Bill no. **234** Folketinget (Danish Parliament) 1998-99

Submitted on 29 April 1999 by the Minister for Environment and Energy (Svend Auken)

Adopted by Folketinget on 28 May 1999 with amendments (see annex)
(Now **Act no. 375 of 2 June 1999**)

The Electricity Supply Bill[1]

Part 1
Introductory provisions

1. The objective of the Act is to ensure that the electricity supply of the country is organised and implemented in accordance with consideration for security of supply, the national economy, the environment and consumer protection. Within the terms of this objective, the Act is to ensure consumers access to inexpensive electricity and continue to provide them with influence on the administration of the assets of the electricity sector.
(2) In accordance with the purposes mentioned in (1), the Act is to promote in particular sustainable energy application, including by energy savings and the use of CHP, renewable and environmentally benign energy sources, while also ensuring efficient use of financial resources and creating competition on markets for production of and trade in electricity.

2. The Act shall apply to the production, transport, trade and supply of electricity.
(2) The Act shall apply on land and in territorial waters and within the exclusive economic zone.
(3) The Act shall not apply to activity regulated in pursuance of Act no. 292 of 10 July 1981 on Certain Marine Installations.

---

[1] The Act contains provisions that implement European Parliament and Council directive 96/92/EC of 19 December 1996 on joint rules for the internal electricity market, cf. the Official Journal of the European Communities, no. L 27, page 20, Council directive 90/547/EEC of 29 October 1990 on transit of electricity through the overall grid, cf. the Official Journal of the European Communities 1990, no. L 330, page 30, Council directive 90/377/EEC of 29 June 1990 on a community procedure with regard to transparency of the prices of gas and electricity for the final user in industry, cf. the Official Journal of the European Communities 1990, no. L 185, page 16, and Council directive 85/337/EEC of 27 June 1985 on the assessment of the impact of certain public and private projects on the environment, cf. the Official Journal of the European Communities 1997, no. L 73, page 5, and Council directive 97/11/EC of 3 March 1997 on the amendment of the above-mentioned directives with respect to plants for utilising energy from water and wind in territorial waters and in the exclusive economic zone, cf. the Official Journal of the European Communities 1985, no. L 175, page 40.

(4) The Minister for Environment and Energy may decide that small installations or small-scale activities that are covered by the Act shall partially or wholly be exempted from the provisions of the Act.

3. The Minister for Environment and Energy is to keep a committee appointed by the Folketing (Danish Parliament) informed about all matters of importance to Denmark's electricity supply.

4. Municipalities may carry out grid activity and electricity production by waste incineration. Municipalities and counties may participate in all other activity covered by section 2 (1) when this activity is carried out by a limited liability company.
(2) Municipalities may engage in other activity which is connected to activity pursuant to the Act, cf. 2 (1). The activity shall be conducted on commercial terms in independent limited liability companies.
(3) The Minister for Environment and Energy can lay down rules concerning the activity mentioned in (2), including with respect to the activities that can be carried out pursuant to (2) and concerning accounting and commercial matters.
(4) The provisions of the Act that apply to grid companies and electricity production companies, shall only apply to the duties of a municipality that form part of grid activity or electricity production activity pursuant to (1), first point.

5. In this Act the following definitions shall apply:

Small-scale CHP plants: CHP plants that are not situated at large-scale electric power station sites, cf. 10 (6).

Direct electricity supply grid: An electricity supply grid designed for the supply of electricity from one electricity producing enterprise to another or to certain consumers, and which wholly or in part replaces the utilisation of the collective electricity supply grid.

Distribution grid: A collective electricity supply grid that has as its purpose to supply electricity to an unknown circle of consumers, and grids owned by a collective electricity supply enterprise and whose purpose it is to connect a consumer directly to the transmission grid.

Utility-owned plant: An installation owned by an enterprise that was entitled to carry out allocations in accordance with section 9 in the hitherto valid Electricity Supply Act.

Consumption site: The point from which electricity is purchased for one, total title number or for connected buildings divided into several title numbers with only one consumer of electricity.

Supply-committed enterprise: An enterprise with a licence that supplies electricity to consumers who either do not have the possibility to choose their own supplier, or who do not exercise this possibility.

Collective electricity-supply enterprise: A publicly or privately owned enterprise with a licence, the purpose of which is to carry out activities such as grid, transmission, supply-committed or system-responsible enterprise on publicly regulated terms.

Collective electricity supply grid: A transmission and distribution grid the object of which is to transport electricity for an unknown group of electricity suppliers and consumers on publicly regulated terms.

MW: Unit of measurement for electrical effect.

Grid enterprise: An enterprise with a licence that operates the distribution grid.

Coherent electricity supply system: Collective electricity supply grids with accompanying plants in a large area which are internally linked with a view to joint operations.

System-responsible enterprise: An enterprise with a licence that has the overall responsibility for maintaining security of supply and for efficient utilisation of a coherent electricity supply system

Transit: Transportation of electricity with a view to fulfilling agreements concerning trade in electricity, where none of the parties to the agreement purchase or produce the electricity in question in Denmark.

Transmission grid: Collective electricity supply grid which has as its purpose to transport electricity from production locations to a general centre in the distribution grid or to join it to other coherent electricity supply grids.

Transmission enterprise: An enterprise with a licence that operates the transmission grid.

Part 2

The position of electricity consumers

6. Everyone in Denmark has the right to be supplied with electricity upon payment. This right means the right to delivery of electricity by means of a supply offer from a supply-

committed enterprise, cf. Part 6 and, from the points of time mentioned in 7, the right to choose supplier.
(2) Consumers who have access to choice of supplier, have the right to cancel and resume deliveries from the Supply-committed enterprises within reasonable time-limits and on reasonable conditions.
(3) Collective electricity supply companies must place their services at the disposal of the consumers on transparent, objective, reasonable and uniform terms.

7. Every consumer has the right to choose his/her supplier from the following points in time:
1) Consumers with annual consumption of 100 GWh and over: from the time this Act enters into force.
2) Consumers with annual consumption of 10 GWh and over: from 1 April 2000.
3) Consumers with annual consumption of 1 GWh and over: from 1 January 2001.
4) All other consumers: from 1 January 2003.
(2) Consumption is counted per consumption site on the basis of consumption during the latest 12-month consumption measurement period before the cut-off date mentioned in (1).
(3) Irrespective of the provision in (1), electricity production companies have the right to supply electricity to their own facilities and subsidiaries.
(4) The Minister for Environment and Energy may lay down more specific rules for the supply mentioned in (3).
(5) If technical conditions are appropriate, the Minister for Environment and Energy may change the deadlines mentioned in (1), having submitted them to the committee mentioned in (3).

8. Every electricity consumer in Denmark must purchase a relative share of the electricity which the grid companies and the system responsible companies are obliged to purchase pursuant to Part 9 of the Act or rules or decisions pursuant to the Act. For electricity, the price must be paid that follows from the Act or from provisions laid down pursuant to the Act.
(2) By agreement with the grid company, electricity consumers can free themselves of their purchase obligation according to (1) upon a payment that must be reasonable vis-à-vis the other consumers.
(3) Every electricity consumer in Denmark must acquire RE certificates in accordance with the rules in Part 9 from the point in time laid down by the Minister for Environment and Energy pursuant to section 61.
(4) Every electricity consumer in Denmark must also meet a relative share of the necessary costs of the collective supply companies in implementing the public service obligations as these have been ordered in accordance with this Act or rules or decisions pursuant to the Act, cf. section 9.

9. The following costs of public service obligations are to be met by all consumers of electricity within the same, coherent electricity supply system:
1) The necessary costs incurred by the system-responsible company to cover the tasks it is ordered to carry out under the provisions in section 28 (3), no. 4, section 29, section 30, section 56, and section 57 (1).
2) The necessary costs incurred by the grid companies for covering the tasks they are ordered to carry out under the provisions in sections 22 (1), nos. 3 and 4, and (5), section 57 (1), and sections 67 and 68.
(2) The other expenses of the collective supply companies are the responsibility of the users who receive the services provided by the company and are charged through the rates of the individual company.

Part 3

Electricity production

10. Electricity production from plants with a capacity in excess of 25 MW can only be carried out by companies that have received a licence from the Minister for Environment and Energy.
(2) A licence pursuant to subsection 1 is awarded for a minimum of 20 years.
(3) A licence can only be awarded to an applicant who can prove that he has the necessary technical and financial capacity.
(4) For electricity production companies which are in possession of a licence when the Act enters in force, a licence in accordance with (1) may be granted on condition that the company in question fulfils the orders about environmentally benign electricity production plants that the company has received pursuant to section 13 of the previously valid Electricity Supply Act.
(5) The Minister for Environment and Energy can grant exemptions from the terms in the licence as mentioned in (4) if this is deemed necessary for the possibility of the electricity production company to continue financially responsible operations.
(6) The Minister for Environment and Energy can lay down rules concerning the power plant locations that shall be termed large-scale power plant locations, cf. section 5.

