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**PRESIDENCY OF THE REPUBLIC****LAW n ° 2017-020****on the Electricity Code in Madagascar****EXPLANATORY STATEMENT**

After almost two decades of implementation, Law no.

°

98-032 of

January 20, 1999 reforming the electricity sector in Madagascar and its texts and application documents seem to be at the end of the cycle. The context of the sector Electricity being dynamic and dependent on many economic parameters, technical and social, the need to revise the Law and its implementing texts has arisen felt from 2008. Several shortcomings were noted by the players in the sector Electricity with regard to the attributions of the institutions and the governance of the sector, the thresholds for Authorization and Concession contracts, the cumbersome procedures prescribed by law, the lack of provisions relating to the use of sources of Renewable Energies (RE), etc., failures that are corrected by this law replacing law n ° 98-032.

This revision of the legal framework is part of the implementation strategies of the New Energy Policy (NPE), adopted in 2015 as part of the Plan National Development (PND) 2015-2019. The NPE reflects the will of the Government to clean up the energy scene and provide a favorable framework for investments in the sector, in particular by taking advantage of new technologies that would allow considerable energy savings. Vision of the NPE is based on a fundamental principle of least cost and on five qualitative objectives for the sector: access for all to modern energy, affordability, securing the quality and reliability of services, safety energy and sustainability. For modern energy (electricity and lighting), the objective is to provide sustainable access to 70% of households by 2030. <sup>[1]</sup><sub>SEP</sub>

This law aims in particular to:

- integrate provisions relating to the use of energy sources renewable, so that Madagascar can align itself with the guidelines international organizations in this area and benefit from related initiatives;
- make the Electricity sector more attractive and more secure for potential investors / promoters;
- provide users of the Electricity sector with a better quality of service, an affordable cost and respecting the principle of continuity and non-discrimination;
- contribute to improving the governance of the electricity sector, in terms of transparency and accountability.

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The main innovations brought by this law can be summarized in four main points.

**I.****ATTRIBUTIONS OF THE INSTITUTIONS AND GOVERNANCE OF THE SECTOR****From the Ministry in charge of Energy**

In addition to defining the national energy policy, he directs and coordinates the planning of all projects concerning the Electricity Sector.

**From the Electricity Regulatory Office**

Law n ° 98-032 established a Regulatory Body, later called Electricity Regulatory Office (ORE). Being a crucial part of the sector Electricity, this entity is established by this law as an Administrative Authority Independent (AAI), and is henceforth renamed "Regulatory Authority of Electricity (ARELEC)" in order to facilitate the exercise of its missions and better establish its independence.

In addition to the old missions of the ERO, de facto attributions - such as that the mediation service or the monitoring and control of the execution of Concession and Authorization - but which were not explicitly mentioned in the old text. The innovation also lies in (i) the supervision of the development of a Grid code intended to regulate in a precise, impartial and evolution of the technical operations of the Electricity sector, as well as (ii) the recomposition of the Electricity Council, now called the "College of Commissioners", a collegial body leading ARELEC and fulfilling the function of regulation of the electricity sector in Madagascar.

#### **From the Rural Electrification Development Agency**

The Rural Electrification Development Agency ("ADER") was created by Decree No. 2002-1550 of December 3, 2002. The NPE provides in particular that:

*"The rural electrification program is implemented by ADER according to clear and transparent rules in accordance with the provisions of the legal framework and regulations in force. As such, it selects and carries out projects on the basis of regional master plans that prioritize renewable energy resources available locally, including hydroelectricity, biomass, solar and wind power, in order to supply electricity to the localities that are poles of development (households, productive and commercial activities to be developed)".*

In this regard and with a view to promoting better development of rural electrification in Madagascar, the concepts of "rural electrification" and "Mini-grid" have been added in the definitions of this law (Article 1<sup>er</sup>).

The provisions relating to the organization and functioning of ADER have also incorporated in order to give its status legal value (Article 78).

In addition, to follow up on the suggestions of donors, the FNE (created by the Law n ° 2002-001 of October 07, 2002) has been institutionalized (Article 80). Some elements have also been specified in the law in order to make the FNE eligible

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much more effectively to donors who require traceability of funds given.

## **II.**

### **PUBLIC DISTRIBUTION**

In order to simplify the process, a third way of authorizing the production of small power was put in place by the Declaration regime which is a improvement of the Autoproduction regime. In addition, it was created a new market player directly inspired by other countries that have initiated the opening of the Electricity market, namely "the Energy Supplier". Finally, the procedures allocation of Authorizations and Concessions have been significantly reduced, with the possibility of delegation of concession and authorization power to ADER, and the abolition of approval by order or decree. This in order to shorten deadlines and streamline operations.

## **III.**

### **RENEWABLE ENERGIES**

The NPE provides for the massive use of renewable energy sources, in the goal of preserving the ecological heritage and participating in the global effect of struggle against climate change and its repercussions. At the same time, the this law incorporates measures to promote renewable energies by in order to increase their share in the energy balance.

First of all, three regimes have been put in place for the exercise of activities of Production, Transport and Distribution: the Concession, Authorization and Declaration (Title III). New thresholds are defined in order to encourage promoters to invest in the field of renewable energies. This simplifies and facilitates administrative arrangements for the installation of green producers.

Then, renewable energies are defined broadly and include solar thermal and photovoltaic, wind, hydroelectric, geothermal, energy generated from biomass, energy from marine sources and that generated from waste (Article 10).

In addition, provisions granting priority for connection to connection requests relating to energy production facilities renewables favor the rapid installation of green producers. In addition, it was provided that in the event of network congestion, injection priority will be given, where possible, to installations that use renewable energies (Article 13).

In addition, this law defines " *the Green Supplier* " (Article 1<sup>er</sup>) who sell

100% renewable energy. It must have a green supply license and may have a favorable tax status (Article 50).

Finally, the methods of production and injection of energy from renewable sources on the interconnected network are provided for in this law, in particular through the "compensation" mechanism (Articles 1<sup>er</sup>, 13).

#### **IV.**

#### **PLANNING AND PRICING**

The Ministry in charge of energy draws up, on the basis of established indicative plans by the Electricity Regulatory Authority, the Development Agency of Rural Electrification and Network Managers, a national resource plan of Production, including the means of Production of renewable energies, as well as the development of electrical networks for a period of fifteen (15) years, reassessed every two (02) years (Article 4 al. 4).

An evolution in the methods of setting electricity sales tariffs is planned. This law defines the guiding principles which will subsequently be specified in the tariff decree.

The price regulations concern the sales and royalties listed in article 84 of the law. For regulated prices, the Electricity Regulatory Authority sets the prices and the formulas for adjusting these prices. It can also set ceiling price for certain categories of activities that it determines (e.g. for rural electrification). Sales that are not included in article 84 are not subject to price regulation.

The improvements made to Law n ° 98-032 being too substantial for a simple amending law, it was decided to adopt and promulgate a new law on the Electricity sector in Madagascar.

This law comprises eleven titles:

- Title I: Definitions and general provisions
- Title II: Renewable energies
- Title III: Regimes applicable to Production, Transport and Distribution
- Title IV: Self-production
- Title V
- : Supply licenses
- Title VI: Energy efficiency and storage
- Title VII: Of the Electricity Regulatory Authority
- Title VIII: Rural electrification
- Title IX: Price regulation
- Title X
- : Surveillance, control and sanctions
- Title XI: Transitional provisions

This is the purpose of this Bill.

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## **PRESIDENCY OF THE REPUBLIC**

### **LAW n ° 2017-020**

#### **on the Electricity Code in Madagascar**

The National Assembly and the Senate adopted in their respective session in date of November 02, 2017 and November 22, 2017.

#### **THE PRESIDENT OF THE REPUBLIC,**

Having regard to the Constitution;

Considering the decision n ° 22-HCC / D3 of December 12, 2017 of the High Court Constitutional;

#### **PROMULATES THE LAW WHOSE CONTENT FOLLOWS:**

#### **TITLE ONE**

#### **DEFINITIONS AND GENERAL PROVISIONS**

##### **First chapter**

##### **DEFINITIONS**

**Article 1 .** - Under the terms of this law the following are understood to mean:

**Central Purchaser:** the Operator holding a Transport concession in a interconnected network, which, depending on its needs, carries out the purchasing mission of electricity to producers for resale to distributors and wholesalers consumers served by the Transport network.

