

## **ELECTRICITY MARKET LAW**

**Law No: 4628 Ratification Date: 20.02.2001 Enactment Date:  
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### **PART ONE General Provisions SECTION ONE Purpose, Scope and Definitions**

**Purpose, Scope and Definitions Article 1.** – The purpose of this Law is to ensure the development of a financially sound and transparent electricity market operating in a competitive environment under provisions of civil law and the delivery of sufficient, good quality, low cost and environment-friendly electricity to consumers and to ensure the autonomous regulation and supervision of this market.

The scope of this law covers generation, transmission, distribution, wholesale, retailing and retailing services, import, export of electricity; rights and obligations of all real persons and legal entities directly involved in these activities; establishment of *Energy Market Regulatory Authority*<sup>1</sup> and determination of operating principles of this authority; and the methods to be employed for privatization of electricity generation and distribution assets.

For the purposes of the interpretation and implementation of this law, the following terms shall bear the following meanings:

1. **Ministry:** The Ministry of Energy and Natural Resources,
2. **Minister:** The Minister of Energy and Natural Resources,
3. **TEAS:** Turkish Electricity Generation and Transmission Co. Inc.,
4. **TEDAS:** Turkish Electricity Distribution Co. Inc.,
5. **DSI:** The Directorate General of State Water Works,
6. **Authority:** *The Energy Market Regulatory Authority*<sup>1</sup>,
7. **Board:** *The Energy Market Regulatory Board*<sup>1</sup>,
8. **Existing Contracts:** The contracts and concession and implementation agreements signed before the enactment of this law in accordance with the terms and conditions of Law no. 3096 dated 04.12.1984, no. 3996 dated 08.06.1994, no. 4283 dated 16.07.1997 and no. 4501 dated 21.01.2000 and related regulations,
9. **Affiliate:** Excluding state economic enterprises, any company that controls alone or jointly with other company(ies) or real person(s), directly or indirectly another legal entity or any legal entity under common control of, directly or indirectly, alone or jointly with other company(ies) or real person(s); and direct or indirect relations between or among such company(ies) and/or legal entity(ies) operating in the market.
10. **Control:** The right to exercise direct or indirect control over the capital or the assets of any legal entity or the right to use more than half of its voting rights or to have the right to assign more than half of the

members of the its management and audit boards or to have the right to assign more than half of the members of an organ representing that legal entity,

11. **Generation:** The transformation of energy resources into electricity in generating facilities,

12. **Transmission:** The transport of electricity through lines higher than 36 kV,

13. **Distribution:** The transport of electricity through 36 kV or lower lines;

14. **Wholesale:** The sale of electricity for resale;

15. **Retail:** The sale of electricity to consumers;

16. **Retail Sale Service:** Excluding the sale of electricity and/or capacity, the services provided by companies holding retail sale licenses to consumers;

17. **Consumer:** All eligible or non-eligible consumers, purchasing electricity for their own needs;

18. **Supplier:** Any generation company, autoproducer or autoproducer group, wholesale company and retail sale company responsible for providing consumers with electricity and/or capacity;

19. **Eligible consumer:** Any real person or legal entity that has the liberty to choose its supplier, due to its consumption of more electricity than the amount set by the Board and/or its direct connection to the transmission system;

20. **Non-eligible consumer:** Any real person or legal entity that can purchase electricity energy and/or capacity only from retail sale companies or from a distribution company holding a retail sale license in its region;

21. **Generation Company:** Any legal entity, except for autoproducers and autoproducer groups, engaged in generation of electricity and the sale of the electricity it has generated;

22. **Distribution Company:** Any legal entity engaged in electricity distribution in a certain geographical region;

23. **Wholesale Company:** Any legal entity engaged in the wholesale, import, export, trade of electricity energy and/or capacity and the sale of the same to the eligible consumers;

24. **Retail Sale Company:** Any legal entity engaged in import of electricity and/or capacity and retail sale to consumers, excluding those directly connected to the transmission system, and in providing retail sale services to consumers;

25. **Autoproducer:** Any legal entity engaged in electricity generation primarily for its own needs;

26. **Autoproducer Group:** Any legal entity engaged in electricity

generation primarily for needs of its affiliates;

27. **Facility:** Plant and equipment installed to perform the functions of generation, transmission or distribution of electricity;

28. **Distribution System:** Electricity distribution facilities and grid operated and/or owned by a distribution company in its designated region;

29. **Transmission System:** Electricity transmission facilities and grid;

30. **Generating Facility:** Facilities generating electricity;

31. **Transmission Facility:** All facilities, including medium voltage feeders of transmission switchyards, starting from the termination point of generating facilities up to connection points of distribution facilities;

32. **Distribution Facility:** All facilities and grid established exclusively for distribution of electricity at the termination point of transmission facilities;

33. **Market:** The electricity energy market covering generation, transmission, distribution, retail sales, wholesale sales, import and export of electricity and capacity, and transactions directly relating to these activities.

34. **Generation Capacity Projection:** An estimate of generation capacity required for the security of electricity supply, to be prepared by the Turkish Electricity Transmission Co. Inc. based on demand forecasts prepared by distribution companies;

35. **Tariff:** The provisions covering prices, terms and conditions related to transmission, distribution and sale of electricity and/or capacity and related services;

36. **License:** Permit granted by the Board to legal entities in accordance with the provisions of this Law in order to enable them to engage in market activities;

37. **Ancillary Services Agreements:** Agreements that set out the prices, terms and conditions of ancillary services to be provided by generation companies, distribution companies, autoproducers, autoproducer groups or consumers connected to the transmission system to the Turkish Electricity Transmission Co. Inc. in accordance with the provisions of the Grid Code. The prices to be paid for ancillary services shall cover the total cost of supplying the related services;

38. **Ancillary Services:** Services, as defined in detail in the grid code and/or the distribution code, to be provided by all legal entities connected to the transmission system or distribution system in accordance with the provisions of Ancillary Services Agreements;

39. **Energy sale and purchase agreements:** The agreements that may be signed by the Turkish Electricity Trading and Contracting Co. Inc. within the framework of the projects to be transferred from TEAS and TEDAS and be realized as per the Provisional Articles 4 and 8; and the

agreements that may be signed upon Board's approval by Turkish Electricity Trading and Contracting Co. Inc. as per item (1) of paragraph (d) of Article 2 of this Law;

**40. Connection and use of system agreements:** The agreements establishing the prices, terms and conditions of the related connection and use of system tariff and containing the terms and conditions specific to a generation company, an autoproducer or an autoproducer group, a distribution company or consumers for access or connection to a transmission or a distribution system;

**41. Bilateral Agreements:** The commercial agreements between real persons and legal entities for the purchase and/or sale of electricity under the provisions of civil law without requiring Board approval;

**42. Transmission Control Agreements:** The bilateral agreements signed in accordance with the provisions of civil law between the Turkish Electricity Transmission Co. Inc. and the private legal entities owning or operating private direct transmission lines;

**43. Grid code:** The set of rules documenting the standards, procedures and principles that apply to the Turkish Electricity Transmission Co. Inc. and all parties connected to the transmission system, which shall be drafted by the Turkish Electricity Transmission Co. Inc. in accordance with provisions of the transmission license;

**44. Distribution code:** The set of rules documenting the standards, procedures and principles that apply to the distribution companies and all parties connected to the distribution system in accordance with provisions of the distribution licenses. The distribution code shall be drafted by TEDAS in accordance with the opinions of the related legal entities in distribution activities;

**45. Customer services code:** The set of rules documenting the standards, procedures and principles that apply to distribution companies, retail sale companies and all parties being served by these companies. The customer services code shall be drafted by TEDAS in accordance with the opinions of the legal entities engaged in distribution and retail sales activities.

**46. Balancing and settlement code:** The set of rules documenting the detailed procedures and principles regarding (a) real-time balancing of sales-purchases of electricity and/or capacity as per the agreements between parties engaged in market activities (b) financial settlement of these transactions. The balancing and settlement code shall be drafted by the Turkish Electricity Transmission Co. Inc. in accordance with provisions of the transmission license.

**47. Transmission Surcharge:** Fees collected on behalf of the Authority on the rates of the transmission tariff;

**48. Turkish Electricity Transmission Company Inc.:** The transmission company established as a successor company of TEAS;

**49. Turkish Electricity Trading and Contracting Company Inc.:** The trading and contracting company established as a successor company of TEAS;

**50. Electricity Generation Company Inc.:** The generation company established as a successor company of TEAS;

**SECTION TWO**  
**Electricity Market Activities and Licenses**  
**Electricity Market activities**

**Article 2.** – The electricity market activities include generation, transmission, distribution, wholesale, retail, retail sale services, trade, import and export activities performed by legal entities operating in the market in accordance with the provisions of this Law.