11. The establishment of new electricity production plants and any significant alterations to existing plants may only be carried out after prior permission from the Minister for Environment and Energy.
(2) Permission is conditional on the applicant documenting the fulfilment of specific, published conditions pertaining to the energy efficiency, use of fuel and other environmental matters concerning the plant for which application is made.
(3) The Minister for Environment and Energy shall lay down the rules concerning the conditions and procedures for granting permission, including that specific licences can be made temporary.
(4) Nuclear production plants may not be established pursuant to this Act.

12. Permission pursuant to section 11 or a licence pursuant to section 10 can be accompanied by conditions to the effect that the owner
1) commits himself to changing the scope of production as decided by the system-responsible company when the latter finds this necessary in order to maintain efficient utilisation of the grid, security of supply or the quality in the coherent supply grid,
2) provides security for the dismantling of plants,
3) in the case of CHP plants, takes on a supply commitment for district heating in a specified supply area, and
4) commits himself to notifying the system-responsible company of the supply area at least one year in advance if a decision is made to shut down the plant or remove it from operation so that it is not at disposal for a lengthy period.

Offshore RE electricity production plants

13. The Danish State alone is entitled to access to utilising energy from water and wind in territorial waters and in the exclusive economic zone.
(2) Preliminary surveys and utilisation of energy covered by (1) may only be carried out by permission from the Minister for Environment and Energy.
(3) Permission can be given for a specific area and may be granted separately for preliminary surveys and utilisation of energy, respectively.
(4) The Minister for Environment and Energy can lay down conditions for the licence, including reporting about the progress of the preliminary surveys and their results and with regard to the observation of safety requirements and the like.
(5) The Minister for Environment and Energy can lay down rules for the conditions for acquiring licences under this provision, including payment for dealing with the licences and time limits for the licences.

14. Permission pursuant to section 13 shall be granted pursuant to the decision of the Minister for Environment and Energy or after applications have publicly been invited in connection with invitation to tender pursuant to rules determined by the Minister for Environment and Energy or following publication of an application received where other interested parties are invited to submit an application.

15. In connection with invitation to tender pursuant to section 14, the Minister for Environment and Energy can state particular conditions or terms that the Minister will emphasise when making decisions with regard to the offers received.
(2) Terms as mentioned in subsection 1 may have to do with the production plant or the infrastructure that is to link the plant to the coherent electricity system, or requirements to the effect that consumers or others, together with the applicant, shall participate as parties in the project.

16. The establishment of electricity production plants that utilise water and wind with accompanying internal cable installations in territorial waters and in the exclusive economic zone as well as significant changes in existing installations, may only be carried out with the prior permission of the Minister for Environment and Energy. Permission will be granted to applicants who are deemed to have the necessary technical and financial capacity.
(2) The Minister for Environment and Energy may stipulate terms for approval of these plants, including requirements as to construction, design, installations, erection, operations, dismantling and provision of guarantee for dismantling of plants as well as technical and safety matters in connection with establishment and operations. The Minister may lay down specific rules concerning these matters.

17. Permission for the establishment of plants in accordance with section 16, which may be assumed to have a significant impact on the environment, may only be granted on the basis of an assessment of the environmental consequences and when the general public and the authorities and organisations affected have had the opportunity to express an opinion.
(2) The Minister for Environment and Energy may lay down specific rules about delimiting the plants covered by (1).
(3) The Minister for Environment and Energy may lay down specific rules for the information and any surveys necessary for an assessment of the environmental consequences to be carried out. The Minister for Environment and Energy may decide that an assessment should be carried out of the environmental impact of one of the plants covered by section 16 during and after establishment. The Minister for Environment and Energy can decide that the environmental consequences of the plants covered by section 16 should be judged by independent experts.
(4) The Minister for Environment and Energy may lay down specific rules with regard to informing and consulting the general public and the authorities and organisations affected in connection with
1) the assessment mentioned in (1),
2) the delimitation mentioned in (2), and
3) the applications for permission in accordance with section 16.

18. Plants established pursuant to orders issued in accordance with section 13 in the hitherto valid Electricity Supply Bill, and plants which have been granted temporary or final permission in accordance with the hitherto valid Electricity Supply Bill, are exempted from the provisions with regard to invitation to tender pursuant to sections 14 and 15.

Part 4

The electricity supply grid

The collective electricity supply grid - Transmission and grid licences

19. Transmission activity and grid activity may only be carried out under licence granted solely to companies that fulfil the requirements in parts 7 and 8 and in section 97 (2).
(2) The licence, which is granted for a minimum twenty-year period, is granted by the Minister for Environment and Energy for a specifically delimited area.

20. Holders of licences in accordance with section 19 (1) are to ensure adequate and efficient transportation of electricity with accompanying services, including
1) maintenance, conversion and developing of the supply grid in the supply area to the necessary degree,
2) connection of suppliers and purchasers of electricity to the collective electricity supply grid,
3) placing the transportation capacity necessary at disposal and,
4) measuring supply and purchase of electricity in the grid.
(2) Should a transmission or grid company not fulfil the commitments mentioned in (1), the Minister for Environment and Energy can order the system-responsible company to attend to this, including carrying out the necessary installation works with regard to the collective electricity supply grid.
(3) When in possession of appropriate proof of identity for use when carrying out the necessary installation works pursuant to (2), the system-responsible company can gain access to the property of a company.
(4) The police force will provide assistance in exercising the powers pursuant to (3).

21. The establishment of new transmission grids designed for voltages of over 100 kV and important changes in similar, existing grids may only be carried out following prior permission from the Minister for Environment and Energy. Permission can only be granted if the applicant is in a position to document that there is sufficient need for the development. The permission may be made conditional on compliance with terms concerning the more specific establishment and operation of the grid, including safety provisions for dismantling of the installation.
(2) The licensee must, however, make the transmission grid available free of charge to the system-responsible company to enable it to comply with an order pursuant to section 20 (2).

22. A grid company shall:
1) Maintain the technical quality in the grid.
2) Measure the electricity transported through the company's grid.
3) Ensure that customers are charged for the payment commitments laid down in this Act.
4) Provide and settle the payment for electricity that is supplied in accordance with a purchase commitment laid down in this Act.

5) Conduct information activity in order to create the greatest possible transparency concerning market conditions for all consumer groups.
6) Map energy consumption and plan and secure the implementation of energy savings in the supply area.
7) Provide energy counselling and advice on questions concerning electricity security to consumers in the supply area.
(2) The grid company must co-operate with the system-responsible company when the tasks under (1) above are being carried out.
(3) The grid company must provide the users of the grid with all necessary information about the measurement of the electricity transported though the grid of the company.
(4) The Minister for Environment and Energy can lay down rules about the implementation of the provisions contained in (1) – (3) above, including rules concerning delimiting tasks that have to do with invoicing and charging amounts. The Minister for Environment and Energy can, furthermore, decide that more precise preconditions must be used as a basis for planning pursuant to (1) no. 6, and for consultancy in accordance with (1) no. 7.
(5) The Minister for Environment and Energy can decide that the grid licensees in co-operation shall initiate research and development with a view to efficient energy application. The Minister for Environment and Energy can lay down rules or make decisions concerning drawing up plans for the activities and for approving these.
(6) In co-operation with transmission companies, grid companies shall draw up annual surveys and forecasts for the use of actual and potential market actors and to illustrate fulfilment of public service obligations.

Direct electricity supply grids

23. It is only possible to construct direct electricity supply grids upon licence from the Minster for Environment and Energy.
(2) The licence may only be granted if the applicant has previously had a request to transport electricity through the collective electricity supply grid rejected and it has not been possible to find a solution to the problem by submitting it to the Energy Supervisory Board.
(3) The licence may be subject to conditions as mentioned in section 21 (1). Section 21 (2) shall be similarly applied.

Access to the collective electricity supply grid.

24. Everybody has the right upon payment to make use of the collective electricity supply grid for transportation of electricity, cf., however, section 25 (5).
(2) However, transportation of electricity to consumers in Denmark may only take place with a view to supplying those customers who have the right to have electricity supplied in accordance with the provisions in section 7 (1) and (3), or with a view to

delivery by Supply-committed enterprises to consumers in the supply area of the company.

25. Transportation of electricity pursuant to section 24 shall take place in accordance with general charges and conditions which are laid down by the system-responsible company and the grid companies, respectively, cf. Part 10.
(2) A request for transportation shall be addressed to the grid company to which the final user of the electricity is connected.
(3) The conditions for the transit are settled by negotiation. A request to this effect shall be addressed to the system-responsible company.
(4) The grid company and the system-responsible company must provide applicants who fulfil the conditions with access to transportation of electricity without undue delay. Negotiations with applicants for transit access must be initiated without undue delay.
(5) The grid company and the system-responsible company may reject a request for transportation or transit on grounds of a lack of transportation capacity.

26. In order to be connected to the collective electricity supply grid, plants and installations must fulfil the technical requirements and standards that have been laid down.
(2) The Minister for Environment and Energy can lay down more specific rules in this regard, including deciding that certain technical requirements and standards should be established by the system-responsible company.

