liquid fuels, and heat,
 - 3) appropriate regulatory bodies responsible for the management of fuels and energy, mentioned in Article 21a – with respect to entities mentioned therein.
 6. The Council of Ministers shall, by way of an ordinance, set detailed principles and the way of introducing limitations mentioned in Section 1, taking into consideration the importance of customers for economy and functioning of the state, and in particular tasks performed by such customers.
 7. At a request of the minister responsible for economy, the Council of Ministers may, by way of an ordinance, introduce in the territory of the Republic of Poland or part thereof, for a defined period, limitations on the sale of solid or liquid fuels and in supply and offtake of gaseous fuels, electric energy and heat, in case of threats mentioned in Section 1.
 8. Energy enterprises shall not be responsible for the effects of limitations introduced under the ordinance mentioned in Section 7.
 9. The minister responsible for economy shall promptly inform the European Commission and the European Union member states of any limitations introduced, as mentioned in Section 7 with respect to supply and offtake of gaseous fuels and electric energy.

Chapter 3

Energy Policy

Article 12. 1. The minister responsible for economy is the supreme governmental authority in charge of energy policy issues.

2. The tasks of the Minister of Economy in the scope of the energy policy cover:
 - 1) preparation, in liaison with appropriate ministers, energy policy guidelines, and coordination of their implementation,
 - 2) determination of detailed conditions of operation and planning of the development of fuels and energy supply systems according to the scope and procedure established in the Act,

- 3) supervision over the operation of the national energy systems within the scope determined by the Act,
 - 4) cooperation with voivods and local authorities within the scope of planning and implementation of fuel and energy supply systems,
 - 5) coordination of cooperation with international governmental organizations within the scope determined by the Act,
 - 6) ⁽³⁹⁾ informing the European Commission annually, by April 15, of investment projects mentioned in Article 16 Section 3, Subsection 2 that are of interest of the European Commission.
3. ⁽⁴⁰⁾ (deleted).

Article 13. 1. The Council of Ministers, at a request of the Minister of Economy shall determine the national energy policy guidelines.

2. Every two years, the Minister of Economy, in liaison with the Minister of Finance, submits to the Council of Ministers the assessment of the implementation of the national energy policy guidelines, mentioned in Section 1 above, together with possible proposals of their correction and short-term forecast for the period no longer than 5 years.

3. Every two years, the Council of Ministers submits to Sejm the assessment of the implementation of the national energy policy guidelines, proposals for their corrections and the short-term forecast for the energy sector development.

4. ⁽⁴¹⁾ The minister responsible for economy shall announce the national energy policy guidelines, determined by the Council of Ministers, in the Official Journal of the Republic of Poland "Monitor Polski".

Article 14. The purposes of the national energy policy guidelines mentioned in Article 15 are as follows:

1. to set out, for the long-term period, not shorter than 15 years, national fuels and energy economy development forecasts, based on the assessments of the state energy security,
2. to determine long-term national action plan in order to implement recommendations stemming from the forecast referred to Section 1.

Article 15. The national energy policy guidelines mentioned in Article 13 shall be developed in accordance to the principle of the sustainable development of the country and shall determine in particular:

- 1) assessment of the energy security of the state,
- 2) forecasted domestic demand for fuels and energy considering the forecasted growth of gross domestic product,
- 3) forecast of fuels and energy imports and exports,
- 4) forecast of the production capacity of fuels and energy sources,
- 5) investment policy,
- 6) activities in environmental protection matters,
- 7) ⁽⁴²⁾ development of renewable energy sources,
- 8) ⁽⁴³⁾ policy of the effective usage of fuels and energy,
- 9) licensing policy of energy enterprises business activity,
- 10) pricing policy,
- 11) obligatory reserves of fuels policy,
- 12) energy sector ownership transformations policy,
- 13) proposals relating to international cooperation,
- 14) proposals relating to research and development,
- 15) proposals for amendments to legal regulations.

Article 16.⁽⁴⁴⁾ 1. Energy enterprises which are engaged in the transmission or distribution of gaseous fuels, electric energy or heat, shall prepare, for the territory of their operation, development plans to meet present and future demand for gaseous fuels, electric energy or heat, with the consideration of the local land development plan or the trends of commune development plan specified in the study of conditions and trends of the commune land development plan.

2. Enterprises mentioned in Section 1 shall prepare development plans to meet present and future demand for gaseous fuels, electric energy or heat for periods of minimum three years.

3. Plans mentioned in Section 1 shall cover in particular:

- 1) anticipated scope of gaseous fuels and electric energy supplies,
- 2) ⁽⁴⁵⁾ grid modernization, extension or construction projects and possible new sources of electric energy, gaseous fuels or heat, including renewable sources,
- 3) projects rationalizing the consumption of fuels and energy by customers,
- 4) proposed investment financing structure,
- 5) anticipated income necessary for the implementation of plans,
- 6) anticipated schedule for the implementation of investment projects.

4. Plans mentioned in Section 1 above should ensure minimization of outlays and costs borne by an energy enterprise so that outlays and costs do not cause excessive increase of prices and rates of charges of gaseous fuels, electric energy or heat in subsequent years, while ensuring continuity, reliability and quality of supplies.

5. In order to rationalize investment projects when preparing plans mentioned in Section 1, energy enterprises engaged in transmission and distribution of gaseous fuels, electric energy or heat are obliged to cooperate with interconnected entities and communes on whose territory they conduct business activity. The cooperation should in particular consist in:

- 1) communicating information on planned projects to interconnected entities to the extent such projects would have an impact on the operation of the equipment connected to the grid or change terms of the interconnection or supply of electric energy, gaseous fuels or heat,
- 2) ensuring consistency between plans of energy enterprises and guidelines and plans mentioned in Article 19 and 20.

6. Draft plans mentioned in Section 1, excluding development plans to meet present and future demand for heat, shall be subject to the President of the Energy Regulatory Authority's approval.

