



www.ogel.org

ISSN 1875-418X
Issue (Provisional)
Published January 2013

This article will be published in a future issue of OGEL (2013). Check website for final publication date for correct reference.

This article may not be the final version and should be considered as a draft article.

Terms & Conditions

Registered OGEL users are authorised to download and print one copy of the articles in the OGEL Website for personal, non-commercial use provided all printouts clearly include the name of the author and of OGEL. The work so downloaded must not be modified. **Copies downloaded must not be further circulated.** Each individual wishing to download a copy must first register with the website.

All other use including copying, distribution, retransmission or modification of the information or materials contained herein without the express written consent of OGEL is strictly prohibited. Should the user contravene these conditions OGEL reserve the right to send a bill for the unauthorised use to the person or persons engaging in such unauthorised use. The bill will charge to the unauthorised user a sum which takes into account the copyright fee and administrative costs of identifying and pursuing the unauthorised user.

For more information about the Terms & Conditions visit www.ogel.org

© Copyright OGEL 2013

OGEL Cover v2.3

Oil, Gas & Energy Law Intelligence

The Jordanian Electricity Regulatory Commission: Independence in Theory or in Practice? by Y.A. Failat

About OGEL

OGEL (Oil, Gas & Energy Law Intelligence): Focusing on recent developments in the area of oil-gas-energy law, regulation, treaties, judicial and arbitral cases, voluntary guidelines, tax and contracting, including the oil-gas-energy geopolitics.

For full Terms & Conditions and subscription rates, please visit our website at www.ogel.org.

Open to all to read and to contribute

OGEL has become the hub of a global professional and academic network. Therefore we invite all those with an interest in oil-gas-energy law and regulation to contribute. We are looking mainly for short comments on recent developments of broad interest. We would like where possible for such comments to be backed-up by provision of in-depth notes and articles (which we will be published in our 'knowledge bank') and primary legal and regulatory materials.

Please contact us at info@ogel.org if you would like to participate in this global network: we are ready to publish relevant and quality contributions with name, photo, and brief biographical description - but we will also accept anonymous ones where there is a good reason. We do not expect contributors to produce long academic articles (though we publish a select number of academic studies either as an advance version or an OGEL-focused republication), but rather concise comments from the author's professional 'workshop'.

OGEL is linked to **OGELFORUM**, a place for discussion, sharing of insights and intelligence, of relevant issues related in a significant way to oil, gas and energy issues: Policy, legislation, contracting, security strategy, climate change related to energy.

The Jordanian Electricity Regulatory Commission: Independence in Theory or in Practice?

1. Introduction:

Around the world, a number of countries have created or are in the process of creating National Regulatory Authorities to regulate their electricity sectors.¹ Amongst these countries is the Hashemite Kingdom of Jordan (Jordan) which has established the Electricity Regulatory Commission (ERC) in 2002.² In literature, it was stressed that the independence of national authorities is amongst the most important characteristics for achieving effective governance and regulation.³ Accordingly, with national objectives including the development of the electricity sector in the interest of the public, protection of undertakings, encouragement of investments and strengthening the role of the ERC in the advancement of the sector; it is the objective of this paper to assemble the fundamental principles for the autonomy of the ERC and evaluate whether the current framework is adequate to meet such objectives. The paper will first provide an overview on the history and development of the Jordanian Electricity Sector. Then, it will analyse the ERC's independence from the government and stakeholders. Finally, it will conclude by evaluating its autonomy with regard to its decision-making competencies and market sustainability and control.

¹ Fabrizio Gilardi and Martino Maggeti, 'the Independence of Regulatory Authorities' in David Levi-Fair (ed), *Handbook on the Politics of Regulation* (Edward Elgar Publishing 2010) 201; Sanford Berg, Ali Memon and Rama Skelton, 'Designing an Independent Regulatory Commission' (2000) Public Utility Research Centre, University of Florida 00-17, 6 <http://www.regulationbodyofknowledge.org/documents/004.pdf> accessed 18 March 2012.

² The Jordanian General Electricity Law No.64/2002 (The Electricity Law) Article 6 (A).

³ Jon Stern and John Cubbin, 'Regulatory Effectiveness: The Impact of Regulation and Regulatory Governance Arrangements on Electricity Industry Outcomes' (2005) The World Bank 3536; Warrick Smith, 'Utility Regulators – The Independence Debate' (1997) The World Bank, Public Policy for the Private Sector Note, No 127; Ioannis Kessides, 'Reforming Infrastructure - Privatization, Regulation; and Competition' (2004) The World Bank Research Report 28985; Roger Noll, 'Telecommunications Reform in Developing Countries' in Anne Krueger (ed.), *Economic Policy Reform: The Second Stage* (University of Chicago Press 2002).

2. The History of the Jordanian Market:

Jordan has witnessed the inauguration of the electricity industry in 1938, when a small company was established to provide electrical energy in 1947.⁴ Afterwards, it was converted into a public shareholding company named the Jordan Electricity Power Company (JEPCO) which under a concession; generated and distributed electricity to 64% of the total electricity consumers in the country.⁵ In 1961, the privately owned Irbid District Electricity Company (IDECO) was founded to generate and distribute electricity to another 23% of the consumers.⁶ Consequently, the government has appreciated the need for a ‘modern and reliable electricity system’ and thus created the Jordan Electricity Authority (JEA) by virtue of the General Electricity Law No.21/1967.⁷ The law stipulates that JEA is a self governing governmental institution holding a legal personality and independence with regard to administrative and financial matters.⁸ JEA enjoyed the right to generate, transmit and distribute electricity with the obligation to ensure that supply is accessible to the remaining 13% of consumers which are not covered by other licensed companies.⁹

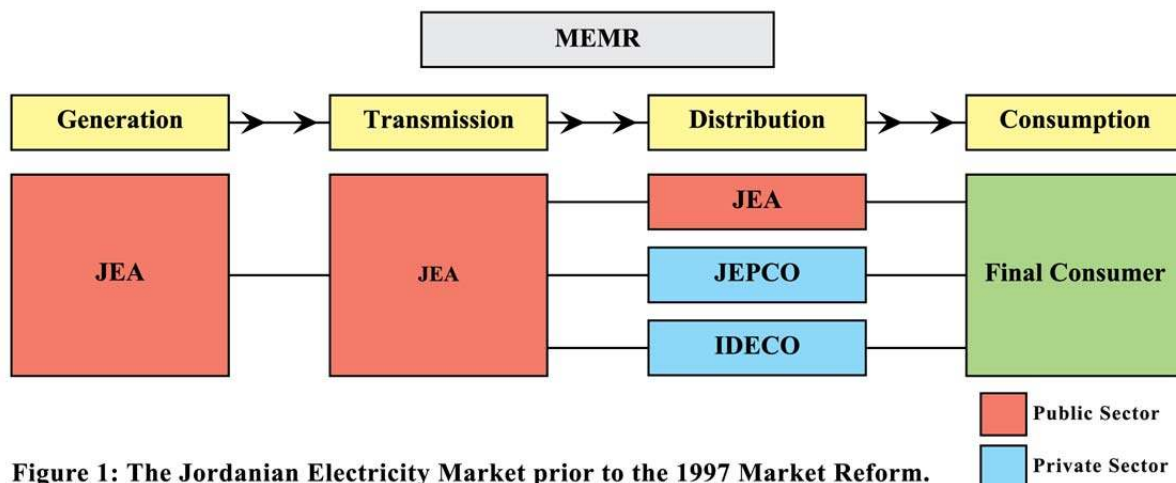


Figure 1: The Jordanian Electricity Market prior to the 1997 Market Reform.

