

**DECREE No. 93-96**

**The Congress of the Republic of Guatemala**

**WHEREAS**

*The electricity needs of most Guatemalans are not currently being met; electric power supply is not keeping pace with the growth and the present demand; and the industry's shortcomings are impeding the nation's development, therefore, it is necessary to liberate the electric power sector so as to boost the output and expand the transmission and distribution of electric energy.*

**WHEREAS**

*The Guatemalan Government, as a coordinator of the nation's development, considers this to be a situation of urgency for the nation, under the terms of Article 129 of the Guatemalan Constitution and, the Government does not have the financial means required for an undertaking of these dimensions, it is necessary to secure investors to help create electricity generation, transmission, and distribution utilities and promote an optimum growth of the power industry.*

**WHEREAS**

*To proceed with the demonopolization of the power generation system pursuant to Article 130 of the Guatemalan Constitution, it is necessary that power transmission and distribution systems be rapidly decentralized and demonopolized, so that the power supply may be expeditiously increased in order to meet the social and production-related needs of Guatemalans and thereby raise their standard of living, specially the living conditions of poorer residents in rural areas who have no electric service at this time.*

**WHEREAS**

*The country must create a body of basic laws and regulations to expedite the workings and make for optimum performance of the various components of electric service, and to that end requires that there be expert technical commission established, with a membership chosen from among candidates nominated by those sectors of the nation having the greatest interest in advancing the electric power industry.*

**NOW THEREFORE**

*The Guatemalan Congress, by virtue of its authority under Article 171 (a) of the Guatemalan Constitution, hereby decrees as follows.*

**Electric Power Act**

**TITLE I  
THE ELECTRIC POWER SYSTEM**

**CHAPTER I  
GENERAL PRINCIPLES**

**Article 1.** This law regulates the operation of the business of electricity generation, transmission, distribution, marketing and sale, whose operations shall be governed by the following principles:

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- a) The existence of an unrestricted market for electricity generation, with no requirement of prior State authorization or condition other than the ones provided in the Constitution and laws of Guatemala.
  - b) The existence of an unrestricted market for the transmission of electricity, as long as there is no public property to be used for it, and likewise, there exists a free market for private electricity distribution service.
  - c) As provided in this law, authorization is required for power transmission where public property is required to be used, and for distribution of power to the final customer.
  - d) Electric service rates may be freely set, except for transmission and distribution service rates for which an authorization is required. Wholesale power transfers between generating companies, power marketers, importers and exporters shall be regulated as provided in this law.

**Article 2.** This law applies to every individual and legal persona engaged in the generation, transmission, distribution, or sale of electricity, whether wholly State-owned, wholly privately owned, or with joint public and private ownership, and regardless of its degree of autonomy and terms of incorporation or establishment.

**Article 3.** Except as otherwise provided in this law, the Ministry of Energy and Mines (hereinafter the "Ministry") is the State agency responsible for electric power policy formulation and coordination, State plans and indicative programs, and for the administration and enforcement of this law and regulations thereunder.

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## CHAPTER II THE NATIONAL ELECTRIC ENERGY COMMISSION

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**Article 4.** The National Electric Energy Commission is hereby established (hereinafter the "Commission") as the technical arm of the Ministry. The Commission shall independently pursue its purpose, performing the following functions:

- a) In the areas over which it has jurisdiction, administer and enforce this law and regulations thereunder, and administrating penalties against those who violate this law and its regulations.
- b) Monitor compliance by electric service franchisees, protect customer's rights, and protect against anti-competitive, abusive, and discriminatory practices.
- c) Set rates for energy transmission and distribution services required to be regulated under this law, and create rate-setting methods.
- d) Settle disputes between parties engaged in electric service operations, acting as arbiter when such parties fail to come to an agreement.
- e) Issue technical standards for the electricity industry and monitor their compliance in accordance with internationally accepted practices.
- f) Issue directives and rules as required to safeguard unrestricted access to and use of transmission lines and distribution systems, in accordance with this law and regulations thereunder.

**Article 5.** The Commission shall have three members, appointed by the Executive Branch from short-lists of three candidates to be put each forwarded by:

1. The chancellors of the country's universities.

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2. The Ministry.
  3. Agents from the Wholesale Market.

Requirements for serving on the Commission are as follows:

1. Guatemalan nationality
2. A university degree in a related discipline and a preeminent reputation.
3. No ties to companies associated with the electricity sector regulated under this law.
4. No criminal record, or in collection proceedings.
5. Full-time dedication to the work of the Commission, and no non-Commission employment.

The official order appointing the Commission members will state which of the members shall chair it. The chairman shall represent the Commission for matters falling within its purview.

Commission members shall serve for five years, reckoned from the date on which they take up their duties.

The Commission shall take decisions by a majority vote of the members. Members shall act with complete impartiality and will be personally accountable for their acts.

If a Commission member steps down, is constantly absent, or is removed for demonstrated negligence or nonfeasance, the Executive Branch will appoint a replacement from the short-list initially put out by the respective group of those listed above in this article.

The Commission shall have its own budget and funds reserved to it, which it shall utilize solely to fund its purposes.

