

Executive Summary

General Law of Electricity

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I. Preamble

The national electric system was created in 1928, when, through a presidential decree, the formation of the Electric Company of Santo Domingo was authorized. It was responsible for generating, building, rehabilitating and extending the transmission and distribution networks of electric energy.

Later, in 1954, the National Congress approved Law 4018 which declared of high national interest the acquisition by the State of all the companies that were then producing, transmitting and distributing electricity to the public in general. In 1955, the Dominican Government modified the energy sector by acquiring the Electric Company of Santo Domingo. Also, through Decree No. 555 dated 19 January 1955, the Corporación Dominicana de Electricidad (CDE) (Dominican Electricity Corporation) was created, which was assigned the responsibility of maintaining, expanding and generating all the electric energy in the country. In order to formulate a legal framework to regulate the electric sector, on 21 April 1955, the National Congress approved the Organic Law of the Corporación Dominicana de Electricidad (Law No. 4115) which granted jurisdiction and autonomy to that Corporation to exercise authority in the electric field within the territory of the Dominican Republic in an exclusive manner.

After several modifications to Law No. 4115, in 1966 the Organic Law of the Secretariat of State of Industry and Commerce No. 290-66 was promulgated. This created an echelon higher than the Corporación Dominicana de Electricidad (CDE), a Secretariat of State, which became responsible for the energy policy of the country. Later decree No. 584 of 1979 issued by the Executive Power, created the National Energy Commission, which under the direction of the Secretariat of State of Industry and Commerce was given the duties to formulate and propose to the Executive Power the investment programs for the generation of energy.

For the purpose of stimulating the energy sector, Law 14-90 on Incentives to National Electric Development was promulgated in 1990. The purpose of this law was to foster and stimulate generation of energy through the establishment of incentives and cancellation of assessed taxes to those companies committed to the production of electric energy.

Law 14-90 on Incentives to National Electric Development was revoked in 1992 with the enactment of Law 11-92 which created the Tax Code. During that same year of 1992, the restructuring process of the Corporación Dominicana de Electricidad was initiated, when the Dominican Government promoted consultations with international organizations to design a reform and restructuring project of the Dominican electric system. As a result of these consultations and subsequent works, the President of the Republic introduced to the National Congress the General Electricity Bill in December of 1993.

However, the modifications introduced by the National Congress altered basic aspects of the new vision contemplated for the electric market. Since it was practically impossible to develop a bill that would satisfy the interests of all the parties who participate in the Dominican electric system, in 1997 the Dominican Government started a restructuring process of the energy sector in conjunction with other state-owned enterprises. To this end, General Law for the Reform of Government Enterprises No. 141-97 was put into force; a legal framework which served as a basis for the capitalization of the Corporación Dominicana de Electricidad (CDE).

For the capitalization process established under Law No. 141-97, five new companies were created with the contributions from the assets of CDE's properties. Two of these companies are engaged in generation of electricity (Empresa Generadora de Electricidad ITABO and Empresa Generadora de Electricidad Haina). The other three companies are in the business of supplying electricity (Empresa Distribuidora de Electricidad del Norte, Empresa Distribuidora de Electricidad del Este y Empresa Distribuidora de Electricidad del Sur). Each one of these companies received from CDE the assets that were affected by the

activities assigned to these new companies, when they function as part of the only corporate unit of CDE. All other assets, including those of transmission and hydroelectric generation remain with CDE.

As a consequence of not having in 1997 a new General Law of Electricity, it was necessary to use the legislation then in force, to establish the regulatory framework that would govern the capitalized industries. In order to complement the lack of an adequate electricity law, through Decree No. 118/98, the Superintendency of Electricity was created under the direction of the Secretariat of State of Industry and Commerce.

The new General Law of Electricity No. 125/01 recognizes the importance of the private sector in the activities of generation, distribution and commercialization of electric energy, in an effort to achieve expansion of the sector and a more efficient service, while the government maintains the exclusive right to regulate the sector.

The present law is divided as follows: Title I: Definitions; Title II: Scope and Objectives; Title III: Institutions of the Electric Sub-sector; Title IV: Installation of Electric Services; Title V: Rights of Way; Title VI: Implementation and Exploitation of Works and Electric Services; Title VII: Electricity Pricing Systems; Title VIII: Sanctions; Title IX: Other Regulations; Title X without a title and Title XI on Repeals.

Following is an overview of the basic aspects of the new Law in order to provide the reader with a general outlook of the new regulations that will be applied to the Dominican electric industry.