⁴ Malek Kabariti, 'Identification of National Energy Policies and Energy Access in Jordan' (2005) National Energy Research Group, 14 <http://webfealb.fea.aub.edu.lb/fea/research/erg/web/Policy%20Paper%20Jordan.pdf> accessed 19 March 2012.

⁵ ERC 'Electricity and National Growth' (ERC, 2008) <http://www.erc.gov.jo/English/AboutTheSector/Pages/default.aspx> accessed 28 March 2012.

⁶ IDECO 'Establishment of the Company and its Evolution' (IDECO 2011) (Arabic) <http://www.ideco.com.jo/portal/WebForms/StartOfCompany.aspx> accessed 28 March 2012.

⁷ The General Electricity Law No.21/1967, Article 3; Kabariti (n 4).

⁸ The Electricity Law, Article 3(1).

⁹ Ibid, Article 3(2).

3. Privatisation and Liberalisation:

With the aim to attract investment, strengthen local capital market, install new generation plans and implement schematic projects, and cover local demand;¹⁰ the electricity sector amongst others, was subject to a privatisation reform administered by the Executive Privatization Commission which was created by the Council of Ministers.¹¹ The administration is in charge of placing broad policy and guidelines which serve the reform by detaching policy making, regulation and operation.¹² The committee envisaged that the primary policy making role should rest with the Ministry of Energy and Mineral Resources (MEMR); the regulation to be assigned to an independent Regulation Agency (IRA); and the investment or operational role to private utilities.¹³ In 1999, JEA was converted into a public share holding company called the National Electricity Power Company (NEPCO); whose activities were regulated by the 1996 Decree No. (10) as amended by the 1999 Decree No (13).¹⁴ As a step towards privatisation, the company was divided into three small companies as ordered in the Council of Ministers' Resolution of 1997. NEPCO retained transmission; distribution was assigned to the Electricity Distribution Company (EDCO); and Generation to the Central Electric Generation Company (CEGCO) along with other Independent Private Producers (IPPs).¹⁵

¹⁰ F. Abdulla and others, 'Status of Jordan Renewable Energy Sectors: Problems Needs, and Challenges' (Beirut Regional Workshop on Energy Efficiency and Renewable Energy Technology, Beirut, April 2004) 5.2.

¹¹ League of Arab States, *Arab States Business Law Handbook Vol 1* (IBP 2007) 108.

¹² Gil Feiler, *the Middle East in the New Millennium: Economic Development and Business Law* (Brill 2000) 124.

¹³ Mohamed Arafat, Rashid Aburas and Fawzi Kharbat, 'The Privatisation of the Electricity Supply Industry in Jordan' (17th World Energy Congress, Houston, September 1998).

¹⁴ NEPCO, 'Historical Glimpse' (NEPCO, 2011) http://www.nepco.com.jo/english_history.html accessed 28 March 2012.

¹⁵ Ibid.

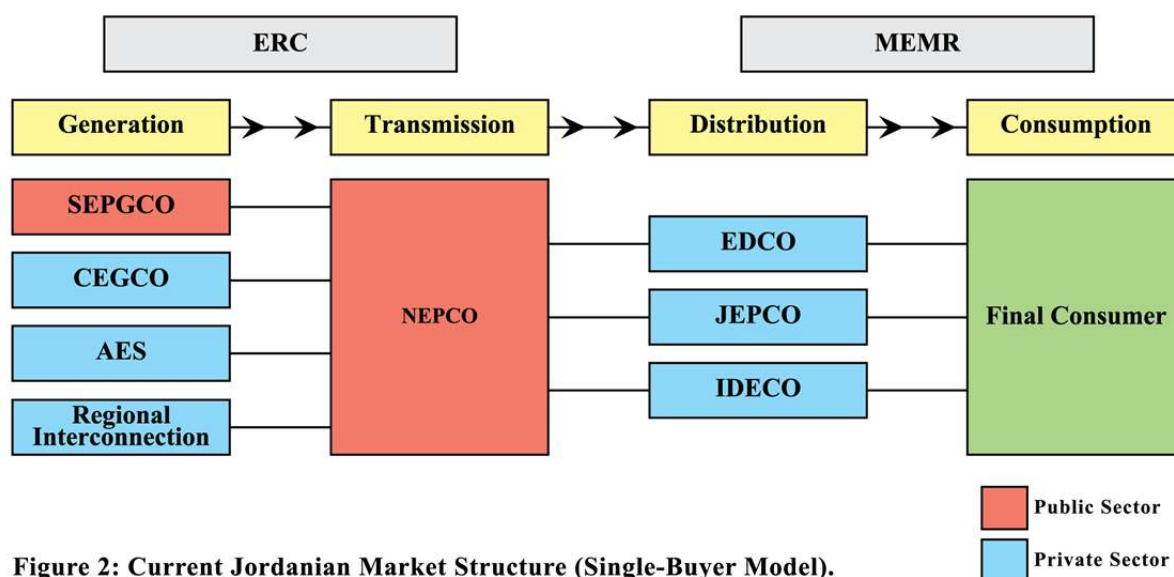


Figure 2: Current Jordanian Market Structure (Single-Buyer Model).

4. The ERC's Establishment and its Justification:

The Privatisation law No.25/2000 provides that the Council of Ministers is responsible for recommending and taking the necessary steps to establish, monitor and support an IRA which regulates at least a sector.¹⁶ Accordingly, the enactment of the General Electricity Law No.64/2002 (Electricity Law) not only further restructured and privatised the electricity sector by unbundling public companies¹⁷ but also established the ERC.¹⁸ The creation of such an agency is not a 'new phenomenon', IRAs have been widely used in the US and Europe for regulating a range of sectors including electricity.¹⁹ In fact, Brown provides that '...the independent regulator model has become the de facto governance model...in most of the 200 countries that created new national or regional regulatory systems...'²⁰

¹⁶ The Privatisation Law No.25/2000 found at <http://www.idlo.int/MF/Documents/Regulations/571.pdf> , Article 7 (A) 6.