Article 17.⁽⁴⁶⁾ 1.⁽⁴⁷⁾ Voivodship local government shall participate in planning energy and fuel demand in the territory of the voivodship, within the scope set forth in Article 19, Section 5.

2. Voivod shall supervise the conformity of heat supply plans with the national energy policy guidelines and the law in force.

Article 18. 1.⁽⁴⁸⁾ Exclusive tasks of communes in the field of electric energy and heat supply consist of:

- 1) planning and organization of heat, electric energy and gaseous fuel supply on the commune territory,
- 2) planning of lighting of public places and roads on the commune territory,
- 3) ⁽⁴⁹⁾ financing of lighting of streets, squares and roads on the territory of commune, which is their administrator, subject to Section 3a.

2.⁽⁵⁰⁾ Communes shall carry out tasks mentioned in Section 1, in accordance with the national energy policy guidelines and the local land use plan or local development plan of the commune.

- 3.⁽⁵¹⁾ The expenditures for lighting of public roads which are not under the commune administration shall be covered by the state budget.
- 3a.⁽⁵²⁾ The expenditures for lighting of national, voivodship or powiat roads within the boundaries of cities with powiat rights shall be covered by the state budget.
- 4.⁽⁵³⁾ The Minister of Finance shall determine, by way of an ordinance, rules and deadlines for transfer of financial resources for the purposes mentioned in Section 3 and 3a.

Article 19. 1.⁽⁵⁴⁾ The commune executive mayor shall prepare draft guidelines for the heat, electric energy and gaseous fuels supply plan, hereinafter referred to as “the draft guidelines”.

2. The draft guidelines shall be prepared for the entire commune or its part.

3.⁽⁵⁵⁾ The draft guidelines shall determine:

- 1) assessment of the present situation and forecasted changes in heat, electric energy and gaseous fuel demand,
- 2) projects rationalizing the usage of heat, electric energy and gaseous fuel by customers and users,
- 3) possibilities of usage of existing fuel and energy surpluses and local resources with particular consideration to co-generation of electric energy and heat and the usage of waste heat from industrial installations,
- 4) scope of cooperation with other communes.

4.⁽⁵⁶⁾ Energy enterprises shall made available to the commune executive mayor the plans mentioned in Article 16 Section 1, free of charge and to the extent they concern territory of this commune, and proposals necessary for the development of the draft guidelines.

5.⁽⁵⁷⁾ The draft guidelines shall be agreed with the voivodship local government in respect of the coordination of cooperation with other communes and by a voivod in respect of the conformity with the national energy policy.

6. The draft guidelines shall be made available for public review for 21 days, and announced in the manner usually used in particular township.

7.⁽⁵⁸⁾ Persons and organizational units interested in heat, electric energy and gaseous fuel supply within a commune area, have the right to submit motions, comments and reservations to the draft guidelines.

8.⁽⁵⁹⁾ Commune’s Council adopts guidelines for the heat, electric energy and gaseous fuel supply plan deciding on motions, comments and reservations submitted during the public availability of the draft guidelines .

Article 20.⁽⁶⁰⁾ 1. Where plans of energy enterprises do not ensure the implementation of guidelines mentioned in Article 19, Section 8, a commune executive mayor shall work out a draft heat, electric energy and gaseous fuels supply plan for the territory of a commune or its part. The draft plan shall be prepared on the basis of guidelines adopted by the commune’s council and should be consistent with them.

2. The draft plan mentioned in Section 1 shall contain:

- 1) proposals in respect of the development and modernization of particular systems of heat, electric energy and gaseous fuels supply, including the business justification,
- 2) time schedule of the implementation of tasks,
- 3) anticipated costs of the implementation of the heat supply plan and sources of their financing.

3.⁽⁶¹⁾ Commune executive mayor submits the draft plan mentioned in Section 1 to the voivod in order to confirm its consistency with the assumptions mentioned in Article 19.

4. Commune’s Council adopts the supply plan mentioned in Section 1.

5. For the purpose of the implementation of the plan mentioned in Section 3, the commune may conclude contracts with energy enterprises.

6. Where implementation of the plan based on contracts is not possible, to ensure supply of heat, electric energy and gaseous fuels, the commune council may, by resolution, indicate the portion of the plan, with which activities carried out in the territory of the commune must be consistent.

Chapter 4

Fuel and Energy Economy Regulatory Authority

Article 21. 1. The tasks connected with the regulation of the energy economy and the development of competition shall be implemented by the President of the Energy Regulatory Authority, hereinafter referred to as “the President of ERA”.

2.⁽⁶²⁾ The President of ERA is a central government authority appointed for five years by the Chairman of the Council of Ministers at a request of the minister responsible for economy.

3.⁽⁶³⁾ The President of ERA may be recalled by the Chairman of the Council of Ministers before the end of his term of office in case of disease making him incapable of performing his duties, gross violation of his duties, commitment of a crime determined in the enforceable judgment, or his/her resignation.

4. The President of ERA performs the tasks mentioned in Section 1, supported by the Energy Regulatory Authority, and hereinafter referred to as the “ERA”.

5.⁽⁶⁴⁾ The Deputy President of ERA is appointed and removed by the minister responsible for economy, at a request of the President of ERA.

6.⁽⁶⁵⁾ The organization and mode of operation of ERA shall be determined in the charter granted by the minister responsible for economy, by way of an ordinance.

Article 21a.⁽⁶⁶⁾ The bodies in charge of the regulation of fuel and energy administration for organizational units subordinate to the Minister of National Defense, organizational units of the Police, National Fire Forces, Border Guard, Government Protection Office, National Security Agency, Intelligence Agency and organizational units of the prison organization system subordinate to the Minister of Justice, are energy management inspection units appointed by appropriate ministers, and with respect to organizational units of the aforementioned Agencies, Heads of such Agencies, in consultation with the President of the ERA.