The Commission shall fund its operations through a fee based upon the monthly power sales of distribution utilities, each of which shall pay forthwith to the Committee every month a liquid sum equal to 0.3% of total electric energy distributed in the month of the calculation times the kilowatt-hour price of electricity according to the Guatemala City residential rate schedule.

The Commission may expend its revenues, with the restrictions prescribed in this law and by the Guatemalan Constitution. The Commission will issue rules to government member's per diem allowances and compensation.

The Commission may, in performing its mandate, secure the advice of professionals, consultants, and experts.

Regulations issued under this law will provide specific rules for the foregoing provisions of this article.

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### **CHAPTER III DEFINITIONS**

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**Article 6.** The following definitions will apply, for purposes of this law, for electric power generation, transmission, distribution and sale services and to those engaged in such operations.

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**Self-producer:**

An individual or legal person who owns or is in possession of an electric generating the output of which is intended for use exclusively by that person.

**Awardee:**

An individual or legal person authorized by the Ministry to develop facilities for the transmission and distribution of electric energy and who has the rights and is bound by the requirements set out in this law.

**Wholesale Market Agent:**

Enterprises engaged in the generation, sale, distribution, importation, exportation, and transmission of electric power, of a size larger than the ceiling prescribed for such purposes in this law.

**Generating company:**

An individual or legal person who owns or is in possession of a power generating station and who sells commercially all or part of its output.

**Distributing Company:**

An individual or legal person who owns or is in possession of facilities intended for the commercial distribution of electricity.

**Power Marketer:**

An individual or legal person whose activities are related to the purchase and sale of blocks of power, without itself being engaged in power generation, transmission, distribution, or consumption.

**Environmental impact evaluation:**

A procedure whereby the authority having jurisdiction, judges the impact a project will have on the environment.

**Large power user:**

A customer whose power demand exceeds the ceiling specified for such purpose in regulations under this law.

**Wholesale market:**

A group of business formed by spot and long term sales and purchaser of blocks of power and energy between power marketers.

**Wheeling charge:**

Money paid to the owner of a transmission, transformer or distribution facility by another party in exchange for the right to use such facility to transmit electric power and energy.

**Private power distribution service:**

The supply of electric energy to a consumer over a distribution system, not using public property, on terms freely negotiated case by case bases between customer and distributor.

**Retail service:**

The supply of electricity to final-customer premises over distribution systems, adhering to service standards and at rates approved by the Commission.

**Distribution systems:**

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Group of transforming substations and transmissions lines intended for electric power distribution, operating at the voltages specified in the regulations.

**Easements:**

Public utility easements are those that must be imposed for the construction of electric energy generation, transmission, and distribution work and facilities.

**Transmission system:**

The group of transformation substations and transmission lines between the generation delivery point and the point of off-take by the distributor or large customer. Consists of the main and secondary transmission systems.

**Main transmission system:**

The transmission system shared by generating utilities. The Commission will define this system, in accordance with a report delivered to it for this purpose by the wholesale market administrator.

**Secondary transmission system:**

The system that is not part of the main system. Private and ultimate-user distribution systems are not part of the secondary system.

**National Electric System:**

The whole of the facilities, generating stations, transmission grids, substations, distribution systems, electrical equipment, load centers and, generally, the entire electric power infrastructure intended for the provision of electric service, whether or not interconnected, within which electric energy is transferred from one region of Guatemala to another.

**National Power Grid:**

The interconnected portion of the National Electric System.

**Transmission:**

The transportation of electric energy over the transmission system.

**Transmission company:**

An individual or legal person owning a facility for electricity transmission and transformation

**Generating company:**

An individual person which owns or is in possession of a power generating station and which sells commercially all or part of its output.

**User:**

The owner or tenant of premises to whom electricity is supplied.

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**CHAPTER IV  
SEPARATION OF FUNCTIONS IN THE POWER INDUSTRY**

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**Article 7.** An individual or legal person that is engaged concurrently in the generation and transmission and/or distribution of electric energy over the National Electric System (SEN) shall do so through separate utilities or legal person.

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The foregoing notwithstanding, generating utilities and retail distribution franchisees may own secondary transmission lines to connect into the national power Grid, and retail distribution franchisees may own generating stations with a capability up to 5 MW.

This article does not apply to companies with a generating capability up to 5 MW, or to municipal electrical utilities, regardless of their installed capacity, except for municipal corporations or utilities with joint public-private ownership or which are funded with nonmunicipal resources.

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**TITLE II  
ESTABLISHMENT OF ELECTRIC GENERATING, TRANSMISSION AND DISTRIBUTION  
FACILITIES**

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**CHAPTER I  
GENERAL**

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**Article 8.** Any person may establish a generating plant, no authorization being required from any government agency, the sole restrictions being those associated with environmental protection and with protecting the safety of people, their rights and property. Therefore, for the use of State property with this purpose, an authorization from the Ministry is required for generating stations with a capability of over 5 MW. The Ministry will rule on applications for site authorization within 90 days after their filing, provided that the applicant is in compliance with Article 10 of this law and associated regulations.

**Article 9.** The installation and operation of nuclear power plants will be regulated by a special law. The provisions for authorizations for the use of public property apply to geothermal power plants. For purposes of their operation as electric generating facilities, however, both nuclear and thermal power plants are governed by this law.