**Regulated assets :** Generation, Transmission and Distribution facilities and the tangible and intangible goods linked to them, concerned by the obligations of public service determined by this law, including the connection and access to networks for the withdrawal and injection of energy, the metering, and where appropriate, ancillary services.

##### **Rural Electrification Development Agency (ADER):**

public institution in charge of the development of rural electrification, such as referred to in Title VIII of this law.

**Call for tenders:** the procedure by which the Licensing Authority chooses the technical and financial proposals evaluated on the basis of objective criteria previously brought to the attention of the candidates.

The Call for Tenders is classified into two categories according to the objectives:

- Call for projects: call for tenders relating to a specific perimeter where the candidate proposes technical solutions, after a call for demonstrations of interest;

- Call for applications: call for tenders relating to a perimeter determined where the candidate submits bids on the basis of a specification charges prepared by the Granting Authority.

**Self-producer:** any natural or legal person governed by public or private law, whose main activity is not to produce electricity but which has Electricity Production Facilities to meet its own needs total or partial.

**Autoproduction:** all the operations allowing a Autoproducer to transform any source of primary energy into electricity mainly for the satisfaction of its own needs.

**Authorization:** the contract by which the Licensing Authority allows an Operator to establish and operate Electricity Installations with a view to producing and / or distribute / supply electricity to an end customer or as part of Self-generation for a period and under the conditions provided for in the said Authorization.

**Electricity Regulatory Authority (ARELEC):** formerly called Electricity Regulatory Office (ORE), a regulatory body created by the provisions of Title IV of Law no.98-032. Its statutes and its attributions are put up to date through this law.

**Licensing authority:** the State represented by the Minister in charge of energy or, by delegation of power, the Electrification Development Agency Rural.

**Low voltage (LV) :** the voltage level below 1000 Volts.

**Biomass :** the biodegradable fraction of products, waste and residues of biological origin from agriculture (including plant substances and animals), forestry and allied industries, including fishing and aquaculture, as well as the biodegradable fraction of industrial waste and municipal.

**Isolated Center :** all Production units and Distribution networks not interconnected to a Transport network, providing local service, commonly called also “mini-grid”.

**End customer :** any natural or legal person who purchases electricity for its own consumption.

**MV or HV end customer:** the end customer connected to the MV or HV network.

**LV end customer:** the end customer connected to the LV network.

**Compensation :** compensation consists of being able to deduct from consumption over a period of energy injected into the network during the same period, even if the consumption and injection were carried out at times different, according to pricing terms determined by the Regulatory Authority of Electricity.

**Meter :** the metering equipment installed at an end customer, including any remote reading equipment, in order to measure the energy taken or injected and, where applicable, the active power and the reactive power, during a unit of time determined by regulation.

**Concession :** the contract by which the Licensing Authority allows an Operator to establish and operate Electricity Installations with a view to producing, transporting and / or to distribute / supply electricity to end customers for a fixed period and under the conditions provided for in said contract.

**Concessionaire:** the Operator holding one or more Concessions.

**Declaration:** the procedure consisting for a Producer or Self-Producer to inform the Granting Authority in advance of the establishment of means of Production or Self-production.

**Dispatching:** the coordination of the Production and Transport system in a electrical energy system in order to ensure continuity of service, safety, electrical reliability and service at the lowest cost of demand.

**Distribution:** all the means and operations to ensure the transit of electricity, downstream of the Production Installations or of the Transport, for delivery to the end customer.

**Energy efficiency :** all technical or managerial measures aimed at optimize the energy efficiency of Installations according to the principle of least cost.

**Rural Electrification :** the part of the Electricity sector whose purpose is to supply electricity (i) to rural or peri-urban areas of the territory of the Republic of Madagascar in which no distribution network of medium and low voltage is installed and (ii) the mini-grids not connected to a interconnected Transmission or Distribution network (iii) excluding all Autoproduction installations intended to satisfy only own needs of the Autoproducer.

**Sustainable energy :** any source of energy production and conservation for where resources are available on a scale large enough to make it possible to extract a significant part of the energy consumed over time term, preferably a hundred years.

**Wind energy:** the mechanical energy resulting from the conversion of the force of wind.

**Geothermal energy:** the energy stored in the form of heat under the solid earth surface.

**Renewable energies :** electrical or thermal energies from renewable energy sources referred to in Article 10.

**Photovoltaic solar energy:** energy from the conversion of light solar radiation in electric current by the photovoltaic effect of materials photosensitive semiconductors.

**Solar thermal energy:** the energy resulting from the conversion of light from solar radiation into heat energy by the use of sensors solar thermal.

**Economic, social and environmental impact study:** the scientific study referred to in Articles 20 and 24, carried out by an approved person or entity putting highlight the impacts of a project on the economy, society and the environment.

**Financial equilibrium :** the regulated price should make it possible to cover all economic and financial costs of the service concerned.

**Operator:** the natural or legal person, public or private, having is responsible for the construction, management and maintenance of Electricity Installations under of an Authorization, Concession or Declaration.

**National Fund :** the **Fund** (s) referred to in Article 80.

**Supply :** the delivery of electricity by the holder of a Concession of Production, Transport, Distribution or Supply License, including by an Autoproducer, to an end customer.

**Electricity supplier :** any authorized natural or legal person, under this law, to sell electricity to an end customer, in accordance with

section 49.

**Green supplier:** any electricity supplier, holder of a green supply, which sells one hundred percent (100%) renewable energy, without damage to a thermal backup supply whose capacity cannot exceed ten percent (10%) of annual production in MWh.

**Distribution network operator (GRD) :** the Concessionaire or the Licensee of a Distribution network in charge of management and maintenance power lines and related installations that supply electricity up to the end customer.

**Transmission System Operator (TSO) :** the Concessionaire of a network of Transport in charge of the management and maintenance of lines and installations electrics that carry electricity to the distribution networks.

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**National Transport Manager (GNT) :** the Concessionaire of the Transport as referred to in article 26.

**Grid code :** the technical code comprising prescriptions and rules relating to the connection, access and management of electricity referred to in Article 62.

**Electrical Installations (or Installations):** Production Installations, Autoproduction, Transport or Distribution networks, Installations auxiliaries, and more generally all the infrastructures and constructions operated or held by Operators of the electricity sector and intended, according to the case, to Production, Self-production, conversion, transformation, Transport and Electricity Distribution.

**High Voltage (HT) :** the voltage level greater than 50,000 Volts.

**Private lines:** the power lines referred to in article 48, exclusively located on a private domain.

**Medium voltage (MT):** the voltage level between 1000 and 50,000 Volts.

**Electricity public service obligation :** aims to guarantee, while respecting of the general interest, the supply of electricity in sufficient quantity and whose quality conforms to generally accepted standards, respecting the principles continuity of service, equal treatment of users with regard to charges and advantages, and at the lowest cost.

**Public Private Partnership (PPP) :** refers to a contract regardless of its form or its name, by which a public person entrusts to a third party, for a fixed period, depending on the amortization period of the investments or the financing methods selected, a mission aimed at:

- all or part of the financing, infrastructure, works, equipment or intangible goods, necessary for the public service, as well as,
- all or part of their construction, rehabilitation, transformation, maintenance, maintenance, operation, or management, with or without delegation of services public.

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**Perimeter :** geographical and administrative delimitation of the area in which an Operator is legally authorized to carry out electrical activities.

**Regulatory period :** the period defined by the Regulatory Authority of Electricity for tariff adjustment purposes.

**Licensee :** the Operator holding one or more Authorizations.

**Planning:** the iterative process based on economic, social, environmental and demographic measures aimed at forecasting energy demand power (power power MW, MW / h) in the short, medium and long term, and at the align with the means of Transport, Distribution and

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**Independent Energy Producer** : the Operator holding an Authorization or a Production Concession, exercising exclusively this activity of Production, and delivering the energy produced, either to a Transport Concessionaire, or to a Distribution Licensee / Concessionaire.

**Production**: all the operations allowing the transformation of any primary energy source in electricity.

**Producer** : any natural or legal person who produces electricity, including including any Autoproducer.

**Peak power of a network**: the maximum amount of powers called on the different lines of a network.

**Installed power of a power plant**: the sum of the nominal powers Production units installed in the plant.

**Transport**: all the means to ensure the transit of electricity, in very high voltage (THT) or in high voltage (HV), between Production Installations and Distribution Installations or with a view to supply to customers with high voltage (HV).