II. Basic principles, objectives and basic definitions

The new General Law of Electricity No. 125-01 constitutes the legal framework which regulates all phases related to the production, transmission, distribution and commercialization of electricity, as well as the functions of State agencies created by this Law and related to these matters.

The General Law of Electricity defines throughout its text, the essential terms for adequate interpretation. Following are some of the most important.

Distribution Activity: Distribution and commercialization of electricity services to final consumers by a distributing company.

Self Producers: are those entities or companies which generate their own electricity for their own consumption independently of their productive process and eventually sell surplus power or electric energy to others.

Customer or Consumer of a Public Service: A low consumption consumer is any customer with a generating capacity the same or less than 2.0 megawatts.

Definitive Concession: Authorization from the Executive Branch, which grants those interested the right to build and exploit electric works in accordance with the present law or any other related law.

Provisional Concession: Administrative resolution of the Superintendency of Electricity, which grants the authorization to enter

public or private property to carry out studies and surveys, related to electric works.

Right of Use: Payment to which the owners of lines and substations of the transmission system have the right to receive for allowing use of said systems by third parties.

Distribution Company: Electric company whose main objective is to operate a distribution system and is responsible for supplying electric energy to final consumers.

Transmission Toll: Payment to which the owners of lines and substations of the transmission system have the right to receive for use and connection rights.

Permit: Is the authorization granted by relevant authority, prior approval having been granted by the Superintendency of Electricity to use and occupy with electric works national or municipal goods of public use.

Rationing: A condition declared by the Superintendency of Electricity by means of a resolution when the electric system is not capable of supplying demand due to force majeure.

Public Distribution Service: Supply, at regulated prices, by a distribution company to final consumers located in their concession zones, or that connect to the concessionaire's facilities through their own lines or third party lines.

Customer or consumer of a public service: A low consumption consumer is every client with an installed capacity equal or less than 2.0 megawatts, applying a gradual dismantling of said capacity.

User or Final Consumer: Corresponds to the person or company, customer of the supplying company, which uses electric energy for its consumption.

Regulated Consumer: Consumers who receive the public distribution service at prices regulated by the Superintendency of Electricity.

Non-regulated Consumer: Is one whose monthly demand excess the limits established by the Superintendency of Electricity to qualify as a public service consumer and one who complies with the requirements established in the regulations for application of the law.

Basic objectives of Law 125-01 are the following:

1. Promote and guarantee the electricity supply required by the country under adequate conditions of quality, safety and continuity, with optimum use of resources and due consideration to environmental aspects.
2. Promote private participation in the development of the electricity sub-sector.
3. Promote competition in the generating area, stimulating investment and prices for that item to be free and determined by the market.
4. Regulate transmission and distribution prices based on economic criteria of efficiency and equity.

5. Ensure that electricity supply is carried out with neutrality and without discrimination.
6. Ensure protection of consumer's rights and compliance with their duties.

It is important to point out that the new Law establishes that the Law of a regulatory, promoting, and monitoring character, which shall be exercised by the State through the specialized institutions, creates the essential functions of the State.

In addition, the Law establishes that private activities and entrepreneurial actions of the State in this sub-sector shall be subject to the same regulations as other companies of the sector and to the decisions adopted by relevant institutions.

III. Institutions of the electric sub-sector

In order to regulate the electric sub-sector and implement the provisions contained in the Law, the formation of two state institutions is foreseen to be responsible for monitoring and ensuring strict compliance with the law: a) the National Energy Commission and b) the Superintendency of Electricity.

Also, companies which produce, transport or distribute electricity to third parties are classified as: a) electric companies and self-producers and co-generators of electricity which sell its surpluses through the system and b) owners of distribution lines and electric distribution sub-stations. All of these companies will be able to directly trade their electricity and its distribution capabilities, and they will be subject and regulated by Law 125-01, whether they are of national and/or foreign capital, private and/or public, without any discrimination due to any of these circumstances.

According to its essential principles, the new General Law of Electricity No. 125-01 intends to avoid formation of monopolies in the electric sector. To this end, the Law establishes that in interconnected electric systems whose maximum power demand exceeds that defined in the regulations and which include supply to distributing companies, the electric companies, the self-producers and co-generators of electricity may carry out only one of the activities of generation, transmission or distribution.

As the only exception to this rule, the Law establishes that, each one of the three distribution companies resulting from the capitalization process of the Corporación Dominicana de Electricidad may own, directly or indirectly, the generating facilities, as long as this capacity does not exceed fifteen per cent (15%) of maximum demand of the interconnected electric system.