¹⁷ Sami Karaki and others, 'Electricity Energy Access in Jordan, Lebanon and Syria' (2004) Working Paper for "Energy Access II" Working Group Global Network on Energy for Sustainable Development, 10 http://webfea.fea.aub.edu.lb/fea/research/erg/web/Energy%20Access%20Paper_AUB.pdf accessed 22 March 2012.

¹⁸ The Electricity Law, Article 6 (A).

¹⁹ Katja Johannsen, 'Regulatory Independence in Theory and Practice : a survey of Independent Energy Regulators in Eight European Countries' (2003) AKF Forlgat 'Institute of Local Government Studies, 15 <http://www.regulationbodyofknowledge.org/documents/031.pdf> accessed on 15 April 2012.

²⁰ Ashley Brown, Jon Stern, Bernard Tenebaum, *Handbook for Evaluating Infrastructure Regulatory Systems* (World Bank Publication 2006) 55-56; Abebe Ababayehu Chekol, 'What is the Advantage of an Independent

IRAs are commonly used as they limit political interference and thus, optimise market efficiency, reliability, service availability and consumer protection and credibility in the liberalisation process.²¹ The concept of IRAs under the EU Energy and Gas directives is seen as a mean to liberalisation.²² This is because, IRAs challenge market failures and safeguard the investor's capital by supervising natural monopolies and guaranteeing the investors access to transmission and distribution networks.²³ Furthermore, IRAs can enhance the regulation of the electricity sector as they offer higher knowledge and expertise²⁴ which is necessary to meet the demands of the complex electricity sector.²⁵ The essential market reform and the establishment of the ERC can be further justified when the Commission's statutory objectives are read.²⁶ Article 7 (A) of the Electricity Law stipulates the aims of the ERC which include, maintenance of effective structure; ensuring economic feasibility; improving and encouraging investment; ensuring safe, reliable and high quality electricity services; operational compliance with environmental law; ensuring security of supply; balancing consumer, investor and other stakeholders' rights; and the overreaching goal of developing the market from the current single-buyer model to a wholesale competitive as illustrated in figure 3.²⁷

Energy Regulation in Network-Bound Sectors' (2010) CEPMLP, University of Dundee
www.dundee.ac.uk/cepmlp/gateway/index.php?news=30883 accessed 15 April 2012.

²¹ OECD, 'Designing Independent and Accountable Regulatory Authorities for High Quality Regulation' (Proceedings of an Expert Meeting, London, January 2005) 7.

²² Peter Evans, *Liberalizing Global Trade in Energy Services* (American Enterprise Institute 2002) 50.

²³ S Breyer, 'Typical Justifications for Regulation' in Robert Baldwin, Colin Scott and Christopher Hood, *a Reader on Regulation* (Oxford University Press 1998) 64.

²⁴ Giandomenico Majone, *Regulating Europe* (Psychology Press 1996)12.

²⁵ Phillip Andrews-Speed, *Energy Policy and Regulation in the People's Republic of China* (Kluwer Law International 2004) 158.

²⁶ *Ibid*, 156.

²⁷ The Electricity Law, Article 7 (A).

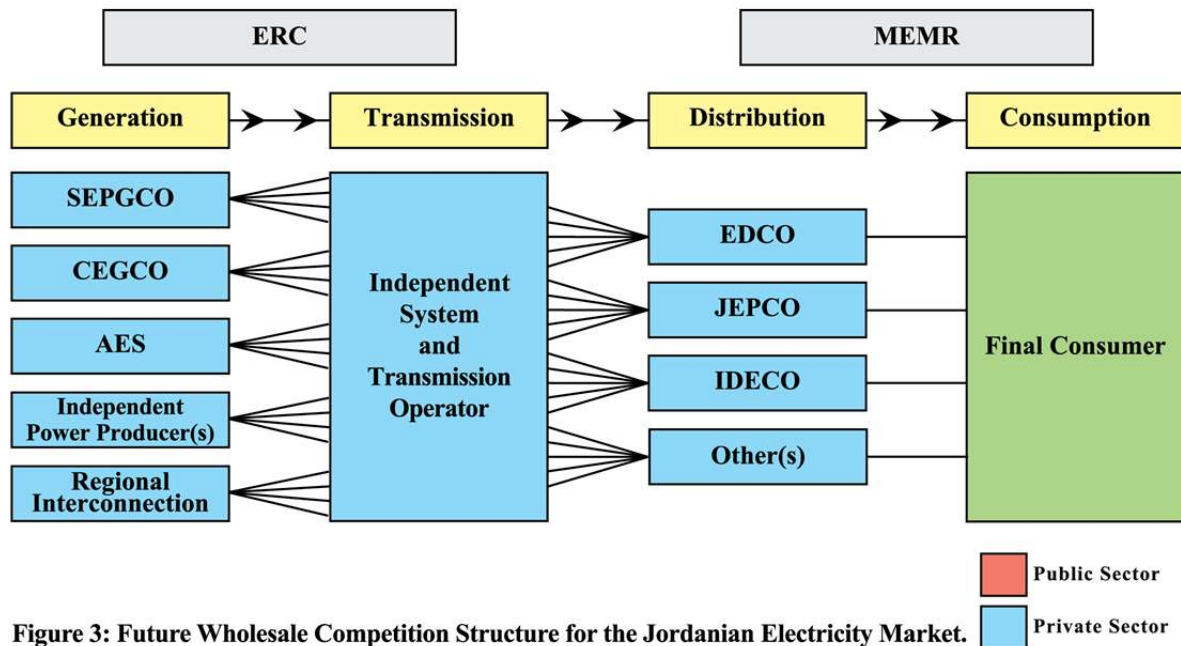


Figure 3: Future Wholesale Competition Structure for the Jordanian Electricity Market.

5. The Independence of the ERC:

As noted earlier, independence is necessary for the effective governance of the ERC. In evaluating such autonomy, three dimensions must be considered;²⁸ independence from the government, independence from stakeholders and independence in decision-making competencies.²⁹

5.1. Independence from the Government:

Freedom from political pressure and influence is vital to maintain the successful functionality and credibility of an IRA.³⁰ However, the ERC is an apparatus of the state and for that reason there are limits to the extent of independence it can enjoy.³¹ The concept of an IRA has triggered confusion and misunderstanding amongst politicians as the notion may be seen as

²⁸ Mark Jamison, 'Leadership and the Independent Regulator' (2005) World Bank Policy Research Paper 3620, 3 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=755067 accessed 01 April 2012.