The procedures and principles to be followed by legal entities engaged in market activities shall be set forth in this Law and applicable regulations.

All private sector legal entities subject to civil law operating in the market shall be established as incorporated or limited liability companies in accordance with the provisions of the Turkish Commercial law no: 6762 and, if established as incorporated companies, their shares must be completely registered to name. The minimum capital requirements and other provisions that should be included in the articles of association of these companies shall be established through regulations.

The market activities and legal entities that may be engaged in these activities through obtaining applicable licenses as per the provisions of this Law are as follows:

a) **Legal entities to be engaged in generation activities:** The generation of electricity shall be performed by Electricity Generation Co. Inc. and private sector generation companies, excluding the electricity generation by autoproducers and autoproducer groups. Electricity Generation Co. Inc. and private sector generation companies, in accordance with their licenses, shall be entitled to sell electricity and/or capacity to real persons and legal entities.

1. **Electricity Generation Co. Inc.;** shall be entitled to build, lease and operate new generation facilities, if deemed necessary, in accordance with the Board-approved generation capacity projection and with due regard to the generation investments by the private sector. Electricity Generation Co. Inc. shall be transferred the generation facilities of DSI as per the provisions of this Law, and it shall operate the generation facilities, that are transferred from TEAS and are not transferred to the private legal entities subject to civil law, either directly or through its affiliates, or disconnect these generation facilities from the system where deemed necessary. Electricity Generation Co. Inc. shall retain the ownership of the facilities and enterprises, the operating rights of which have been or shall be transferred to the private sector legal entities subject to civil law, as well as the complementary investments to be completed in such facilities and enterprises.

2. **Private Sector Generation Companies** are private sector legal entities subject to civil law that are engaged in generation and sale of electricity at generation facility(ies) they own or have acquired through financial leasing or transfer of operating rights (TOOR).

Total market share of generation facilities operated by a particular private sector generation company and its affiliates may not exceed twenty percent of the published figure for the total installed capacity in Turkey in the preceding year.

3. **An Autoproducer and Autoproducer Group** shall be entitled to sell a certain percentage (not exceeding twenty percent in any case) to be determined by the Board of the electricity it has generated in a calendar year within a competitive environment. The Board, under extraordinary circumstances, can increase this percentage by half of the original ratio. In case the amount of the electricity sold in a calendar year exceeds the percentage set by the Board, the autoproducer or autoproducer group shall be obligated to obtain a generation license.

The procedures and principles regarding the activities of autoproducers and autoproducer groups, the nature of their sales to their affiliates and sales of the electricity generation surpluses shall be governed by the regulations to be issued.

b) **Legal entities to be engaged in Transmission Activities:** The Turkish Electricity Transmission Co. Inc shall conduct the electricity transmission activities. Turkish Electricity Transmission Co. Inc.

shall be responsible for taking over all transmission facilities owned by the public, developing transmission investment plans for the proposed new transmission facilities and building and operating new transmission facilities.

Turkish Electricity Transmission Co. Inc. shall also prepare, revise and inspect the the transmission, connection and use of system tariffs that are subject to the Board approval and shall perform load dispatch and frequency control, carry out substitution and capacity expansion activities in the transmission system, monitor real-time system reliability, purchase and provide ancillary services under the provisions of ancillary services agreements.

Turkish Electricity Transmission Co., Inc. shall engage in international interconnection activities in line with the decision of the Ministry and shall provide non-discriminatory transmission and connection services to all system users including eligible consumers connected and/or to be connected to the transmission system, in accordance with provisions of grid code and transmission license.

Turkish Electricity Transmission Co. Inc. shall be responsible for the development and implementation of an infrastructure required for implementing new trade methods and sales channels in line with the Board decisions and market developments. Turkish Electricity Transmission Co. Inc. shall prepare and submit for Board approval a generation capacity projection based on demand forecasts prepared by the distribution companies within the framework of the applicable regulations.

In addition to the transmission grid, it shall be possible to establish private direct transmission lines in conformity with the standards applicable for the national transmission grid and under a connection and use of system agreement between the Turkish Electricity Transmission Co. Inc. and generation companies. The purpose of transmission control agreements shall be to maintain operational integrity and stability of the transmission system.

**c) Legal entities to be engaged in distribution activities:** The electricity distribution activities shall be performed by distribution companies in areas indicated in their respective licenses.

In cases where there are consumers unable to purchase electricity and/or capacity from another supplier in the region served by any distribution company, then such distribution company shall be obliged to obtain a retail sale license and engage in electricity sales to such consumers on a retail basis and/or provide retail sale services.

On the condition to obtain retail licenses, distribution companies shall be entitled to engage in retail sales of electricity and/or retail sale services for consumers in their respective regions, even if there are other retail sale company and/or companies in their designated regions.

Distribution companies owning and/or operating distribution facilities in the areas specified in their licenses shall carry out renewal, replacement and capacity expansion investments for these facilities and provide non-discriminatory electricity distribution and connection services to all system users including eligible consumers connected and/or to be connected to the distribution system within a period of time to be specified by regulations in accordance with the terms and provisions of their distribution licenses and the distribution code.

Distribution companies shall purchase and provide ancillary services under ancillary services agreements.

Distribution companies shall prepare demand forecasts, in accordance with the regulations to be issued by the Board, for the regions specified in their licenses and notify the same to the Turkish Electricity Transmission Co. Inc. These forecasts shall be published by Turkish Electricity Transmission Co. Inc. after their approval by the Board.

The related distribution companies shall be responsible for the preparation of the investment plans for the public-owned transmission facilities in line with the Board approved demand forecasts and submission of these to the Board for approval; and building new distribution facilities or performance of necessary improvement and upgrading activities in the distribution facilities included in the Board approved investment plans.

**d) Legal entities to be engaged in Wholesale activities:** Wholesale activities shall be conducted by the Turkish Electricity Trading and Contracting Co. Inc. and private sector wholesale companies in accordance with the provisions of this Law, relevant regulations, their respective licenses, the grid code, the balancing and settlement code and bilateral agreements.

**1. Turkish Electricity Trading and Contracting Co. Inc.** shall be transferred the existing energy sale and purchase agreements from TEAS and TEDAS signed within the framework of existing contracts. It may also enter into energy purchase and sales agreements, implement and terminate the agreements it has been transferred and/or signed within the framework of Provisional Articles 4 and 8. On the condition to be limited to the energy sales commitments assumed by the Turkish Electricity Trading and Contracting Co. Inc. against TEDAS and distribution companies within the framework of the transfer of operating rights agreements transferred until 31 October 2001, the Turkish Electricity

Trading and Contracting Co. Inc. shall primarily purchase electricity from Electricity Generation Co. Inc. and in case the electricity supply shortage continues, Turkish Electricity Trading and Contracting Co. Inc. be entitled to enter into energy purchase agreements unless a more economical supply resource is available, provided that the term of such contracts do not exceed one year and are approved by the Board.

**2. Private Sector Wholesale Companies;** Private sector wholesale companies shall engage in wholesale of electricity.

The total market share of any private sector wholesale company together with its affiliates shall not exceed ten percent of the total electricity consumed in the market during the preceding year.

**e) Legal entities to be engaged in Retail activities:** Activities involving retail sale of electricity and/or capacity and retail sale services shall be conducted by retail sale companies and distribution companies holding retail sale licenses in accordance with provisions of this Law, applicable regulations, their respective licenses, customer services code and distribution code.

**f) Legal entities to be engaged in Import and Export of electricity:** The import and/or export of electricity to or from countries that fulfill the requirement of international interconnection in accordance with the Ministry's policy determined according to the law no: 3154 on the Establishment and Duties of Ministry of Energy and Natural Resources, shall be conducted by Turkish Electricity Trading and Contracting Co. Inc., private sector wholesale companies, retail companies and distribution companies holding retail licenses, subject to Board approval, in accordance with the provisions of this Law, applicable regulations, their respective licenses, grid code and distribution code.