Part 5

System-responsible activity

27. System-responsible activity can only be carried out under licence which may only be granted to companies that fulfil the requirements in Parts 7 and 8, and in section 97 (2).
(2) The licence, which is given for 20 years, is granted by the Minister for Environment and Energy for a specified area.

28. The system-responsible company shall co-operate with the other collective electricity supply companies to ensure, in particular, that the public service obligations mentioned in section 9 are fulfilled.
(2) The system-responsible company shall observe confidentiality with regard to commercial information and may not discriminate against users of the system or categories of users or show favour to its own companies or owners.
(3) The system-responsible company shall carry out the following tasks:
1) Maintain the technical quality and balance within the coherent electricity supply system, including ensuring the presence of the necessary supply capacity for the physical regulation of the system.

2) Prepare annual surveys and forecasts for the use of the current and potential actors on the market and to illustrate the fulfilment of public service obligations.
3) Co-operate with other system-responsible companies in Denmark and other countries to establish mutual, equal principles for electricity supply and on grid tariffs, grid access and transit, market questions etc. and co-ordination of transmission connections, including handling balance and capacity problems, and enter into necessary joint system operation agreements that ensure the utilisation of the advantages provided by linked systems.
4) Ensure that the prioritised production pursuant to section 57 is bought and that this is proportionately distributed to the consumers.
5) Co-operate with the grid companies to ensure grid access and access to transit.
6) Ensure that the users have equal access to information concerning access to purchase and sale of electricity.
7) Draw up a plan for future demand for transmission capacity in the coherent electricity supply system and transmission connections to other grids.
8) Co-operate with the transmission company to ensure necessary conversion and new construction of transmission grids in accordance with transmission grid planning, cf. no. 7
9) Submit an annual environmental report to the Minister for Environment and Energy which gives an account of the development in the most important environmental matters for electricity and CHP production within the total electricity supply system.
10) Draw up instructions for measurements by the grid companies.
11) Calculate and implement the necessary accounts and charge the payments for carrying out public service obligations, cf. section 9.
(4) The Minister for Environment and Energy can lay down specific rules concerning the content and implementation of the tasks which are the duty of a system-responsible company.

29. The system-responsible company must ensure that such R&D projects as are necessary for utilising environmentally benign electricity production technologies are carried out.
(2) The Minister for Environment and Energy can lay down rules pertaining to the tasks mentioned in (1), including rules to the effect that a plan for these must be approved before the costs can be levied on the consumers pursuant to the provision in section 9 (1) no. 1.

30. The Minister for Environment and Energy can lay down rules to the effect that the system-responsible company must ensure that stores of fuel for electricity and CHP production are maintained with a view to security of supply, including rules to the effect that electricity production companies shall assist in the purchasing and location etc. of the stores.

(2) The Minister for Environment and Energy can order the system-responsible companies to construct and operate transmission installations between Funen and Zealand.

31. With a view to safeguarding the day-round and balance planning of the system and to fulfilling its commitments, the system-responsible company can
1) obtain the necessary information from the users of the grid, and
2) demand the necessary reorganisation of transactions planned, including necessary regulations of the production both during the operational 24-hour period and immediately prior to it.

32. The Minister for Environment and Energy is to appoint 2 members without voting rights to the Board of the system-responsible company.
(2) The members appointed by the Minister are to be appointed for a period of 4 years and are to be independent of commercial electricity and heat supply interests and of any other business interests.

Part 6

Supply-committed activity

33. Supply-committed activity may only be conducted on licence which may be granted to companies that fulfil the requirements in Parts 7 and in section 97 (2).
(2) The licence, which is given for 5 years, is granted by the Minister for Environment and Energy for a specified area.

34. A supply-committed enterprise shall offer the consumers in the company's supply area
1) delivery of sufficient electricity as mentioned in section 6,
2) fulfilment of the purchase obligation for RE Certificates pursuant to the rules in Part 9, and
3) services with respect to energy savings.

(2) The Minister for Environment and Energy can lay down rules concerning the obligations of the licensee, including rules with respect to co-operation between several Supply-committed enterprises with respect to carrying out the commitments.

Part 7

Transfer, consumer influence, unbundling of activities, etc.

35. Before a transmission grid of 200 kV or more or a grid connection to another country, which is owned by a licensee, or owner shares in companies that own such grids, can be surrendered to others, an offer shall be made to the State to purchase the

transmission grid, the grid connection or owner shares. The pre-emptive right shall be exercised by the Minister for Environment and Energy on behalf of the State.
(2) (1) shall also apply when owner shares in a system-responsible company are being surrendered.
(3) The pre-emptive right shall lapse if the Minister, within 3 months from the date at which the offer is made, should not state that he will exercise it. The price shall be fixed on ordinary market terms. In case of disagreement, the price and the terms of payment shall be fixed by the valuation commission pursuant to the rules in Part 4 of the Act on Procedure in Expropriation of Real Property.
(4) An agreement which is entered into in contravention of (1) and (2) shall be void.

36. A grid company may neither partly nor in whole surrender owner shares in an electricity production company to
1) a company in which the grid company directly or indirectly has owner shares
2) a company which directly or indirectly has owner shares in the grid company
3) a company which directly or indirectly is owned in whole or in part by a company that directly or indirectly has owner shares in the grid company.
(2) The Minister for Environment and Energy may grant an exemption from the provision in (1).

37. In connection with the sale of an electricity supply company, or parts or shares etc. in an electricity supply company, a municipality or a county shall state the amount of the municipality's or county's investment capital in the electricity supply company and the net proceeds of the sale.
(2) Any type of whole or partial, direct or indirect transfer or the like of the following shall be equated with sale, cf. (1):
1) electricity supply activity
2) direct or indirect availability or other right over electricity supply activity
3) capital shares owned directly or indirectly in the electricity supply company.
(3) The statement shall be submitted to the Energy Supervisory Board in accordance with rules laid down by the Board.
(4) The provisions of (1) – (3) shall also apply if the one who sells or transfers is an enterprise or a company etc. in which the municipality or county has a capital share, or if the municipality or county gain a profit by selling or transferring etc. an enterprise or a company that owns capital shares in an electricity supply company. The provisions of (1) – (3) shall, moreover, apply if the municipality or county should in any other way gain a profit by sale or transfer etc. as mentioned in point 1.
(5) The Energy Supervisory Board shall decide whether or not the statement can be approved. Should the Energy Supervisory Board not be able to approve it, the Board shall fix the level of the municipality's or county's direct or indirect share of the investment capital in the electricity supply company and the net proceeds of the sale, cf. (1), (2) and (4).

(6) By 1 June of each year at the latest, the Energy Supervisory Board shall inform the Ministry of the Interior about the level of the amount a municipality or county has gained, directly or indirectly, in net proceeds from sale, cf. (5) on this.
(7) The Minister of the Interior shall accordingly reduce the state subsidy to the municipality or county pursuant to the provisions in sections 10 and 17 of the Act on Municipal Equalisation and General Subsidies to Municipalities and Counties by the sum mentioned in (6), inclusive of interest payments as mentioned in (8)
(8) The Ministry of the Interior shall calculate an interest payment which is calculated from the time at which the municipality or county have the proceeds of the sale or transfer at their disposal and up to the year in which the reduction of state subsidy to the municipality or county takes place. The interest of the net proceeds is calculated, cf. (6), minus the annual reduction in state subsidy, as mentioned in (7). The interest is fixed at the official discount rate of the National Bank of Denmark for the year or years for which interest payments are to be calculated.
(9) By electricity supply enterprise in this provision is meant every type of enterprise covered by section 2.

38. Electricity production and electricity trading companies and their subsidiaries may together not
1) own more than 15% of the total capital of a collective electricity supply enterprise, or
2) have a controlling interest in the executive bodies of a collective electricity supply company by virtue of special voting rights.
(2) Supply committed companies may together not
1) own more than 15% of the total capital of a grid company, transmission company or system-responsible company, or
2) hold a controlling influence in the executive bodies of a grid company, transmission company or system-responsible company by virtue of special voting rights.
(3) Agreements concerning transfers of capital shares and agreements or provisions in Statutes concerning distribution of voting rights which are in contravention of the provisions in (1) and (2) shall be void.

39. Collective electricity supply companies shall inform the Energy Supervisory Board in writing of any whole or partial surrender of their owner shares in electricity production companies or other collective electricity supply enterprises. Furthermore, collective electricity supply companies shall inform the Energy Supervisory Board of the firms that have owner shares in the enterprise to the extent that the enterprise is aware of this.

Consumer influence

40. The majority of members of the board of a grid company shall be elected by the consumers in the supply area of the grid company or by one or more municipal or

county Boards in the supply area of the company by virtue of their exercising of their owner rights at the annual general meeting of the grid company or in some other manner. The majority can also be elected by the consumers and one or more municipal or county Boards jointly.
(2) The requirement regarding influence in (1) shall be considered fulfilled if the Board of a grid company that is run in the form of a co-operative is appointed by a committee of representatives that has been elected by members in the supply area. This same shall apply to a grid company that is run as a proprietary institution or in the form of an association, if the Board is appointed by representatives that have been elected by one or more municipal councils in the supply area, by a majority of the consumers in a the supply area of the grid company, or by such municipal councils and consumers jointly. The same shall apply to municipal grid activity, cf. section 4 (1), point 1.
(3) In a grid company which is owned by a legal person, the requirement regarding influence in (1) shall be considered fulfilled if a majority of members of the Board of the legal person have been elected or appointed in the manner described in (1) and this Board elects the Board of the grid company.
(4) The Minister for Environment and Energy can, if special considerations so indicate, make an exemption from the influence requirement in (1).