Following are comments on the most relevant aspects of the two government agencies created by Law 125-01.

a. *Comisión Nacional de Energía (National Energy Commission)*

This new institution called the National Energy Commission (the Commission) is endowed with legal status of public law and equity capital.

The Commission shall be presided by the Secretary of State of Industry and Commerce and integrated by the Technical Secretary of the Presidency, the Secretary of State of Finances, the Secretary of State of Agriculture, the Secretary of State of Environment and Natural Resources, the Governor of the Central Bank and the Director of the Dominican Institute of Telecommunications (INDOTEL). There will also be an executive director of the Commission, to be designated by the Executive Branch, and who shall be responsible for the technical and administrative direction of the Commission and act as Secretary in the meetings of same.

Among the roles attributed by the Law to the Commission are, in general, drafting and coordination of the legal framework and regulatory projects; propose and adopt policies and procedures; drafting of plans to ensure proper functioning and development of the energy sector and propose them to the Executive Branch and ensure its compliance; promote investment decisions in accordance with said plans and advice the Executive Branch on all matters related to the sector.

The assets of the Commission shall be made of the resources assigned every year in the National Budget, and by the contributions of up to one per cent (1%) of total sales of the electric system, an amount to be decided by the Regulations.

The human resources of the Commission shall be highly qualified and with technical experience, and shall be remunerated in accordance with market conditions.

b. *Superintendencia de Electricidad (Superintendency of Electricity)*

This institution was created in 1998 through Decree No. 118-09 of the Executive Branch. As of the date of enactment of the new Law 125-01 it enjoys legal status of public law and equity capital, and its relations with the Executive Branch shall be done through the National Energy Commission.

Management of the Superintendency of Electricity shall be the responsibility of a Council integrated by one (1) President and two (2) members, designated by the Executive Branch and ratified by National Congress. The post of Superintendent shall behold by whoever is appointed as president of the Council.

Members of the Council shall be renowned professionals in professional or academic matters and with at least eight (8) years of experience in the energy sector. Their remuneration shall not be subject to the practices regulating those of the public sector, but shall be set according to market conditions for the highest executives posts of the private sector.

An important aspect incorporated by the new Law 125-01 is the institutional independence granted to the members of the Council of the Superintendency of Electricity. The members of the Council shall work for a term of up to four (4) years and can only be removed from their posts due to serious faults and shall not have conflicts of interest with owners or electric companies nor be linked to these. As an exception, the first three members of the Council shall be named for periods of two, three and four years respectively, being able to be

nominated for a similar period. This period shall commence as of the date of enactment of the present law.

Among the most important roles attributed by Law to the Superintendency of Electricity are the following:

1. Develop, ensure compliance and systematically analyze the structure and level of prices of electricity and set, through resolutions, the rates and tolls subject to regulation.
2. Authorize or not modifications to electricity rate levels requested by companies, due to the indexation formulas that the Superintendency of Electricity has determined.
3. Monitor and supervise compliance with legal provisions and rules, as well as with the technical procedures regarding generation, transmission and distribution and commercialization of electricity.
4. Supervise electric market behavior in order to avoid monopolist practices on the part of companies of the sub-sector, which operate within a competition regime and notify the Commission.
5. Apply penalties and fines in the cases of non-compliance with the Law, its rules, procedures and instructions, in accordance with that established in the regulations.
6. Analyze and decide through a resolution, requests for provisional concessions of electric generation, transmission and distribution works, as well as its due date or abrogation.
7. Analyze and process definitive concessions requests and make recommendations to the National Energy Commission on relevant decisions.
8. Notify relevant institutions about permits requested.
9. To know, prior to its implementation the installation of electric works, and request the relevant agency confirmation as to compliance with technical requirements as well as environmental protection practices.
10. Request electric companies to provide technical, economic and statistical background, necessary to carry out its functions and duties.
11. Settle, listening to those affected, claims, between or against individuals, consumers, concessionaires and owners and operators of electrical installations, which refer to situations, which fall within its jurisdiction.
12. Provide the Commission and its Executive Director background facts requested which are needed to properly fulfill its functions.
13. Authorize all licenses to provide local electric services as well as monitor its performance.

In addition, the Superintendency of Electricity is empowered to establish, modify and complement technical standards related to the quality and safety of electric installations, equipment and appliances, through resolutions.