## Chapter II

### GENERAL PROVISIONS

**Art. 2.** - This law governs all dimensions of the Electricity sector at Madagascar (institutional attributions, contract regimes, awarding of markets, pricing and planning, energy sources, rural electrification, efficiency energy, etc.).

This sectoral law is self-supporting and escapes the provisions of the Law n ° 2015-039 of 03 February 2016 on the Public-Private Partnership which is only for him suppletive. Selection / identification of partners relating to the Electricity sector as well as the related procurement are subject to compliance with the principles set out in Titles III, IV and V of this law.

However, all projects, excluding private initiative, developed within the framework of this law, must go through the mandatory preliminary and preparatory stages provided for by Law no.2015-039, namely pre-feasibility, feasibility, financial sustainability and fiscal sustainability.

**Art. 3.** - The activities of Production, Transport, Distribution and Supply of electric power on the territory of Madagascar can be ensured without discrimination by any natural or legal person, governed by private or public law, of Malagasy or foreign nationality, according to the terms set by this law and the texts taken for its application.

In the case of legal persons governed by private law, these must be incorporated in the form of companies incorporated under Malagasy law, in accordance with legislative and regulatory provisions in force.

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**Art. 4.** - The activities of Production, Transport, Distribution and Supply of electrical energy are carried out under the conditions provided for by the this law, under the authority of the Minister in charge of energy and of the Electricity regulation, the respective competences of which are determined by the this law and the texts adopted for its application.

The Minister in charge of energy, without this list being exhaustive:

- draws up the general policy on electrical energy and defines the



guidelines for implementing said policy;

- launches calls for tenders in terms of Production, Transport and Distribution in accordance with article 64 of this law;
- fixed by regulatory means, in consultation with the Minister in charge of trade and with the National Standardization Committee, standards, technical specifications and standards applicable to the Installations electric.

For the realization of the general policy on electric energy, the Minister in charge of energy may delegate all or part of his powers, in particular to the Rural Electrification Development Agency within the framework of the allocation of Authorizations and Concessions for rural electrification. The terms and conditions of any delegation of power are specified by decree.

The Ministry in charge of energy collects and stores data and information relating to the Electricity sector.

The Ministry in charge of energy draws up, on the basis of indicative plans established by the Electricity Regulatory Authority, the Development Agency of Rural Electrification and Network Managers, a national resource plan of Production, including the means of Production of renewable energies, as well as the development of electrical networks for a period of fifteen (15) years, reassessed every two (02) years.

The indicative plans designed by the Electricity Regulatory Authority, the Agency of Rural Electrification Development and Network Managers are refer to the forecast of demand, the evolution of the existing fleet and that of the sites potential candidates.

The powers of the Electricity Regulatory Authority are specified in the articles 59, 61, 64 and 66.

The National Standardization Committee coordinates the application of standards in in Electrical installations.

**Art. 5.** - Any actor in the electric energy sector must comply with principles of good governance including, in particular, transparency, discrimination and accountability. He must respond to any complaint or question asked within a reasonable timeframe specified in the Grid code and in a manner motivated.

The Minister in charge of energy and the Electricity Regulatory Authority enact, each in their area of expertise, the rules of good governance and performance indicators to be respected by regulated actors. The latter must comply with these rules and report on their good run annually.

Breaches of the rules and principles thus defined lead to sanctions administrative procedures set by decree by the Minister in charge of energy or by the Electricity Regulatory Authority according to their area of expertise.

**Art. 6.** - Anyone wishing to carry out Production activities must at beforehand, depending on the level of installed capacity envisaged, obtain either a Authorization, either a Concession or, if necessary, make a prior Declaration.

Anyone wishing to exercise the activities of Network Manager Transport must first obtain a Concession.

Anyone wishing to exercise the activities of Network Manager Distribution must obtain beforehand, depending on the peak power level envisaged, either an Authorization or a Concession.

Anyone wishing to operate as a Supplier must be a holder of

a Concession, a Transport and / or Distribution Authorization, or hold a Supply License.

**Art. 7.** - Anyone wishing to carry out Self-production activities must at prior, depending on the level of installed capacity envisaged, either file a Prior declaration, or obtain an Authorization, in accordance with Articles 42 and 43.

**Art. 8.** - Separate Authorizations or Concessions are granted for each of the Production, Transport and Distribution activities. One same Operator can hold Authorizations or Concessions for all three activities.

**Art. 9.** - The National Transport Manager acts as Purchaser Central according to the terms defined by decree depending on the opening of the market electricity.

## **TITLE II**

### **RENEWABLE ENERGIES**

**Art 10.** - Are considered as renewable energies, energies following:

- solar thermal energy and solar photovoltaic energy;
- wind power ;
- hydroelectric power;
- energy generated from biomass;
- geothermal energy;
- energy of marine origin;
- energy generated from waste.

**Art. 11.** - The State ensures the promotion and development of energies renewable and sustainable. If it deems it appropriate, the State is entitled to create a Agency for energy management, energy efficiency and the promotion of renewable energies.

The State fixes by regulatory means the conditions, the modalities and the mechanisms development and financing of renewable energy projects, as well as the specific additional incentive measures necessary for their promotion.

**Art. 12.** - The State fixes, in the General Tax Code and in the Code of Customs, tax and customs benefits relating to goods and services intended for the Production and Exploitation of renewable energies.

**Art. 13.** - In examining a producer's connection request renewable energies, the GNT, the TSO, the DSOs or the mini-grids, grant, to the extent of technical constraints and security of supply, priority for connection requests relating to Production of renewable energies.

These same networks also grant, to the extent of the constraints technical and security of supply, injection priority at the lowest cost to Installations that produce renewable energies.

The end customer, Self-producer of renewable energies, is entitled to operate a compensation for the electricity produced as long as it is equipped with a meter double flow allowing to measure separately the quantity of electricity withdrawn and injected according to the methods specified by the Electricity Regulatory Authority. The purchase and installation costs of these meters are borne by the Autoproducer.

**Art. 14.** - The surplus from renewable energy production can be sold to the network to which the Autoproducer is connected, without however exceeding 40% of the Annual production.

The terms, the commercial conditions as well as the redemption prices of the surplus of renewable energy by the GNT, the TSO, the DSOs or the mini networks, are set by regulation, after consulting the Regulatory Authority of Electricity, within the limits of article 46.

**Art . 15.** - Electricity production, including from energies renewable, must be adapted to the means of Transport and Distribution, while guaranteeing compliance with safety and security conditions, in particular those provided for by the texts relating to the Environment.

**Art . 16.** - Regulatory measures will be taken to ensure that the development of thermal and renewable energy sources is carried out in compliance with standards for the protection of public health, the environment and the requirements of competitiveness of the national economy.

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**Art . 17.** - The Ministry in charge of Energy publishes a detailed annual report on the energy mix which includes the state of development and the use of energies renewable.

### **TITLE III**

#### **REGIMES APPLICABLE TO PRODUCTION, TRANSPORT AND DISTRIBUTION**

**Article. 18.** - The exercise of the activities of Production, Transport and Distribution is subject, depending on the installed powers, to one of the legal regimes following:

- Concession ;
- Authorization;
- the statement.

The emergency thermal units of Renewable Energy Installations follow the legal regime and the thresholds as set in this title and the provisions applicable to renewable energies.

#### **Chapter i**

##### **AUTHORIZATION**

**Art. 19 .** - Except in the cases referred to in Title IV of this law, are placed under the Authorization regime:

- the establishment and operation of Power Generation Installations:

Thermal

$P \leq 500 \text{ kW}$

Hydroelectricity

$500 \text{ kW} < P \leq 5 \text{ MW}$

Wind

$250 \text{ kW} < P \leq 5 \text{ MW}$

Solar Thermal

$P \leq 5 \text{ MW}$

Solar photovoltaic

$150 \text{ kW} \leq P \leq 5 \text{ MW}$

Biomass

$P \leq 5 \text{ MW}$

Geothermal and marine origin

$P \leq 10 \text{ MW}$

Waste

$P \leq 5 \text{ MW}$

- the establishment and operation of Distribution Installations, with a peak less than or equal to 5 MW.

**Art. 20.** - The Authorization contract relating to Production and Distribution between in force as soon as it is signed by the Minister in charge of energy or by the Development of Rural Electrification in the event of delegation of power, at the end of a call for tenders procedure or on the basis of unsolicited applications whose terms and criteria are set by decree.