**Article 10.** Project proposals for electricity generation and transmission must include an environmental impact assessment, based on an environmental impact study, which must be submitted to the National Environment Commission (CONAMA) who must rule within 60 days after the petition is filed.

CONAMA Will issue an opinion approving or rejecting the proposed project, stating the grounds for its decision, or will approve the proposal with recommendations, which will be binding. Regulations under this law will specify enforcement provisions.

If CONAMA fails to issue an opinion within 60 days as provided in this article, the proposed project will be deemed to have been approved, the responsibility being for CONAMA's account, with specific accountability on the part of person who failed to issue the opinion within the prescribed interval.

**Article 11.** For purposes of producing studies on electricity generation, transmission and distribution projects requiring site authorization, an interim authorization good for up to one year may be granted to an applicant who so requests. The temporary authorization will allow studies, surveys, and measurements to be done and taken from public and private property, providing compensation to landowners, occupants or tenants for loss and damages. If the parties fail to come to an agreement, damages shall be assessed as provided in regulations under this law.

Applications for temporary site authorization shall be filed as prescribed in the regulations. Interim authorizations will be granted by Ministry resolution. The granting of one such authorization does not preclude another applicant's petition for an interim authorization on the same site.

**Article 12.** When a water resource is used both for electricity generation and for other purposes, or when there exist two or more hydroelectric developments along a single stream, the party authorized to

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exploit the resource shall ensure that its operations do not interfere with the continuing exercise of other rights.

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**CHAPTER II**  
**AUTHORIZATION FOR ELECTRICITY GENERATION , TRANSMISSION, AND RETAIL**  
**DISTRIBUTION SERVICE.**

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**Article 13.** Authorization to establish generating stations under Article 8 of this law and to engage in electricity transmission and retail distribution service is the act of empowering a franchisee to use public property, in accordance with the law.

Such authorization is given by the Ministry in the form of an order for a term not exceeding 50 years. Authorizations are non-exclusive, so that other parties may compete with the franchisee to supply the same service.

**Article 14.** Any individual or legal person may apply for an authorization to establish a generating station and provide transmission service in accordance with this law.

A party seeking such authorization shall file an application package with the ministry, providing all the information required in regulations under this law, including that related to easements required over public and/or private property. The application package must include a general description of the subject-matter of the application.

**Article 15.** Within 15 business days after the application is filed, the Ministry will publish once, at applicant's expense, in the Diario de Centro América and in one other publication of wider circulation, the general description of the authorization application as set out in the application package. Any person wishing to file an objection to the general features of the project or wishing to secure authorization for the same project must so advise the Ministry in writing within 8 days after the last publication. In the latter case, the authorization shall be formally sought within 30 days, as prescribed in Article 14 of this law.

**Article 16.** Within 15 days after the end of the terms prescribed in Article 15, as applicable, the Ministry will in a public ceremony open the application(s) filed.

**Article 17.** The Ministry will rule on the authorization application (s), setting out the grounds for its decision, within 60 days after the date of opening of applications. If the Ministry fails to issue a final ruling within that time, responsibility including damages will be for the account of the official who failed to so act.

**Article 18.** If a Ministry ruling under Article 17 is affirmative, the decision will be set out in a ministerial order, which will be published in the Diario de Centro América within 15 days. The order will set out the rights and obligations of the parties, conditions, times for start-up and completion of construction, penalties, grounds for contract termination, and other relevant provisions of this law and its enabling regulations. If the Ministry rules to deny the application, it will simply notify the applicant its decision.

**Article 19.** Within 30 days after the date of publication of a ministerial order under Article 18, the Ministry and the franchisee will subscribe a contract in the form of a public instrument. The contract will set out the text of the ministerial order and procedures for amending or expanding the authorization if the parties should agree to do so.

**Article 20.** To award an authorization for retail electric distribution service, the Ministry will conduct an open call for proposals, in accordance with the regulations under this law. Authorization for distribution service to final consumers will be confined to a territory specified in the authorization order, which may

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be enlarged or otherwise modified by agreement between the parties and with authorization from the Ministry. Authorization to a franchisee to supply service in a territory is non-exclusive. Within the authorized territory there shall be an obligatory service frame with a radius of not less than 200 meters around the franchisee's facilities.

**Article 21.** The ministerial order granting authorization under the foregoing articles will expire if the corresponding public instrument is not signed within the term prescribed in Article 19 for reasons attributable to the franchisee.

**Article 22.** Authorization for electricity transmission and retail distribution empowers the party so authorized to

- a) Use, for the construction of project works, public property, and cross rivers, bridges, railroad tracks and electricity transmission and distribution lines, and
- b) Remove vegetation along rights of way as required to protect and secure life, property, and the franchisee's own electrical installations.

These powers must be exercised considering specific technical recommendations; the franchisee is responsible for damages and losses occasioned.

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**CHAPTER III  
EASEMENTS OVER PUBLIC AND PRIVATE LAND**

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**Article 23.** Easements imposed by law for public purposes. Such easements include rights of way, including the building of paths, trails and roads; water and water supply easements, and all others provided in ordinary law, such as are necessary with technical studies conducted, including continuing inspection and maintenance rights.