The Superintendency of Electricity shall be responsible for the periodic preparation of data and information to know the sector, the procedures used to establish rates, as well as its historic and foreseen values. Of public knowledge should be, in particular, both the reports related to the calculation of transmission and distribution prices, as well as the prices existing in the non-regulated market.

The Superintendency of Electricity may apply relevant sanctions in cases of non-compliance of technical procedures and their instructions, which are committed by the electric companies of the sub-sector, in accordance with the provisions of this law and its regulations.

The highest authority of the Superintendency of Electricity shall be the Superintendent, who shall have legal, judicial and extrajudicial representation. The Superintendent shall be responsible for the technical and administrative direction of the Superintendency of Electricity in addition to other functions among which are:

1. Designate the members of the Arbitral Commission when there is disagreement between the parties;
2. Execute before those interested, prior approval of the Executive Branch, definitive concession agreements;
3. Chair the coordinating agency meetings, with the right to a vote to settle a tie. The Superintendent, in representation of public interest, shall be the only representative with a power to veto at the coordinating agency.

The assets of the Superintendency of Electricity shall be formed by the resources assigned every year in the National Budget and by the contributions of up to one per cent (1%) of total sales of the electric system, an amount to be established by the Regulations, as well as by the sale of goods and services it may carry out, as well as from the rates, rights, interests and other income perceived through implementation of its functions.

It is also important to point out that the new Law 125-01 foresees the creation of a Consumer Protection Office, which will be dependent on the Superintendency. Its role will be to take care of and settle public service consumers' complaints regarding billings, bad quality of service or any complaint caused by excesses or improper behavior of the electricity distribution companies.

c. Coordinating Agency

The electric generation, transmission and distribution companies must coordinate their operations in order to provide the best service at minimum cost. In order to do this, they must create and integrate an agency to coordinate the operation of the generation stations and the transmission and distribution systems, which shall be called Coordinating Agency.

The main functions assigned to the Coordinating Agency by the new Law 125-01 are:

1. To plan and coordinate the operation of the electricity generation stations and transmission and distribution lines in order to guarantee a dependable and safe supply of electricity at a minimum economic cost;

2. Guarantee the sale of the installed capacity of the generating units of the System;
3. Calculate and value the energy transfers produced by this coordination;
4. Facilitate exercise of the rights of way on transmission lines;
5. Cooperate with the Commission and the Superintendency of Electricity in the promotion of sound competition, transparency and equity in the electricity market.

The terms and conditions for the constitution, organization and rules of procedures of the Coordinating Agency, shall be established in the Regulations, after discussion of the opinions of the representatives of the electric companies.

The Coordinating Agency shall have legal status and its highest authority shall be a Coordinating Council. The Coordinating Council shall be formed by a representative of the Superintendency of Electricity, who will preside it, a representative of the electric companies of private generation, one from the state electric company (hydroelectric), one from transmission and one from distribution.

IV. Installation of electric services. Activities, which require concession or permits

In accordance with the provisions of the new General Law of Electricity No. 125-01, electric concessions may be granted to companies legally constituted, whether national or foreign.

The General Law of Electricity has established the requirement of a concession for the purposes of establishing and exploiting the public service of electricity distribution, for its generation, hydroelectric generation by the State, transmission services (State), in interconnected systems whose maximum power demand is higher than that established by the Regulations and which include supplies to distributing companies.

If a generating company decides to make an installation in a geographical zone where there are no interconnection facilities with the national electric system, it may obtain a special concession to install the interconnecting line, as long as the transmission company does not assume the corresponding investments. In this case, it will reach an agreement to determine the way in which the transmission company will reimburse the costs incurred by the generating company.

With the exception to this principle, the Law establishes that the generation of electricity and transmission do not require concessions in interconnected systems or isolated when maximum power demand is inferior to that established in the Regulations and which includes supplies to distributing companies. However, concessions can be granted when interested parties thus request them.

Law 125-01 establishes two types of concessions, which are analyzed as follows:

- a) **Provisional Concession:** This type of concession will occur when the owner of the land or the electric company, in this case the

concessionaire, reach a friendly agreement which allows the concessionaire access to the land whether personal, state or belonging to the municipality, to carry out studies, analysis or surveys which contribute to the improvement of electric service.

The term of the provisional concession shall be established among the parties and cannot exceed eighteen (18) months if the land belongs to the State or the municipality, and the legal representatives shall be responsible for the proceedings required. It should be pointed out, that once a provisional concession is granted, it will be published in a newspaper with nation-wide distribution within fifteen days, two consecutive times.