### **General Terms and Types of Licenses**

**Article 3. –** The provisions and conditions applicable to licenses to be issued by the Authority as per this Law and minimum requirements to be included in licenses are as follows:

#### **a) Rules and principles applicable to licenses:**

1. All legal entities to be engaged in market activities must obtain the relevant license for each, and for each facility if the subject market activity is to be performed in more than one facility, prior to the commencement of their market activities.
2. Legal entities holding more than one license or legal entities performing the same activity in more than one facility shall keep separate books and records of account for each licensed activity or facility.
3. The procedures and provisions concerning license applications, rights and obligations of legal entities holding licenses, transfer of license rights, modification of licenses, terms of licenses and extension of these terms thereto and, relinquishing of license rights by the license holder and determination of license fees based on type of operation and quantity of electricity generated, transmitted and distributed, shall be specified in regulations to be issued.
4. Licenses shall be issued for a period of up to forty-nine years. The minimum term for generation, transmission and distribution licenses shall be ten years.
5. In accordance with provisions of this Law, companies holding distribution licenses and the Turkish Electricity Transmission Co. Inc. shall be responsible for creating and maintaining an efficient, stable, and economic system in the market and establishing the infrastructure required for a competitive environment in generation, wholesale and retail sale of electricity.
6. All legal entities shall be obligated to pay a fee to the Authority for obtaining, renewing, modifying and duplicating their licenses and an annual fee as determined by the Board.
7. Legal entities holding licenses must keep their facilities, and their books and records of account ready for Board inspection and audit, and must make such facilities and books and records of account available to the Board for inspection and audit, when required by the Board. Legal entities holding licenses must also provide the Board any information and documents it may require in the performance of its duties.
8. In addition to obtaining licenses for market activities, all legal entities engaged in market activities shall be obligated comply with provisions of the applicable laws and regulations depending on the type of their operations.

#### **b) Minimum common provisions applicable to all licenses:**

1. Provisions defining groups and categories of real persons and legal entities to be served and types of activities to be carried out within the scope of licenses,
2. Provisions obligating the holder of a distribution or transmission license to provide non-discriminatory system access and use of system rights to all real persons and legal entities,
3. Provisions governing the determination of general pricing principles, pricing principles to be

employed for electricity sales to non-eligible consumers with regard to the market conditions, tariff formulae and mechanisms relating to adjustments and auditing of such tariffs that may be required due to inflation,

4. Provisions obligating the license holders to a) submit the Board full and true information and b) in terms of the sales to consumers, to purchase electricity and/or capacity from the most economic source in the market and to provide proof of this when requested,
5. Provisions relating to the application of cost reflective prices and employment of measures aimed at minimizing technical and non-technical losses in accordance with applicable regulations,
6. Provisions regarding the cancellation and expiration of the license,
7. Provisions regarding modification of the license,
8. Provisions related to the fees to be paid by the license holder to the Authority and terms of such payment,
9. Provisions regarding the conditions under which any facility and/or facilities owned or being used by the license holder shall be used by third parties in accordance with the objectives of the license,
10. Provisions relating to license holder's obligation to comply with any and all instructions issued by the Board,
11. Provisions governing the activities to be performed within the scope of the applicable License without obtaining any further authorization from the Board,
12. Provisions specifying the disputes, arising from licensed activities, to be settled by the Board,
13. Provisions defining terms, conditions and circumstances under which rights and obligations defined in a license shall become ineffective,
14. Provisions governing the technical requirements of the services to be provided.

**c) The types of licenses to be granted by the Authority in order to be engaged in market activities are as follows:**

**1. Generation License:**

Generation license shall mean the license to be obtained from the Authority by generation companies for existing or future generation facilities, in order to be engaged in generation of electricity and sale of electricity generated. The procedures and principles on obtaining a generation license is shall be specified in regulations to be issued.

Excluding the autoproducers and autoproducer groups, real persons or legal entities, that generate electricity only to meet their own requirements in accordance with the regulations to be issued and do not operate in parallel to the transmission and distribution system, shall not be subject to licensing. Generation companies may enter into affiliate relationships with distribution companies without having controlling power over them.

Generation companies may not engage in any market activities other than those described above.

**2. Transmission License:**

The transmission license shall mean the license to be obtained from the Authority by the Turkish Electricity Transmission Co. Inc. in order to perform transmission activities through the transmission facilities already existing or to be constructed.

In accordance with the provisions of the grid code, Turkish Electricity Transmission Co. Inc. shall be responsible for determination of the load dispatch order in order to balance the demand and supply in the market; actual performance of load dispatch within the limitations of real-time transmission constraints in line with technical and economic load dispatch rules; and revising the load dispatch order when required.

Turkish Electricity Transmission Co. Inc. may not engage in market activity other than transmission activity.

**3. Distribution License**

The distribution license shall mean the license to be obtained from the Authority by all legal entities in order to engage in distribution activities in a specified region.

In addition to distribution and retail sale activities, private sector distribution companies shall be entitled to construct generation facilities in the region specified in their licenses provided that they obtain a generation license and that the amount of the annual electricity generated by them do not exceed 20 percent of the total amount of electricity offered for consumption in the relevant region within the previous year.

Distribution companies may not purchase more than 20 percent of the electricity that they have distributed during the previous year in the area specified in their license from generation companies that they own or are affiliated with.



Unless they amend their existing contracts according to the provisions of this Law that allow for free competition among distribution companies, the private sector distribution companies, holding distribution rights in a specific region through transfer of operating rights as stipulated in their existing contracts, shall not be entitled to enjoy the right to obtain generation licenses, construct generation facilities and to enter into contractual agreements with legal entities engaged in generation activities without an evaluation of their control status.

On the other hand, private sector distribution companies holding distribution rights in a specific region as per their existing contracts shall be obligated to amend their existing contracts to meet the standards of free competition conditions within a time period to be determined by the Board. The type of the contracts shall not prevent the enforcement of provisions herein.

Distribution companies may not engage in any market activities other than those defined above.

#### **4. Wholesale License**

The wholesale license shall mean the license to be obtained from the Authority by wholesale companies in order to be engaged in wholesale of electricity and electricity sales to eligible consumers in the market.

Any wholesale license may include as a separate section, provisions permitting electricity export to or import from any country meeting the international interconnection conditions in line with the decision of the Ministry.

Before granting such an authorization, the Board shall obtain from the Turkish Electricity Transmission Co., Inc. an opinion in respect of technical constraints. The provisions in any wholesale license on the import and export of electricity shall be applicable only for limited quantities and for a limited term. Such term may be different from the term of the related wholesale license. Any amendment or extension of terms in provisions regarding import and export of electricity shall be considered independent of any amendment or extension of terms in other provisions of the wholesale license.

#### **5. Retail Sale License**

The retail sale license shall mean the license to be obtained from the Authority by legal entities in order to engage in retail sale of electricity and/or to provide retail sale services in the market. A retail sale license may include, as a separate section, provisions permitting import of electricity at voltage levels under the transmission level in line with the decision of the Ministry.

Before granting such an authorization, the Board shall obtain from the distribution company operating in the distribution area in question an opinion with respect to technical issues. The provisions in any retail license on the import of electricity shall be applicable only for limited quantities and for a limited term. Such term may be different from the term of the related retail license. Any amendment or extension of terms in provisions regarding import of electricity shall be considered independent of any amendment or extension of terms in other provisions of the retail license.

Retail sale companies shall be entitled to engage in retail sale or retail sale service activities without any limitation regarding regions.

The distribution companies holding retail licenses shall be entitled to sell electricity and/or capacity to any eligible consumer in another distribution company's region only if their retail licenses include such provisions.

#### **6. Autoproducer and Autoproducer Group License**

Autoproducer license shall mean the license to be obtained from the Authority by autoproducers that generate electricity for their own needs and operate in parallel to the transmission and/or distribution system and by autoproducer groups that supply electricity to their affiliates.

#### **d) Expiration of Licenses:**

The licenses shall automatically expire at the end of their terms unless extended by the Board in accordance with the methods specified in the licenses. The licenses shall automatically expire if the license holder is declared bankrupt. Intentional cancellation of licenses by the license holders shall be subject to Board approval.

## **PART TWO**

### **The Energy Market<sup>1</sup> Regulatory Authority, Energy Market<sup>1</sup> Regulatory Board and Miscellaneous Provisions**

#### **SECTION ONE**

#### **Functions and Powers of the Energy Market<sup>1</sup> Regulatory Authority and Energy Market<sup>1</sup> Regulatory Board**

#### **Energy Market<sup>1</sup> Regulatory Authority**

**Article 4.** – An independent, administratively and financially autonomous public institution, namely the Energy Market<sup>1</sup> Regulatory Authority, is hereby established to perform the duties assigned to it by this

law.