**Article 24.** Power lines may cross rivers, canals, railway tracks, aqueducts, streets, roads, other power lines, telegraph, telephone or cable wires. Installations shall be designed so as to secure safety to people and their property, as well as the effective supply of the electric service.

The crossing of streets, roads and highways by transmission lines is not deemed to be a use of public property. Specification will be set out in the regulations under this law.

**Article 25.** Easements Terms. The time of an easements shall be indeterminate. When electrical installations on the servant property are no longer needed for purposes of providing the electric service, the easement is extinguished. The Ministry will so declare at the request of the interested party.

**Article 26.** When an easement is extinguished, for any reason, the owner or tenant of the servant property will regain full power over such land and will not be required to return any compensation previously received.

**Article 27.** Easements over public land. A franchisee requiring an easement to be created over publicly owned land shall arrange it with the proper authorities. State agencies, whether or not decentralized, and whether or not autonomous, shall assist in imposing easements as provided in this article.

**Article 28.** At the end of the authorized term to use the public property, easements over the servant estate will not be extinguished if it is necessary to use them again. A new franchisee will have the same easement rights as its predecessor.

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**Article 29.** Grounds for levying of penalties on franchisees. The owner or tenant of a servant property may apply to the Ministry for penalties to be levied on a franchisee on the following grounds.

- a) If, after approval of the easement, the franchisee fails to begin the project works when originally agreed.
- b) If activities to supply the service are not began or finished in the prescribed time.

**Article 30.** If the franchisee fails to act by a prescribed deadline and/or fails to pay penalties levied against it, the owner or tenant of the servant estate may petition the departmental lower court judge to execute proceedings to have the easement cancelled. In every such application the Ministry must be heard.

**Article 31.** Rights afforded to franchisee from easements for public purposes. Easements imposed as provided in this chapter earn the franchisee the right to

- a) Build, on the servant estate, works and facilities needed for the electric service in question and intended for use in such service;
- b) Erect poles and towers, string overhead cables and lay underground cables, and erect substations and other structures needed to supply the service, responsibility for such acts being for the sole account of the franchisee;
- c) Use areas needed to establish easements in general and for the construction, inspection, maintenance, repair, and modification of facilities for the service to be supplied;
- d) Mark off land for intake structures, conduits, screening spillways, reservoirs, pressure tanks, pipes, outbuildings, staff accommodation, tailraces, access roads, and generally any structure required strictly for the facility;
- e) Discharge water through existing channels in the servant property when conditions of the channels so permit.

**Article 32.** Obligations of landowner when an easement is imposed by law for public purposes. Under the terms of an easement granted under this chapter, the owner or tenant of the servant property shall:

- a) Permit the construction of the intended facilities and the transit of inspectors and workers engaged in hauling materials and equipment needed for construction, reconstruction, inspection, maintenance, repair or modification of the facilities;
- b) Refrain from building on the easement, planting or executing other work thereon, except for cultivation, planting and, generally use of the land such as will not affect the electrical service or technical specifications, all these activities to be carried out for the owner's account and risk, and without prejudice to the provisions in the preceding paragraph.

**Article 33.** Compensation. The holder of an easement legally granted for public purposes shall compensate the owner or tenant of the servant estate for anticipated losses to the landowner or tenant. The amount of compensation shall be fixed by mutual agreement between the franchisee and owner or tenant of the servant property; if the parties fail to come to an agreement as to the amount of the compensation, either party may present their petition in a civil court for proceedings to seek a ruling, which shall be non-appealable.

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**Article 34.** Compensation paid under Article 33 may not take the form of free power supply or preferential rate treatment.

**Article 35. Easements.** The party seeking an easement shall file with the Ministry a written petition, accompanying the application for authorization, explaining the need for an easement pursuant to technical studies conducted, and a description of the property over which the easement would run, with information on departmental and municipal jurisdictions and general features of the property. The applicant shall likewise provide plans of the proposed works project and of the site and information on farmed land and structures affected, and an estimate of anticipated losses to the landowner.

**Article 36.** The Ministry shall, without delay, notify the landowners or tenants directly or through the municipality in question of the public interest in, and need for, an easement over their land. The Ministry shall include with such notice a copy of the applicant's statement and of the other information required under Article 35.

**Article 37.** The applicant shall satisfy all formalities and conduct necessary negotiations to create the easements it seeks over public or private lands. If the landowner or tenant agrees to constitute the easement and to the compensation offered to make up for anticipated losses, he shall, after being paid the agreed compensation, subscribe the easement instrument, within five days after the date on which negotiations conclude.

**Article 38.** The franchisee and the owner or tenant of the servant estate may settle disputes arising out of the imposition of the easement and the amount of compensation payable through an equity arbitration procedure, in accordance with the Arbitration Law (Congressional Decree 67-95).

**Article 39.** In case that the landowner or tenant cannot be reached or found, the franchisee will have to ask for an authorization through the notification made by the Ministry, which shall explain the need for that easement and it will be posted in a visible part of the land and the jurisdictional municipality.

**Article 40. Opposition to an easement.** If the owner or tenant of the property over which an easement is sought denies the easement, the franchisee seeking such easement shall file a petition with the Ministry, accompanied by a notarized statement reporting the landowner's refusal, for an order to impose a legal easement for public purpose. The Ministry will, within five days after receipt of the petition, notify the owner or tenant of the property that it has five days in which to explain its objection. At the end of that interval, with or without the owner's or tenant's opinion, the Ministry will rule on the petition within five days, stating whether or not an easement for public purposes shall be granted.