Article 22.⁽⁶⁷⁾ 1. The Energy Regulatory Authority consists of the Head Office in Warsaw and the following regional branches:

- 1) North-West branch seated in Szczecin,
- 2) North branch seated in Gdańsk,
- 3) Western branch seated in Poznań,
- 4) Eastern branch seated in Lublin,
- 5) Middle-Western branch seated in Łódź,
- 6) South-West branch seated in Wrocław,
- 7) Southern branch seated in Katowice,
- 8) South-East branch seated in Kraków

2.⁽⁶⁸⁾ The minister responsible for economy shall specify, by way of an ordinance, a detailed territorial and subject-matter jurisdiction, with consideration to powiat borders.

3. Directors of the ERA regional branches are appointed and removed by the President of ERA.

Article 23. 1.⁽⁶⁹⁾ The President of ERA regulates activities of energy enterprises according to the national energy policy guidelines and the Act, aiming at minimizing the costs of energy enterprises and customers of fuels and energy.

2. The tasks and duties of the President of ERA shall cover in particular:

- 1) issuing, refusal of issuance, amending and withdrawal of licenses,
- 2) ⁽⁷⁰⁾ approval and control of tariffs of gaseous fuels, electric energy and heat, considering their consistence with principles set out in Articles 45 and 46, including:
 - a) analysis and verification of costs adopted by energy enterprises as justified for calculation of prices and rates of charges in tariffs,
 - b) determining adjustment coefficients that specify projected improvements in effectiveness of energy enterprises and change in terms of conducting by such enterprise a specific kind of business activity,
 - c) determining period of validity of the adjustment coefficient mentioned in letter b).

2a)⁽⁷¹⁾ (deleted)

- 3) agreement of draft plans mentioned in Article 16,
- 4) control of supply, as well as customer service quality standards in respect of trade in electric energy and gaseous fuels,
- 5) resolving disputes within the scope determined in Article 8 Section 1,
- 6) imposing fines in accordance with principles provided in the Act,
- 7) cooperation with the relevant authorities in counteracting monopolistic practices of energy enterprises,
- 8) publishing information with a view to improving energy efficiency and fuels utilization,
- 9) collecting and processing information relating to energy economy,
- 10) controlling qualifications of persons, mentioned in Article 54,
- 11) ⁽⁷²⁾ gathering information on investment projects that are of interest to the European Union and communicating them to the European Commission via the minister responsible for economy.

3.⁽⁷³⁾ An opinion from the territorially competent Voivodship's Executive Board is necessary for handling issues mentioned in Section 2, Subsections 1 and 3, excluding issues mentioned in Article 32, Section 1 Subsection 4.

4.⁽⁷⁴⁾ Failure to provide opinion mentioned in Section 3 within 14 days from submitting the issue shall be deemed as providing a positive one.

Article 24.⁽⁷⁵⁾ By the end of the first quarter of each year, the President of ERA shall provide the minister responsible for economy with a report on his activity and, at the minister's request, also with information concerning the scope of his activity.

Article 25-27.⁽⁷⁶⁾ (deleted).

Article 28.⁽⁷⁷⁾ The President of ERA may request from energy enterprises information concerning their business activity, including information on their investment projects, with due regard to the provisions of law on confidential and proprietary information.

Article 29.⁽⁷⁸⁾ The Prime Minister shall determine, by way of an ordinance, the rules of remuneration of ERA employees.

- Article 30.** 1. The provisions of the Code of Administrative Procedure shall apply to proceedings before the President of ERA, subject to Sections 2 to 4.
- 2.⁽⁷⁹⁾ Decision of the President of ERA may be appealed to the Warsaw Regional Court, the Antimonopoly Court within two weeks from the date of the decision delivery.
3. The proceedings in the case of appeal against decisions of the President of ERA shall be governed by the provisions of the Code of Civil Procedure on proceedings in commercial cases.
4. Sections 2 and 3 shall apply to decisions of the President of ERA of lesser gravity, which can be appealed against, accordingly; provided that an appeal must be filed within 7 days.

- Article 31.** 1. ERA shall publish a Bulletin of Energy Regulatory Authority, hereinafter referred to as the "ERA Bulletin".
2. ERA shall publish in the ERA Bulletin reports mentioned in Article 24 Section 1.
3. ERA shall publish in the ERA Bulletin information on:
- 1) entities applying for a license,
 - 2) ⁽⁸⁰⁾ decisions concerning licenses and tariffs together with a justification,
 - 3) decisions on disputes taken by the President of ERA.
4. In case of heat, information mentioned in Section 3 is published in the territorially appropriate Voivodship Official Journal.
5. The President of ERA may, by way of a ruling, order the publication of regional or sectoral editions of the ERA Bulletin, as well as determine their scope and terms of publication of announcements.

Chapter 5

Licenses and Tariffs

- Article 32.**⁽⁸¹⁾ 1. The following shall require a license:
- 1) ⁽⁸²⁾ production of energy and fuels, except for production of solid fuels, generation of electric energy in sources of capacity less than 5 MW, production of gaseous fuels from liquid gas, generation of heat in sources of the total capacity of less than 1 MW,
 - 2) storage of gaseous and liquid fuels except for: local storage of liquid gas in installations with a flow rate of less than 1 MJ/s and storage of liquid fuels in the retail trade,
 - 3) transmission and distribution of fuels and energy, except for: transmission and distribution of gaseous fuels in the grids of a flow rate of less than 1 MJ/s and distribution of heat from the group terminals by customers' installations,
 - 4) ⁽⁸³⁾ trade in energy and fuels except for trade of solid fuels, trade of electric energy by means of the installations with voltage lower than 1 kV, owned by customer, trade of gaseous fuels, if the annual value of trade does not exceed the equivalent of EUR 100,000, and trade of liquid fuels, if the annual value of trade does not exceed the equivalent of EUR 500,000, as well as trade of gaseous fuels and electric energy in commodity exchanges by commodity brokerage houses that conduct brokerage business of trade in commodities under the Act on Commodity Exchanges of October 26, 2000 (Journal of Laws No 103, item 1099).
2. Licenses to carry out the activity mentioned in Section 1 Subsection 4 in the area of foreign trade in natural gas shall be granted with consideration to the diversification of gas sources and energy security.
3. At a request of the minister responsible for economy, the Council of Ministers shall specify, by way of an ordinance, a minimum level of diversification of gas supplies from

abroad by determining maximum percentage of gas from one source. The ordinance shall specify the level of diversification for at least 10 years.