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When an Authorization procedure has been launched on the basis of proposals spontaneous and in the absence of a pending tender procedure, the Authorization cannot be called into question by a subsequent tendering procedure.

The preparation of calls for tenders or the examination of unsolicited applications must give rise to consultation with any other relevant ministry as well as representatives of the local authorities on whose territory the Facilities electricity are developed and operated.

Any unsolicited offer or application must be accompanied by a study economic, social and environmental impact.

The Ministry in charge of Electric Energy and the Regulatory Authority of Electricity instruct each at their own level any Authorization request and give their respective opinions, to be discussed and compared during a deliberative meeting common, prior to any allocation of Authorization.

**Art. 21.** - The Authorization contract specifies the subject, the duration and the name of the holder of Authorization at least:

- a) the modalities of making available the land necessary for the establishment and the operation of the Facilities;
- b) the rights and obligations of the Licensee, including service obligations public and the principles of good management to which it is subject;
- c) the general conditions of construction, operation and maintenance of Installations and general norms and standards of equipment and project materials;
- d) the specific provisions relating to the financing of Installations and activities of the Licensee;
- e) pricing conditions;
- f) the modalities of application of the sanctions in the event of violation of the terms of the Authorization contract;
- g) the terms of application of the conditions of transfer or takeover of Installations by the Granting Authority upon expiry of the Authorization, waiver or forfeiture of the Authorization and force majeure;
- h) the procedure for settling disputes.

**Art. 22.** - Any increase in power greater than ten percent (10%) at installed power with a maximum of 5MW must give rise to a demand from the Licensee for the granting of a new Authorization or, in the event of exceeding of the threshold referred to in article 19, of a Concession.

## **Chapter II OF THE CONCESSION**

### ***Section I. Provisions common to Concessions***

**Art. 23.** - Except in the cases referred to in Title IV of this law, are placed under the Concession regime:

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- the establishment and operation of Power Generation Installations installed greater than 500kW for thermal installations, 5MW for

Hydraulic installations and 5MW for all other Installations;

- the establishment and operation of Power Distribution Installations

peak over 5MW;

- the establishment and operation of Transport Facilities.

**Art. 24.** - Production, Transport and Distribution Concessions are allocated by the Minister in charge of energy or by the Development Agency of Rural Electrification in the event of delegation of power, following a procedure call for tenders or on the basis of unsolicited applications, the terms and conditions of which criteria are specified by decree, without prejudice to the supplementary provisions provided for by Law n ° 2015-039 on Public Private Partnership.

The Ministry in charge of Electric Energy, the Regulatory Authority of Electricity and the Rural Electrification Development Agency instruct each at their level any request for Concession and give their respective opinions, to debate and confront during a joint deliberative meeting, prior to any grant of Concession.

The preparation of calls for tenders or the examination of unsolicited applications must give rise to consultation with any other relevant ministry as well as local authorities in whose territory the Electricity Installations are developed and operated. In this context, the Ministry in charge of Energy electricity and the Rural Electrification Development Agency are working together to coordinate the various calls for projects in a coherent manner.

All offers must be accompanied by an environmental impact study.

Concession contracts come into force upon signature by the Minister in charge of energy or by the Rural Electrification Development Agency in the event of delegation of power, and are subsequently published in the Official Journal of the Republic six (06) months at the latest after their conclusion.

**Art. 25.** - The Concession contract specifies its object, its duration, the name of the Concessionaire and its territorial base. It specifies at least:

- a) the modalities of making available the land necessary for the establishment and the operation of the Facilities;
- b) the rights and obligations of the Concessionaire, including service obligations public and the principles of good management to which it is subject;
- c) the general conditions of construction, operation and maintenance of Facilities, and general standards for project equipment and materials;
- d) the specific provisions relating to the financing of Installations and activities of the Concessionaire;
- e) pricing conditions;
- f) the modalities of application of the sanctions in the event of violation of the terms of the Concession contract;

- g) the terms of application of the conditions of transfer or takeover of Installations by the Concession Authority at the end of the Concession, of waiver or forfeiture of the concession and force majeure;

- h) the procedure for settling disputes.

In the case of an Independent Energy Producer, the energy purchase contract previously concluded with the Central Purchaser is annexed to the Concession contract referred to in the first paragraph.

## ***Section II. Specific provisions to Transport Concessions***

**Art. 26.** - Transport Concessionaires have the obligation to carry out the interconnection of new Operators who so request.

The terms and distribution of the costs of the connection and, if necessary, of reinforcement of the network, are the subject of negotiations between the two parties in accordance with the principles set by the Electricity Regulatory Authority.

At the expiration of the existing Transport Concessions, there remains only one Manager of the national Transport network in charge of the national dispatch as well and the management of interconnected Transmission and Distribution networks.

**Art. 27.** - Any Concessionaire of a Transport network ensures the network security, reliability and efficiency in the area it covers. It ensures the Dispatching function.

It draws up an indicative plan for the development of Production in the network, proposes to the Ministry in charge of energy for the development of the national plan specified in Article 4 and, once this national plan is published, implements it by the launching of calls for tenders in accordance with Article 64.

He takes all necessary measures to ensure the availability of all the auxiliary services essential to maintaining a high level of reliability and security of the electrical network.

The Transport network Concessionaire ensures the availability of readings and measures and provides interested parties with all the necessary information for settlement and payment.

He refrains from any discrimination between users or categories network users.

Provided that the capacities of the Transport network allow it, the Authority of Electricity Regulation may possibly authorize certain categories users or distributors and certain producers to conclude direct supply of electricity between them according to the thresholds proposed by the Electricity regulation and approved by the Ministry in charge of energy.

The Electricity Regulatory Authority defines with the Concessionaire Transport the conditions under which the interconnected network concerned may be used to transit the flow of electricity produced under these contracts.

It fixes the transit charge in accordance with Article 92.

Producers connected to the network are required to follow the instructions Dispatching for the management of their power plants.

### **Chapter III OF THE DECLARATION**

**Art. 28.** - The establishment and the operation of Power Generation Installations:

Hydroelectricity

$P \leq 500 \text{ kW}$

Wind

$P \leq 250 \text{ kW}$

Solar PV

$P \leq 150 \text{ kW}$

The Declaration must be filed with the Ministry in charge of energy in accordance with terms set by decree. For Power Generation Installations solar PV less than 10kW, buyers and users must complete a simplified form available from the Electricity Regulatory Authority. The resellers of solar PV installations less than 10kW have the obligation to have the said form completed by their customers.

Any Declaration must include an environmental impact study, according to the procedures in force.

## Chapter IV

### PROVISIONS RELATING TO AUTHORIZATIONS, CONCESSIONS AND DECLARATIONS

**Art. 29.** - Holders of a Concession, Authorization or Declaration of Production, send to the Electricity Regulatory Authority, as soon as they are signed, the network connection contracts that they conclude with holders of a Electricity Transmission or Distribution Concession.

**Art. 30.** - Holders of a Concession, Authorization or Declaration respect the public service obligations set by decree.

The Electricity Regulatory Authority controls and evaluates the execution of public service obligations and presents the results of its analysis annually, in the form of a report, to the Minister in charge of energy. Said report is by the suite published on the website of the Electricity Regulatory Authority .

**Art. 31.** - To facilitate the procedures to be undertaken by the candidate Dealer, Licensee, Declarant or Supplier, the Ministry in charge de l'énergie sets up a centralized information system that is regularly updated day.

**Art. 32.** - The duration of the Authorization and the Concession takes into account the nature and amount of investments to be made by the Operator.

If at the end of the Concession, it turns out that the Concessionaire, due to circumstances beyond his control did not completely cushion his investment, he may file a request for an extension of the Concession (01) year before the expiration of the latter. This extension will be requested according to the same rules as the allocation and subject to prior notice from the Authority Electricity regulation.

**Art. 33.** - Authorizations and Concessions are neither tacit nor full renewable right. At the end of the Authorization or the Concession, a new Authorization or Concession may be granted following a competition, the terms of which are specified by decree.

**Art. 34.** - The State guarantees the continuity of the public electricity service in the event of failure of the holders of Concession, Authorization, Declaration or in the absence holders. To this end, he may take any urgent measures, in accordance with the modalities specified by decree.