The Authority shall be responsible for issuing Board-approved licenses that set forth the activities to which the legal entities shall be entitled and the rights and obligations arising from such activities; regulation of existing contracts within the scope of transfer of operating rights as per the provisions of this Law; monitoring market performance; drafting, amending, enforcing and auditing the performance standards and distribution and customer services codes; setting out the pricing principles indicated in this Law; setting out the pricing principles to be employed for electricity sale to non-eligible consumers with regard to the market conditions; enforcing and auditing the formulae regarding the modification of such prices due to inflation; and ensuring the conformity of the market behavior with the provisions of this Law.

When issuing the regulations as per the provisions of this Law and Board decision, the Authority shall consider the opinions of the legal entities operating in the market and other relevant organizations and institutions.

The headquarters of the Authority shall be located in Ankara and the ministry to which it is related shall be the Ministry of Energy and Natural Resources. The Authority may establish representative offices in distribution regions in order to carry out customer relations.

The organization of the Authority shall consist of the *Energy Market*<sup>1</sup> Regulatory Board; Chairman Office; and Service Units.

The Authority shall perform its duties and exercise its rights arising from this Law through the *Energy Market*<sup>1</sup> Regulatory Board. Board shall be the representative and decision making body of the Authority.

The *Energy Market*<sup>1</sup> Regulatory Board and Chairman's Office Article 5. - The Board shall consist of seven members, including one chairman and one vice-chairman.

Board members shall be selected and appointed by the Council of Ministers among candidates having completed at least a four-year program of undergraduate degree in law, political sciences, administrative sciences, public administration, economics, engineering, management or public finance fields and having minimum ten years of experience in public or private sector and who have distinguished themselves in their professions.

When making the appointment, the Council of Ministers shall also appoint the board chairman and vice chairman. The term of office for the chairman and members of the Board shall be six years. Board members may be re-elected following the expiry of their terms of office.

In case the chairmanship or membership of the Board becomes vacant before the completion of its term for any reason, a new member shall appointed for the vacancy within one month.

In addition to the duties set out in other provisions this Law, the Board shall also have the following duties:

- a) To enforce the provisions of this Law;
- b) To determine the reductions in limits relating to the definition of eligible consumer and to issue new limits until the last day of January every year;
- c) To make the necessary arrangements to ensure reliable, quality, stable and low-cost electricity services to consumers;
- d) To determine and enforce management information systems and financial reporting standards for all license holders in accordance with generally accepted accounting procedures;
- e) To determine and enforce security standards and requirements for generation, transmission, distribution companies and autoproducers and autoproducer groups;
- f) To ensure the development and implementation of an infrastructure that allows for implementation of new trading mechanisms and sales channels depending on market development;
- g) To develop model agreements where deemed necessary, in line with objectives of this Law;
- h) To establish and enforce procedures and principles to protect against the unwarranted disclosure of commercially sensitive information, including commercial secrets and confidential competitive information;
- i) To oversee the activities and practices of legal entities operating in the market, as well as their compliance with the terms and conditions of their respective licenses, in order to ensure compliance with non-discrimination and transparency standards;
- j) To establish and enforce standards and rules for relations and conducts among affiliates in order to promote competition, and in case such standards require introduction of additional restrictions on cross - ownership and operational and accounting issues related to market activities, to determine such restrictions;
- k) To prepare and submit the Ministry the annual report and other reports regarding the

development of the market;

- l) To establish and implement the Authority's personnel policy including the appointment of personnel;
  - m) To decide on the issues concerning the purchase, sale and rental of movable and immovable equipment and services to the Authority;
  - n) To monitor the market-related legislation and practices of international organizations and agencies and carry out such arrangements it deems necessary; to prepare draft legislation and submit these to the Ministry where deemed necessary;
  - o) To decide on all transactions regarding the receivables, rights and obligations of the Authority against third parties;
  - p) With regard to the environmental effects of the electricity generation operations, to take necessary measures for encouraging the utilization of renewable and domestic energy resources and to initiate actions with relevant agencies for provision and implementation of incentives in this field.
- In addition to the powers set out in other provisions of this Law, the Board shall have the following powers:
- a) In order to ensure the development of a competitive market, to approve instructions and regulations, grid code, distribution code, customer services code, and balancing and settlement code that are necessary for implementation of the provisions of this Law and for performance of the duties assigned to the Board by this Law.
  - b) To grant approvals related to licenses and other approvals indicated in this Law;
  - c) To approve and, where necessary, revise the demand forecasts prepared by distribution companies and finalized by the Electricity Generation Co. Inc.;
  - d) To approve, if necessary revise and supervise the compliance with the generation capacity projections and the transmission investment plan prepared by the Turkish Electricity Transmission Co. Inc. on the basis of Board approved demand forecasts and the distribution investment plans prepared by distribution companies operating the public owned distribution facilities in conformity with the abovementioned plans;
  - e) To examine and approve Turkish Electricity Trading and Contracting Co. Inc.'s wholesale price tariffs, the transmission tariffs, distribution tariffs and retail tariffs to be drafted in accordance with the terms and conditions set forth in the respective licenses;
  - f) To determine the basic principles regarding transmission, distribution, wholesale and retail pricing and if necessary, to revise these in accordance with the terms and conditions of the respective licenses;
  - g) To publish and revise where deemed necessary, the percentages and terms relating to the quantity of electricity sold by autoproducers and autoproducer groups after meeting their own or their members' needs;
  - h) To establish the transmission surcharge and to carry out necessary arrangements governing the collection of the transmission surcharge by the Turkish Electricity Transmission Co. Inc. and payment thereof to the Authority;
  - i) To determine the amounts to be paid to the Authority by the legal entities for license-related procedures and other transactions;
  - j) To examine the audited financial statements of the legal entities operating in the market or to have these reports examined;
  - k) To determine the scope of the reports to be submitted by legal entities on service reliability, outages and other performance criteria and to ensure that these reports are regularly submitted to the Board;
  - l) To impose administrative fines and revoke licenses in case of non-compliance with the provisions of this Law, the provisions of regulations issued by the Board, the tariffs and regulations approved by the Board, the terms and conditions of licenses or the decisions of the Board;
  - m) To act in conjunction with other government bodies to enforce the protection of property rights, ecosystems, hydroelectric sources and public interests in general during the construction and operation of generation, transmission, and distribution facilities; and to take necessary preventive measures in these facilities with prior notice as per the provisions of law No: 3082 (dated 20/11/1984), in order to investigate and eliminate any real or potential threat on public interest or safety.
  - n) To approve the Authority's budget, annual business plan, income and expenditure final accounts, and annual report and other reports on market development prepared by chairmanship and if deemed necessary, decide on the transfer between the items in the budget;
  - o) Where the parties holding licenses fail to reach an agreement on the provisions of agreements

relating to connection to a transmission system or a distribution system and use thereof, to settle such disputes in accordance with provisions of this Law and related licenses of the parties;

p) To carry out expenditures of the Authority with regard to its approved budget and in accordance with the related regulations to be issued on procedures and principles of expenditure;

r) With respect to the existing agreements; to attend any meeting held between parties of any such agreements where deemed necessary, provided that time and date of such meeting is notified five working days prior to the meeting;

s) With respect to existing agreements; to propose modifications aimed at facilitation of transition to a competitive market in accordance with provisions of this Law for consideration by the parties and to act as an intermediary for settlement of any dispute prior to initiation of any formal dispute settlement process relating to such agreements provided that such mediation does not breach provisions of existing agreements governing the settlement of disputes;

t) In the course of performing its duties as per this Law, to require any public or private entity or person, to provide any information and document deemed necessary and/or to review the same at the premises of such persons;

u) To assign duties or powers to the Board Chairman in fields it deems proper.

The Chairman of the Board shall be the Chairman of the Authority. The Chairman shall be responsible for implementation and enforcement of the Board decisions and representation of the Board. These responsibilities also include communication to the public relating to the work of the Board. The vice chairman shall perform all the duties of the chairman in the absence of the chairman.

The Board shall make all decisions of the Authority, except for those decisions the Chairman delegates to the personnel of the Authority.

The duties and powers of the Chairman's Office shall be as follows:

a) To set up service units it deems necessary in accordance with the Board decisions;

b) In order to ensure effective functioning of the Authority, to employ adequate number of personnel in accordance with the Board's decision;

c) To ensure highest level of organization and coordination between and among the Board and the service units, in an efficient, harmonious, disciplined and stable manner, and to resolve possible conflicts of duty and authority among service units;

d) To determine the agenda, date and time of the Board meetings and to chair the Board;

e) To ensure that Board decisions are followed in all respects and to monitor compliance with them;

f) To represent the Board before the public and private institutions;

g) To prepare the annual budget, final income-expenditure accounts and annual activity report of the Authority and to submit them to the board; to ensure the implementation of institution's budget, collection of revenues and performance of expenditures.