4. A license mentioned in Section 1, Subsection 1 shall not be required for business activity consisting in the generation of heat in industrial technological processes and when capacity ordered by customers does not exceed 1 MW.

Article 33. 1. The President of ERA shall grant licenses if the applicant:

- 1) has its registered office or place of residence in the Republic of Poland;
- 1) ⁽⁸⁴⁾ has its registered office or place of residence in European Union member states;
- 2) has the financing necessary to ensure the proper performance of the activity,
- 3) has technical capacities guaranteeing the proper performance of the activity,
- 4) ensures the employment of personnel with relevant qualifications as mentioned in Article 54,
- 5) has obtained a planning permit.

2. A license issued pursuant to Section 1 does not exempt from the requirement to obtain licenses or permits according to any other legal regulations.

3. A license cannot be awarded to a person who:

- 1) is subject to bankruptcy or liquidation procedure,
- 2) was withheld a license for an activity covered by the Act over the last 10 years,
- 3) was subject to the enforceable conviction for an offense related to the business activity covered by the Act.

4. In making decisions on granting licenses, the social interest and the national energy policy guidelines shall be taken into consideration.

5. ⁽⁸⁵⁾ The President of ERA, via the minister responsible for economy, shall inform the European Commission on reasons of refusal to grant a license to an applicant.

Article 34. 1. Energy enterprises that were granted a license shall pay annual charges to the state budget, charged against their operational costs.

2. ⁽⁸⁶⁾ (deleted)

3. ⁽⁸⁷⁾ The Council of Ministers, by way of an ordinance, shall specify the amount and a way of the collection, by the President of ERA, of charges mentioned in Section 1, taking into consideration energy enterprises revenues from licensed business activity, as well as regulation costs.

Article 35. 1. An application for a license should contain in particular:

- 1) ⁽⁸⁸⁾ name of the applicant, its seat or place of residence and first and last names of attorneys authorized to perform legal acts on behalf of the entity, if appointed,
- 2) scope and subject of a business activity to be licensed, and the draft plan mentioned in Article 16,
- 3) information concerning operations of an entity to date, including financial reports for last 3 years, if an entity conducted a business activity,
- 4) specification of time for which the license is to be awarded, including the date of commencement of the activity,
- 5) specification of funds at the disposal of the applicant in order to ensure appropriate performance of operations covered by the application,
- 6) statistical identification number in the domestic register of entities conducting a business activity.

2. The President of ERA may request additional information and documents to ensure that the applicant shall meet requirements stemming from the regulations.

3. The President of ERA shall refuse to issue a license if an applicant does not meet conditions required by provisions of law.

Article 36. Licenses shall be issued for a definite period of no less than 10 years and no more than 50 years.

Article 37. 1. A license should determine the following:

- 1) name of an enterprise as well as its registered office or place of residence;
- 2) subject and scope of activities covered by the license;
- 3) date of commencing activities covered by the license and conditions of their performance;
- 4) period for which the license is valid;
- 5) ⁽⁸⁹⁾ particular terms of performance of activities covered by the license, having in purpose proper service of customers with respect to:
 - a) ensuring ability to supply fuels or energy in a continuous and reliable manner, meeting qualitative requirements specified in the ordinance issued under Article 9, Section 1,
 - b) notifying the President of ERA of failure to commence, discontinuance or limitation of activities covered by the license within the term of its validity,
- 6) the environmental protection safeguards during the licensed operations and after their termination;
- 7) statistical identification number in the domestic register of entities conducting a business activity.

2. A license should also determine conditions of termination of energy enterprises' activity after the expiry of the license or after its revocation.

3. ⁽⁹⁰⁾ The President of ERA shall send a copy of issued licenses to a territorially appropriate statistics office.

Article 38. Granting a license may be dependant on setting up a collateral in order to satisfy the claims of third parties arising due to improper performance of an activity covered by the license, including harm to environment.

Article 39. An energy enterprise may apply for the extension of its license no later than 18 months before its expiration.

Article 40. 1. The President of ERA may order an energy enterprise, despite the expiration of its license, to continue to provide services for a period not longer than 2 years, if social interest so requires.

2. If an activity conducted upon terms determined in Section 1 brings an energy enterprise loss, coverage of losses is due from the State Treasury in the amount limited to justified costs of the activity, determined in the license, performed with the maintenance of due diligence.

3. Costs mentioned in Section 2 are subject to the President of ERA approval.

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Article 41. 1. The President of ERA may amend terms of an issued license ex officio or at a request of an energy enterprise.

2. The President of ERA may amend terms of a license ex officio or withdraw a license:

- 1) due to requirements of national defense and security, determined in the separate provisions,
- 2) in case of a split of licensees or their merger with other entities,

3. The President of ERA revokes a license:
 - 1) in the event of termination of a business activity covered by the license,
 - 2) in the event of an enforceable court ruling banning the conduct of a business activity covered by the license,
 - 3) if an activity conducted grossly violates the terms of the license, and the licensed enterprise has failed to remove the shortcomings revealed by the regulatory authority within the indicated period.
- 4.⁽⁹¹⁾ The President of ERA notifies a territorially appropriate statistics office about the withdrawal of a license.

Article 42. A license issued on the basis of the Act shall expire upon the lapse of time for which it has been granted or on the day of striking the licensed enterprise off the appropriate register.