If the Ministry rules that a legal easement for public purposes shall not be granted, the franchisee may seek another property over which to seek an easement.

**Article 41.** If the Ministry rules that a legal easement shall be imposed, it will so certify to the franchisee, which may petition the lower court judge, of the Civil Division, of the department in which the property is located, to issue a final ruling after proceedings pursuant to the Court Act.

**Article 42.** The owner or tenant of property over which an easement is sought may oppose such easement only.

- a) If it would affect the sole purpose of the servant property or make it unfit for its normal use;
- b) If there exists another property over which an easement would be more practical or less disruptive;
- c) If the owner does not agree with the compensation being offered.

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The owner or tenant shall provide, in situation a) or b), evidence to support its opposition, and in situation c), an expert valuation.

**Article 43.** The court ruling shall, in the event, declare the easement being sought to be an easement imposed by law for public purposes, and shall arrange the compensation to be paid, setting a deadline of five days or less from the date of last notice for the owner or tenant to subscribe a public instrument creating the easement. The court shall advise the owner or tenant that if it should fail to execute such instrument, the court, without further proceedings, shall subscribe the instrument within five days after expiration of the deadline for such subscription by the owner or tenant, during which interval the franchisee shall pay to the Cashier's Office of the court, to the account of the owner or tenant, the amount fixed as compensation. Until this requirement is satisfied, the court will not execute the public instrument imposing the easement.

Final rulings by the court in these proceedings may not be appealed.

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**TITLE III  
OPERATION AND DEVELOPMENT OF ELECTRIC GENERATING,  
TRANSMISSION AND DISTRIBUTION FACILITIES**

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**CHAPTER I  
OPERATION AND DEVELOPMENT OF ELECTRIC GENERATING PLANTS  
AND TRANSMISSION SYSTEMS.**

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**Article 44.** The wholesale power market shall be administered by a private, nonprofit agency called the "wholesale market administrator", who shall have the following functions:

- a) Coordinate the least-cost operation of generating stations, cross-border interconnections and transmission grids for the wholesale energy market as a whole, in a setting without restrictions for contracting power among parties which generate and sell energy, including importers and exporters, large customers, and distributors.
- b) Set short-term market prices for power and energy transfers between parties engaged in the generation, sale distribution, import and export of electric energy, where such transfers are not the subject of freely negotiated long-term contracts.
- c) Ensure the security of the power supply.

Wholesale market operators shall operate their facilities in accordance with directives issued by the wholesale market administrator.

Wholesale market operations shall be governed by this law and regulations thereunder. The nature, funding, and operation of the wholesale market administrator shall be governed by this law and regulations thereunder, and by its own specific regulations.

**Article 45.** If a party operating a generating or transmission facility fails to abide by the coordination directives issued by the wholesale market administrator, that party shall be liable, under the terms of this law, to a fine and also to disconnection, for a fixed period or until the problem which prompted its being disconnected from the National Electric System has been solved.

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**CHAPTER II  
OPERATION AND DEVELOPMENT OF RETAIL POWER  
DISTRIBUTION FACILITIES**

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**Article 46.** A party that is located in the obligatory service territory of a franchisee, and wishes to obtain electric service, may require the franchisee to supply electric service, pursuant to this law and regulations thereunder. A party which, not being located in such service supplied if that party can attain the boundary of the service territory using its own grids or grids owned by others.

**Article 47.** The State may provide funds to fully or in part pay, the capital cost of rural electrification projects serving a social or public interest which are located outside the boundaries of defined service territory. Such State funding shall be considered a subsidy, and shall not be passed on to users as a cost. Facilities built using such funds shall be administered and operated by the franchisee, which shall undertake to maintain them in perfect operating condition.

State funding for a project as provided in this article will not be awarded without a favorable socioeconomic assessment of the project from the Ministry.

**Article 48.** If a franchisee requires that parties seeking electric service contribute funds to obtain the service, the franchisee shall reimburse those parties for their contributions within the terms and under the conditions prescribed in the regulations. Such contributions may not exceed the maximum value that for such purposes are set by the Commission.

**Article 49.** Customers may not draw more power than the maximum contracted power, with the margins allowed by the provider. If the user exceeds that ceiling, the distributor may suspend service and bill the excess demand at the customer's rate, in conformity with the regulations.

**Article 50.** If a customer fails to pay when two or more bills for distribution service to its premises are due, the distribution company may, after having given notice to the customer, immediately cut its electric service. If electricity is consumed without prior approval from the distributor, or when supply conditions are modified by the customer, service may be cut off without the requirement of advance notice to the customer, and the customer may in addition be liable to penalties under this law and its enabling regulations.

The Commission will set disconnection and reconnection charges.

**Article 51.** Power customers are entitled to demand good-quality electric service, as provided in this law and regulations thereunder. Customers must be in compliance with obligations associated with supply of the service.

**Article 52.** Expenses required to be incurred for changing, removing, moving and replacing electric installations shall be on the account of the interested parties and/or the parties originating them.