41. Should the consumers or municipal or county Boards, or these jointly, not have the influence in the grid company mentioned in section 40, a committee of consumer representatives shall be established. The committee of consumer representatives shall consist of 11 members elected by the consumers in the supply area of the grid company and they shall elect the majority of the members of the Board of the grid company.
(2) The Minister for Environment and Energy can lay down specific rules concerning the conditions for consumers' right to vote and their eligibility as well as the duration of the period for which the members of the committee of consumer representatives shall be mandated.
(3) The committee of consumer representatives may solely elect Board members from among candidates proposed by the members of the committee of consumer representatives. The Board members shall be elected for a period corresponding to the period which applies to other Board members as laid down in the Statutes.
(4) If the grid company is run in the form of a limited company, section 49 (6) and section 59 (1) and (2), point 2 of the Danish Companies Act shall not apply.

42. A committee of consumer representatives pursuant to section 41 (1) shall be elected for the first time 2 months at the latest after the grid company has not fulfilled the influence requirement specified in section 40. The committee of consumer representatives shall elect the majority of the Board members of the grid company within a time-limit of 4 weeks.
(2) The grid company shall see to it that a committee of consumer representatives is established pursuant to section 41.

43. A minimum of one third of the members of the Board of a supply-committed enterprise shall be elected by a majority of the consumers in the supply area of the company, or by one or more municipal councils in the supply area.
(2) Sections 40-42 shall apply with the necessary adjustments.
(3) The Minister for Environment and Energy can, if special circumstances so indicate, make an exemption from the influence requirement in (1).

44. The Statutes of a grid and supply-committed enterprise shall contain specific provisions that ensure the implementation of sections 40-43.
(2) The Minister for Environment and Energy can lay down rules to the effect that in order for the Statutes of the companies specified in (1) to be approved, cf. section 53 (2), they must be drawn up within the framework of standard Statutes determined by the Minister.

Qualification requirements

45. A Board member in a system-responsible company may not be a Board member or director in an electricity production or electricity trading company.
(2) Directors, deputy directors, assistant directors and senior staff in a system-responsible company may not participate in the running or management of an electricity production or electricity trading company.

Giving loans, provision of security etc.

46. A collective electricity supply company may not give loans to or provide security for other companies, including other collective electricity supply companies.
(2) The provision in (1) shall not apply to the extent that only the capital specified in section 74 (3) is at disposal when loans are given or security provided.
(3) Agreements entered into by collective supply companies with other companies, including allied companies, shall be made on market-determined conditions.

Unbundling of activities

47. Licences to Supply-committed enterprises, system-responsible companies, grid companies and transmission companies may, with the exceptions specified in (2), not be granted to the same company, and the licensee may only operate the activities that lie within the terms of the licence in the company.
(2) A licence for grid activity and a licence for transmission activity can, however, be granted to the same company if the Minister for Environment and Energy deems that this can take place without it being an obstacle to responsible conduct of the activities that must be carried out under the terms of the licence. Under similar conditions, a licence for transmission activity and a licence for system-responsible activity can be granted to the same company.

(3) In the cases specified in (2) there shall be account unbundling in the company between the two activities that must be carried out under the terms of the licence.
(4) Other activities that lie outside the terms of the licence, including production of or trade in electricity, must be carried out in autonomous, limited liability companies.
(5) (4) shall not apply to municipalities that conduct activity pursuant to section 4 (1), point 1.

48. Companies that produce electricity by waste incineration may not within the same company conduct other electricity production activity or electricity trading activity.

49. Funds collected by the holder of the licence for others according to the provisions of this Act shall be unbundled from the licensee's assets.

Part 8

General provisions concerning licences

50. In the licences, apart from the terms that may be laid down pursuant to Parts 3-6, in special cases with reference to fulfilling the objectives of the Act, such conditions as may be justified by special conditions of the company may be laid down. Moreover, terms may be laid down that are necessary with a view to complying with EU rules or EU recommendations in the area.
(2) In the licence, the Minister for Environment and Energy can make it a condition that, at one year's notice, he can decide that with reference to security of supply, the electricity production companies shall maintain a more closely specified minimum production capacity.
(3) In the licence, the Minister can make it a condition that, at one year's notice, he can decide that electricity transmission companies shall maintain a more closely specified transmission capacity with reference to security of supply.

51. The Minister for Environment and Energy shall supervise that the terms of the licences are complied with.
(2) The holders of licences shall pay the costs associated with the supervision pursuant to rules laid down by the Minister for Environment and Energy.
(3) Pursuant to rules laid down by the Minister for Environment and Energy, the collective electricity supply companies shall meet the costs associated with the Minister's attendance to and assessment of the planning, development and research tasks of the collective electricity supply companies, including the activities specified in section 22 (1) no. 6, section 22 (6), section 28 (3) nos. 2 and 7 and section 29.
(4) Holders of licences for grid, transmission and production activity shall own the plants that are utilised for the implementation of the activities that must be carried out under the terms of the licence.

(5) In special cases, the Minister for Environment and Energy may grant an exemption from the provisions in (4).

52. After 5 years and upon advance notice of 1 year, new terms may be laid down in a licence.

53. Licences granted pursuant to this Act are exempt from legal proceedings and can neither directly nor indirectly be transferred to others unless the Minister for Environment and Energy permits the transfer and approves the terms for this.
(2) The Statutes of the collective electricity supply companies and any amendments to these shall be approved by the Minister for Environment and Energy.

54. A licence can be revoked if
1) provisions, terms or orders pursuant to this Act or rules issued pursuant to this Act are repeatedly breached,
2) incorrect or misleading information is provided in a licence application or permission connected with the licence,
3) the holder of the licence or permission goes to the Court for suspension of payments, applies to the Court for a liquidation order, or is declared bankrupt.

(2) If a violation as specified in (1) can be redressed, the Minister for Environment and Energy can inform the holder that within a fixed time-limit he shall comply with his commitments or permission.
(3) The decision pursuant to (1) nos. 1 and 2 shall be taken by the Court, and pursuant to (1) no. 3 by the Minister for Environment and Energy.

Part 9

Environmentally benign electricity production

55. By RE electricity is meant electricity produced by wind energy, biogas, biomass, solar energy and wave energy and electricity produced at hydropower plants under 10 MW.
(2) The Minister for Environment and Energy can lay down rules concerning delimitation of the energy sources specified in (1) and alter the capacity limit for hydropower plants covered by (1). The Minister for Environment and Energy can, moreover, lay down rules or make decisions to the effect that other energy sources and technologies than those specified in (1) shall be included in the concept of RE electricity.

General prioritisation of environmentally benign electricity production

56. The system-responsible companies shall offer balancing services to CHP producers in relation to heat-bound electricity production and to electricity production plants that produce RE electricity pursuant to rules laid down by the Minister for Environment and Energy.
(2) The Minister for Environment and Energy can lay down rules with respect to the plants that are to be offered balancing services pursuant to (1) and the conditions for this.

Prioritised sale of environmentally benign electricity production

57. In order to promote environmentally benign energy production, grid companies and system responsible companies are obliged to purchase electricity from
1) small-scale, including industrial, CHP production plants and electricity from electricity production plants that produce RE electricity or utilise waste as fuel at a payment that results from sections 58 and 59, and
2) other CHP plants designated to supply district heating to the extent that the electricity cannot be sold at prices that cover the necessary costs of the electricity production in question.

(2) Following submission to the committee specified in section 3, the Minister for Environment and Energy can lay down rules or make a decision concerning the content and scope of the commitments specified in (1) to purchase electricity, including the time duration of the purchase obligation and calculation of the settlement price pursuant to (1), no. 2.
(3) Following submission to the committee specified in section 3, the Minister for Environment and Energy can lay down rules that electricity production from utility-owned plants or plants constructed by these companies shall not be covered by the purchase obligation in (1).

Settlement rules for prioritised electricity

58. Electricity from plants as specified in section 57 (1) no 1, shall be purchased at a price that corresponds to the costs of producing and transporting electricity, including fuel and operational costs etc. and long-term plant costs. When the long-term plant costs are being fixed, the objectives specified in section 1 shall be considered. RE electricity, including RE electricity produced by CHP plants, shall be settled in accordance with rules issued in pursuance of section 59, cf., however, (3).
(2) The Minister for Environment and Energy can lay down specific rules as to the plants that shall be covered by the provisions in (1) and about calculation of the settlement price pursuant to (1).
(3) Following submission to the committee specified in section 3, the Minister for Environment and Energy can lay down special settlement rules for electricity, including RE electricity that is produced at utility-owned plants or plants constructed by these companies.