#### ***The Duties of the Board regarding the natural gas market<sup>1</sup>***

**ARTICLE 5/A.** *Energy Market Regulatory Board shall also perform the following duties regarding the natural gas market:*

*a) To determine the opinion and suggestions of the Authority with regard to the plans, policies and applications regarding natural gas market activities.*

*b) To ensure the performance of the duties of the Authority for execution of the rights and obligations arising from the international agreements regarding the natural gas market activities.*

*c) To approve all regulations related to the natural gas market activities, on which the Authority has been authorized as per the provisions of the Natural Gas Market Law, and to ensure the execution thereof.*

*d) To take and implement all kinds of decisions regarding issue of licenses and certificates as provided in the Natural Gas Market Law as well as the compliance with and termination of such licenses and certificates.*

*e) To take decisions regarding the determination of pricing issues and the limitations and obligations which can be applied under special circumstances as per the provisions of Natural Gas Market Law.*

*f) To regulate procedures and principles regarding the formation of tariff and price structures in natural gas market areas where competition is non-existent or insufficient.*

*g) To approve the tariffs regarding the activities indicated in the Natural Gas Market Law or to decide on tariff revisions.*

*h) To decide on filing applications with any legal or administrative authority for purposes including litigation and enforcement of any penalty or sanction as part of the Board's authority to supervise, carry out preliminary investigations and inquiries concerning the natural gas market operations.*

i) To settle the disputes among legal entities or between legal entities and consumers arising from the implementation of Natural Gas Market Law.

j) To perform other duties and exercise other authorities indicated in the Natural Gas Market Law.

#### Prohibitions and Dismissal from Office

**Article 6.** - The members of the Board cannot accept any duties in public or private institutions during their membership unless based on a specific law. Within two years from the termination of their terms of office, members of the Board may not be employed by, or hold shares in, any legal entity subject to civil law and engaged in electricity, and *natural gas*<sup>1</sup> market activities or any affiliate of any such legal entities, and may not have any direct or indirect relation which will or might yield an income from any such legal entity or its affiliates and may not deal with trading of electricity and *natural gas*<sup>1</sup>.

Except for the securities issued by the Treasury Undersecretariat for borrowing, the members of the Board must sell or transfer any shares or other securities that they possess in legal entities engaged in electricity, and *natural gas*<sup>1</sup> market activities or in their affiliates, within thirty days from the commencement of their term of office to persons other than kinship relations up to the third level, and marriage-born relations up to the second level .

The spouses of the members of Board and their kinship relatives of the first level may not be employed by, or hold shares in, any legal entity other than public institutions engaged in electricity, and *natural gas*<sup>1</sup> market activities or any affiliate of any such legal entities after appointment of Board members and during their terms of office, and may not have any direct or indirect relation which will or might yield an income from any such legal entity or its affiliates and may not deal with trading of electricity and *natural gas*<sup>1</sup>.

Members of the Board and Authority personnel may not disclose, personally benefit from, or help third parties to benefit from, any confidential information about the Authority, or any confidential information provided to the Board about the persons or legal entities in the electricity and *natural gas*<sup>1</sup> markets, even after termination of their terms of office.

The members of the Board may not be dismissed from the office before the expiry of their terms of office, except in cases where, through a court decision, it is confirmed that the Chairman or the members of the Board have violated the prohibitions set forth in this Article, or have committed a crime connected to the duties assigned to them by the law hereby, a Board member's eligibility to be a civil servant pursuant to Law No. 657 is lost, a Board member is incapacitated for a period exceeding three months due to illness, accident or otherwise, a Board member's inability to continue to fulfill their duties in the remaining term of office has been documented by a committee report obtained from a fully equipped hospital without waiting for such three-month term, the Council of Ministers shall remove such member from office before the completion of his or her term.

#### Oath and Declaration of Property

**Article 7.** - The members of the Board shall take an oath before the First Chairmanship of the Court of Appeal that they shall perform the duties of the Board with due diligence and honesty during their terms of office and that they shall not act, or let others to act, in breach of the provisions of this Law and related legislation throughout their terms of office.

The application for oath taking shall be considered urgent by the Court of Appeal.

The members of the Board shall not start their duties before taking oath.

The members of the Board must make a declaration of personal property within one month after beginning their duties and within one month after completing their terms of office, and once every two years during their terms of office.

#### Board Meetings, Approvals, Quorum, Annual Reports and Audit

**Article 8.** - The rules and principles to be followed by the Board during performing its duties and the methods to be followed during processing the applications shall established by regulations.

a) The Board shall conduct meetings not less than once per week, and then as often as it deems necessary to perform its duties.

The Board shall be chaired by the chairman or in his/her absence, by the vice chairman. The agenda of each meeting shall be prepared and communicated to the board members by the chairman, or in his or her absence, by the vice chairman, prior to the meeting.

The board shall form a quorum with the presence of at least four members, and decisions shall be reached by affirmative votes of at least four members (majority vote).

Board members shall not participate in the discussions and voting in regard to matters involving themselves, those with kinship relations up to the third level, or marriage-born relations up to the second level.

b) Legal entities shall apply for all approvals and license-related transactions in the manner specified

in the applicable regulations.

In addition to the approvals required in licenses issued under this Law and other approvals specified herein, the approval of the Board shall be obtained in respect of any 10 % or higher capital changes in the partnership status of a legal entity or any 5 % or higher capital changes in the partnership status of a publicly-traded company operating in the market or in case of a merger between such legal entities or a consolidation or change in control status of any legal entity or in case its status as a legal entity is altered through a sale, transfer or other arrangements or a material part of generation, transmission or distribution facilities owned by a real person is effected by a sale, transfer or any other change.

*The provisions regarding the partnership status of the legal entities performing activities in the electricity market shall not be applicable on the facilities conducting generation activity for the natural gas market. However, natural gas storage facilities shall be subject to the referred provisions<sup>1</sup>.*

The Competition Board reserves the right to issue the authorizations with respect to any merger or acquisitions to be carried out in the market under the scope of Article 7 of the Law on Protection of Fair Competition No: 4054.

c) The Board shall send to the Ministry for information, by April 30 of the following year an annual report for the past financial year. This report shall contain consolidated income statements, balance sheets and comprehensive financial statements based on annual activities.

d) *The Authority shall be audited by the Prime Ministry, Higher Audit Board<sup>1</sup>.*

### **Status of the Authority Personnel, Procedures for their Appointment and Their Personnel Rights**

**Article 9.** – The service units of the Authority shall consist of main service units organized as departments, consultative units and auxiliary units. The rights and responsibilities of the service units and their staffing shall be determined by the regulations to be issued by the Council of Ministers upon the proposal of the Board.

The permanent and main functions required for the Board services shall be performed by contracted personnel employed through administrative service contracts.

Except in respect to remuneration and financial rights, personnel of the Authority shall be subject to the provisions of Law No. 657 on Civil Servants.

While working for the Authority, any and all benefits provided by social security agencies before the date of their employment by the Authority to such personnel shall be reserved.

Local and foreign experts may also be employed in accordance with the provisions of the regulations to be prepared by the Chairman's Office and enforced by the approval of the Board.

Where certain specialized services are required, appointments of Authority personnel for these tasks shall be made by the Board among the personnel employed at the Ministry or its affiliated and related organizations or from other public agencies and organizations engaged in energy-related matters, upon the approval of the related Authority or institution.

The procedures regarding the appointment of staff from non-public agencies and the establishment of personnel career system shall be regulated by regulations to be issued.

The Board members and Authority personnel shall comply with the qualifications indicated in sub-items (1), (4), (5), (6) and (7) of item (A) of Article 48 of Law No. 657 on Civil Servants.

The chairman and members of the board and other Authority personnel shall be subject to the Law no. 5434 on Pension Fund. Those appointed as Board chairman or members shall cease their existing posts during terms of office with the Board. However, any Board member, subject to the provisions of Law No. 657 on Civil Servants or any personnel regime regulated under private legislation, shall, upon the expiration of their term of office and upon their request, return to the civil service and be appointed to a position by the Minister, provided that the provisions of Article 6 of this law are reserved.

The conditions required for achievement of academic titles shall be reserved.

*The situation of the personnel of the Authority with respect to retirement shall be governed by regulations to be drafted by the Chairman's Office and enacted by the Council of Ministers<sup>1</sup>.*

Notwithstanding the above, the chairman of the Board shall be deemed to have an equivalent status to the Undersecretary of the Ministry and the members of the Board to have an equivalent status to the Deputy Undersecretary with respect to their retirement status.