The franchisee is required to provide electric service through overhead lines. If a municipality or other interested party requires that power be distributed over a facility that is more costly than the usual facility, the capital-cost difference shall be absorbed by that party, which shall pay the difference directly to the franchisee.

**Article 53.** Retail distribution franchisees shall have contracts with generating utilities that will assure the supply to the franchisee of its total power and energy requirements for at least the current and following calendar year.

Franchisees are responsible for providing uninterrupted electric service to their customers to whom rate regulations apply, and shall compensate those customers for rationed kilowatt-hours contracted for both power and energy in the event of long generation-transmission interruptions, except where the Commission determines that the outages were the result of major-force causes. The amount of

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compensation payable per rationed kilowatt-hour for long service interruptions shall be fixed by the Commission when it approves distribution tariffs. The regulations will define "protracted outage" and compensable rationed kilowatt-hours.

In the event of short outages lasting longer than those permissible under technical standards, the franchisee shall deduct a sum from the monthly power bill of its customers bound by regulated rates, as prescribed in the regulations.

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**CHAPTER III**  
**RESCISSION OR TERMINATION OF AUTHORIZATION**

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**Article 54.** An authorization to supply retail power distribution service is terminated by rescission or when the authorization expires or the franchisee renounces, with a prior ministerial determination.

**Article 55.** An authorization to supply power to final customers is rescinded when, the penalties prescribed in the regulations have been levied against a distributor, and the distributor

- a) Fails to supply, the service requested of it in its obligatory service territory as and when prescribed so in the regulations; in such event, the distributor may petition the Ministry, once only, for an extension of time;
- b) Repeatedly supplies deficient service, when judged against minimum quality standards prescribed in the enabling regulations of this law, and fails to improve that situation after fines have been levied against it, in the interval prescribed by the Commission.

A rescission order may encompass all or any part of the authorized service territory.

**Article 56.** Specifically for transmission service, the authorization shall be cancelled when a franchisee refuses to allow third parties to use its installations as prescribed in this law and regulations thereunder.

**Article 57.** If the cancellation of authorization for retail distribution service would jeopardize continuity of the service, the ministry will temporarily take control of the distribution facility to ensure the continuity of its operations.

Upon termination of the authorization, the rights and property of the authorizations will be sold through a public auction, as an economic unit, within 180 days. From the proceeds of the auction the Ministry will deduct its expenses and any amounts owed by the former franchisee, and shall deliver the balance to the former franchisee. The former franchisee may bid at the auction unless the authorization was terminated because of poor service.

Franchisees whose authorizations have been terminated may not, by any reason, oppose the auction. Having asserted their claims in ordinary legal proceedings, they will be paid with utilities raised at the auction.

**Article 58.** A franchisee may, after seeking a determination and authorization from the Ministry, transfer its electric service supply rights to another party, which shall thereupon acquire all the former franchisee's rights and obligations. The Ministry may in each case decide whether or not such transfer shall be allowed. Procedures for these transfers shall be as prescribed in regulations under this law, with due regard always to the need for uninterrupted service supply.

**TITLE IV**  
**ELECTRIC POWER PRICING**

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**CHAPTER I  
GENERAL PROVISIONS**

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**Article 59.** The following electric service supply prices are regulated:

- a) Prices for power and energy transfers between parties engaged in the generation, distribution, sale, import or export of energy associated with the least-cost operations of the national Electric System, except for transfers executed under supply contracts freely negotiated by the parties.
- b) Rates for transmission lines, transforming substations and distribution facilities, where it has not been possible for rates to be fixed freely in negotiations between the parties. In such cases, the rates shall be fixed by the Commission, in conformity with this law and regulations thereunder.
- c) Prices for power distributed to final-users whose maximum power demand is below the limit prescribed in the regulations. Prices billed to customers whose maximum demand exceeds the previously established are unregulated, and the terms of service supply shall be freely negotiated with the distribution utility or with any other supplier.

Prices not listed in the foregoing paragraphs may be freely set.

**Article 60.** Usage charges set by the Commission when the parties have not negotiated a rate must strictly reflect the average capital and operating costs of economically adapted transmission, transformation, and distributions systems. Commission-approved costs that are specific to distribution service must match the standard distribution costs of efficient providers.

**Article 61.** Retail distribution tariffs shall be fixed by the Commission, through the sum of power and energy purchase cost components, freely negotiated between generators and distributors, by reference to the point of entry to the distribution system, and components of efficient distribution costs under Article 60. Tariffs shall be structured so as to afford equal treatment to consumers and make for economic efficiency in the electric power industry. Costs attributable to the service provided to one customer class shall not be recovered through rates billed to other customers.

Generating, transmission, or distributions companies are prohibited to allow their employees, as compensation or any other form of benefit, a discount off then-prevailing electricity rates, or providing them with free power.

**Article 62.** Electricity purchase for the retail power distributors will get done through open bidding. All the related information concerning bids and franchises will be of public access. Regulations under this law will establish the procedures and conditions for contract awarding, and the procedures in case one or more bidders complains about the awarding.

**Article 63.** By no means, when a rate has to be set, will article 1,520 of the Civil Code apply, since the rates for the electric service will only be ruled by this law. Nor will article 1,520 of the Civil Code apply to rates not submitted to regulation under this law.