**Art. 35.** - The Authorization, Concession or Declaration confers on the Operator:

- the right to occupy the outbuildings of the public domain and the private domain of the State or local authorities necessary for the establishment and the operation of the Electricity Installations. This right confers on its holder the prerogatives and obligations of an owner, without giving him the power add new facilities;

- the right to perform, subject to the agreement of the competent authorities, on these same outbuildings all the work necessary for the establishment, the operation and maintenance of the Electricity Installations;

- a surface right on land in the public domain and in the private domain of the State or the local communities necessary for the establishment, the operation of the Electricity Installations, in accordance with the Ordinance n ° 60-146 of October 3, 1960 relating to the land registration system.

Work relating to the construction, operation and maintenance of Installations can, if necessary, be declared of public utility by the State and lead, if necessary, to expropriations pronounced in accordance with the legislation.

The Concession, Authorization or Declaration also confers on its holder during its duration the right to execute, vis-à-vis third parties, easements in accordance with Title IV of Decree No. 64-013 of January 7, 1964 on general regulations for the operation of electric power for public use.

**Art. 36 .** - In the event of withdrawal or termination before the expiry date of the Authorization or of the Concession, for a reason other than non-performance by the Licensee or the Concessionaire of his obligations, the Licensee or the Concessionaire is compensated for the damage resulting from the early eviction. The rules for determining the compensation are specified in the Authorization or Concession contract and must

provide for compensation at least equal to the share of investments not yet amortized by the Licensee or the Concessionaire on the day of withdrawal and termination.

**Art. 37.** - During the term of the Authorization or the Concession, the Licensee or the Concessionaire is the owner of the Facilities subject to Authorization or Concession, without being able to add new Installations or to carry out activities there other than those initially planned.

The fate of the Installations at the end of the Concession or Authorization is determined in accordance with the provisions of the Authorization or Concession contract. These may in particular provide for the conditions for dismantling the Installations or their transfer to the Licensing Authority or to any public or private person as well as the financial terms relating to these operations.

Transport Concessions, other than those granted to the Manager National Transport, and the related infrastructures are coming to an end at this last according to the terms specified by decree.

**Art. 38 .** - The rights conferred on the Concessionaire or Licensee by a Concession or Authorization may be pledged or assigned, including by way of guaranteed, individually or collectively, by the holders after validation prior to the Granting Authority and under the conditions set by this law, the decrees taken for its application and the terms of the Concession contract or Authorization.

The realization of the pledge or the assignment of rights arising from the Authorization or of the Concession automatically takes precedence, unless otherwise prescribed by the deed of pledge or assignment, the transfer of the Facilities and the surface right to the benefit of the new holder of these rights.

The Installations and surface rights referred to in Article 35 may also be subject to mortgages after the prior agreement of the Granting Authority, in the conditions set by this law, the decrees issued for its application and the terms of the Concession or Authorization.

The pledges, assignments as collateral or mortgages referred to above above, however, can only be granted to guarantee the loans contracted, directly or indirectly, by the Concessionaire or by the Licensee to finance the construction, modification or operation of its Facilities. These securities, when they are intended to guarantee a plurality of creditors, may be granted to one of them or to a representative or agent on behalf of all the creditors concerned.

**Art. 39.** - The Concession or Authorization provides for the terms and conditions in which lenders who have participated in the financing and / or refinancing of Electricity installations can substitute or substitute an entity of their choice to the initial Concessionaire or Permissioner in the rights and obligations resulting from of the Concession or Authorization.



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To this end, notwithstanding any legislative or regulatory provision, in particular in the event of bankruptcy or liquidation of the original Licensee or Concessionaire, the substitution implies devolution to the new entity of said rights and obligations, including including occupancy and surface rights, as well as Installations of electricity necessary for the continuation of the Concession or Authorization.

**Art. 40.** - Any agreement by which the Concessionaire or the Licensee transfers to a third party the rights conferred by the Concession or the Authorization is subject to prior authorization from the Granting Authority. The deadlines and modalities of this transfer are set out in the Concession or Authorization contract.

**Art. 41.** - The owners of private land or their beneficiaries, the users of the national public or private domain and the Concessionaires of public service are not authorized to undertake acts or works likely to harm the construction, operation and maintenance of the Installations.

However, in the event of occupation of the public domain, no recourse can be exercised against the State, public services or local public authorities, by the Dealer, Licensee, or Declarant except in the event of serious misconduct or gross negligence, for damages that the use of the public domain may cause its Installations or work carried out on said area in the general interest or public security.

#### **TITLE IV**

#### **OF SELF-PRODUCTION**

**Art. 42.** - The establishment and operation of Autoproduction Installations including the installed power is less than or equal to 500kW for the Installations thermal, hydraulic and solar, and less than or equal to 1MW for Biomass, geothermal, wind or transformation installations waste, are subject to Declaration in accordance with the terms set by decree without prejudice to the simplified declaration form provided for in Article 28.

**Art. 43.** - The establishment and operation of Autoproduction Installations including the installed power is greater than 500kW for thermal installations, hydraulic and solar, and greater than 1MW for Biomass Installations, geothermal, wind and waste processing are placed under the Authorization regime.

Autoproduction Authorizations are granted by way of decisions taken by the Minister in charge of energy upon request presented by any interested person according to the terms set by decree.

**Art. 44.** - The Autoproduction Authorization specifies its object, its duration and the technical conditions to be observed in order to ensure the safety of persons and goods and the preservation of the environment.

**Art. 45.** - The Autoproduction Authorization is granted for a period which varies according to the specifics of Autoproduction needs. It may be the subject of a renewal at the end of the initial term under conditions set by decree.

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**Art. 46.** - Subject to at least sixty percent (60%) of the electricity produced are consumed for their own needs, the Autoproducer may sell its surplus electricity under conditions set by the Regulatory Authority of Electricity in accordance with article 14.

**Art. 47.** - The Concessionaires or Permissioners of Production or Distribution or Transport Concessionaires may enter into agreements

with the Self-Producers with a view to either purchasing all or part of the surplus electricity, or to exchange energy with them.

The costs of connecting the Autoproducer Installations to a network Distribution or Transport tariffs and the sales tariffs for surpluses are subject to negotiations between the Autoproducer and the Concessionaire or the Licensee operating this network.

**Art. 48.** - Subject to meeting the technical conditions provided for by regulatory process and in particular not to cause any disturbance to the Installations pre-existing or future telegraph, telephone or electrical services, the establishment and operation of private lines are free when these lines private property are located entirely on private property.

## **TITLE V**

### **SUPPLY LICENSES**

**Art. 49.** - The supply of electricity to an end customer is only authorized in the conditions and according to the modalities set out below.

**Art. 50.** - Any natural or legal person wishing to exercise an activity of Supply must hold a Supply License. However, holders of a Concession or a Distribution or Transport Authorization are exempt from this Supply License.

Green suppliers can apply for a Green Supply License which the modalities and exemptions are set by regulation.

**Art. 51.** - Any request for a Supply License must be submitted to of the Electricity Regulatory Authority.

Anyone requesting a Supply License must provide proof a technical and financial capacity according to the modalities and a procedure fixed by the Electricity Regulatory Authority.

**Art. 52.** - The Electricity Supplier is bound by service obligations following public:

- ensure fair and non-discriminatory treatment of end customers;
- respect the tariff obligations and apply the maximum prices decreed by the Electricity Regulatory Authority;

- inform end customers in a clear and transparent manner about the services returns and their cost;
- comply with the performance indices decreed by the Regulatory Authority of Electricity;
- send an annual report to the Regulatory Authority

Electricity reporting on its activities and handling complaints.

**Art. 53.** - The green supplier is also required to maintain a supply of one hundred percent (100%) renewable energies, without prejudice to a supply of thermal backup, the quantity of which may not exceed ten percent (10%) of the annual production in MWh.

**Art. 54.** - In the event of non-compliance with the obligations referred to in Article 52 or when one of the conditions for granting the Supply License is no longer met, the Autorité Regulation of Electricity may, on its own initiative or on a proposal from the Minister in charge of energy, launch a withdrawal procedure, in compliance with the principles of contradictory and according to the terms as defined by the Regulatory Authority electricity.

## **TITLE VI**

### **ENERGY EFFICIENCY AND STORAGE**

**Art. 55.** - Each actor in the electricity sector accomplishes its missions

with respect for the environment and energy efficiency, in accordance with Energy policy in force.