- b) **Definitive Concession:** Law 125-01 foresees that this type of concession must be granted by an authorization of the Executive Branch. In harmony with the provisions of the General Law of Environment No. 64-00, the Law sets forth that under no circumstances will concessions be granted to install electricity generating units which consider the use of toxic waste whether foreign or local which degrade the environment and the national ecologic system. To this end, Law 125-01 states that the Secretariat of State of Environment and Natural Resources must issue a certificate of non-objection prior to its approval.

All requests must include a study of the effect of the installations on the environment and the measures the company will take to mitigate it, in any case subject to the provisions and official agencies responsible for the matter.

Definitive concessions will be granted for a term not to exceed forty (40) years. However, the concessionaire may request its renovation, not less than one year and no more than five years of its due date. It must be pointed out, that the Law establishes that public distribution and generation services cannot be transferred in whole or in part without the prior authorization of the Superintendency of Electricity.

Of great importance are the provisions of Law 125-01 with regards to the receipt of several requests for the same definitive concession, in which case the Superintendency of Electricity will carry out a public bidding for the rights of the concession according to the way and terms established in the Regulations for the enforcement of the law.

The definitive concession acquires a contractual character when the Executive Branch approves the petitioner's proposal, and via the Commission authorizes its implementation. The authorization for the definitive concession of a public services, establishes the limits of the concession area.

For the electric generation works, which are not subject to granting of a concession, the General Law of Electricity foresees the granting of permits so that said works, may use and occupy national or municipal properties for public use. These permits will be granted after consultation with the Superintendency of Electricity, or by the relevant authorities en the way set forth in the Regulations.

Law 125-01 foresees three ways to end the concessions, which may be terminated due to expiration, non-compliance with the obligations of the concessionaire or resignation.

V. Rights-of-way

In order to obtain greater efficiency in electric energy generation, distribution and transmission, the new General Law of Electricity incorporates the juridical figure of rights-of-way. In this respect, the resolutions of definitive or provisional concessions, permits and authorizations by the Executive Branch shall indicate the rights-of-way the concessionaire may require, in accordance with the special rights-of-way plans approved in the resolution or concession authorization.

Through the granting of rights-of-way the concessionaire is allowed to obtain the right to occupy the lands needed to carry out studies, build and carry out the work and normal operations; occupy and close land necessary to build reservoirs, dumps, classifiers, water storage reservoirs, forebays, caverns, housing for the security personnel, access roads, warehouses, and in general, all the rights-of-way and works required for the electric installations.

Also, the definitive concessions of lines and transmission sub-stations and public service distribution allow the concessionaire to obtain, through the procedures set forth in this law, the right to carry out studies; to lay aerial and/or subterranean lines through properties acquired in a definitive manner, occupy the land necessary to transport electricity from the generating station or sub-station up to the consumption or application points and limit its use; occupy and close the land necessary for electric sub-stations, including housing for the security personnel.

For the conflicts that may arise between the beneficiary of a definitive concessions and the claimant of a property, law 125-01 grants power to the Justice of the Peace with jurisdiction over the land to know of any conflict within his faculty, paying the concessionaire all costs and payments that may be incurred.

In addition, the Law sets forth that the claimant of the land and the concessionaire shall have the option, excluding the Justice of the Peace, to appoint the Superintendent who shall designate an Arbitral Commission integrated by three experts, chosen one by each party, and the third by the first two, from the professional staff kept by the Superintendency of Electricity so that, after listening to each of the parties, evaluate the compensation that should be paid to the owner of the land. If within thirty (30) days the parties do not reach an agreement about the Arbitral Commission, it shall be appointed by the Superintendent. The decision of the Arbitral Commission will not be subject to recourse, it will be irrevocable and will be imposed on the parties. The fees of the Arbitral Commission shall be paid by the concessionaire and will be determined by the Superintendent.

Another innovative provision incorporated by the new General Law of Electricity is the compensation for the use of the transmission system installations, which will be referred to as transmission toll. According to the Law, owners or operators of electric lines which have concession or a permit will be obliged to allow third parties the use of its installations, necessary for the passage of electricity, such as aerial or subterranean lines, sub-stations and other works.

It must be pointed out that within the national interconnected system the prices for the use of transmission and transformation installations are regulated and established by the Superintendency. In this regard, the Law establishes that the total amount collected from transmission tolls must cover the long-term total cost of the transmission system, which will be comprised by the annuity of the investment plus the operating and maintenance costs of installations efficiently scaled.