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**CHAPTER II  
TRANSMISSION AND DISTRIBUTION LINEN USAGE CHARGES**

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**Article 64.** The use of main and secondary transmission, and transforming facilities will be chargeable by the owners. These charges can be negotiated by the parties; in case of absence of a negotiated agreement, rates will be fixed by the Commission, who shall so notify the owners of the transmission

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and distribution systems in question, and the wholesale market administrator, always respecting the procedures set out in this law and its regulations.

**Article 65.** Every generating company and electric energy importer that is connected to the National Electric System shall pay a fee for the use of the main system, per kilowatt of connected firm power. Charges for use of the secondary system shall be paid according to the specific use made of systems by generating companies. Every generating company connected to the National Electric System shall build transmission facilities to transport energy to the primary system, or shall pay to use secondary facilities for that purpose.

**Article 66.** Transmission and retail distribution franchisees are obligated to permit their transmission and distribution system to be used by other parties, upon payment by such parties of usage fees, so those parties may supply energy to customers at unregulated rates. They shall likewise expand their facilities as requested to this end, upon payment of the guarantees prescribed in the regulations.

**Article 67.** Charges for the use of the primary system shall be calculated dividing annual capital costs plus operation and maintenance costs of the primary system for optimum-size facilities by the total firm power connected to the respective electric system.

Annual investments shall be calculated on the basis of the new replacement value of optimally sized facilities, considering the adjustment rate used in tariff calculation and based on a 30-year useful life. The new replacement value is the cost of construction work and other physical assets allowed under the site authorization, using technology available in the market, to provide the same service. The concept of 'economically adapted facility' entails recognizing, in calculating replacement value, only facilities or portions of facilities that are economically justified for purposes of supplying the required service.

**Article 68.** Any power generating company and importer of electric energy connected to the National Electric System, after paying an access fee and, at no further cost, may take off power and energy at any point on the main system and at any point on the secondary system from which there is a predominant annual flow of energy to the primary system.

**Article 69.** Charges for use of the primary system and the automatic adjustment formula shall be set by the Commission in the first days of January every two years.

To calculate usage fees, the owner(s) of the transmission systems involved and the wholesale market administrator shall inform the Commission of the annual capital costs, operating and maintenance costs of the main transmission system and of firm power output of generating stations, and shall submit also a technical report.

**Article 70.** In addition, a power generating company, importer, exporter, or marketer shall pay, charges for the use of the primary system, secondary charges to the transmission companies involved or to the distributor in the event of:

- a) Connection to the electric system at any substation located outside the primary system,
- b) Electricity sales in substations situated outside that system,
- c) Use of distribution facilities.

Secondary charges shall be paid only if the use of the facilities pertain to the preponderant energy flow, and payment of such charges shall entitle the payer to take off electricity at any point of the system from where it is produced, under typical system operating conditions, net physical transmission to pints

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covered by secondary charges. Secondary charges correspond to the total cost of the part where the secondary transmission system is involved, or of the distribution network utilized, and shall be paid by generating companies that use these facilities, pro rata to the power conveyed over them.

The total cost will be formed by the annual capital cost plus operation and maintenance costs, for economically adapted facilities. Average power and energy losses over the secondary system involved will be absorbed by generating utilities that use the system. Secondary charges for distribution systems will correspond to distribution value added per maximum power unit, set by the Commission for the calculation of final-customer rates.

Any disputes between generating and transmission companies will be settled by the Commission, who must rule on the dispute within 30 days after a complaint is filed by one of the parties.

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### CHAPTER III RETAIL RATES

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**Article 71.** Rates billed to final-consumers of distribution services, with their power and energy components, will be calculated by the Commission as the sum of the weighted price of all the distributor's purchases referenced to the distribution system entry point and the distribution added value (DAV). To refer power and energy purchase prices to the distribution system entry point, the Commission shall take the sum of the pertinent sub-transmission charges. Prices for the purchase of power and energy at the distribution system entry point, will in every case, be expressed according to component of power related to the distributor's maximum annual demand (Q/kW/month) and an energy component (Q/kWh).

The price for energy purchases by a distributor that are recognized in rate schedules must reflect strictly the terms secured in tendering processes under Article 62.

The DAV corresponds to the average capital and operational cost of a distribution system of an efficient benchmark company operating in an area of determined density.

**Article 72.** The DAV must take into account at least the following basic elements:

- a) User-associated costs with, regardless of the customer's power and energy demand.
- b) Average distribution losses, separated out into power and energy.
- c) Capital, operating and maintenance costs associated with the distribution service, expressed by unit power supplied.

**Article 73.** Capital cost per power unit shall be calculated as the constant annual capital cost corresponding to replacement value of an economically sized distribution system. Such annual sum shall be calculated with a service life typical of distribution facilities and the adjustment rate used in tariff calculations. Operating and maintenance costs shall be those of an efficiently operating benchmark distribution system.

**Article 74.** Power distributors shall calculate DVA components by means of a study commissioned from an engineering firm prequalified by the Commission. The Commission can allow that several distributors conduct studies, if distribution densities are alike from one group to the next, and use a single DAV to determine rates for all companies falling into a single group.

Terms of reference for the DAV study or studies shall be drawn up by the Commission, who may monitor the studies' progress.