59. Following submission to the committees specified in section 3, the Minister for Environment and Energy shall lay down rules for settlement of RE electricity, including that different settlement prices can be utilised for different technologies. The Minister for Environment and Energy shall also lay down rules that, over and above the settlement price, a surcharge of a maximum of DKK 0.27 per kWh for RE electricity shall be paid should RE certificates not be issued for this electricity pursuant to section 60. The Minister for Environment and Energy shall lay down rules concerning the production plants for which the surcharge shall be paid and rules concerning the duration of the settlement rules and the surcharge.
(2) Electricity from wind turbines which the RE Fund is to take over pursuant to section 66 shall be settled at a price that corresponds to the costs incurred by the RE Fund in the take-over specified in section 66. The Minister for Environment and Energy may lay down more specific rules for the calculation of the settlement price.
(3) Following submission to the committee specified in section 3, the Minister for Environment and Energy can lay down special settlement rules for RE electricity produced at plants constructed as a consequence of orders issued pursuant to section 13 of the hitherto valid Electricity Supply Act.

RE certificates

60. Producers of RE electricity shall receive certificates for the amount of RE electricity they have produced. The certificates are to be called "RE Certificates" and are tradable.
(2) The Minister for Environment and Energy is to lay down rules about which producers are to be covered by the provision in (1) with respect to issue and distribution of and trade in RE Certificates from a point in time decided by the Minister.

61. From a point in time decided by the Minister, every consumer of electricity in Denmark will be obliged to acquire RE certificates. Following submission to the committee specified in section 3, each year the Minister for Environment and Energy is to determine the minimum number of RE certificates every consumer of electricity shall acquire. The purchase obligation shall be uniformly fixed for all electricity consumers as an obligation to acquire a certain number of RE certificates in relation to electricity consumption.
(2) The Minister for Environment and Energy is to reduce the purchase obligation pursuant to (1) in cases where it proves impossible to fulfil.

62. The system-responsible companies are responsible for undertaking the purchase obligation pursuant to section 61 on behalf of their customers.
(2) Consumers with a different supplier than the supply-committed enterprise may themselves attend to their purchase obligation or request the supply-committed enterprise in the supply area in question to purchase RE certificates on their behalf.

(3) The Minister for Environment and Energy is to lay down rules with regard to when and how the fulfilment of the purchase obligation is to be documented.

63. In case of failure to fulfil the purchase obligation pursuant to section 61, DKK 0.27 shall be paid for each kWh for which the party obliged, pursuant to section 62, should have purchased certificates. The sum shall be paid to the Treasury.
(2) The Minister for Environment and Energy can lay down rules concerning payment and collection of the sum specified in (1), including that the sum shall be charged by the collective electricity supply companies. There is right of distraint for the sum.

The RE Fund

64. With the objective of buying up RE certificates pursuant to the rules in section 65 and taking over wind turbines pursuant to the rules in section 66, a Fund is to be set up called "The RE Fund". The Minister for Environment and Energy can lay down rules to the effect that the Fund shall also promote RE electricity in other ways. The Fund is to be administered by the Minister for Environment and Energy.
(2) The State is to grant an annual sum of money over the Finance Act to the RE Fund for the purposes specified in (1). Amounts not utilised in one year shall be transferred to the next year.
(3) The Minister for Environment and Energy is to lay down rules about the establishment of the RE Fund, including rules concerning the executive management of the RE Fund and applications of the financial means of the Fund.
(4) The costs of administering the RE Fund are to be met from the financial means of the Fund.

65. Should the total number of RE certificates that are to be purchased in Denmark pursuant to the purchase obligation in section 61 not have been sold by a point in time specified pursuant to section 62 (3), the RE Fund is to buy up the number of RE certificates that are necessary for fulfilling the purchase obligation on the national level. The RE certificates are to be bought up for a minimum of DKK 0.10 and a maximum of DKK 0.27 per kWh.

66. Owners of wind turbines who can document that they will be unable to pay off outstanding loans in a wind turbine due to changed surcharges on wind turbine electricity fixed pursuant to section 59 (1), can request the RE Fund to take over the wind turbine and the obligation to pay off the loans outstanding. This provision shall also be applied to loans obtained by wind turbine owners who own part of a wind turbine.
(2) (1) shall solely be applied concerning loans obtained before the Bill was presented to finance the purchase of a wind turbine. (1) shall not be applied in the case of utility-owned wind turbines.

(3) The Minister for Environment and Energy can lay down specific rules concerning the application of (1), including rules with regard to the latest date at which the request should be submitted and concerning the scope and application of the scheme.
(4) The RE Fund can dismantle, sell or operate wind turbines that are taken over pursuant to (1).
(5) Electricity from wind turbines that the RE Fund has taken over pursuant to (1) shall be charged in accordance with the rules in section 59 (2). Funds which originate in the dismantling, sale or operation of wind turbines taken over by the RE Fund pursuant to (1) shall accrue to the Treasury.

Connection etc. of environmentally benign electricity and CHP production plants

67. When the plants specified in section 57 (1) no. 1 are connected to the electricity supply grid, the owner of the plant shall only pay the cost that would have been incurred in being connected to the 10-20 kV grid, irrespective of whether, on objective criteria, the grid company selects another connection point. Other costs, including costs for grid boosting and grid expansion, shall be met by the grid company.
(2) Owners of plants as specified in section 57 (1), no 1, who wish to supply electricity at a higher voltage level than 10-20 kV shall themselves meet the costs involved in being connected to a correspondingly higher voltage level. Other costs, including costs for grid boosting and grid expansion, shall be met by the grid company.
(3) The provisions in (1) and (2) shall not apply to wind turbines.

68. The Minister for Environment and Energy can lay down rules with respect to the construction and connection of wind turbines to the electricity grid, including rules concerning the distribution of costs involved in grid connection and being connected to the electricity grid. The Minister for Environment and Energy can lay down rules regarding the construction, installation, design and operation of wind turbines and rules about accreditation of certificates and testing with respect to these matters.
(2) The Minister for Environment and Energy can lay down rules to the effect that the collective electricity supply companies administer rules laid down pursuant to (1) and section 59 and make decisions about matters that are regulated pursuant to these provisions.
(3) The Minister for Environment and Energy is to supervise that the rules laid down pursuant to (1) are complied with. The Minister for Environment and Energy may order that matters that are in contravention of rules or decisions pursuant to (1) and (2) shall be put right immediately or within a time-limit.
(4) The Minister for Environment and Energy can lay down charges for requests for grid connection in accordance with rules laid down pursuant to (1) and for supervision, registration and control of wind turbines and wind-turbine owners in connection with the establishment of a nation-wide register of wind turbines and wind-turbine owners. There is right of distraint for these fixed charges.

Part 10

Prices and terms for electricity

The prices and terms of the electricity supply companies

69. The prices of services from the collective electricity supply companies shall be fixed with consideration for the costs to the companies of purchase of energy, wages, services, administration, maintenance, other operation expenses and depreciation and return on capital.
(2) The Minister for Environment and Energy can lay down rules for calculating operational depreciation and for the statement of the capital of the company, including any investment capital, and the rates that can be utilised when including interest payment pursuant to (1). The Minister for Environment and Energy can also lay down rules with respect to account unbundling between different activities as well as rules concerning the accounting and budgeting of collective electricity supply companies, including that collective electricity supply companies must draw up, have audited and publish annual accounts in accordance with the provisions of the Danish Company Accounts Act.

70. Prices for the services of grid and transmission companies shall be fixed in accordance with the revenue framework specified in (2). The framework is to be established with a view to covering the costs specified in section 69 when the company is run efficiently.
(2) The Minister for Environment and Energy shall lay down rules with respect to a general revenue framework for all companies involved for a specified number of years. With the framework that is specified, each year the Energy Supervisory Board is to establish a revenue framework for each company involved.
(3) The Energy Supervisory Board may grant dispensations from the framework laid down by the Board should this prove necessary for a company to fulfil the commitments laid down in its licence, the Act or provisions laid down pursuant to the Act.
(4) Any type of revenue accruing to the company shall be spent on covering the costs involved in the activities that must be carried out under the licence. This does not, however, apply to profits in the form of return on investment capital and extraordinary efficiency gains in relation to the revenue framework. The Minister for Environment and Energy can lay down rules as to what may be regarded as extraordinary efficiency gains and with respect to establishing the level of these.
(5) Companies which have included losses realised with respect to co-ordinated activity pursuant to the provisions in section 9 (6) of the hitherto valid Electricity Supply Act may, however, not apply the provision in (4), point 2, before the losses mentioned have been covered.
(6) Municipalities and counties may not grant subsidies to municipal grid activity which, pursuant to the provision in (4) 1, is not operated in limited liability companies.

71. System-responsible companies can include necessary costs in their prices as mentioned in section 69 (1). By necessary costs is meant costs incurred by the company on the basis of deliberations concerning managerial economics with a view to maintaining efficient operation.
(2) Any type of revenue accruing to the company shall be spent on covering the costs involved in the activities that must be carried out under the licence. This does not, however, apply to profits in the form of reasonable return on investment capital.
(3) The Energy Supervisory Board shall approve the pricing after notification, cf. section 76. The approval can be made conditional. The Minister for Environment and Energy can lay down rules concerning conditions for approval.