The annuity of the investment shall be calculated by the Superintendency on the basis of replacement cost of new installations, taking into consideration the rate of opportunity cost of capital stated in this law. Said annuity and the operating and maintenance costs of the transmission installations, as well as the corresponding readjustment formulas shall be determined every four (4) years by the Superintendency.

The law foresees that for electric systems which are not interconnected of a lower load or equal to that stated in the Regulations and in the distribution systems, tolls shall be agreed upon directly between the owner of the installations and the person interested in its use, on the basis of the same principles set forth in this Law and its Regulation. If there is no agreement, any of the parties may ask the Superintendency to set the toll.

VI. Implementation and exploitation of the electric works and services

The new General Law of Electricity states that before commencing operations, the generation, transmission and distribution works must be implemented in accordance with that established in the Regulations of the Law, and after the Superintendency of Electricity verifies that they comply with the conditions of quality, safety and conservation of the environment.

To this end, the Superintendency of Electricity will have a maximum period of two (2) months to carry out said verification. After this period without any statements from the Superintendency of Electricity, it will be considered that the works comply with the requirements necessary to start operations.

Once operations are started, all companies for the generation, transmission and distribution of electricity must comply with the conditions of quality, safety and continuity of services, and conservation of the environment. Non-compliance will be subject to sanctions and in reiterated cases and serious offenses, the intervention of the company by the Superintendency of Electricity, with prior authorization by the Commission.

Of particular interest is the new provision of the Law regarding the public service of distribution, when it states that it is mandatory to provide such services to whomever requests it within the zone of the concession and within the terms to be determined by the Regulations of the Law. Also the distribution companies are compelled to allowing other companies to supply their clients, which are not subject to a price regulation in said zone.

As of January 1 of the year 2003, the distributing companies are compelled to compensate final regulated consumers for the electric

energy not supplied for an equivalent of one hundred and fifty per cent (150%) of electricity not delivered. The electricity sales contracts between the generating companies and the distributing companies shall include the compensations corresponding to this provision.

In order to suspend the energy service to any consumer, independently of the cause, it will be mandatory to leave a written notice stating the reasons for such decision. When the electric service is suspended based on lack of payment, if the consumer has the documentation to show that payments are up to date, the company must compensate for damages caused, for three (3) times the amount on which the company based the decision to discontinue the service.

The Law 125-01 foresees that the distribution concessionaires may proceed with the immediate interruption of services to the consumer, in the case of lack of payment for two (2) or more monthly bills corresponding to services provided. This provision will not apply to public services companies such as hospitals, schools, asylums and public lighting. Also, only the contracting individual or company who owes for the supply of electricity is liable for payment. To this end, the distribution companies may use all legal instruments available to proceed with collection of said debts.

In the case of delays in the payment of invoices for the supply of electricity, concessionaires will be empowered to apply the lending rate of the market to said amounts, as of their due date until its payment, calculated on the basis of days or months. Concessionaires shall apply the charges for interruption and reconnection according to that set forth by Regulations for enforcement of the Law.

In the case of bankruptcy of a public distribution service concessionaire, the Superintendency of Electricity may take control of the company in order to preserve continuity of the service, chargeable to the Concessionaire Company. In these cases, once intervention has taken place, all assets of the Concessionaire Company, including the guarantees and bonds, which were pledged to the delivery of the public distribution service, shall, as a matter of law, be excluded from the bankruptcy. The Superintendency of Electricity, within a term of ninety (90) days, as of the date of the intervention, will open to public bidding the concession and the assets of the concessionaire pledged to the service. From the amount obtained in the bidding process, the concession's expenditures and commitments shall have priority, and if there is a balance, the rules of common law shall apply.

If an electric generation deficit occurs due to prolonged failure of the thermoelectric units or due to drought, the Superintendency of Electricity shall issue a resolution to regulate the supply of electricity, applying rationing measures. In this case, and based on the cost of lack of energy supply, established annually by the Superintendency, generators should compensate the public service distribution companies. The distributing companies shall pass on to their consumers of public service said compensation in the amount, terms and conditions set forth by the Regulations for enforcement of the Law and stated in said resolution. To this end, the distributing companies shall take this into consideration in their contracts for the purchase of electricity.