²⁹ These dimensions mirror the collective view of the majority of authors including Fesler's definition of independence: 'Independence of control by the governor and legislature, independence of control over utility companies and independence in the sense of integrity and impartiality. Anders Larsen and others, 'Independent Regulatory Authorities in European Electricity Markets' (2006) 34 Energy Policy 2858, 2860; James Fesler, 'The Independence of State Utility Commissions, II' (1941) 3 (1) The Journal of Politics 42, 61

³⁰ Berg (n 1) 6.

³¹ Jiabin Hu, 'Assessing the Governance of the Independent Regulatory Agencies in China' (Dphil Thesis, University of South California 2009) 40.

‘awkward, outside of normal governance processes, democratically dangerous or even unconstitutional.’³² In fact, in Jordan like the Netherlands, assigning full independence to the IRA from the government may result in unconstitutional outcomes.³³

The 1952 Constitution of Jordan allows regulatory privileges and administrative rights to be assigned to an IRA but limits the degree of its independence from the government.³⁴ The Constitution provides that the Council of Ministers ‘...shall be entrusted with the responsibility of administering all affairs of the State, internal and external.’³⁵ Such administration may be assigned to a person or body if entrusted by law.³⁶ However, the Prime Minister and Ministers remain ‘collectively responsible before the chamber of Deputies in respect of public policy in the state.’³⁷ Upon such delegation a regulated definition of the relevant duties assigned to the Prime Minister, Ministers and the Council need to be drafted and ratified.³⁸

It can be seen that the Constitution dictates governmental interference in the affairs of the ERC and limits its independence. This explains Article 6 of the Electricity Law which establishes the commission and entrusts it with a juridical personality, financial, and administrative independence;³⁹ yet, requires it to be related to the Prime Minister.⁴⁰ It may be argued that the relational requirement between the ERC and the Prime Minister is included in the Electricity Law to satisfy the Constitution rather than an attempt in hindering the independence of the ERC. This is based on the fact that there is little evidence of discretionary powers or exclusive competencies assigned to the Prime Minister and thus

³² OECD, *Proceedings of the First APEC-OECD Workshop on Regulatory Reform: Beijing, China, September 2001* (OECD Publishing 2001) 96.

³³ Ibid.

³⁴ The Constitution of the Hashemite Kingdom of Jordan 1952, Article 45 (1), Article 45 (2) and Article 51.

³⁵ The Constitution of the Hashemite Kingdom of Jordan 1952, Article 45 (1).

³⁶ Ibid.

³⁷ Ibid, Article 51. As amended in the Official Gazette No. 1380 of 4/5/1958 and 1396 of 1/9/1958.

³⁸ Ibid, Article 45 (2).

³⁹ The Electricity Law, Article 6 (A).

⁴⁰ Ibid, Article 6(B).

retaining an arm's length relationship between the ERC and the government.⁴¹ The Electricity Law refers to the Prime Minister and the Ministers mainly in relation to policy making⁴² and the appointment of the Commissioners.⁴³

The ERC consists of the Committee and Administrative staff.⁴⁴ It is administered and supervised by five Commissioners including the Chief and Deputy Chief Commissioners who are appointed by the Council of Ministers upon the recommendation of the Prime Minister.⁴⁵ It is clear that the government is retaining basic control through the power of appointment. This type of political interference however, will always be naturally found in all areas of regulation.⁴⁶ Jordan has chosen this type of leadership to avoid the shortcomings of individual regulation such as undue personalisation of the process and vulnerability to regulatory capture.⁴⁷ Moreover, commission-type leadership offers more extensive expertise and a thorough standpoint on regulatory challenges.⁴⁸ The Commissioners are appointed for a term of four years⁴⁹ which can only be renewed once.⁵⁰ The Commissioners are protected as they cannot be removed by the Prime Minister but may be dismissed in scenarios stipulated in Article 17 of the Electricity Law which include: expiry of term; resignation; absence from meetings; inability to perform duties; sentencing for criminal behaviour amongst other things.⁵¹ While such commissioners cannot be dismissed without a just cause, it is doubtful that they would be reappointed if their views on general policy are not in line with the

⁴¹ Katja Johannsen, Lene Pedersen and Eva, 'Independent Regulatory Authorities - A Comparative Study of European Energy Regulators' (2004) AKF Forlgat 'Institute of Local Government Studies', 21 www.akf.dk/udgivelser/2004/pdf/ira.pdf accessed 03 April 2012.

⁴² The Electricity Law, Article 4 (1).

⁴³ Ibid, Articles 8, 11, and 12.

⁴⁴ Ibid, Article 6 (C).

⁴⁵ Ibid, Article 8 (A).

⁴⁶ Martin Minogue and Ledvinia Carino, *Regulatory Governance in Developing Countries* (Edward Elgar Publishing 2006) 74.

⁴⁷ DPE, 'Governance and Accountability in the Regulatory Process: Policy Proposals' (2000) Working Paper, 11 <http://www.transport.ie/upload/general/3661-0.pdf> accessed 02 April 2012.

⁴⁸ Ibid.

⁴⁹ The Electricity Law, Article 12 (A) 1.

⁵⁰ Ibid, Article 12 (A) 2.

⁵¹ The Electricity Law, Article 17.

appointer.⁵² In other words commissioners may take instructions from the appointee in order to secure their changes of reappointment.⁵³ Therefore, provisions against reappointment are recommended to prevent Commissioners from acting in accordance with the appointing authority.⁵⁴ This is mainly to steer clear of scenarios where commissioners may take instructions from the appointment to secure their chances of reappointment.⁵⁵

Jordan is not alone in departing from an agency head or a director leadership. In Europe commission-type leadership is used in Belgium, Denmark, France, Greece, Italy, Portugal, Spain and the United Kingdom.⁵⁶ In most states of the EU, regulators are appointed by Ministers and hold tenure for 4-7 years which cannot be renewed or be terminated for policy reasons.⁵⁷ The US Federal Energy Regulatory Commission consists of five Commissioners appointed by the President upon the consent of the Senate for a five year term.⁵⁸ In Russia, the procedure is similar however; it is only the Chairman which is appointed by the President whereas the other commissioners are appointed by the government.⁵⁹ It's been noted that the Chairman is seen as a representative of the state and the Commissioners representatives of the government. This is problematic as the regulator must be a creature of the state rather than the government.⁶⁰

Nonetheless, this does not suffice to determine the independence of the ERC; governments can influence regulators even if they are formally independent.⁶¹ They can do so by

⁵² Francese Trillas, 'Independent Regulators: Theory, Evidence and Reform Proposals' (2010) Working Paper WP - 860, May 2010 at 12.