- Article 43.** 1. Whoever intends to conduct a business activity consisting in production, transformation, storage, transmission, distribution of and/or trade in fuels or energy subject to licensing may apply for issuing a license promise.
2. A promise shall be issued by the President of ERA by way of an administrative decision.
 3. The promise specifies the period of its validity, however it can not be shorter than six months.
 4. During the period of the promise validity, the license to conduct an activity specified in the promise cannot be refused, unless the legal or factual status described in the application for issuing the promise has changed.
 5. Article 35 of the Act apply accordingly to applications for issuing a promise.

- Article 44.**⁽⁹²⁾ 1. Energy enterprises are obliged, within enterprise accounts plans, to keep accounts in a manner enabling calculation of costs and revenues, separately for the:
- 1) supply of fuels and energy, including fixed costs, variable costs and revenues, separately for the production, distribution, trade, storage for each kind of fuels or energy supplied, as well as for each group of customers as specified in the tariff,
 - 2) business activity not related to the activities mentioned in Subsection 1.
2. Energy enterprises that are not obliged to publish financial reports under separate regulations, shall make financial reports available for public review at their offices .

- Article 45.** 1.⁽⁹³⁾ Tariffs for gaseous fuels, electric energy and heat should ensure:
- 1) ⁽⁹⁴⁾ coverage of justified costs of energy enterprises' operation in the field of production, transformation, storage, transmission, distribution of or trade in fuels and energy, and costs of modernization, development and environmental protection,
 - 2) protection of interest of customers from unjustified level of prices.
- 1a.⁽⁹⁵⁾ Costs of operation of energy enterprises engaged in transmission and distribution of electric energy mentioned in Section 1 Subsection 1, shall include the costs which arise from outlays for investment projects undertaken by energy enterprises engaged in production of electric energy in years 1993-1998 for the purpose of improving environmental protection and efficiency of production of electric energy in the part as shall be approved by the President of the ERA, with consideration for revenues from the sale of electric energy in the competitive market mentioned in Article 49, Section 1.
2. Tariffs for gaseous fuels, electric energy and heat may include costs of co-financing by energy enterprises of projects and services with a view to reducing energy and fuel consumption by customers and which provide an economically justified alternative for avoidance of development of new sources of energy and/or grids.

3.⁽⁹⁶⁾ Tariffs for gaseous fuels, electric energy and heat, mentioned in Section 1, may include cost of co-financing by energy enterprises of projects related to development of renewable energy sources.

4.⁽⁹⁷⁾ Energy enterprises shall differentiate tariffs for gaseous fuels, electric energy and heat for different groups of customers, only depending on justified costs relating to the delivery, unless otherwise provided in the provisions of law.

5.⁽⁹⁸⁾ Energy enterprises engaged in transmission and distribution of gaseous fuels, electric energy or heat shall calculate rates of charges for transmission services in such a manner that the percentage of fixed charges for the provision of transmission services in total charges for such services for a given group of customers should not be higher than:

- 1) 40% - for gaseous fuels and electric energy,
- 2) 30% - for heat.

Article 45a.⁽⁹⁹⁾ 1. On the basis of prices and rates of charges included in the tariff or prices and rates of charges established on a competitive market mentioned in Article 49 Section 1, an energy enterprise shall calculate charges for gaseous fuels, electric energy or heat supplied to a customer.

2. The charges mentioned in Section 1, adjusted for discounts and rebates granted to a customer, constitute costs of purchase of gaseous fuels, electric energy or heat supplied to a building where dwellings and business premises are located, occupied or used by persons that are not customers.

3. An energy enterprise shall grant discounts and rebates mentioned in Section 2 in case of failure to comply with customer service quality standards, in the amount specified in the tariff or in the contract.

4. The costs of purchase mentioned in Section 2 are settled in charges collected from persons mentioned in Section 2. The charges should be determined in such a manner as to ensure the coverage of costs of purchase of gaseous fuels, electric energy or heat borne by the customer exclusively.

5. Provisions of Section 4 shall apply accordingly to determining by a customer – a building owner or administrator – of charges payable by persons mentioned in Section 2 to whom heat is supplied from own sources and heating systems.

6. In case the only recipient of gaseous fuels, electric energy or heat supplied to a multi-dwelling building is an owner or an administrator of such building, he/she is responsible for breaking down total costs of purchase of gaseous fuels, electric energy or heat into separate dwellings.

7. The customer may commission other person or an organizational unit to keep settlements mentioned in Section 6, on a basis of a separate contract.

Article 45b.⁽¹⁰⁰⁾ Prices and rates of charges for heat used in settlements with customers may not be changed more frequently than once in 12 months.

Article 46.⁽¹⁰¹⁾ 1. The minister responsible for economy, in consultation with the Minister in charge of Finance, after having sought the opinion of the President of ERA, shall determine, by way of an ordinance, detailed terms of formulation and calculation of tariffs for gaseous fuels, electric energy and heat, including detailed rules for settlements in trade of gaseous fuels, electric energy and heat.

2. The ordinance mentioned in Section 1 should specify, in particular, types of tariffs applied, including types of prices and rates of charges, and methods of:

- 1) determining criteria for the division of customers into tariff groups,

- 2) calculating prices and rates of charges, and calculating charges, including charges for the interconnection with a grid,
- 3) differentiating prices and rates of charges for tariff groups with regard to costs incurred,
- 4) ⁽¹⁰²⁾ reflecting improvement of effectiveness and conditions of a business activity conducted by energy enterprises in calculation of costs mentioned in Article 9a and Article 45 Section 1a,
- 5) making settlements between energy enterprises, also in the scope set forth in Article 45, Section 1a,
- 6) making settlements with customers, including amounts of charges for the illegal offtake of fuels and energy, and for the failure to maintain customer service quality standards.

Article 47. 1. ⁽¹⁰³⁾ Licensed energy enterprises shall set tariffs for gaseous fuels and electric energy and heat, which are subject to approval of the President of ERA. Licensed energy enterprises submit tariffs of their own initiative or at a request of the President of ERA.

2. ⁽¹⁰⁴⁾ The President of ERA, within 30 days, shall approve the tariff or refuse to approve it in case of its inconsistency with principles and provisions mentioned in Articles 44, 45 and 46.