72. In their prices as mentioned in section 69 (1), Supply-committed enterprises may calculate a profit which is reasonable in relation to the level of the turnover and efficiency in purchasing electricity and other costs,
(2) The Energy Supervisory Board shall approve the pricing after notification, cf. section 76. The approval can be made conditional. The Minister for Environment and Energy can lay down rules concerning conditions for approval.

73. When the collective electricity supply companies price their services pursuant to sections 69–72, this shall take place on the basis of reasonable, objective and non-discriminatory criteria in relation to the costs that the individual categories of purchaser give rise to.

74. The collective electricity supply companies shall notify the Energy Supervisory Board of the level of the capital that the company deems is to form the basis for establishing the interest payment which, pursuant to section 69, can be calculated into the prices. The companies shall separately state the level of any investment capital.
(2) On the basis of the notification mentioned in (1) and with consideration for the financing situation and turnover of the company, the Energy Supervisory Board shall calculate the level of the capital that forms the basis for the establishment of the interest payment that may be included and the level of any investment capital.
(3) Irrespective of the provisions in sections 69-72, collective electricity supply companies and their owners may freely dispose of capital and revenues which, pursuant to the hitherto valid Electricity Supply Act, were at their free disposal.

Production prices

75. The prices and delivery terms of the sale of electricity by electricity production companies shall be established by agreement unless settled pursuant to the provisions of Part 9.

(2) When establishing the prices and delivery terms of district heating, the owners of CHP plants shall not utilise their position to distribute their costs in a manner that may be regarded as unreasonable for district heating consumers.
(3) Companies producing electricity by waste incineration must be economically self-sustaining. When establishing prices and conditions for waste incineration and for delivery of district heating, owners of waste incineration plants shall not utilise their position to distribute their costs in a manner considered unreasonable for users of the waste incineration plant or for district heating consumers.
(4) The Minister for Environment and Energy can lay down rules concerning distribution pursuant to (2) and (3).

Supervision of prices, establishment of rules

76. The collective electricity supply companies shall notify the Energy Supervisory Board with respect to the following:
1) Prices, charges and terms for services covered by the licences and the basis for the establishment of these, including delivery agreements as stipulated by the Energy Supervisory Board.
2) Requests and agreements concerning transit, including negotiated prices and terms.
3) Documentation for the unbundling of commercial activities.
4) Statements of investment capital and capital on which they wish interest to be paid.
5) Statements of coverage of losses realised in co-ordinated activity pursuant to the provisions in section 9 (6) of the hitherto valid Electricity Supply Act.
6) Accounts, budgets and other information upon the stipulation of the Board to be used in the establishment and inspection of the revenue framework mentioned in section 70.

(2) The Energy Supervisory Board can, moreover, order owners of CHP production plants to notify the sales prices of district heating and the basis of the pricing.
(3) The Energy Supervisory Board can lay down rules for notifications pursuant to (1)-(2).

77. If the Energy Supervisory Board should find that the prices and delivery terms must be regarded as being in contravention of the provisions of this Act, the Board can order that the prices and conditions are to be amended.
(2) If an unreasonable matter in relation to negotiations concerning grid access can not be stopped by order pursuant to (1), the Energy Supervisory Board can issue an order to the licensees to enter into an agreement concerning the matter on the usual current terms for similar agreements.
(3) If the Energy Supervisory Board should find that prices, terms or agreements may be deemed to result in an environmentally or economically inappropriate utilisation of energy, the Board may order them to be amended following negotiation with the parties.

(4) The Energy Supervisory Board can decide that a collective electricity supply company shall amend consumer prices if the company has conducted a transaction that cannot be regarded as reasonable vis-à-vis consumers. The Energy Supervisory Board can also decide that a company shall utilise a profit to amend prices to a specified extent.

Part 11

The Energy Supervisory Board

78. The Minister for Environment and Energy shall appoint an Energy Supervisory Board to undertake an inspection and complaints function in the field of energy.
(2) The Energy Supervisory Board is an autonomous committee which is not subject to the instructions of the Minister for Environment and Energy.
(3) The Minister for Environment and Energy shall establish specific rules for the tasks that the Energy Supervisory Board is to perform. The Minister for Environment and Energy can lay down rules to the effect that the Board is to attend to tasks that are allocated to the Minister. The Minister for Environment and Energy shall approve the Board's rules of procedure.
(4) Upon agreement with the Energy Supervisory Board, the Chairman of the Board can make decisions on its behalf.
(5) The Competition Authority and the Danish Energy Agency shall place secretarial assistance at the disposal of the Board and its Chairman.
(6) The costs of establishing and operating the Energy Supervisory Board shall be met by the companies supervised by the Board pursuant to this Act, cf., however, (7).
(7) The Minister for Environment and Energy can lay down specific rules or make decisions with respect to the matters mentioned in (5) and can lay down specific rules concerning payment pursuant to (6), including that a charge shall be payable for submission of a complaint to the Energy Supervisory Board.

79. The Energy Supervisory Board shall consist of a Chairman and 6 other members appointed by the Minister for Environment and Energy. The members are to be independent of the parties in the energy sector and shall represent legal, economic, technological, environmental, business and consumer expertise. At least one of the members must fulfil the conditions necessary for becoming a High Court judge.
(2) The members of the Board and 2 permanent substitutes are to be appointed for 4 years. Should a member or a substitute resign before the expiry of the period of appointment, re-appointment shall take place for the remainder of the period only.

80. The Energy Supervisory Board can attend to and decide on cases on its own initiative on the basis of a notification or a complaint.

81. The Energy Supervisory Board can, without a Court order upon appropriate proof of identity for supervisory purposes pursuant to the Act
1) *in situ* familiarise itself with and take copies of any type of information including accounts, accounting materials, books, other business papers and electronically stored data, and
2) gain access to the premises of a company or association.
(2) The police shall provide assistance in the exercise of powers pursuant to (1).

82. The Energy Supervisory Board shall submit an annual account of its activity to the Minister for Environment and Energy.
(2) The Energy Supervisory Board shall establish a publicly accessible register of notified charges, terms, technical requirements and standards and shall publish a representative selection of these at least once a year. The register shall, moreover, include information concerning the owner shares held by the collective electricity supply companies in electricity production companies and other collective electricity supply companies and concerning who has owner shares in collective electricity supply companies.
(3) Notifications shall be publicly accessible. The Energy Supervisory Board can, however, decide that a notification is not to be published if indicated by substantial considerations.
(4) The Energy Supervisory Board shall prepare and publish periodical analyses of revenue and cost matters pertaining to the collective electricity supply companies and assessments of the performance of their tasks by these companies.
(5) The Energy Supervisory Board shall take any other steps necessary to ensure transparency with regard to prices, charges, discounts and terms. The Energy Supervisory Board can lay down rules concerning the manner in which such matters are to be made public by the companies and rules concerning invoicing and specification of costs vis-à-vis recipients of transport and energy services.
(6) The Energy Supervisory Board can decide that an impartial expert is to scrutinise accounts, contracts and the like in a company etc. with a view to preparing an expert report for the Board.

83. The Energy Supervisory Board shall draw the attention of the Minister for Environment and Energy to matters which in the opinion of the Board may be of importance for performing tasks concerning, inter alia, issuing, amending and overseeing licences.

Part 12

Duty of disclosure, accounting

84. The Minister for Environment and Energy, the Energy Supervisory Board and the Energy Complaints Board can obtain information necessary for the performance of their

duties in connection with attending to a complaint or in connection with supervision of companies that must hold a licence, other electricity production companies, electricity trading companies and other consumers affected.
(2) To ensure price transparency and security of supply and to follow-up objectives of energy and environmental policy, including preparing the necessary data basis in connection with this, the Minister for Environment and Energy can order collective electricity supply companies, electricity production companies and electricity trading companies to prepare and surrender specific information concerning the production and operational affairs of the companies and concerning the services purchased and sold by the company.
(3) Collective electricity supply companies and electricity producers shall, upon request, provide the system-responsible companies with the information necessary for the performance of their tasks.
(4) Collective electricity supply companies shall, upon request, provide other companies with sufficient information to ensure that grid and transmission activity can take place in a manner compatible with secure and efficient operation of the interconnected system.
(5) Companies shall maintain confidentiality with respect to commercially sensitive information received pursuant to (1) - (4).

85. Electricity production companies and companies trading in electricity shall draw up annual accounts pursuant to the Danish Company Accounts Act. The annual accounts shall be publicly accessible.
(2) The companies shall keep consolidated accounts for non-electricity-related activities which they would have to do if the activities in question were carried out by separate companies.
(3) The Minister for Environment and Energy can lay down specific rules concerning accounting by the companies pursuant to (1) - (2).