⁵³ Larsen (n 29) 2861.

⁵⁴ Lene Holm Pedersen, 'Transfer and Transformation in Process of Europeanisation' (2006) 45 *European Journal of Political Research* 985, 1000.

⁵⁵ Larsen (n 29) 2861.

⁵⁶ Larsen (n 29) 2862.

⁵⁷ *Ibid.*

⁵⁸ Fred Bosselman, Joel Eisen and Jimi Rossi, *Energy, Economics, and the Environment: Cases and Materials* (Foundation Press 2010) 63.

⁵⁹ The World Bank, 'Policy Perspective and Analysis of the Regulatory Regime in the Restructured Russian Power Sector' (2004) A Policy Note, Infrastructure and Energy Services Department Europe and Central Asia Region 36087, 8 <http://documents.worldbank.org/curated/en/2004/06/6771239/policy-perspective-analysis-regulatory-regime-restructured-russian-power-sector-policy-note> accessed 12 March 2012.

⁶⁰ *Ibid.*

⁶¹ Larsen (n 29) 2860.

decreasing their budgets or dismissing unwanted regulators amongst other measures.⁶² Thus, independence is relative to the IRAs organisational autonomy, particularly, with regard to their policy and finances.⁶³ On this regard, the government must ensure that the ERC is afforded with the necessary tools and resources to deliver its objectives.⁶⁴

Creating a balance between regulatory autonomy and independence with sustainable financing is easier said than done. There is no ideal answer and the fact remains that most governments financially contribute to their IRAs; rendering them ‘at least partly vulnerable to political influence.’⁶⁵ To diminish dependence on this regard, ring-fenced funds may be sought.⁶⁶ Moreover, a well balanced and diverse funding scheme which will enhance the IRA’s independence is appropriate.⁶⁷ Like most IRAs,⁶⁸ the ERC’s principal financial source stems from fees levied on the regulated companies for the grant of licenses, renewal of licenses and other miscellaneous and administrative services.⁶⁹ The ERC may be allocated governmental funding in cases of emergency or by way of grants and income from subsidies.⁷⁰ This hybrid funding mechanism is applied by both the UK and the US.⁷¹ Moreover, the ERC has the power and the liberty to implement its decisions, prepare its own budgets, supervise its financial and administrative affairs, and most importantly decide on its internal organisation and regulatory structure amongst other powers which illustrate its organisational autonomy.⁷²

⁶² Ibid.

⁶³ Johannsen (n 41) 11.

⁶⁴ BIS, ‘Principles for Economic Regulation’ (April 2011) UK Department for Business, Innovation & Skills, 7 <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/p/11-795-principles-for-economic-regulation> accessed 06 April 2012.

⁶⁵ United Nations Industrial Development Organisation, Training Manual on Sustainable Energy Regulation and Policymaking for Africa (UNIDO 2006) 5-5.

⁶⁶ Ibid.

⁶⁷ Academy for Educational Development, ‘Comparative Study of Regulatory Fiscal Autonomy around the World’ (2003) Fiscal Autonomy Review Prepared for the Philippine Regulatory Commission, 1 <http://www.globalregulatorynetwork.org/Resources/AEDFiscalAutonomy.pdf> accessed 05 April 2012.

⁶⁸ Ibid.

⁶⁹ The Electricity Law, Articles 25(A), 25 (B).

⁷⁰ Ibid, Articles 25 (C), 25 (D).

⁷¹ Academy for Educational Development (n 67).

⁷² The Electricity Law, Article 13 (B).

5.2. Independence from Stakeholders:

The autonomy of the ERC is not only dependent on limiting governmental influence but also analogous to pressure from other stakeholders.⁷³ Pederson identifies three main situations where the ERC's independence may suffer.⁷⁴ Firstly, the regulators may support the regulated firms as they are drawn to the possibility of obtaining a job promise or receiving sponsorship for academic research amongst other indirect bribes.⁷⁵ Secondly, the regulator may have direct or indirect interest in the electricity sector.⁷⁶ Thirdly, the regulator can be defrauded by being delivered false information or rather being subject to 'information asymmetry.'⁷⁷ This is particularly the case in manipulating accounting data which would be expensive and challenging for the regulator to validate.⁷⁸

To mitigate the above, the Electricity Law has encompassed provisions which ensure that the regulator is not easily captured by economic interests of the regulated industry. Upon appointment, the Commissioners need to meet several criteria which not only relate to nationality, civil competency and education but also their personal interest in the sector.⁷⁹ The Electricity Law prohibits the appointment of Commissioners who have, or are related to a person who has interest in any business related to the electricity sector or engaged in any related activity.⁸⁰ Moreover, the appointee cannot be an employee of any of the regulated firms during the preceding year of the date of appointment.⁸¹ The above applies also through

⁷³ Cecilia Ugaz, 'Consumer Participation and Pro-poor Regulation in Latin America' in Cecilia Ugaz and Catherine Price (eds.), *Utility Privatisation and Regulation: A Fair Deal for Consumer?* (Edgwar Elgar Publishing 2003) 90.

⁷⁴ Pedersen (n 54).

⁷⁵ Frederic Boehm, 'Regulatory Capture Revisited - Lessons from Economics of Corruption' (2007) Internet Centre for Corruption Research Working Paper 23, 16 [www.icgg.org/downloads/Boehm - Regulatory Capture Revisited.pdf](http://www.icgg.org/downloads/Boehm_-_Regulatory_Capture_Revisited.pdf) accessed 09 April 2012.

⁷⁶ Johannsen (n 41) 22.

⁷⁷ Anthony Ogus, 'Regulatory Institutions and Structures' (2002) 73 *Annals of Public and Cooperative Economics* 627, 631.

⁷⁸ Boehm (n 75); Information Asymmetry is defined as the "insufficiency of information of the other party during the process of transaction, Yuanxun Li and Zhenhai Mei, 'Research on Risk Aversion of Human Resources Outsourcing' in Qingyuan Zhou (ed.) *Advances in Applied Economics, Business and Development: International Symposium, 2011, Dalian, China, August 6-7, 2011 Proceedings* (Springer 2012) 56

⁷⁹ The Electricity Law, Article 11.

⁸⁰ *Ibid*, Article 11 (E).