The salaries to be paid to the Chairman and members of the Board shall be determined by the Council of Ministers upon the proposal of the Ministry. Such salaries shall not be more than two times the remuneration received by government officers of the highest rank, including all forms of payments.

The remuneration and other financial rights of the Authority personnel shall be determined by the Board upon the proposal of the Board Chairman within the framework of the principles to be established by the Council of Ministers.

The procedures and rules specifying the expenses incurred by the chairman and members of the Board, the personnel of the Authority and those subject to temporary contracts in the course of performing their duties to be reimbursed by the Authority shall be set forth in regulations to be issued.  
Revenues and Assets of the Authority

**Article 10.** - The revenues of the Authority shall form its budget and consist of the following items:

*A) The revenues of the Authority related with the electricity market shall consist of the following items<sup>1</sup>:*

- a) Fees collected for license applications, renewals, modifications, license copies and annual license fees.
- b) Publications and other revenues.
- c) Grants to be extended by international organizations and institutions to finance studies and projects relating to development of market provided the details of such grants are made public.
- d) 25% of the administrative fines imposed by the Board;
- e) Transmission surcharges equal to one percent of the transmission tariff at most.

*B) The revenues of the Authority related with the natural gas market shall consist of the following items<sup>1</sup>:*

- a) *Participation fee.*
- b) *Fees collected for license, certificate, approval and visa procedures.*
- c) *Publications and other revenues.*
- d) *Grants to be extended by international organizations and institutions to finance studies and projects relating to development of market provided the details of such grants are made public.*

*Participation fee payers shall be the legal entities holding licenses and certificates. The participation fee shall be calculated by multiplying the net sales revenue amount in income tables to be prepared with respect to the annual activity periods of the said tax payers, with the participation fee rate to be determined by the Board, provided that such rate does not exceed 0,2 %. The participation fee rate to be applied within any year shall be announced in December of the previous year.*

The expenses of the Authority must be covered by its revenues. The annual income surplus of the Authority shall be transferred to general budget until the end of March of the following year. The revenues of the Authority shall be kept in accounts opened in banks that are deemed appropriate by the Board. The financial resources required for the functioning of the Authority shall be provided through general budget, until its revenues reach a level enough to sustain its activities.

The property and assets of the Authority shall be considered state-owned property and cannot be confiscated or pledged.

## **SECTION TWO** **Sanctions and Legal Action**

### **Sanctions and Procedures of Imposition of Sanctions**

**Article 11-** The Board shall impose the following fines and sanctions on the legal entities operating in the market:

- a) In cases where it is determined that the information provided upon request by the Board is false, lacking or misleading or if the conditions for on-site investigations by the Board are not made, a fine of TL 200 billion shall be imposed and the legal entity shall be warned to submit the correct information and/or make available the conditions for on-site investigation within seven days. However, in cases where the breach in question can easily be remedied, instead of imposing a fine, related real person and legal entity shall be warned to submit the correct information and/or make available the conditions for on-site investigation within seven days;
- b) In cases where it is determined that legal entity is in breach of the provisions of this law, and regulations and notifications issued by the Board, a fine of TL 250 billion shall be imposed and the legal entity shall be warned to remedy the breach within thirty days;
- c) In cases where it is determined that a legal entity fails to comply with any of the general terms or any of the responsibilities set out in its license, a fine of TL 300 billion shall be imposed and the legal entity shall be warned to remedy the breach within thirty days;
- d) If misleading information or non-factual documents related to licensing conditions are presented in license application process or if the changes that affect the licensing conditions occur during the term of the license and the board is not notified about such changes, and if the Board considers that the non-factual documents, misleading information or changes in license conditions may be corrected, a fine of TL 400 billion shall be imposed and the legal entity shall be warned to correct the same within thirty days.
- e) In case the prohibitions on affiliate relations are violated during the term of the license, a fine of TL



450 billion shall be imposed and the legal entity shall be warned to correct the related affiliate relation within thirty days;

f) In cases where it is determined that a legal entity is engaged in activities not covered by its license; a fine of TL 500 billion shall be imposed and the legal entity shall be warned to stop rendering the activities not covered by its license or the adverse actions within fifteen days;

g) In cases where it is determined that licensing qualifications have been lost during the term of the license or have never been present, the license shall be revoked.

In cases where the above mentioned actions requiring imposition of fines are not corrected or repeated despite a warning, the fines shall each time be imposed, increased by two times. If the same action, which requires imposition of an administrative fine, is not committed within two years from the date of initial fine imposition, previous fines shall not be taken into consideration. However, the increased fines may not exceed 10% of the gross income stated in the previous financial year's balance sheet of the legal entity subject to fine imposition. In cases where the total amount of fines imposed reach the referred limit, the Board may cancel the license.

In case of violations cited in sub-paragraph (c) or (d) of the first item of this article, the Board shall directly revoke the license without imposing any administrative fines in proportion to the degree of violation.

In cases where it becomes mandatory to revoke the license for any distribution region, the Board shall revoke the license only after taking necessary measures in advance to prevent service interruption. A bidding process shall be initiated within a hundred and twenty days for the sale of the facilities in question, on behalf of the license holder that retains the ownership of the facilities. The procedures and principles concerning implementation shall be defined by regulations.

All administrative fines indicated in this article shall in no way be included as cost items in the tariffs to be calculated by the legal entities.

The fines shall be imposed separately on all of the parties who act in violation of this law. In cases where the actions requiring imposition of fines as per this law are deemed as crimes as per Turkish Penal Code or other codes including sentence provisions, this shall not form an obstacle against the imposition of the these fines and the cancellation of licenses.

In cases where the actions requiring fine imposition are more than one, if there is any relation between these faults, the fine related to the fault requiring the highest fine shall be imposed; and if there is no relation between them, each of the fines shall be imposed separately.

In case of an action is deemed to require a fine, within fifteen days after the notification, the related legal entity may apply to the Board to request that the decision be reviewed. The decision to impose fines shall become final in case no such request is filed or such requests as filed are denied.

The right to impose fines shall be subject to a time limitation of five years starting from the beginning of the year following the time when the violation in question has taken place.

The time limitation shall be interrupted upon any action by the Board for review or investigation; or upon notification of such transaction to the other party, or upon a suit being filed against the decision.

The amounts of fines imposed shall be collected by the Ministry of Finance on behalf of the Authority as per the provisions of Act No: 6183 on Procedures for Collection of Public Receivables.

Fine amounts shall be increased every year in accordance with the provisions of Supplementary Article 2 of Turkish Penal Code No: 765, as amended by Law No: 4421, dated 28 July 1999.

### **Right to Legal Action**

**Article 12.** - Any lawsuit against the decisions of the Board shall be submitted to the Council of State as the court of first instance. The Council of State shall consider such filings against Board decisions an urgent matter.

## **SECTION THREE**

### **Tariffs, Consumer Support, Privatization and Other Provisions**

#### **Tariffs and Consumer Support**

**Article 13** – The procedures and principles regarding the tariffs, implementation of tariffs and consumer support as indicated in this Law are as follows:

a) Tariffs:

The tariffs regulated in this section and to be proposed for enforcement in the following year shall be prepared by the legal entity concerned in accordance with provisions of this Law and the license granted to it by the Board before the end of October 31 of every year and be submitted for the Board's approval. When the Board determines that such application conforms to the provisions of the applicable license, it shall these applications before December 31 of the same year.



The Board approval shall also contain adjustments to be made by the holder of the license in the tariff during the following year based on annual inflation and any other provisions defined in the license. Formulae relating to such price adjustments shall be set forth in each license issued by the Authority in accordance with provisions of this Law. The price structure shall exclude any factor, which is not directly related to the legal entity's market activities. The transmission surcharge to be imposed by the Turkish Electricity Transmission Co. Inc shall be an exception to this provision.

Price formulae included in any license may only be modified at times and/or conditions as specified in the same license.

The provisions of Board-approved tariffs shall be binding upon all real persons and legal entities subject to these tariffs. In case any real person or legal entity fails to effect the any of the payments indicated in the license, the sanctions to be applied, including the suspension of the service, shall be established by the regulations

The Board shall review and approve the tariff relating to the current year, concurrently with the issuance of a license requiring tariff approval.

b) Types of tariffs subject to Board regulation:

1. **The connection and use of system tariffs:** Connection and use of system tariffs shall establish non-discriminatory prices, terms and conditions for connection to and use of a transmission system or a distribution system which shall be included in the relevant connection and use of system agreements.