Part 13

Sanctions

86. Should any party neglect to observe in time an order given by the Energy Supervisory Board pursuant to section 77, as a statutory measure the Energy Supervisory Board can impose daily or weekly fines on the persons in question.
(2) There is right of distraint for the fines mentioned in (1).

87. Unless a higher penalty is laid down in other legislation, the penalty of a fine shall be imposed on whosoever
1) neglects to acquire a licence for production, grid, transmission and supply-committed activity or for system-responsible activity pursuant to sections 10, 19, 27 and 33,

2) neglects to acquire permission for the establishment and operation of grids or plants pursuant to sections 11, 13, 16, 21 and 23,
3) disregards the terms for a licence or permission pursuant to the provisions mentioned in nos. 1 and 2,
4) neglects to comply with orders or prohibitions pursuant to the Act, including orders concerning correcting an illegal matter,
5) neglects to provide information as dealt with in Part 12,
6) provides the Minister for Environment and Energy or the Energy Complaints Board with incorrect or misleading information or neglects to provide information upon request.

88. In rules issued pursuant to the Act, the penalty of a fine can be established for contravention of the provisions in or terms and orders issued in pursuance of the rules.
(2) Companies etc. (legal persons) can be held criminally liable pursuant to the rules in Part 5 of the Criminal Code.

Part 14

Complaints, the Energy Complaints Board etc.

89. The Energy Complaints Board shall attend to complaints concerning decisions made by the Minister for Environment and Energy or by the Energy Supervisory Board pursuant to this Act or rules issued pursuant to the Act.
(2) The decisions made by the Minister for Environment and Energy and the Energy Supervisory Board pursuant to the Act, or rules issued pursuant to the Act, can not be submitted to an administrative authority than the Energy Complaints Board mentioned in (1). The decisions may not be brought before the Courts before the final administrative decision has been made.

90. The Minister for Environment and Energy can lay down rules concerning the following:
1) Access to making a complaint about decisions which, pursuant to the Act or rules issued in pursuance of the Act, shall be taken by the Minister for Environment and Energy or by the Energy Supervisory Board, including that it shall not be possible to submit certain decisions to the Energy Complaints Board, and that decisions made by an institution under the Ministry of Environment and Energy or other Authority to which the Minister has delegated the authority he holds under the Act pursuant to section 92, can not be submitted to the Minister for Environment and Energy.
2) Payment of a charge when a complaint is submitted to the Energy Complaints Board.

91. When decisions pursuant to this Act or rules issued pursuant to this Act are to be made, the representatives on the Energy Complaints Board appointed on the recommendation of the Confederation of Danish Industries and the Agricultural Council

of Denmark shall be replaced by 2 members with special economic or technical expertise in the field of electricity supply. They shall be appointed by the Minister for Environment and Energy.

92. The Minister for Environment and Energy can authorise an institution established under the Ministry or another Authority to exercise the powers held by the Minister under the Act.

Part 15

Entry into force, revocation and interim provisions

93. The time at which the Act shall enter into force shall be laid down by the Minister for Environment and Energy. The Minister can decide that parts of the Act shall enter into force before other parts of the Act.

94. The Minister for Environment and Energy can revoke the Energy Supply Act. cf. Consolidation Act no. 632 of 1 July 1996. The Minister can lay down that parts of the Act shall be revoked before other parts of the Act.

95. The Minister for Environment and Energy can revoke Part 2 of the Act on the Utilisation of Renewable Energy etc., cf. Consolidation Act no. 837 of 7 October 1992.

96. The Minister for Environment and Energy can lay down rules to the effect that rules laid down pursuant to the Acts mentioned in sections 94 and 95 shall remain in force until replaced by rules laid down pursuant to this Act. Contravention of the rules shall be punished pursuant to the hitherto valid rules.

97. A company which at the time the Act enters into force legally performed activity which must be carried out under licence pursuant to this Act, shall have the right to receive a licence for its activity when
1) the company declares its willingness to fulfil the obligations imposed on it pursuant to the provisions of the Act and the licence,
2) the Statutes of the company are not in contravention of the provisions of this Act or rules issued pursuant to the Act and can be approved by the Minister for Environment and Energy, and
3) the company fulfils the requirements of this Act for being granted a licence.
(2) It is a condition for licences being granted to grid companies that direct or indirect owner shares in electricity production companies, transmission companies, system-responsible companies and Supply-committed enterprises which at the time the Bill is presented are owned by the grid company or by companies that directly or indirectly hold owner shares in the grid company, are transferred to the grid company so that this

directly owns the owner shares in question. It is, likewise, a condition for the granting of a licence to transmission companies, system-responsible companies and Supply-committed enterprises that owner shares in these companies are transferred to the grid company/companies affected, in accordance with point 1.
(3) The Minister for Environment and Energy may grant an exemption from the provision in (2) should special circumstances so indicate.

98. Approvals for the establishment of and alterations to production plants, transmission grids and licences for electricity production and transmission, granted pursuant to the provisions of the hitherto valid Electricity Supply Act, shall be maintained in accordance with their contents and duration.
(2) A company which must hold a licence can temporarily continue its activity without a licence if it submits the necessary application for a licence within a time limit laid down by the Minister for Environment and Energy until the Minister has made a decision about the application, provided that the company making the application complies with the provisions of the Act for the activity.
(3) The Minister for Environment and Energy shall lay down the point in time from which the licence requirement for grid and Supply-committed enterprises shall apply.

99. The Minister for Environment and Energy can lay down interim provisions by which the hitherto valid legal position can be maintained in an interim period with the amendments necessitated by this Act with reference to the companies affected by section 98 (2) and (3).

100. When the Act enters into force and upon the decision of the Energy Supervisory Board, collective electricity supply companies shall draw up a statement of non-utilised allocations undertaken in pursuance of the hitherto valid Electricity Supply Act, over and under coverage for the period prior to the entry into force of the present Act and other matters to do with capital. The companies shall subsequently draw up a preliminary statement of account prepared in accordance with guidelines laid down by the Energy Supervisory Board and which can form the basis for future pricing pursuant to the provisions of this Act. The statement and the preliminary statement of account shall be submitted to the Energy Supervisory Board within a deadline laid down by the Board.
(2) Before a deadline laid down by the Energy Supervisory Board, collective electricity supply companies shall submit a report concerning the manner in which non-utilised allocations undertaken pursuant to the hitherto valid Electricity Supply Act, over and under coverage for the period prior to the entry into force of this Act, and other assets or liabilities included in the preliminary statement of account mentioned in (1) will be offset in the prices of the next year.
(3) The Energy Supervisory Board shall decide whether the statements and preliminary statements of account submitted by the companies pursuant to (1) can be approved. The Energy Supervisory Board shall, moreover, decide whether the statements by the

companies pursuant to (2) can form the basis for offsetting allocations etc. in the prices of the next year.
(4) Should a company not have fulfilled its obligations pursuant to (1) and (2) within the time-limit laid down by the Energy Supervisory Board, the Board shall lay down the statement and preliminary statement of account.
(5) The obligations of collective electricity supply companies pursuant to approvals in accordance with section 9 (6) of the hitherto valid Electricity Supply Act for inclusion of losses realised in connection with co-ordinated activity shall be maintained.

101. Companies operating electricity production activity covered by the hitherto valid Electricity Supply Act shall, at the entry into force of this Act and as specified by the Minister for Environment and Energy, prepare an account of non-utilised allocations undertaken pursuant to the hitherto valid Electricity Supply Act, over and under coverage for the period prior to the entry into force of the present Act, and other matters.
(2) The statement mentioned in (1) should form the basis of the companies' economic preliminary statement of account in connection with the transition to pricing pursuant to section 75.
(3) Companies covered by (1) which, at the time the Act enters into force, perform activity by waste incineration in accordance with guidelines laid down by the Minister for Environment and Energy shall draw up a separate statement of the economic affairs of the waste incineration plant.
(4) The statement mentioned in (3) shall form the basis of the economic preliminary statement of account in connection with the unbundling of waste incineration activity in a separate company in pursuance of section 48. The statement and the preliminary statement of account shall be submitted to the Minister for Environment and Energy within a time-limit laid down by the Minister.
(5) The Minister for Environment and Energy can give his approval that the owner, when the economic preliminary statement of account for waste incineration companies pursuant to (3) is drawn up, determines that it is incumbent upon the waste incineration plant to pay a sum corresponding to the necessary loan capital which is a consequence of the assets being increased because previously undertaken allocations over the electricity price are taken out of the statement for the company that unbundles the waste incineration plant.
(6) The Minister for Environment and Energy shall decide whether the statements submitted by the companies pursuant to (1) and (3) can be approved. On this basis, the Minister for Environment and Energy shall decide which obligations shall be incumbent on electricity production companies following the transition to pricing pursuant to section 75.

102. Should this Act mean that a company covered by the hitherto valid Electricity Supply Act will have to be divided into several independent legal entities, this division shall take place in such a manner that the assets and liabilities are allocated to each

entity which is naturally associated with the activity that will have to be performed by the entity in question. In relation to the liabilities of the company, the division which has taken place shall have no effect vis-à-vis the creditors of the company.
(2) The Energy Supervisory Board and the Minister for Environment and Energy, respectively, shall check that the provision in (1) is complied with in connection with the establishment of the preliminary statements of account pursuant to sections 100 and 101.