⁸¹ *Ibid*, Article 11 (F).

the period of the term,⁸² and for another year following its end.⁸³ Incompliance with these provisions results in the dismissal of the Commissioner and an indictment for the ‘crime of misutilisation of public office or breach of trust, as the case may be, and shall be liable to reimburse all the sums or benefits gained by him as a result of committing such violation...’⁸⁴

With regard to information asymmetry, its extent depends on the effectiveness of the accounting environment. In order to mitigate it and have an economically efficient system for financial reporting; it is necessary to hold professional independent auditors, and an independent standard setting and enforcement body.⁸⁵ In Jordan, the Companies Law No.22/1997 requires all companies to prepare financial statements every six months and also publish information such as their balance sheet, profit and auditor’s report.⁸⁶ The reports must be prepared in the light of ‘internationally recognised accounting and auditing principles which can justly’ illustrate its findings.⁸⁷ Moreover, the Jordanian Securities Commission Law No.23/1997 and the Directives of disclosures, auditing, and accounting standards No. 1/1998 requires companies to apply International Financial Reporting Standards (IFRS).⁸⁸ The implementation of IFRSs reduces information asymmetry, smooth the communication between interested parties, and lower various related costs.⁸⁹

Furthermore, Information asymmetry may be resolved by competition as it forces market players to disclose their personal information without the intervention of the IRA.⁹⁰ Such a

⁸² Ibid, Article 15 (A).

⁸³ Ibid, Article 15 (B).

⁸⁴ Ibid, Articles 15 (C) 1 and 17 (G).

⁸⁵ Etty Wulandari and Asheq Rahman, ‘A Cross-Country Study on the Quality Acceptability; and Enforceability of Accounting Standards and the Value Relevance of Accounting Earning’ (2004) Working paper OECD, 6 www.oecd.org/dataoecd/6/16/33735584.pdf accessed 14 April 2012.

⁸⁶ The Jordanian Companies Law No.22/1997 Articles 141 and 142.

⁸⁷ Ibid, Article 195.

⁸⁸ The World Bank, Report on the Observance of Standards and Codes for the Hashemite Kingdom of Jordan (2004) Accounting and Auditing Assessment (ROSC) 35087, 4 www.worldbank.org/ifa/rosc_aa_jor.pdf accessed 02 April 2012.

⁸⁹ Feng Li and Nemit Shroff, ‘Financial Reporting Quality and Economic Growth’ (Conference on Teaching and Learning in Accounting, New York, August 2009) 2.

⁹⁰ Ahmed Galal, ‘Utility Regulation Versus BOT Schemes: An Assessment of Electricity Sector Reforms in Arab Countries’ (2001) The Egyptian Centre for Economic Studies, Working Paper 63, 6 http://www.eces.org.eg/publications/View_Pub.asp?p_id=10&p_detail_id=165 accessed 14 April 2012.

remedy is particularly appropriate when information asymmetry is the result of vertical-integration and policy-induced restrictions which provide ‘fertile conditions for unequal distribution of information’ between and operator and a regulator.⁹¹ Advances in technology have significantly increased the possibility of using this option.⁹² As noted in section 4, Jordan’s electricity market is still not a competitive one. The progress towards such a market is supported by the market reforms and the law which aid in tackling information asymmetry. However, in the meantime, the ERC could use mechanisms such as competition by comparison or rather competition for the market (auction) as they reduce the firms’ information advantage and mitigate their information rent.⁹³

5.3.Independent Decision-Making Competencies:

The third dimension in evaluating the independence of the ERC is the extent of its decision-making competencies. There are different types of agencies on this regard, IRAs which are ‘truly regulatory and possess actual decision-making powers and agencies that are merely consultative.’⁹⁴ For the ERC to prove to be the former, it must enjoy powers to lay down rules rather than merely producing services or administrative tasks.⁹⁵

Article 7 (B) of the Electricity Law grants the ERC with competencies which include the power to grant licenses; regulate persons engaged in generation, transmission, supply, distribution and system operation; set tariffs amongst other fees and their calculation methodologies; decide on technical standards with regard to electric appliances and installations; partake in implementing environmental standards in accordance with legislation; provide expert advice and information on the sector; and advocate for a competitive electricity market.⁹⁶ Furthermore, the ERC has the power and the responsibility to settle disputes between the licensees and consumers or between licensees’ interests.⁹⁷ Such disputes may relate to matter of supply and connection of electric power, quality of service

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Hu (n 31) 44.

⁹⁵ Johannsen (n 41) 20.

⁹⁶ The Electricity Law, Article 7 (B).

⁹⁷ Ibid, Article 9 (F).

and electric tariffs amongst other issues related to the sector.⁹⁸ In 2010, the ERC dealt with a number 196 complaints relating to energy and supply quality.⁹⁹

Such a set of competencies and powers is advantageous and illustrates the pragmatic independence of the ERC in being truly regulatory rather than consultative.¹⁰⁰ However, this is not the case with regards to the competition of the market. The ERC only has the power to make recommendations to the Ministry on how to achieve a competitive market structure.¹⁰¹ Introducing competition is insufficient; an IRA shall also mandate the prohibition of ‘abuse of dominant position’ in the market which threatens the sector.¹⁰² Setting discriminatory rates, refusal of service to customers, acts of monopoly or any other acts consisting of abuse of dominant position are prohibited under Jordanian Competition Law.¹⁰³ The ERC is responsible to report any such conduct to the MEMR.¹⁰⁴

With regard to decision-making competencies, the ERC is more independent than the Russian and the majority of the European agencies.¹⁰⁵ Russia, which is one of the top producers and consumers of electric power in the world and has recently restructured its power sector, uncommonly holds a fractured regulatory jurisdiction in which the authority is distributed amongst the various agencies whose powers and independence vary.¹⁰⁶ For instance, the Regional Regulatory Commission and the Federal Tariff Service hold limited independence and autonomy in setting tariffs as the Ministry of Economic Development and Trade will play the final and discretionary role on such tasks.¹⁰⁷ Additionally, unlike the ERC and other

⁹⁸ Ibid, Article 18 (A).

⁹⁹ Electricity Regulatory Commission, ‘Annual Report 2010’ (2011) 13
<http://www.erc.gov.jo/English/Publication/Documents/annual%20reprot%202010.pdf> accessed on 01 March 2012.

¹⁰⁰ Brown (n 20) 64.

¹⁰¹ The Electricity Law, Article 7 (B) 7.

¹⁰² Brown (n 20) 65.

¹⁰³ The Jordanian Competition Law No.33/2004, Article 6.

¹⁰⁴ Ibid, Articles 48 (A), 48 (B).

¹⁰⁵ Please see Appendix 1.

¹⁰⁶ The World Bank (n 59) 6; Energy Information Administration, ‘Russia’ (EIA 2012)
www.eia.gov/countries/cab.cfm?fips=RS accessed 15 November 2012.