**Art. 56.** - Any owner of a battery storage system must ensure recycling or proper treatment of the resulting waste. The state provides mechanisms and provisions relating to the adequate recycling of this waste through regulatory.

**Art. 57.** - Any new energy production project must study the energy efficiency and storage possibilities.

Energy efficiency measures across the entire chain of activities are specified by decree.

## **TITLE VII**

### **OF THE ELECTRICITY REGULATORY AUTHORITY**

**Art. 58.** - An independent administrative authority called Electricity Regulatory Authority (ARELEC), in charge of monitoring the sector of Electricity, whose attributions, composition and operating methods are specified by this law and the decrees issued for its application.

The Electricity Regulatory Authority is a specialized technical body in the Electricity sector and whose staff are considered Experts in

its field. As needed, he can consult all the administration and bodies concerned in the performance of its missions.

The Electricity Regulatory Authority is subject to control jurisdictional, in particular in the exercise of its power of sanction. His independence is guaranteed by this law and is manifested in particular by its collegial management, **the method of appointing its members**, the terms of appointment and / or recruitment of its staff, the conditions for exercising its mandate, legal personality and financial autonomy.

**Art. 59.** - The Electricity Regulatory Authority has for missions, without this list is not exhaustive:

- to contribute, on consultation with the Ministry in charge of energy, to the design of the electricity sector policy and the development of strategies for its implementation;
- to draw up technical regulations within the limits of its powers and to interpret texts and documents relating to Electricity;
- to set and publish, in accordance with the tariff provisions of this law and the texts taken for its application, the regulated prices of electricity as well that the amount of transit charges and monitor their application;
- monitor compliance with quality of service standards;
- to control and ensure respect for the principles of competition;
- to ensure the follow-up and control of the execution of the Concession contracts and Authorization, Declarations, as well as Autoproduction Authorizations and Supply Licenses;
- coordinate the development and successive revisions of the Grid code, including modalities are defined in article 62 of this Law, and to control application by network users;
- provide a mediation service;
- to carry out the periodic census of the Operators of the Electricity sector and economic analysis of the Electricity market;
- to collect documents, information and statistics concerning the sector Electricity within the limits of its powers;
- to carry out or have carried out specific audits, investigations and

investigations into the Electricity sector;

- carry out training and provide technical assistance to all public or private players in the electricity sector;
- promote transparency in the Electricity sector by carrying out publication of all general notices, calls for tenders and notices attribution on its website;
- monitor and evaluate the application of the decisions it has taken and take the appropriate measures against offenders.

In these areas, it has the power to draw up regulations having the value imperative and binding on the Operators of the Electricity Sector, from their publication in the Bulletin of the Electricity Regulatory Authority, under conditions fixed by decree.

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It also has powers of control, investigation, injunction and sanction that allow it to ensure the proper functioning and sector transparency.

**Art. 60.** - The Electricity Regulatory Authority motivates and justifies its decisions according to the prescriptions of its Procedures Manual, in particular with regard to following principles:

1. the motivation includes all the elements on which the decision;
2. The operators of the electricity sector have the possibility of asserting their comments, prior to any decision being taken concerning them;
3. The follow-up given to these comments is justified in the final decision.

Acts of individual or collective scope adopted in execution of its missions as well as any preparatory act, expert report, comments from the parties consulted relating thereto are published on the website of the Regulatory Authority of Electricity, respecting the confidentiality of commercial information sensitive and / or personal data.

The acts, decisions, injunctions or sanctions pronounced by the Authority Electricity Regulation are enforceable and are subject to appeal before the state Council.

**Art. 61.** - The Electricity Regulatory Authority calculates and sets the tariffs in compliance with the principles and formulas defined in this law, and the texts taken for its application. If necessary, it can submit proposals for modifications of these texts to the Minister in charge of energy. This one must promulgate the changes within one (01) month.

Following the publication of the regulatory texts relating to the tariffs taken for application of this law, any modification thereof may not be made only with the prior agreement of the Electricity Regulatory Authority. This will have to decide within one (01) month following receipt of the proposal for amendment to be submitted to the Minister for promulgation.

**Art. 62.** - In accordance with article 59, in consultation with the Ministry in charge of Electric Power, Transport Network Managers and Distribution as well as players in the Electricity market - players grouped together in a consortium called a "Network User Group", the French Regulatory Authority Electricité coordinates the development of a Grid code to ensure the correct operation of the electricity sector. This Grid code, published by the Autorité de Electricity Regulation, contains in particular, without limitation:

- 1 ° a planning code which provides for the exchange of data with a view to the preparation of development plans;

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- the technical requirements for connection to the network of the Installations users of this network, including mini-networks, as well as the deadlines connection;
  - the technical requirements for establishing the network infrastructures;
  - technical requirements for establishing hotlines;
  - the terms (i) for suspending access, (ii) for decommissioning or removal of a connection, (iii) authorization of taxation adaptations to the network user's installations or even (iv) the authorization of their deletion by the Network Manager;
  - the priority to be given to the burying of power lines during improvement, renewal and / or extension of the network;
  - the modalities of the priority to be given to the connection of the Production of renewable energy sources;
  - the technical requirements applicable to private electricity networks and the technical obligations for the said Network Manager.
- 3 ° an access code containing the procedure and additional rules concerning the access request, including the time limits within which the network must produce a reasoned response to any request for access to the networks.
- 4 ° an operational and data exchange code containing in particular:
- operational rules relating to dispatching;
  - operational rules relating to the technical management of electricity flows and actions to remedy problems that could compromise the security and continuity of electrical energy supply;
  - the auxiliary services that the network operator must set up, or put in place as appropriate, namely:
    - o voltage and frequency settings
    - o the quick or cold reserve
    - o compensation for any imbalance or disturbance
    - o congestion management
    - o the black-start service, ...
  - the terms and conditions for the provision of User Installations network for the benefit of the Network Manager, for the needs of the network management;
- 5 ° a collaboration code containing (i) the terms of collaboration between Managers of interconnected networks, (ii) the minimum content of the collaboration to ensure safe and efficient operation, development coordinated and interoperable interconnected networks;
- 6 ° a count code containing the information to be provided by the Managers Distribution networks for the purposes of carrying out the various operations related to counting, calibration and calibration of counting systems, and procedures by default ;

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- 7 ° a network code of conduct, in the event of incidents leading to an interruption of supply, or even blackout, containing in particular a clear load shedding plan and transparent if necessary, as well as a possible implementation of clauses of interruptibility in the supply contract.

After the publication of the first Grid code, the Grid User Group is convened annually by the Electricity Regulatory Authority to proceed to the evaluation of the use of the document and to work on its possibilities of modification and improvement.

**Art. 63.** - The Electricity Regulatory Authority can:

- (i) take action automatically in the event of irregularities and violations by any intervening party, public or private, electricity regulations;
- (ii) be referred to by the Minister in charge of energy, the Permissioners or the Concessionaires, or by any other natural or legal person private or public;
- (iii) be referred to by the Institutions for a request for advice or studies on the whole activities falling within its competence; and
- (iv) be informed by any natural or legal person of any problem related to electricity.

**Art. 64.** - In terms of planning the electricity sector, the Authority Electricity Regulation supports the Ministry in charge of electric energy in the development of the national plan of the means of production, by drawing up a plan indicative as specified in article 4.

The Electricity Regulatory Authority may be charged by the Minister in charge of energy to develop a tender program in the energy sector. electrical energy.

Any call for tenders project for the purchase of power and energy or for the granting of Concession or Authorization, must be presented prior to its launch to the Electricity Regulatory Authority for examination and approval.

The Minister in charge of energy or the Central Purchaser provide him with a copy of the bids from bidders.

**Art. 65.** - For the accomplishment of the missions entrusted to it by the this law, the Electricity Regulatory Authority may:

- 1. Collect, both from Administrations and legal persons or physical Permissioners, Dealers and Declarants of the sector, all the information necessary to ensure compliance with the obligations which are imposed on them, without being able to be opposed to it any limitation;
- 2. Have the same natural or legal persons carry out surveys;

- 3. Carry out annual surveys of users, at the expense of Dealers, Licensees and Declarants to assess the quality of service.

The information collected by the Electricity Regulatory Authority in application of the provisions of this article may not be used for other purposes that the accomplishment of the missions entrusted to it by this law. Their disclosure is prohibited except in the case of the inquiries provided for in point 3 ° of this article, the results of which will be published.