The connection charges shall not include the grid investment costs. The connection charges shall be limited to the costs incurred in relation to the connection of the related legal entity.

2. **Transmission Tariff:** The transmission tariff to be drafted by the Turkish Electricity Transmission Co. Inc. shall establish non-discriminatory prices, terms and conditions for the provision of transmission service to all users benefiting from the transmission of generated, imported or exported electricity over the transmission facilities. The transmission tariff shall also cover grid investments by the Turkish Electricity Transmission Co. Inc. and transmission surcharges.

3. **Wholesale Price Tariff:** The wholesale price tariff to be drafted by Turkish Electricity Trading and Contracting Co. Inc. shall establish non-discriminatory prices, terms and conditions to all real persons and legal entities to whom the Turkish Electricity Trading and Co. Inc. is obligated to sell electricity on wholesale basis.

In calculation of the wholesale tariff, the Board shall ensure that the average price of electricity purchases is included and that the Turkish Electricity Trading and Contracting Co. Inc. has the capacity to fulfill its financial liabilities.

4. **Distribution Tariffs:** The distribution tariff to be drafted by distribution companies shall establish non-discriminatory prices, terms and conditions for the distribution service to all users benefiting from the distribution of electricity through distribution facilities.

5. **Retail tariffs:** The retail tariffs shall establish the non-discriminatory prices, terms and conditions applicable to all consumers, except for those directly connected to the transmission system.

The retail tariffs applicable to non-eligible consumers shall be proposed by retail sale companies and/or distribution companies holding retail sale licenses and the Board shall examine and approve such retail tariffs.

The retail tariffs applicable to eligible consumers, except for those directly connected to the transmission system, shall be proposed by the distribution company holding retail sale license in the respective distribution region and/or a retail sale company and be reviewed and approved by the Board until such eligible consumers select their respective suppliers under bilateral agreements.

The license of any retail sale company may include provisions pertaining to application of tariffs and/or price ranges which are subject to variation depending on electricity consumption quantities, and related details shall be defined in the license.

c) **Consumer Support**

In cases where consumers in certain regions and/or in line with certain objectives need to be supported, such subsidy shall provided in the form direct cash refunds to consumers without affecting the prices. The amount, procedure and principles of these refunds shall be established by the Council of Minister upon the Ministry's proposal.

The issue of compensation for losses and damages that may arise due to lack of quality and/or interruptions in power supply, shall be addressed in the licenses and the contracts of the legal entities providing these services to consumers. The procedures and principles concerning the implementation of these provisions shall be defined in regulations.

**Privatization**

**Article 14.** – The Ministry shall provide the Privatization Administration with proposals and opinions regarding the privatization of the assets belonging to the Turkish Electricity Distribution Company (TEDAS) and Electricity Generation Co. Inc., their subsidiaries, affiliates, partnerships and operational units and facilities. The privatization process shall be executed by the Privatization Administration according to the provisions of Privatization Law no: 4046.

The foreign real persons and legal entities engaged in the market activities as defined by this Law within the scope of privatization activities, cannot have a market share that will enable them with a control power in the electricity generation, transmission and distribution sectors.

#### **Other Provisions**

##### **Article 15**

###### **a) Debt Servicing**

Of the debt obligations assumed by the TEAS those which are related to the transmission activity shall be transferred to the Turkish Electricity Transmission Co. Inc. and those which are related to the generation activity to the Electricity Generation Co. Inc. with the condition that reconciliation between the relevant organizations and Treasury be completed within sixty days. During the transactions concerning privatization, sale and transfer of shares under the framework of domestic or foreign loan agreements to which Treasury is a party or a guarantor, the financial obligations arising from the investments performed to finance the related energy generation and transmission facilities shall be established as part of the financial obligations of the legal entity being transferred the referred facilities, by means of a protocol to be signed between the Electricity Generation Co. Inc., Turkish Electricity Transmission Co. Inc., Treasury, and Privatization Administration.

###### **b) Market Financial Reconciliation Center:**

The Market Financial Reconciliation Center under the body of the Turkish Electricity Transmission Co. Inc. shall operate the financial reconciliation system through calculating amounts payable or receivable by legal entities operating in the market, based on differences between actual purchases – sales and contracted quantities in accordance with the provisions of the Balancing and Settlement Code drafted the Turkish Electricity Transmission Co. Inc and approved by the Board.

All legal entities shall be obligated to provide the Market Financial Reconciliation Center with all data required to enable the latter to determine amounts receivable or payable by such legal entities operating in the market in accordance with the provisions of the Balancing and Settlement Code.

Under no circumstances shall the Market Financial Reconciliation Center purchase or sell or otherwise deal with electricity and/or capacity on its own account. All data furnished to the Market Financial Reconciliation Center shall be treated as confidential in accordance with provisions of the Balancing and Settlement Code. All legal entities served by the Market Financial Reconciliation Center shall be obligated to pay a fee determined for such services in accordance with the provisions of the Balancing and Settlement Code.

###### **c) Expropriation**

When required by the activities set out in this law, expropriation can be performed on the basis of the procedures established in the Expropriation Law no. 2942. The decision of the Board on the requirement of expropriation shall be deemed as “public interest” and shall become effective upon approval by the Ministry.

In cases where the legal entities engaged or to be engaged in generation, distribution, and transmission activities, request expropriation from the Authority and such request is approved by the Board, expropriation shall be performed by the Authority. In such cases, the expropriation cost shall be paid by the related legal entity. Ownership of the expropriated immovable shall belong to the Treasury, and its usage rights shall belong to the legal entity paying the expropriation cost. Usage rights are an integral part of the relevant license or contract, and their validity period shall be limited with the validity period of them.

The expropriation payments by the legal entities shall not be refunded in cases where the licenses of the related legal entities are cancelled or has expired.

###### **d) Real Property Rights or Rental:**

Legal entities may request the use of public land as regard to their activities provided that the related cost be paid by the legal entity.

In cases where the board deems such request to be appropriate, the board shall meet such requirements by usufruct, easement, right of construction or long- term lease with regard to the needs in accordance with the relevant laws.

The price of the right so acquired shall be determined by the Board and be paid by the related legal entity. Usage rights are an integral part of the relevant license or contract, and their validity period

shall be limited with the validity period of them.

#### Inapplicable Provisions

Article 16. - The Authority shall not be subject to Law no. 1050 on Public Accounting, Law no. 2886 on Public Tender and Law no. 6245 on Travel Allowances. The Authority and revenues of the Authority shall be exempt from all taxes, duties and charges. Any lawsuits to be filed by the Board shall be exempt from any collateral.

#### Amended and Cancelled Provisions

##### **Article 17.**

a) The phrase “land required by energy generation facilities and transmission and distribution networks” shall be introduced after “tourism facilities” phrase in the Paragraph 1 of Article 64 of Public Tender Law no. 2886.

b) After “the duties of the Ministry of Energy and Natural Resources” statement in Article 2 of Law no. 3154 on the Organization and Duties of the Ministry of Energy and Natural Resources, the phrase “if or to the extent not included within the scope of authority of institutions or establishments functioning in the market, through their related legislations” shall be incorporated. After “the duties of the Directorate General Energy Affairs” statement in Article 10 of Law no. 3154 on the Organization and Duties of the Ministry of Energy and Natural Resources, the phrase “if or to the extent not included within the scope of authority of institutions or establishments functioning in the market, through their related legislations” shall be incorporated.

c) The following articles of the indicated laws shall be annulled: the Supplementary Article 1; first, second and third paragraphs of Supplementary Article 2; and Supplementary Article 3 of “Law (No 3291, dated May 28, 1986) on Amendment of Law No. 1211 on Central Bank of Republic of Turkey, Banking Law No. 3182, Law No. 2983 on Incentives for Savings and Accelerating Public Investments, Law No. 2985 on Social Housing, Law No. 3238, dated 7 November 1985, and Law No. 2499 on Amending Capital Markets; and Law No. 1177 on Cancellation of Selected Articles of Law on Tobacco and Tobacco Monopoly and Privatization of Public Economic Enterprises”.

**Article 18.** – The following supplementary article is hereby incorporated in the Law no. 6200 on Organization and Responsibilities of the Directorate General of State Water Works.

Supplementary article 1. The units of the hydroelectric power plants related to energy generation, constructed by the Directorate General of State Water Works which are currently in operation or will become operational, and plant, equipment and property that constitute a complementary part of these units, shall be transferred to Electricity Generation Co. Inc. on the basis of their valuation with regard to the payments to the Public Participation Fund and other financial obligations borne by project loans from foreign sources as secured by Treasury and allocated to Directorate General of State Water Works.