In the case of public disaster and/or national emergency, the State may assume the responsibility to manage the electric companies, in a

provisional manner until such time as the cause which provoked such intervention ceases, paying the concessionaire compensation, which shall be determined taking as a basis an average of the utilities they company would have earned during the last three (3) years. If the company in question had not been in operation for three (3) years, or did not receive remuneration, compensation shall be determined based on the valuation of experts.

Another important and innovative provision of the new General Law of Electricity is the one related to reimbursable financial contributions. In accordance with the Law, the concessionaires of public distribution services may request the users requesting service, a reimbursable financial contribution for extension of existing installations up to the connecting point of the petitioner, whether the user builds the extension works on the basis of a project approved by the electric company or the user finances the works in the amount determined between the parties, the electric company making the commitment to interconnect them once the work is done.

VII. Electricity price system

The price of electricity for final consumers shall, in general, be unrestricted when transactions are carried out under conditions of competition.

The rates applicable to regulated consumers will be subject to regulation within the concession zones of the distributing companies. These customers shall be considered public service customers and the rates shall be set by resolution of the Superintendency.

Maximum power for public service user was set by the Law at 2.0 megawatts or less until the year 2002. During the year 2003 it shall be 1.4 megawatts, for the year 2004 it will be 0.8 megawatts and for the year 2005 it will be 0.2 megawatts. The Superintendency of Electricity will develop a rate list for each year mentioned to take these changes into consideration.

Also considered as regulated rates are those rates applicable to other services provided by the electric distributing companies to public service consumers, with the exception of those that, given their competitive characteristics, the Regulation does not subject them to price control; and rates applicable to the use of electricity transmission and distribution facilities to exercise the right of use for the transit of energy established by the present Law.

Supplies which are carried out under special quality of service conditions will not be subject to price regulation, or those whose duration is of less than one (1) year, as well as other supplies expressly stated in the law.

For the sale of electricity with long-term contracts, the new General Law of Electricity establishes that the sale of electricity of a generating company to a distributing one will be done at prices resulting from competitive procedures of public bidding. These biddings will be ruled by the conditions established by the Superintendency of Electricity, which will supervise the bidding and awarding process and will require copies of the contracts, which shall contain, at least, its term, points of purchase, prices of electricity and the power at each purchasing point,

indexation methodology, treatment of increases of power demand, compensation due to lack of supply in accordance with the costs of lack of energy supply set by the Superintendency of Electricity and established guarantees. The generators will transfer the difference between demand of a distributing company and its contracts to short-term marginal cost.

With the objective of guaranteeing that generation prices represent reasonable values in the electric market, the Superintendency of Electricity will ensure that the sale of electricity through contracts are not greater than eighty per cent (80%) of interconnected electric energy demand, guaranteeing that the spot market represents in the annual balance of energy and supplied electric power, a minimum of twenty per cent (20%) of the total national consumption of the interconnected system.

VIII. Sanctions

The new General Law of Electricity contains several penal provisions for violations committed against the good performance of the Dominican Electric System.

Anyone who intentionally through any means destroys, disables, or damages electric lines, networks, sub-stations, generating stations, measurement equipment, and electric installations, or any of its components, for the purpose of stopping or interrupting the service or supply of electricity, shall be brought before the Courts in accordance with the laws in force.

Those who misappropriate electric energy, directly or indirectly, through clandestine or fraudulent connections, will incur in the violations stated under Article 401 of the Penal Code. A clandestine or fraudulent modification of an installation is understood as any modification made to it or to any of its parts, which allow consumption of electricity without same being duly registered in the corresponding meter.

Concessionaires may immediately suspend supply of electricity to consumers who are found with clandestine or fraudulent installations, without prejudice to the collection of the non-registered consumption and corresponding legal actions.

In order to determine the amount of the non-registered consumption, it is presumed, unless otherwise proven, that five (5) months have passed from the date when the clandestine modification to the installation was discovered. The value of that five-month fraudulent consumption or for the time proven shall be calculated on the basis of installed capacity.

Each fraud detected and its settlement will be notified to the Consumer Protection Office; the amounts collected from these cases, shall be liquidated as follows: seventy per cent (70%) for the distributing company, twenty per cent (20%) for the Consumer Protection Office and the remaining ten per cent (10%) to the incentive for development of renewable energy.

The generators, distributors, traders, self-producers and co-generators shall be responsible for the violations committed by their employees during the exercise of their functions; any non-compliance due to an

action or failure to perform the duties set forth in the present law and its complementary Regulations shall be considered a violation, as well as the punishable conduct related to same. Each violation will be dealt with separately even though it may have the same origin. The authority to impose a sanction expires after three (3) years, as of the date of the fact, and the action to exercise the sanction prescribes after five (5) years, as of the date of the sentence or resolution.