**Art. 66.** - The Electricity Regulatory Authority draws up an annual report public which reports on its activity of the application of this law and of the respect of their obligations by companies in the sector.

In this report, the Electricity Regulatory Authority may suggest the changes of a regulatory nature that he sees as the evolution technological, economic and social activities of the electricity sector. She may also comment on improving competition.

The Electricity Regulatory Authority makes recommendations to the

Government for the development of competition in the activities of Production, Transport and Distribution of electrical energy.

The report is published on the website of the Electricity Regulatory Authority.

**Art. 67.** - The Electricity Regulatory Authority is made up of:

- a College of Commissioners, hereinafter "the College", and
- an Executive Secretariat

**Art. 68.** - The College is a collegial unit made up of six (06) members individually referred to as "Electricity Commissioner" including:

- **two (02) representatives of the Administration: one appointed by the Minister in charge of energy and the other by the Minister in charge of research scientist ;**
- **one (01) representative of the Order of Engineers, appointed by the Order;**
- **one (01) representative of Electricity Sector Operators, appointed by the Operators;**
- **one (01) representative of users appointed by user associations or consumers of electricity;**
- **one (01) representative of industrial customers appointed by the groups from the private sector.**

These personalities are chosen because of their skills in technical, legal, and economic and their knowledge of the Electricity.

**Art. 69.** - The appointment of the Electricity Commissioners is recorded by Decree on the proposal of the Minister in charge of energy. The term of office is five (05) years renewable once.

The College ensures the regulatory function of the electricity sector in Madagascar. He is headed by a President elected by the six (06) Commissioners. Can be worn candidates for the post of President of the College the two (02) representatives of the Administration and the representative of the Order of Engineers.

**Art. 70.** - The functions of Commissioner of Electricity are incompatible with any elective, social mandate, any public employment and any other professional activity, paid or not.

The Electricity Commissioners cannot, directly or indirectly, perform functions, receive fees, except for services rendered before their taking up office or holding any interest in a company in the Electricity sector, the supply of equipment relating to this sector or to any other company having any link with the sector. However, if a member of the College holds interests in such a company, he has a period of three (03) months to comply with the law.

The Electricity Commissioners, having exercised an activity, accepted a job or an elective mandate incompatible with their membership or having failed obligations defined in the first and second paragraphs of this article are declared automatically resigned by the College acting by a majority of its members.

The Electricity Commissioners work full time within the Authority of Regulation of Electricity and receive treatment to guarantee their independence.

**Art. 71.** - The Executive Secretariat of the Electricity Regulatory Authority is headed by an Executive Secretary.

The Executive Secretary must be a person who has demonstrated his ability to management and with in-depth technical skills in the sector electricity, recruited through a call for candidates launched by the College for a

renewable period of five (05) years. He performs the technical functions and administrative authorities of the Electricity Regulatory Authority.

**Art. 72.** - The staff of the Executive Secretariat cannot work for companies in the Electricity sector, nor benefit from an Authorization or Concession, nor exercise of functions or hold interests in a company Licensee or Concessionaire, nor be a member of the Malagasy Administration.

**Art. 73.** - The Electricity Commissioners and the staff of the Executive Secretariat are subject to professional secrecy. They can't disclose to anyone whether it is confidential and sensitive information of which they have become aware by reason of their duties, except when called upon to bear witness in court, without prejudice to cases in which they are required to communicate information under a provision of national law and subject to what is necessary for the establishment of the annual report provided for in section 66.

**Art. 74.** - Except in cases where the law obliges or authorizes them to waive the obligation of confidentiality mentioned in article 73, any Commissioner of Electricity and any member of the staff of the Executive Secretariat of the Regulatory Authority Electricity which breaks the said obligation is punishable by imprisonment of five (05) to ten (10) years and a fine of one (01) to twenty (20) million Ariary.

**Art. 75.** - The budget of the Electricity Regulatory Authority, necessary to the accomplishment of its missions, is fueled by the perception of a percentage on the turnover of Permissioner or Concessionaire companies, as well as only to Declarants and Suppliers in accordance with the terms set by Decree. The operation of the Electricity Regulatory Authority follows the Plan General Accountant in force, and his assets are placed in a current account open with a primary bank chosen by the College.

**Art. 76.** - The accounts of the Electricity Regulatory Authority are subject to an annual audit by a qualified consulting firm appointed by the College. The accounts of the Electricity Regulatory Authority are made available to the public.

The provisions of this article do not preclude any control that the College of Auditors, the Court of Auditors or any other authority administration considers it necessary to have the financial management of the Authority Electricity regulation.

**Art. 77.** - The Electricity Regulatory Authority organizes within it a Mediation service to ensure the examination and treatment of questions and complaints concerning the operation of the Electricity market or relating to the activities and operations in the Electricity sector.

The Mediation Service can be validly contacted by any consumer and / or Operator of the Electricity sector and / or any entity or person having a interest in taking action on electricity. Its operation and the terms of its referral are described in the Procedures Manual of the Regulatory Authority of Electricity.

## **TITLE VIII**

### **RURAL ELECTRIFICATION**

#### **Chapter i**

#### **OF THE RURAL ELECTRIFICATION DEVELOPMENT AGENCY (ADER)**

**Art. 78.** - The Rural Electrification Development Agency (ADER), public institution specializing in the development of electrification Rural, is placed under the technical supervision of the Ministry in charge of energy and is with legal personality and administrative and financial autonomy. The



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**Art. 79.** - The Rural Electrification Development Agency has for missions main:

- promote the emergence and rational development of Installations electricity in rural areas;
- ensure the conditions for the technical, financial and economic viability of Farmers in rural areas, in particular through the promotion and emergence of new operators as well as technical assistance to these operators;
- to support and support rural development initiatives and the good functioning of basic rural social services;
- to examine Authorization and / or Concession requests falling within its skills;
- to grant, by delegation of the Minister in charge of energy, Authorizations and Concessions falling within its remit;
- to control, in coordination with the Electricity Regulatory Authority and in the areas falling within its competence, respect by Operators in rural areas of legislative, regulatory and / or contractual applicable to them by virtue of the Law and the Authorization or the Concession from which they benefit. This control also covers the compliance with the initial conditions for granting any grants of investments.

In addition, the Rural Electrification Development Agency can be consulted by the Minister in charge of energy, as part of the establishment of the general policy of the electricity sector.

A decree specifies the missions, attributions, composition and modalities of functioning of the Rural Electrification Development Agency.

## **Chapter II**

### **FINANCING OF THE RURAL ELECTRIFICATION PROGRAM**

**Art. 80.** - In order to finance the development of electrical installations in rural environment, a National Fund dedicated to the rural electrification program and promotion of sustainable energy is instituted. This Fund is authorized to grant a range of financial services and products for Licensees, Dealers, Declarants and Suppliers according to the terms specified by decree.

## **TITLE IX**

### **REGULATION OF TARIFFS**

#### **Chapter i**

#### **GENERAL**

**Art. 81.** - The regulation of tariffs concerns:

- (a) On interconnected networks:
- sales of power and energy from the Central Purchaser to Distribution Dealers and Permissioners;

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- sales of power and energy by Concessionaires and Distribution licensees to end users;
- charges for Transmission and Distribution on the networks interconnected;

- sales of excess power and energy from Autoproducers to Distribution Dealers and Permissioners;
- sales of excess power and energy from Autoproducers to Suppliers (under license) and end customers.
- (b) Outside interconnected networks as well as on mini-networks:
  - sales of power and energy by Concessionaires and Distribution Licensees or Suppliers to end users;
  - sales of power and energy by Concessionaires and Production Licensees to Concessionaires and Licensees of Distribution;
  - Distribution fees;
  - sales of excess power and energy from Autoproducers to Distribution dealers and licensees;
  - sales of excess power and energy from Autoproducers to Suppliers (under license) and end customers.

**Art. 82.** - Sales which are not explicitly stipulated in the previous article are not subject to price regulation, without prejudice to the provisions of article 94.

**Art. 83.** - For regulated prices, the Electricity Regulatory Authority sets prices, as well as formulas for adjusting these prices to compensate the effect of changes in the main economic parameters. These formulas incorporate a term to encourage operators to increase their productivity. The Electricity Regulatory Authority revises the structure of the formulas adjustment annually or in the event of a fundamental modification of the structure costs. It can also set ceiling prices for the categories of activities that it determines.