The amounts of payments payable to relevant organizations shall be assessed and established by a protocol to be drafted between the Ministry, the Treasury, Directorate General of State Water Works, and Electricity Generation Co. Inc. The procedures and principles concerning transfer of these shall be defined in regulations to be prepared by the Ministry and enforced by the Council of Ministers within six months after the effective date of this provision. Transfer transactions shall exempt from all tax, charge and duties.

## **SECTION FOUR**

### **Provisional Articles**

**Provisional Article 1.** All tasks and obligations assigned to the Electricity Generation Co. Inc., Turkish Electricity Transmission Co. Inc. and Turkish Electricity Trading and Contracting Co. Inc. shall be assumed by TEAS until these companies are actually established.

**Provisional Article 2.** - The first members of the *Energy Market*<sup>1</sup> Regulatory Board shall be appointed within three months following the enactment date of this Law.

The first members of the Board, except for the Chairman, shall be replaced according to the provisions of this law: initially, the two members selected by lottery at the end of the second year and two other members among the remaining four members selected by lottery at the end of the fourth year.

The Authority personnel shall not be appointed before the establishment of the Board.

**Provisional Article 3.** - Preparatory period shall mean the 18-Month period following the enactment of this law. The Council of Ministers may extend this period once for a period of six months.

#### **Within the context of preparatory period:**

##### **a) During the preparatory period;**

1. Legal entities currently operating in the market as of the date of enactment of this Law shall not be required to obtain licenses.

2. In order to enable the *Energy Market*<sup>1</sup> Regulatory Authority to reach a level of competence where it can fulfil its duties fully, effectively and efficiently, the Ministry shall initiate an institutional development process involving the designing of the Authority's business processes, the development of related procedures, standards and documentation, the definition of an organizational structure and the designing, development and implementation of information technology infrastructure and systems and training programs required by the Authority's personnel after the enactment of this Law. When the Board is actually established, such activities shall be assumed by the Board and completed in coordination with the Ministry.

3. The regulations to be drafted as per the provisions of this law shall be prepared and issued. The existing regulations shall be effective until the regulations to be issued as per this Law are in effect.

4. The grid code, distribution code, customer services code and balancing and settlement code shall be prepared by the public agencies authorized by this Law. In case these regulations are completed before the end of the preparatory period, the activities regarding the enforcement of these codes, with the exception of the balancing and settlement code, shall be carried out with these agencies in conjunction with the Ministry until the Board is established, and in conjunction with the Board after the Board is established.

5. Until the establishment of the Board, the Ministry shall take all necessary precautions during emergency situations in terms of the security of electricity supply.

**b) At the end of the period:**

1. Electricity Generation Co. Inc., Turkish Electricity Transmission Co. Inc., Turkish Electricity Trading and Contracting Co. Inc., TEDAS and private legal entities operating generation and distribution facilities or have acquired the right to operate generation and distribution facilities under their existing contracts shall provide the Board with information and documents required for license applications within time limits specified in applicable regulations to be issued by the Board. All legal entities, that fulfil their respective obligations as per this Law, shall receive their licenses from the Authority within one month following the date of application. Until related licenses are granted, such legal entities shall continue the performance of their market operations in accordance with procedures and provisions in force.

2. The concession contracts for the authorization of the legal entities engaged more than one market activity shall be amended in accordance with the principles to be determined by the Board with regard to the rights and obligations arising from these contracts and the provisions of this law. The Board shall take necessary measures to ensure the continuation of the activities that shall no longer be performed by these legal entities.

The transmission activities shall be performed according to the principles to be determined by the Board via regulations.

3. The Council of Ministers shall have the power to reduce the rates of surcharges and funds on the electricity sale tariffs to zero, to abolish on non-tariff and below-tariff practices, and to make any regulatory amendments related to these subjects.

**Provisional Article 4.** - The existing contracts of the public electricity generation and distribution facilities, for which transfer of operating rights had been planned, shall be ineffective if the transfer process is not completed by *31 October 2001*<sup>2</sup>.

The projects, for which the transfer process has been completed as of the date indicated above, shall have a two-year transition period to complete the construction of environmental protection facilities initiated by TEAŞ and to obtain the applicable permits. During the referred two-year period, electricity generation activities in these facilities may not be stopped due to such reasons.

**Provisional Article 5.** - Subsidiaries of TEDAS and the Electricity Generation Co. Inc. shall maintain their current status until their ownership or operating rights are transferred.

**a) Within the framework of the distribution activities;**

1. TEDAS shall continue its distribution and retail sale activities in distribution regions, the operating rights of which have not been transferred to private sector or otherwise privatized. Other retail companies shall also be entitled to operate in these regions.

2. As per the provisions of the existing contracts, TEDAS shall be obligated to review the investment programs and projects of private distribution companies operating the distribution facilities owned by TEDAS and to supervise and verify whether these projects approved and included in the program are carried out in line with the investment program during the term of the existing contracts.

**b) Within the context of generation activities**

The sale price of the electricity generated by the generation facilities operated by the Electricity Generation Co. Inc., including its affiliates, shall cover the costs of equity, loans, principal, interest and

foreign exchange rate differences as well as the management expenses of the Electricity Generation Co. Inc. The obligations arising from existing loans shall be assumed by the Electricity Generation Co. Inc.

**Provisional Article 6.** - The Electricity Generation Co. Inc. shall sell the electricity it has generated to the Turkish Electricity Trading and Contracting Co. Inc. for a specific period designated by the Board, provided that such period is not longer than five years following the end of preparatory period. The principles and procedures applicable for sale of electricity and/or capacity by the Electricity Generation Co. Inc. to the Turkish Electricity Trading and Contracting Co. Inc. during such period, shall be determined by the Board within the framework of the Ministry policy established as per the Law no. 3154 on the Organization and Duties of the Ministry of Energy and Natural Resources.

**Provisional Article 7.** - All consumers directly connected to the transmission system and consumers whose electricity consumption in the previous year (after the completion of twenty four months following the enactment of this law) exceeds nine million kilowatt hours, shall be considered eligible consumers.

The contracts signed with the consumers directly connected to the transmission system and assumed by the Turkish Electricity Trading and Contracting Co. Inc. shall be valid until these consumers choose their new suppliers.

**Provisional Article 8.** The Treasury guarantees within the framework of law no. 3996, may be provided for the projects decided before the enactment of this law, provided that such projects be commissioned before end of 2002. All Treasury guarantees provided for these projects shall be null and void if these projects are not commissioned by the end of 2002.

Treasury guarantees shall not be provided within the framework of law no 3996, dated 8 June 1994 and law no. 4283, dated 16 July 1997.

**Supplementary Article 1.**– *Energy Market Regulatory Authority shall be authorized and responsible for the enforcement of the Natural Gas Market Law as well as the enforcement of this Law. The Energy Market Regulatory Authority and the Board shall execute the duties, authorities and the regulations regarding the markets separately and in accordance with their laws due to the fact that the natural gas sector and electricity energy sector markets have different natures and structures<sup>1</sup>.*

**Supplementary Article 2** - *Energy Market Regulatory Authority shall be authorized and responsible for; import, transmission, distribution, storage, trade and export of natural gas as well as granting licenses and certificates which define the rights and obligations of all real persons and legal entities regarding such activities, examining the market and system operation, formation, amendment and application and, inspection of distribution and customer service regulations; examining the prices reflecting costs and ensuring that the activities are conducted in accordance with Natural Gas Market Law.*

*For the purposes of enforcement of Natural Gas Market Law, inspection, supervision, guidance of activities of real persons and legal entities that will be performed within the scope of the licenses and certificates to be obtained from the Authority; the principles and provisions to be complied with and the scope and terms of such licenses and certificates, criteria for granting such licenses and certificates, and the terms thereof, method of determining their prices, their compliance with the environmental legislation, procedures of record keeping, rights and obligations of license owners and other issues that may be deemed necessary for the regulation of the market, shall be determined by regulations. The Authority shall prepare the regulations to be enacted upon decision of the Board in accordance with the Natural Gas Market Law, and long term programs upon taking the opinions of the legal entities engaged in market activities and the relevant entities and institutions<sup>1</sup>.*

Effectiveness

**Article 19.** - This Law shall be effective on the date of its publication.

Execution

**Article 20.** - This Law shall enforced by the Council of Ministers.

*Articles in red and italic have been amended as per the provisions of Natural Gas Market Law no. 4646 issued in the Official Gazette No:24390 dated 02/05/2001.*

<sup>2</sup> Suspended by the Constitutional Court