3. ⁽¹⁰⁵⁾ The President of ERA:

- 1) publishes in the ERA Bulletin, within 14 days of the approval and at the expense of the energy enterprise, approved tariffs for gaseous fuels, electric energy and heat,
- 2) submits, within 7 days of approval, approved tariffs for heat for publication in the territorially appropriate Voivodship Official Journal.

4. ⁽¹⁰⁶⁾ The tariff must not be in force earlier than 14 days and not later than 45 days after its publication.

Article 48. ⁽¹⁰⁷⁾ (deleted)

Article 49. ⁽¹⁰⁸⁾ 1. ⁽¹⁰⁹⁾ The President of ERA may exempt an energy enterprise from the obligation to submit tariffs for approval, if he ascertains that the enterprise operates on the competitive market, or may withdraw the exemption granted when the conditions, which justified the exemption cease.

2. The exemption mentioned in Section 1 may concern a specific part of business activity conducted by an energy enterprise to the extent such activity is conducted on the competitive market.

3. ⁽¹¹⁰⁾ When taking decision mentioned in Section 1, the President of ERA considers such characteristics of the fuels or energy market as a number of participants and their market share, a transparent structure and rules of market functioning, existence of barriers for access to the market, equal treatment of all market participants, access to market information, effectiveness of inspections and security measures against making use of position that limits competition, access to highly efficient technologies.

Article 50. ⁽¹¹¹⁾ In the matters not regulated by provisions of this chapter the provisions of the Business Activity Law of November 19, 1999 (Journal of Laws No 101, item 1178, of 2000 No 86, item 958 and No 114, item 1193, of 2001 No 49, item 509, No 67, item 679, No 102, item 1115 and No 147, item 1643, and No 1, item 2 and No 115, item 995, of 2002 No.1, item 2 No.115, item 995 and No. 130, item 1112, of 2003 No. 86, item 789 and No. 128, item 1176) apply accordingly.

Chapter 6

Equipment, Installations, Grids and Their Operation

Article 51. Designing, production, import, construction and operation of installations and equipment should ensure a rational and efficient use of fuels and energy with a maintenance of:

- 1) reliable cooperation with the grid,
- 2) safety of the operation and neighborhood, and compliance with the environmental protection requirements,
- 3) conformity with the requirements of separate regulations, particularly provisions of the Building Law, provisions on anti-shock prevention, fire prevention, technical supervision, provisions of the Act on Cultural Heritage Protection and Museums, Polish Standards introduced for the obligatory application and other provisions of law stemming from the technology of production of energy and kind of applied fuel.

Article 52. 1. Manufacturers and importers of equipment shall specify in their technical documentation the quantity of fuels and energy consumption in relation to performance achieved by equipment in typical conditions of use, hereinafter referred to as “energy efficiency”.

2. Manufacturers and importers of equipment offered on the market shall inform of their energy efficiency on labels and in technical specifications.

3. ⁽¹¹²⁾ (deleted).

4. The Minister of Economy, by way of an ordinance, shall determine the following:

- 1) energy efficiency requirements, which should be met by specific items of equipment mentioned in Section 1,
- 2) ⁽¹¹³⁾ requirements concerning the application of labels and technical specifications mentioned in Section 2, and samples of labels.

Article 53. It is prohibited to introduce into the domestic market the equipment which does not meet the requirements mentioned in Article 52.

Article 53a. ⁽¹¹⁴⁾ Provisions of Articles 52 and 53 do not apply to equipment and installations, or to facilities related to the national defense or security which are integral parts of systems of military technology or armament, rescue and fire-prevention and border protection or used in the prison system, owned by entities mentioned in Article 21a.

Article 54. 1. Persons operating particular installations and equipment, determined in the provisions mentioned in Section 6, are obliged to show additional qualifications confirmed with certificates issued by qualification commissions.

2. It is prohibited to employ persons without qualifications mentioned in Section 1 in one-person operation of the grid, equipment and/or installations determined in the provisions of law mentioned in Section 6.

3. ⁽¹¹⁵⁾ Qualification commissions are appointed for the period of 5 years by:

- 1) the President of ERA, subject to Subsections 2 and 3,
- 2) ⁽¹¹⁶⁾ appropriate ministers and Heads of Agencies mentioned in Article 21a, in the scope of operation of electric, gaseous and heat equipment and installations in organizational units subordinate to these ministers or Heads of Agencies,
- 3) Minister of Transportation and Maritime Economy in the scope of operation of energy installations and equipment applied in the rail transportation organizational units.

3a.⁽¹¹⁷⁾ The body authorized to appoint qualification commissions mentioned in Section 3, may dismiss a member of the commission in case of:

- 1) disease that permanently prevents performance of his/her duties,
- 2) resignation from membership in the commission,
- 3) failure to perform his/her duties,
- 4) loss of qualifications necessary for the appointment to the commission.

4. A person applying for the confirmation of qualifications shall pay a charge in consideration of the confirmation of qualifications mentioned in Section 1.

5. The charges mentioned in Section 4 constitute an income of the organizational units within which qualification commissions are established.

6.⁽¹¹⁸⁾ The minister responsible for economy, in consultation with the minister responsible for transportation and Minister of National Defense shall determine, by way of an ordinance, detailed rules of the confirmation of qualifications of persons mentioned in Section 1.

7.⁽¹¹⁹⁾ When issuing the ordinance mentioned in Section 6, the minister responsible for economy shall specify in particular:

- 1) types of jobs, positions and installations, equipment and grids the operation of which requires possession of qualifications,
- 2) scope of knowledge required to obtain the confirmation of qualifications, appropriate for jobs, positions, as well as installations and equipment mentioned in Subsection 1),
- 3) procedure for the confirmation of qualifications,
- 4) organizational units at which qualification commissions shall be appointed and a manner of their appointment,
- 5) charges for the confirmation of qualifications mentioned in Subsection 2,
- 6) sample qualification certificate.