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**Article 75.** The Commission will review the studies and may suggest comments on their content. In the event of a difference of opinion conveyed in writing, the Commission and the distributors shall together appoint a three-member panel of experts, one of whose members will be appointed by each party and the third member by mutual agreement of the parties. The panel of experts will issue its opinion on the dispute within 60 days after its appointment.

**Article 76.** The Commission will use DVAs and distribution system, entry point energy purchase prices to structure a set of rates for each franchisee. Such tariffs shall strictly reflect the economic cost of obtaining and distributing electric energy.

**Article 77.** Rate-setting methods will be reviewed by the Commission every five years, during the first half of January. The regulations will prescribe times for studies and reviewed, for suggestions, and for panels of experts to be appointed. All Commission reports will be available to the public.

**Article 78.** Rate-setting methods and adjustment formulas may not be modified as long as they are applied, unless adjustments triple the tariffs initially approved. If, at the end of one period of effectiveness a rate schedule, rates have not been set for the next period and such failure to set rates is attributable to the Commission, franchisees may adjust the rates using automatic adjustment formulas.

**Article 79.** The adjustment rate to be used in rate-setting under this law shall be the capital cost rate determined by the Commission through commissioned studies from specialized private entities, which rate shall reflect the capital cost rate for operations in Guatemala entailing comparable risks. Different capital cost rates may be used for transmission and for distribution service. In all cases, if the adjustment rates were below 7 percent per year in real terms, or higher than 13 percent per year in real terms, the latter two figures shall be applied.

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**TITLE V  
PENALTIES**

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**SOLE CHAPTER**

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**Article 80.** The Commission shall provide in this law, levy fines against any person who violates any disposition from this law. Fines shall be denominated in terms of the tariff for the applicable energy component at 1 kilowatt-hour for residential customers in Guatemala City, as prescribed in the enabling regulations of this law.

Fines levied upon end-customers shall range from 100 to 10,000 kilowatt-hours. Fines levied against generating, transmission, and distribution companies shall range from 10,000 to 1,000,000 kWh, depending on the seriousness of the offense.

In the calculation of penalties, each day elapsed on which the offender fails to comply with this law or regulations thereunder, after having been ordered by the Commission to comply, shall count as a separate offense.

The proceeds of fines levied by the Commission shall be added to the Commission's funds.

**Article 81.** Any person against whom a fine is levied under this law or its enabling regulations, may appeal the fine in the courts of ordinary justice, pursuing the usual legal remedies in such situations.

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**TITLE VI**

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**SOLE CHAPTER**

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**FINAL PROVISION**

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**Article 82.** The following legislation is repealed:

- a) Decree-Law 126-85, Geothermal Power Law
- b) Decree-Law 419, Law respecting Easements for Electric Power Work and Facilities
- c) Any other legislation in conflict with this law.

**TITLE VII  
TRANSITORY PROVISIONS**

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**SOLE CHAPTER**

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**Article 1.** The first National Electric Energy Commission shall be formed before April 1, 1997. For the Commission to begin work, the Ministry of Finance will place on deposit the sum of 500,000 quetzales within 10 days after the date of establishment of the Commission. This sum shall be reimbursable.

**Article 2.** The first set of retail distribution charges and tariffs shall be set, pursuant to any criteria and methods prescribed in this law, in the first half of May 1997. DAVs set by the Commission shall be based on values in use in other countries who apply similar methods.

**Article 3.** The Guatemalan Electrification Authority and any other privately-owned or publicly and privately owned company currently engaged in electric energy generation, transmission or distribution shall, within one year after the enactment of this law, segregate its functions and management to be in compliance with this law.

**Article 4.** The Executive Branch shall issue enabling regulations for this law within 90 days of its publication.

**Article 5.** The wholesale market administrator must be in compliance and begin operating within six months after publication of regulations under this law.

**Article 6.** Until the National Electric Energy Commission is formally established, each of the following entities shall, within 10 days after the entry into force of this law, appoint one representative to comprise a committee:

- a) Empresa Eléctrica de Guatemala, S.A. (EEGSA)
- b) National Electrification Institute (INDE)
- c) Guatemalan Engineers' Association

This committee shall be appointed by government order within 15 days after the representatives are designated. It shall set rates under Article 59 of this law for the interval running from the date of entry into force of this decree and the date for setting of new tariffs fixed by the National Electricity Commission. Members of this committee shall cease to serve when the members of the Commission begin their duties.

**Article 7.** This law shall enter into force on the date of its publication in the official gazette.

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**TO THE EXECUTIVE BRANCH FOR  
ASSENT, ENACTMENT AND PUBLICATION**

**MADE IN THE GUATEMALAN LEGISLATURE ON OCTOBER 16, 1996**

(signature)

CARLOS ALBERTO GARCÍA REGAS, PRESIDENT OF THE CONGRESS

ENRIQUE ALEJOS CLOSE AND EFRAIN OLIVA MURALLES  
CLERKS

[seal, Guatemalan Congress]

NATIONAL PALACE, Guatemala City, November 13, 1996.

SO ORDERED

ARZU IRIGOYEN

[seal of the Office of the President]

L. López Rodas,  
Ministry of Energy and Mines  
[Ministry seal]