¹⁰⁷ Ibid.

agencies, Russian regulators are assigned powers via a sub-delegation of the government.¹⁰⁸ In Europe, most regulators are able to set tariffs, issue licenses and settle disputes but some hold only an advisory role on certain matters.¹⁰⁹

6. Conclusion:

This paper has only provided a brief summation on the independence of the ERC. It is clear that the ERC enjoys considerable autonomy from the government and stakeholders. Moreover, it enjoys independence with regard to its administration, finances and decision-making competencies. The analysis however, was based on theory and academic principles which may be incompatible with the pragmatic view of circumstances. The ERC must be factually independent as it ‘may adopt all formal trappings of an independent regulatory entity, while behind the legal facade, the [government] retains effective control over the fundamental regulatory decision’ such as tariff levels.¹¹⁰ All in all, it may well be said that, to a certain extent and from a first level planning perspective, effective legislation does exist in Jordan and it is adequate to provide the ERC with the necessary autonomy in order to meet national objectives and protect national interests. Such effective legislation could be further supported by implementation directives and instruments as well as coherent inter-governmental dialogue.

¹⁰⁸ Ibid, 11.

¹⁰⁹ See Appendix 1; Anders Larsen and others, ‘Independent Regulatory Authorities in Europe (SNF-SESSA Conference: Harmonising Effective Regulation, Bergen, March 2005) 15.

¹¹⁰ The World Bank (n 59) 3.

Bibliography

Primary Sources

Laws

- The Constitution of the Hashemite Kingdom of Jordan 1952.
- The Jordanian General Electricity Law No.21/1967.
- The Jordanian Companies Law No.22/1997.
- The Jordanian Securities Commission Law No.23/1997
- The Jordanian Privatisation Law No.25/2000.
- The Jordanian General Electricity Law No.64/2002.
- The Jordanian Competition Law No.33/2004.

Decrees and Resolutions

- The 1996 Decree No. (10).
- The Council of Ministers' Resolution taken October 10 of 1997.
- The 1999 Decree No (13).

Secondary Sources

Books

- Andrews-Speed P, *Energy Policy and Regulation in the People's Republic of China* (Kluwer Law International 2004).
- Baldwin R, Scott C and Hood C, *A Reader on Regulation* (Oxford University Press 1998).
- Bosselman F, Eisen J and Rossi J, *Energy, Economics, and the Environment: Cases and Materials* (Foundation Press 2010).
- Brown A, Stern J, Tenebaum B, *Handbook for Evaluating Infrastructure Regulatory Systems* (World Bank Publication 2006).
- Evans P, *Liberalizing Global Trade in Energy Services* (American Enterprise Institute 2002).
- Feiler G, *the Middle East in the New Millennium: Economic Development and Business Law* (Brill 2000).
- Krueger A (ed.), *Economic Policy Reform: The Second Stage* (University of Chicago Press 2002).
- League of Arab States, *Arab States Business Law Handbook Vol 1* (IBP 2007).

- Levi-Fair David (ed.), *Handbook on the Politics of Regulation* (Edward Elgar Publishing 2010).
- Majone G, *Regulating Europe* (Psychology Press 1996).
- Minogue M and Carino L, *Regulatory Governance in Developing Countries* (Edward Elgar Publishing 2006).
- OECD, *Proceedings of the First APEC-OECD Workshop on Regulatory Reform: Beijing, China, September 2001* (OECD Publishing 2001).
- United Nations Industrial Development Organisation, *Training Manual on Sustainable Energy Regulation and Policymaking for Africa* (UNIDO 2006).
www.unido.org/fileadmin/media/documents/pdf/training_manual_on_sustainable_ene_rgy_regulation_and_policymaking_for_Africa.pdf accessed April 2012.
- Ugaz C and Price C (eds.), *Utility Privatisation and Regulation: A Fair Deal for Consumer?* (Edgwar Elgar Publishing 2003).
- Zhou Q (ed.) *Advances in Applied Economics, Business and Development: International Symposium, ISAEBD 2011, Dalian, China, August 6-7, 2011 Proceedings* (Springer 2012).

Articles

Hard Copy Journal Articles

- Fesler J, 'The Independence of State Utility Commissions, II' (1941) 3 (1) the Journal of Politics 42.
- Larsen A and others, 'Independent Regulatory Authorities in European Electricity Markets' (2006) 34 Energy Policy 2858.
- Ogus A, 'Regulatory Institutions and Structures' (2002) 73 Annals of Public and Cooperative Economics 627, 631.
- Pedersen L, 'Transfer and Transformation in Process of Europeanisation' (2006) 45 European Journal of Political Research 985.
- Stern J, 'What Makes an Independent Regulator Independent?' (1997) 8 (2) Business Strategy Review 1.

Working Papers

- Academy for Educational Development, 'Comparative Study of Regulatory Fiscal Autonomy around the World' (2003) Fiscal Autonomy Review Prepared for the

Philippine Regulatory Commission

<http://www.globalregulatorynetwork.org/Resources/AEDFiscalAutonomy.pdf>

accessed 05 April 2012.

- Berg S, Ali Memon and Rama Skelton, 'Designing an Independent Regulatory Commission' (2000) Public Utility Research Centre, University of Florida 00-17
<http://www.regulationbodyofknowledge.org/documents/004.pdf> accessed 18 March 2012.
- BIS, 'Principles for Economic Regulation' (April 2011) UK Department for Business, Innovation & Skills <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/p/11-795-principles-for-economic-regulation> accessed 06 April 2012.
- Boehm F, 'Regulatory Capture Revisited - Lessons from Economics of Corruption' (2007) Internet Centre for Corruption Research Working Paper 23
[www.icgg.org/downloads/Boehm - Regulatory Capture Revisited.pdf](http://www.icgg.org/downloads/Boehm_-_Regulatory_Capture_Revisited.pdf) accessed 09 April 2012.
- Chekol A, 'what is the Advantage of an Independent Energy Regulation in Network-Bound Sectors' (2010) CEPMLP, University of Dundee
www.dundee.ac.uk/cepmlp/gateway/index.php?news=30883 accessed 15 April 2012.
- DPE, 'Governance and Accountability in the Regulatory Process: Policy Proposals' (2000) Working Paper, 11 <http://www.transport.ie/upload/general/3661-0.pdf> accessed 02 April 2012.
- Galal A, 'Utility Regulation Versus BOT Schemes: An Assessment of Electricity Sector Reforms in Arab Countries' (2001) The Egyptian Centre for Economic Studies, Working Paper 63
http://www.eces.org.eg/publications/View_Pub.asp?p_id=10&p_detail_id=165 accessed 14 April 2012.
- Jamison M, 'Leadership and the Independent Regulator' (2005) World Bank Policy Research Paper 3620 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=755067 accessed 01 April 2012.
- Johannsen K, 'Regulatory Independence in Theory and Practice : a survey of Independent Energy Regulators in Eight European Countries' (2003) AKF Forlgat 'Institute of Local Government Studies
<http://www.regulationbodyofknowledge.org/documents/031.pdf> accessed on 15 April 2012.