Article 55.⁽¹²⁰⁾ (deleted).

Chapter 7

Fines

Article 56. 1. A fine is imposed on anyone who:

- 1) does not obey duties stemming from the cooperation with the units authorized to dispatch electric energy or gaseous fuels, arising under Article 9 Sections 1 and 2,
 - 1a) ⁽¹²¹⁾ does not obey the duties of purchase of electric energy or heat, imposed by provisions of Article 9a,
- 2) does not obey the duty to keep reserves of fuel, introduced by virtue of Article 10,
- 3) does not apply the limitations on supply of fuels and energy, introduced on the basis of Article 11,
- 4) refuses to enter into a contract mentioned in Article 7, Section 1, without a valid reason,
- 5) ⁽¹²²⁾ applies prices and tariffs not obeying the duty to submit the tariff to the President of ERA for approval and duty of their publication, mentioned in Article 47,
- 6) applies prices and tariffs higher than approved,
- 7) refuses to reveal information required under Article 28,
- 8) runs accounts contrary to the principles set up in Article 44,
- 9) employs personnel without qualifications required by the Act,
- 10) does not maintain the objects, equipment and installations in the proper technical shape,

- 11) introduces into domestic market equipment not conforming with requirements set up in Article 52,
 - 12) does not obey obligations stemming from the license,
 - 13) ⁽¹²³⁾ implements actions contrary to the parts of the plan mentioned in Article 20, Section 6,
 - 14) ⁽¹²⁴⁾ discontinues or limits supply of gaseous fuels, electric energy or heat to customers, without a valid reason,
 - 15) ⁽¹²⁵⁾ delays notification of interested entities of refusal to conclude contracts mentioned in Article 4, Section 6 and Article 7, Section 1, without a valid reason.
2. The fine, mentioned in Section 1, shall be imposed by the President of ERA.
 3. ⁽¹²⁶⁾ The fine mentioned in Section 1 imposed on an energy enterprise must not exceed the value of 15% of revenues of the fined enterprise obtained in the previous fiscal year and if the fine is related to licensed activities, the amount of the fine must not exceed the value of 15% of revenues of the fined enterprise obtained from the licensed activity in previous fiscal year.
 4. The fine is payable from income after tax or from another form of surplus of income over expenses net of taxes; payment of a fine shall be made to the relevant treasury office account.
 5. ⁽¹²⁷⁾ Irrespective of the fine specified in Section 1-4, the President of ERA may impose a fine on a manager of an energy enterprise, however such fine must not exceed 300% of his monthly remuneration.
 6. Imposing a fine, the President of ERA takes into consideration the degree of social harm of an action, prior behavior of an entity and its financial standing.
 7. Fines mentioned in Section 1, are subject to execution according to execution proceedings in administration.

Article 57. 1. In case of illegal offtake of energy or fuels from the grid, an energy enterprise may charge for illegally taken energy or fuels using rates specified in tariffs or claim damages upon general civil law principles.

2. Charges mentioned in Section 1 are subject to execution according to execution proceedings in administration.

Chapter 8

Amendments to Existing Legislation, Transitory and Final Provisions

Article 58. The Code of Civil Procedure of November 17, 1964 (Journal of Laws No. 43, item 43, of 1965 No. 15, item 113, of 1974 No. 27, item 157, No. 39, item 231, of 1975 No. 45, item 234, of 1982 No. 11, item 82, No. 30, item 210, of 1983 No. 5, item 33, of 1984 No. 45, item 241 and 242, of 1985 No. 20, item 86, of 1987 No. 21, item 123, of 1988 No. 41, item 324, of 1989 No. 4, item 21, No. 33, item 175, of 1990 No. 14, item 88, No. 34, item 198, No. 53, item 306, No. 55, item 318, No. 79, item 464, of 1991 No. 7, item 24, No. 22, item 92, No. 115, item 496, of 1993 No. 12, item 53, of 1994 No. 105, item 509, of 1995 No. 83, item 417, of 1996 No. 24, item 110, No. 43, item 189, No 73, item 350, No. 149, item 703 and No. 43, item 270 of 1997) shall be amended as follows:

- 1) in Article 479¹, in §2 and Section 3 after the word „monopolistic” the words „and the Energy Law” are added,
- 2) the title of chapter 2 of the schedule IVa of the Title VII of the first volume of the first part shall read as follows:
“Chapter 2. The proceedings in cases within the scope of counteracting monopolistic practices and in cases of regulation of the energy sector.”
- 3) Article 479²⁸, §1 shall read as follows:

“§1. The decision of the President of the Office for Protection of Competition and Consumers and its branches, as well as decisions of the President of the Energy Regulatory Authority and its branches, referred to in the provisions of this chapter as “the President” may be appealed to the Voivodship Court in Warsaw - the Antimonopoly Court within two weeks counting from the day of the handing over of the decisions.”

- 4) in Article 479²⁹, §1 and §2, in Article 479³⁰ and in Article 479³³ and Article 479³⁴ the words „the Antimonopoly Office” shall be replaced by the words “the President”,
- 5) Article 479³¹, §1 shall read as follows:
“§1 In cases in scope of counteracting monopolistic practices and in cases in scope of regulation of energy sector the parties are also the President and the interested party.”,
- 6) Article 479³² shall read as follows:
“Article 479³². As the plenipotentiary of the President an employee of his office may be appointed.”

Article 59. In the Act on Prices of February 26, 1982 (Journal of Laws No. 27, item 195 of 1988, No 34, item 198 of 1990, No 100, item 442 of 1991, No 11, item 50 of 1993, No 111, item 536 of 1994 and No. 106, item 496 of 1996), in Article 25, Section 1, item 3 a full stop is replaced by a comma and a new Subsection 4 is hereby added, which reads as follows: „4) prices and tariffs formulated on the basis of the Act on Energy Law”.