In accordance with the new General Law of Electricity, the following actions shall constitute a violation and will be subject to sanctions:

- a) The electric companies that not provide all the information requested by the Superintendency of Electricity, or whether the information provided is not complete or truthful;
- b) Electric companies which do not comply with the quality and continuity of electricity supply, conservation of the environment, safety of the installations providing services to consumers, in accordance with the regulations;
- c) Monopoly practices of companies of the electric sub-sector which operate under a competition regime;
- d) Generating and distributing companies that do not provide the Commission and the Superintendency with technical and economic data.

The company, private or public, of the electric sub-sector which incurs in any of the violations stated in the present Law and its complementary Regulations, must pay a fine not less than two hundred (200) nor higher than ten thousand (10,000) times the national minimum wage. Repetition of the offense shall be considered as aggravation in which case the sanction shall be fifty per cent (50%) higher than that established previously. The Superintendency will determine the seriousness of each violation, as well as the amount of the penalty within the limits foreseen in the present Law.

The regulations will stipulate the various types of sanctions resulting from violations foreseen and not foreseen in this law, in its regulations and complementary technical procedures, as well as the instructions and directives issued by the Superintendency of Electricity, always in accordance with the Constitution and laws applicable to the imposition of sanctions.

The electric companies which do not comply with the obligations set forth under Titles IV and VI of the Law and its Regulations and without detriment to that stated in said titles, shall be subject to fines that may amount to one per cent (1%) of the assets of the company and shall be determined by the Superintendency of Electricity according to the seriousness of the offense, in accordance with the Regulations.

IX. Other provisions

Titles IX and X of the General Law of Electricity No. 125-01 include the basic principles of the new electric policy. Following is a summary of the most important principles included in Law 125-01:

- a) Free Importation of Fuels and Lubricants: the electric companies, the self-producers and the co-generators, protected under the

provisions of the present law, may import directly, from any foreign supplier, the fuel and lubricants needed by their plants, prior authorization of the National Energy Commission.

- b) National Treatment of Foreign Investors: Foreign companies investing in the activities related to this law, will be able to remit their dividends and repatriate capital corresponding to foreign capital share, subject to laws and regulations in force.
- c) Property Restrictions regarding Transmission and Dams: It is established that the transmission system and electric generation by any hydraulic mean, can only be established and operated by the Dominican Government understanding that these activities will be managed by the State.

When the Dominican Government deems it convenient, it will make the necessary financial arrangements to finance, build or manage temporarily any transmission generation hydroelectric project.

To this end, the Law establishes that the Executive Branch should create within a term not to exceed ninety (90) days, the Empresa de Transmisión Eléctrica Dominicana (ETED) [Dominican Electric Transmission Company], to which will be transferred all electric lines and transmission systems (interconnected systems); as well as creation of the Empresa de Generación Hidroeléctrica Dominicana (EGEHID) [Dominican Hydroelectric Generation Company] to which all property and management of the hydroelectric generating systems will be transferred.

Another entity created by the new General Law of Electricity is the Corporación Dominicana de Empresas Eléctricas Estatales (CDEEE) [Dominican Corporation of Electric State Enterprises], whose functions consist of providing leadership to and coordinating the electric companies; implementation of State programs related to rural and suburban electrification in favor of low-income communities, as well as management and implementation of electric energy supply contracts with Electricity Independent Private Producers (IPP).

In addition, the Executive Branch will create a Rural and Suburban Electrification Unit to ensure electrification of zones populated by low-income families, which will operate under the direction of the CDEEE, and for this purpose twenty per cent (20%) of benefits deposited in the Patrimonial Fund for Development will be transferred to it.

Finally, the Law establishes that the Executive Branch will have a term of ninety (90) days as of the date of enactment of the Law to issue the regulations for implementation of same, which must be prepared by the Superintendency of Electricity. Likewise, the Law states that during the transition period required for the creation and implementation of the Dominican Corporation of Electric State Enterprises (CDEEE) and the other companies and agencies created by the Law, the present Dominican Corporation of Electricity (CDE), will continue to act as holder of rights, duties and monitoring agency of public assets related to electricity, period during which the general manager of the Dominican Corporation of Electricity will exercise these functions until the Executive Branch declares concluded the transfer process of assets and rights to the new companies created by the Law.

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