- Johannsen K, Pedersen P and Moll E, 'Independent Regulatory Authorities - A Comparative Study of European Energy Regulators' (2004) AKF Forlgat ' Institute of Local Government Studies', 21 www.akf.dk/udgivelser/2004/pdf/ira.pdf accessed 03 April 2012.
- Kabariti M, 'Identification of National Energy Policies and Energy Access in Jordan' (2005) National Energy Research Group
<http://webfealb.fea.aub.edu.lb/fea/research/erg/web/Policy%20Paper%20Jordan.pdf> accessed 19 March 2012.
- Karaki S and others, 'Electricity Energy Access in Jordan, Lebanon and Syria' (2004) Working Paper for "Energy Access II" Working Group Global Network on Energy for Sustainable Development
http://webfea.fea.aub.edu.lb/fea/research/erg/web/Energy%20Access%20Paper_AUB.pdf accessed 22 March 2012.
- Kessides I, 'Reforming Infrastructure - Privatization, Regulation; and Competition' (2004) The World Bank Research Report 28985 www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2004/06/16/000012009_20040616143838/additional/310436360_20050007115940.pdf accessed 15 April 2012.
- Smith W, 'Utility Regulators – The Independence Debate' (1997) The World Bank, Public Policy for the Private Sector Note, No 127
www.ictregulationtoolkit.org/en/Document.2848.pdf accessed 18 March 2012.
- Stern J and Cubbin J, 'Regulatory Effectiveness: The Impact of Regulation and Regulatory Governance Arrangements on Electricity Industry Outcomes' (2005) The World Bank 3536 <elibrary.worldbank.org/content/workingpaper/10.1596/1813-9450-3536> accessed 18 March 2012.
- The World Bank, 'Policy Perspective and Analysis of the Regulatory Regime in the Restructured Russian Power Sector' (2004) A Policy Note, Infrastructure and Energy Services Department Europe and Central Asia Region 36087
<http://documents.worldbank.org/curated/en/2004/06/6771239/policy-perspective-analysis-regulatory-regime-restructured-russian-power-sector-policy-note> accessed 12 March 2012.

- The World Bank, 'Report on the Observance of Standards and Codes for the Hashemite Kingdom of Jordan' (2004) Accounting and Auditing Assessment (ROSC) 35087 <www.worldbank.org/ifa/rosc_aa_jor.pdf> accessed 02 April 2012.
- Wulandari E and Rahman A, 'A Cross-Country Study on the Quality Acceptability; and Enforceability of Accounting Standards and the Value Relevance of Accounting Earning' (2004) Working paper OECD, 6 www.oecd.org/dataoecd/6/16/33735584.pdf accessed 14 April 2012.

Other Secondary Sources

Conference Papers

- Abdulla F and others, 'Status of Jordan Renewable Energy Sectors: Problems Needs, and Challenges' (Beirut Regional Workshop on Energy Efficiency and Renewable Energy Technology, Beirut, April 2004).
- Arafat M, Aburas R and Kharbat F, 'The Privatisation of the Electricity Supply Industry in Jordan' (17th World Energy Congress, Houston, September 1998).
- Feng Li and Nemit Shroff, 'Financial Reporting Quality and Economic Growth' (Conference on Teaching and Learning in Accounting, New York, August 2009).
- Larsen A and others, 'Independent Regulatory Authorities in Europe (SNF-SESSA Conference: Harmonising Effective Regulation, Bergen, and March 2005).
- OECD, 'Designing Independent and Accountable Regulatory Authorities for High Quality Regulation' (Proceedings of an Expert Meeting, London, January 2005)

Thesis

- Hu J, 'Assessing the Governance of the Independent Regulatory Agencies in China' (Dphil Thesis, University of South California 2009).

Websites

- Energy Information Administration, 'Russia' (EIA 2012) www.eia.gov/countries/cab.cfm?fips=RS accessed 15 November 2012.
- ERC 'Electricity and National Growth' (ERC, 2008) <http://www.erc.gov.jo/English/AboutTheSector/Pages/default.aspx> accessed 28 March 2012.

- IDECO 'Establishment of the Company and its Evolution' (IDECO 2011) (Arabic)
<http://www.ideco.com.jo/portal/WebForms/StartOfCompany.aspx> accessed 28 March 2012
[2012](#) accessed 26 March 2012.

Newspaper Articles

- Luck T, 'Government backs down from electricity price hike' *Jordan Times* (Amman, 12 March 2012) <jordantimes.com/government-backs-down-from-electricity-price-hike> Accessed 12 April 2012.
- Luck T, 'Committee to Develop Electricity Tariff Rise with 'Limited Impact'' *Jordan Times* (Amman, 18 March 2012) <jordantimes.com/committee-to-develop-electricity-tariff-rise-with-limited-impact> accessed 12 April 2012.

Other sources

- Electricity Regulatory Commission, 'Annual Report 2010' (2011)
<http://www.erc.gov.jo/English/Publication/Documents/annual%20reprot%202010.pdf>
accessed on 01 March 2012.

Appendix.1

Decision-Making Competencies Comparative Schedule:

Country	Tariffs	Licensing	Disputes	Enforcement
Austria	F	P	P	N
Denmark	F	N	F	F
Finland	F	F	N	F
France	P	N	F	F
Greece	P	P	F	F
Ireland	F	F	F	F
Italy	F	P	F	F
Jordan	F	F	F	F
Luxemburg	P	N	No Answer	F
Netherlands	F	F	P	F
Portugal	F	N	F	P
Russia	P	No Answer	F	P
Spain	P	P	P	N
Norway	F	F	F	F
Sweden	F	F	F	P
UK	F	P	F	F

F: Fully competent; P: Partly competent; N: Not competent.

Sources:

- The Jordanian General Electricity Law No.64/2002.
- Larsen A and others, 'Independent Regulatory Authorities in Europe (SNF-SESSA Conference: Harmonising Effective Regulation, Bergen, March 2005)
- The World Bank, 'Policy Perspective and Analysis of the Regulatory Regime in the Restructured Russian Power Sector' (2004) A Policy Note, Infrastructure and Energy Services Department Europe and Central Asia Region 36087 <http://documents.worldbank.org/curated/en/2004/06/6771239/policy-perspective-analysis-regulatory-regime-restructured-russian-power-sector-policy-note> accessed 12 March 2012.