Article 60. In the Act of April 29, 1985 on Land Management and Real Estate Expropriation (Journal of Laws of 1991 No. 30, item 127, No. 103, item 446 and No. 107, item 464, of 1992 No. 91, item 455, of 1993 No 47, item 212 and No. 131, item 629, of 1994 No. 123, item 608, of 1995 No. 99, item 486, of 1996 No. 5, item 33, No. 90, item 405, No. 106, item 496 and No 156, item 775, and of 1997 No 5, item 24 and No 9, item 44) the following amendments are made:

- 1) in Article 46, Section 2, a new Subsection 4a is added, which reads as follows:
“4a) construction and maintenance of energy equipment and installations used for the production of fuels and energy and to supply fuels and energy by means of the grid.”
- 2) in Article 70 Section 4 is added, which reads as follows:
“4. If the negotiations mentioned in Section 1 last longer than three months, the provisions of Article 67 shall apply accordingly.”

Article 61. In the Act on Business Activity of December 23, 1988 (Journal of Laws No. 41, item 324, of 1990 No. 26, item 149, No. 34, item 198 and No. 86, item 504, of 1991 No. 31, item 128, No. 41, item 179, No. 73, item 321, No. 106, item 457 and No. 107, item 460, of 1993 No 28, item 127, No 47, item 212, No. 134, item 646, of 1994 No. 27, item 96, of 1995, No. 60, item 310, No. 85, item 426, No.90, item 446, No. 141, item 700, No. 147, item 713 and of 1996 No. 41, item 177, No. 45, item 199 and of 1997 No. 9, item 44, No 23, item 117 and No 43, item 272), in Article 11 the following amendments are made:

- a) in Section 1, Subsection 16 a full stop is replaced with a comma and Subsection 17 is added, which reads as follows:
“17) production, transformation, storage, transmission, distribution and trade of fuels and energy.”
- b) Section 9 is added, which reads as follows:
“9. Principles of granting licenses and particular kinds of activities not requiring licenses, mentioned in Section 1, Subsection 17 are determined by the provisions of the Energy Law”.

Article 62. In the Act of January 5, 1991 on State Budget (Journal of Laws of 1993 No. 72, item 344, of 1994 No. 76, item 344, No. 121, item 591, No. 133, item 685, of 1995 No. 78, item 390, No. 124, item 601 and No. 132, item 640 and of 1996 No. 89, item. 402, No. 106, item 496, No. 132, item 621 and No. 139, item 647) in Article 31 Section 3 Subsection 2 after the words “the National Council of Radio and Television” the words “the Energy Regulatory Authority” are added.

Article 63. The Council of Ministers shall determine, by way of an ordinance, the way of financing the Energy Regulatory Authority during its organization process.

Article 64. The first term of office of the Consultative Council lasts for 4 years.

Article 65.⁽¹²⁸⁾ (deleted).

Article 66. 1. Legal or natural persons, and other organizational units without legal personality, who, until the effective date of this Act, had, from their own funds, constructed and are owners or users of installations or equipment, which may constitute a part of the grid, may, within 2 years of the effective date of this Act, transfer the said installations and equipment, against a charge and on agreed terms, to an energy enterprise which obtained a license for the distribution of fuels and energy.

2. Transferred installations and equipment, mentioned in Section 1, should conform technical conditions determined in the provisions of law. Costs of upgrading these installations and equipment to the shape conforming required conditions shall be borne by the transferring person or entity.

Article 67. 1. Within 18 months from the effective date of the present Act, the President of ERA will grant ex officio licenses to all energy enterprises operating on the day of the effective date of the Act, provided that they meet conditions determined in the Act.

2. Before the issuance of a license, enterprises mentioned in Section 1 conduct their activity according to principles in force at that time.

Article 68. 1. On the effective date of this Act District Inspectorates of Energy Management set up by the Energy Management Act of 6th 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, No 34, item 198) shall be abolished.

2. Tasks and responsibilities of the liquidator of District Inspectorates of Energy Management is entrusted to the Minister of Economy.

3. The liquidator shall prepare a closing balance.

Article 69. 1.⁽¹²⁹⁾ The Minister of Finance retains the right to fix tariffs for gaseous fuels, electric energy and heat according to rules and procedure mentioned in the act referred to in Article 59, and shall fix scope and amount of charges for illegal offtake of gaseous fuels, electric energy and heat, within the period of 24 months from the effective date of this Act, subject to Section 2.

1a.⁽¹³⁰⁾ The Minister of Finance shall set, by way of an ordinance, scope and amount of charges for illegal offtake of gaseous fuels, electric energy and heat.

1b.⁽¹³¹⁾ The ordinance mentioned in Section 1a shall specify types of special cases that are treated as illegal offtake of gaseous fuels, electric energy and heat, procedure for calculation

or amount of charges for illegal offtake for each type of case and tariffs for the period for which the payment is due.

2.⁽¹³²⁾ The Council of Ministers may determine, by way of an ordinance, dates not exceeding the period determined in Section 1, after which the Minister of Finance will cease setting charges for illegal offtake of gaseous fuels, electric energy and heat, mentioned in Section 1.

Article 70. 1. Secondary legislation issued and maintained in force under the Act of April 6, 1984 on Energy Management (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, of 1990, No. 14, item 89, No. 34, item 198) shall remain in force until they are replaced by acts issued under this Act unless they are inconsistent with its provisions but for no longer then six months from the effective date of this Act.

2.⁽¹³³⁾ The certificates confirming qualifications, issued on the basis of the existing laws, are valid for the period indicated in these certificates.

Article 71. The following shall hereby expire:

- 1) Act of June 28, 1950 on the General Electrification of Villages and Settlements (Journal of Laws of 1954 No. 32, item 135)
- 2) Energy Management Act of April 6, 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, of 1990 No. 14, item 89, No. 34, item 198).

Article 72. The Act shall come into force after 6 months from the day of its promulgation, except for Article 21, which shall come into force on the day of the promulgation of the Act, and Article 18, Sections 3 and 4, which shall come into force on January 1, 1999.