The regulated price structure reflects the economic costs of providing so as to boost efficiency in the use of electrical energy. Level regulated tariffs take into account the need to ensure the financial equilibrium of operators and the ability to pay end customers.

**Art. 84.** - The Electricity Regulatory Authority approves the tariffs referred to in article 81 on the basis of budgets and tariff proposals from companies of the electricity sector. The pricing proposal of the actor concerned is established in compliance with a pricing methodology and on the basis of regulatory models defined by the Electricity Regulatory Authority. The pricing methodology, incorporating the regulatory models, is adopted by the Regulatory Authority of Electricity after consultation with companies in the electricity sector and consultation of the User Group referred to in Article 62.

**Art. 85.** - The Electricity Regulatory Authority establishes the tariff methodology and exercises its pricing authority in such a way as to promote stable regulation and predictable contributing to the proper functioning of the market, and allowing the market financial assessment of companies in the electricity sector with a certainty reasonable. It maintains the consistency of decisions taken during the periods previous regulatory procedures.

**Art. 86.** - For the sake of transparency in the passing on of costs to the end customer, the different elements of the network tariff are distinguished on the invoice, in particular with regard to public service obligations and their content.

**Art. 87.** - Any supply of electrical energy is subject to procurement a contract between the Supplier and the User. For the end customer, the content and form of this contract must be approved by the Regulatory Authority of

Electricity.

Equal treatment is guaranteed between all users with identical consumption characteristics within the same Concession or for all customers of the same Licensee.

## **Chapter II**

### **TARIFF SYSTEMS**

#### ***Section I. Interconnected networks***

**Art. 88.** - Economic costs, as defined in the pricing methodology used to calculate regulated prices are determined:

- on the basis of a fifteen (15) year projection of the demand for electricity, optimal development plans and cost-efficient services;
- by distinguishing between a term "power" and a term "energy";
- on the basis of a discount rate defined by the Regulatory Authority of Electricity and fixed in accordance with the estimate of the cost of capital of the services rendered.

**Art. 89.** - The remuneration formulas used in the purchase contracts of power and energy by the Transport network Concessionaires must be such that energy prices reflect the variable costs of Production explicit or in the case of Hydraulic Production, implicit, so as to enable optimized network dispatching.

**Art.90.** - In each interconnected network, the Buyer's selling prices central to the Distribution Dealers correspond to the costs of the purchase of energy and power to the Producers by the Central Purchaser, plus the transit charges defined in Article 92.

Prior to the signing of any draft energy purchase contract electricity, the Central Purchaser has the obligation to communicate it to the

Electricity regulation with any supporting document. The Regulatory Authority Electricité gives an opinion, possibly including recommendations on price components of this draft contract.

**Art. 91.** - The sale prices of Distribution Concessionaires to users final costs correspond to the purchase costs from the Central Purchaser, plus the costs Economic Distribution. These costs are determined taking into account the characteristics of electricity demand and incorporate a rate of return in agreement with the estimate of the cost of capital for services rendered set by the Authority Electricity regulation.

The Electricity Regulatory Authority provides for a pricing system from which the most disadvantaged users can benefit, as defined by the applicable legal or regulatory provisions.

**Art. 92.** - A Transport fee is due for any transit of electricity on the Transport network.

The Transport fee is based on the economic cost calculated taking into account transport investment program account for a period of fifteen (15) years, as well as losses on the network and costs incurred by the Transport concessionaire to ensure the dispatching function, and for ensure continuity and quality of service. This cost is adapted to provide for any regulatory period during the duration of the Concession a rate of return average set by the Electricity Regulatory Authority.

#### ***Section II. Isolated centers / Mini-grids***

**Art. 93.** - The regulated tariffs applied by the Concessionaires of Distribution of isolated centers correspond to the cost of Production plus

Distribution costs. These costs are determined taking into account the characteristics of the demand and incorporate a rate of return set by the Electricity Regulatory Authority.

**Art. 94.** - For the sales of the Permissioners, the prices are regulated according to the terms of article 81. However, in the case of electrification financed totally or partially through equipment subsidies, for which a tariff would possibly be established in the subsidy agreement, the Regulatory Authority de l'Electricité ensures the application of the fixed tariff.

### ***Section III. Other expenses***

**Art. 95.** - The prices of connections and other user services are invoiced on the basis of a price schedule approved by the Regulatory Authority of Electricity.

## **TITLE X**

## **MONITORING, CONTROL AND SANCTIONS**

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**Art. 96.** - Any Operator and any Self-Producer have the duty to maintain their Installations in good working order and in conditions which do not endanger people or property, in accordance with the provisions contained in the Concession or Authorization contract and in the legislation in force.

**Art 97.** - Any Transmission and Distribution Network Operator of electrical energy is required to demand before energizing an Installation new or renovated, the delivery of a certificate of conformity of the said Installation the safety regulations and standards in force.

Without prejudice to the regulations applicable in terms of control and certification of electrical equipment sold in Madagascar:

- any manufacturer or importer of electrical equipment is required, before make available to the reseller, to obtain a certificate of compliance of this equipment with the standards in force issued by the company approved control;
- any seller of electrical equipment must obtain insurance from the importer or manufacturer, that the equipment that it makes available to users is complies with the standards in force and benefits from a certificate of conformity;
- any manufacturer, importer or seller whose electrical equipment does not have no certificate of conformity will have this equipment withdrawn from the market at its fresh. This withdrawal is ordered by order of the Minister in charge of energy.

**Art. 98.** - The establishment and operation of Electricity Installations must comply with the laws and regulations relating to the protection of the environment and in particular those of Law n ° 2015-003 of January 20, 2015 on the Environmental Charter and regulatory texts taken for its application.

**Art. 99.** - Any consumption of electrical energy obtained directly or indirectly through clandestine or fraudulent connections constitutes theft and will be punished by the penalties set out in article 401 of the Penal Code.

**Art. 100.** - A control of conformity with the approved standards of the Indoor electrical installations and electrical equipment to ensure the protection of electricity users and their property against the dangers which can result. A decree establishes the applicable procedures and standards as well as the conditions under which, under the authority of the Minister in charge of energy, carried out the inspection and technical control of the Electricity Installations by

engineers and sworn officers.

Will be punished by six (06) months to one (01) year of imprisonment and a fine of 50,000 Ariary to 50,000,000 Ariary or one of these two penalties only, anyone who has voluntarily refrained from complying with the standards in force within the time limit set by the Authority in charge of Inspection and Control; the whole without prejudice to the possible adjustment to standards carried out automatically by the Administration at the expense of the offender.

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The same penalties are applicable to any person exercising without title a Production, Transport, Distribution and / or Supply activity.

**Art. 101.** - Any attempted destruction or willful destruction of Installations of electricity as defined in article 1 will be punished by the penalties article 100, paragraph 2 of this law.

**Art. 102 .** - Are also considered as offenses within the meaning of this law:

- violation of the obligations provided for in Titles I (Chapter II), II, III and IV;
  - failure to pay or late payment of due fees;
  - failure to make it available within a time limit set by the Authority
- Electricity regulation of information and data requested by it or by the Ministry in charge of energy in accordance with this law and its application texts.

**Art. 103.** - In the event of a duly noted infringement, without prejudice to the penalties that can be applied in accordance with the legislation in force and under subject to prior formal notice, the Operators subject to this law are liable to one of the following administrative sanctions:

- withdrawal of the Concession, Authorization or Supply License;
- suspension of the right to Operate.

Without prejudice to the application of the sanctions provided for in paragraph 1 (1), if the breach does not constitute a criminal offense, the Regulatory Authority of Electricité can impose a civil fine on the offender, the amount and collection methods are set by regulation, depending on the severity of the offense.

## **TITLE XI**

### **TRANSITIONAL PROVISIONS**

**Art. 104.** - The powers and powers of the Regulatory Body are fully taken over by the Electricity Regulatory Authority. The new bodies created within the Electricity Regulatory Authority will enter into force by decree.

**Art. 105 .** - The Concessions, Authorizations and Declarations which have been granted under the scheme and the applicable thresholds for the establishment and the operation of the Electricity Installations before the entry into force of this law remain valid until their expiration and confer on their holder all of the rights which were acquired to them under the old regime.

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