103. Cases being attended to by the Danish Energy Agency, the Electricity Price Committee or the Competition Complaints Council shall be transferred at the entry into force of this Act or from a later point in time as laid down by the Minister for Environment and Energy to the Authority which, pursuant to this Act, should attend to the case should the case be submitted after this Act has entered into force.

104. The following amendments shall be made to the Act on Municipal Equalisation and General Subsidies to Municipalities and Counties, cf. Consolidation Act no. 571 of 4 July 1997, as most recently amended by section 5 of Act no. 117 of 2 March 1999:
1) In *section 10 (6)* and *section 17 (6)* "The Electricity Price Committee" shall be amended to "The Energy Supervisory Board".
2) In *section 10 (6)* and *section 17 (6)*, in two places "section 10 b" shall be amended to "section 37".

105. The Minister for Environment and Energy can lay down transition rules.

106. The Act shall not apply to the Faroe Islands and Greenland.

Notes on the Bill

General Notes

1. The background to the Bill1.

1.1 The Electricity Reform Agreement.
On 3 March 1999 a majority of the parties in the Folketing (Danish Parliament) entered into an agreement for a reform of the electricity sector. The Electricity Reform Agreement (cf. Annex 1) establishes the framework for the way in which consumer protection, environmental consideration and security of supply are to be conducted in a liberalised electricity market.

This Bill is to be presented together with Bill 235 (Bill on CO_2 Quotas for Electricity Production), Bill 236 (Bill on the Amendment of the Act on Subsidies for Electricity Production), Bill 237 (Bill to Amend the Act on the Utilisation of Renewable Energy Sources), and Bill 238 (Bill on the Amendment of the Heat Supply Act) , for the overall implementation of the Electricity Reform Agreement.

1.2 The objective of the Bill.
The objective of the Bill is to modernise the legislative framework of the electricity supply. The new scheme is to provide efficient, modern control instruments which can ensure considerations of security of supply, national economy, environmental protection and consumer protection, at the same time as the electricity sector will be subject to a higher degree of market control.

The Electricity Reform Agreement lays down the followings considerations which should be taken into account:
Consumer protection, inexpensive consumer prices and free choice of supplier for consumers
Fulfilment of international environmental commitments
Access to the electricity system on objective, non-discriminatory terms
An electricity system that continues to function well with high energy and cost effectiveness, quality, and security of supply
A well-functioning, competitive market for production and trade in electricity with continued incentives for energy savings
Increased framework control that will allow market actors more individual options
Environmentally and economically efficient economic interaction between the Danish electricity system and non-Danish systems and with the rest of the Danish energy system.

There are two important reasons for the need to implement a legislative reform for the electricity sector. Decisive changes are taking place in the outer framework conditions of the electricity sector. There is extensive internationalisation and liberalisation of access to the electricity markets. In 1996 an EU directive was adopted on the internal market for electricity, and Nordic electricity co-operation has undergone large-scale change due to the far-reaching liberalisation that has already taken place in the other Nordic countries. Furthermore, over the last ten years energy policy has to an increasing extent been dominated by the desire to ensure sustainable development where environmental impact from energy production is significantly reduced.

Present legislation is no longer in keeping with this development. A new legislative framework is needed that can unite the fulfilment of the long-term environmental objectives with effective consumer protection and the introduction of increased competition in the electricity sector,

The Bill is to ensure the implementation of the necessary environmental reorganisation of the electricity supply with the greatest possible consideration for economic efficiency and the possibilities of creating a positive business impact The Bill is to create the basis for efficient, environmentally sustainable utilisation of the already-established energy infrastructure. In accordance with this, a framework must be created for the continued introduction of renewable energy and CHP, at the same time as the utilisation of the supply system should interact with savings efforts at the stage of consumption.

The aim of the Bill is, among other things, to create clarity with regard to the division of roles in the electricity sector to ensure clear separation of tasks concerning public service obligations and commercial activities. The Bill also aims to develop the unique organisation of the Danish electricity sector, which to a high degree is characterised by a decentralised structure with municipal or directly consumer-owned electricity companies.

The new legislation has, moreover, the aim of promoting efficiency to bring the development of efficiency in the Danish electricity sector in line with international development. Although the Danish energy sector in general is considered relatively efficient, there is nevertheless thought to be a basis for improving efficiency by means such as mergers, co-operation and other forms of structural rationalisations. Increased competition combined with more targeted, efficiency promoting price regulation are to contribute to realising the efficiency potential of the sector.

Finally, the Bill is to contribute to implementing the agreement on the 1999 Finance Act where it is estimated that Government finances will be improved by approximately DKK 2 billion annually when the reform is fully implemented.

1.3. New framework conditions.

In recent years the international framework conditions of the energy sector have undergone significant changes, creating the need to adapt national legislation. Efforts to establish an internal market for energy within the EU, with free movement of goods, persons, services and capital, were formally launched with the presentation of a White Paper by the Commission in 1988. The aim of the internal market is to improve efficiency and the competitiveness of the economy of the Community at the same time as having consideration for security of supply and environmental protection.

The first phase of the liberalisation of the energy markets was implemented in 1990-91 with the directives on the transit of electricity and natural gas and the price transparency directive. The concession directive was implemented in 1994 and in 1992 the Commission presented its proposal for joint rules for the internal market for electricity and natural gas. The aim of the market directives for electricity and natural gas is to open and integrate the energy markets which, in most of the EU Member States, traditionally have been characterised by a lack of competition.

The adoption of joint rules for the internal electricity market in December 1996 means that a joint framework has now been established for the gradual opening of the national electricity markets. The directive allows the possibility of having consideration in the implementation phase for the way in which the energy sector in the individual countries is organised.

Several countries liberalised their energy markets simultaneously with the political negotiations about the Commission's proposed directive. At the beginning of the 1990s, the then British Government privatised and liberalised large sections of the energy sector. In the Nordic countries, Norway (1991) and later also Sweden (1994-96) and Finland (1996) implemented electricity market reforms with the introduction of competition at the production and supply stages and rules concerning access to utilising the grid.

As one element in liberalising its electricity market, in 1993 Norway established an electricity exchange. In 1996 the electricity exchange was expanded to become a joint electricity exchange for Norway and Sweden (NordPool), at the same time as Norway and Sweden reached agreement on the countries becoming part of a joint price market. Today, NordPool is owned (50/50) by the two state-owned companies, Statnett SF and Svenska Kraftnät, which take care of system responsibility in Norway and Sweden, respectively. As of 1 July 1998, Finland was integrated in the Norwegian-Swedish electricity market and is thus included in the same price area. Today, like a number of other international market actors, Danish electricity companies trade on the Nordic electricity exchange.

Alongside growing internationalisation, throughout the last decade there been increasing focus on environmental impact from the energy sector, nationally and internationally.

In 1990, the then Danish government presented its plan of action for energy, "Energy 2000", the main objective of which was sustainable development of the energy sector. The national objective of a 20% reduction of CO_2 by 2005 in relation to the 1998 level was established in "Energy 2000"; since that time this has been a guiding principle of energy policy. The 1990 action plan was followed up by the 1996 action plan, "Energy 21", which, among things, pointed to the need for a more coherent reform of the electricity area with a view to uniting the environmental aims with the growing liberalisation of electricity markets.

The need for effective measures to reduce energy-sector environmental impact was further emphasised by the negotiated settlement of the Kyoto Climate Conference in December 1997, where agreement was reached concerning a legally binding agreement which is to reduce emissions of greenhouse gases by the industrialised countries. In the internal division of responsibilities within the EU, Denmark has undertaken to reduce emissions by 21% between 2008 and 2012 in relation to the 1990 level. Pursuant to the Kyoto Protocol, Denmark, like the other industrialised countries, must have made visible progress by 2005 towards meeting its reduction commitments. The electricity reform agreement will contribute to ensuring that Denmark can fulfil these commitments.

1.4. The historical structure of the electricity sector.
Historically, the Danish electricity supply system has been self-organising with no legislative regulation. The first electricity plant with public supply was established in 1891 and in the years that followed several hundred electricity plants were established. These were usually municipally-owned electricity plants in urban areas, while in the rural areas co-operative societies were typically established with the individual consumers as members. These companies were responsible for both production and distribution of electricity.

Joint production plants were gradually established on a regional basis and the individual local enterprises went over to being distribution companies. In all essentials, the establishment of the vertical structure of the Danish electricity sector as we know it today was completed during the 1950s.There are at present approximately 100 distribution companies, the great majority of which are owned by the municipalities or the consumers in the form of co-operative societies. A small number of companies are organised as partnerships or non-profit institutions (funds). NESA, the distribution company, is a limited company but mainly with municipal shareholders.

The distribution companies own the production companies in such a way that within a given area the distribution companies jointly own the production activity on a partnership or co-operative basis. For their part, the production companies have set up two co-operation bodies, ELSAM for Jutland/Funen and ELKRAFT for Zealand and Bornholm. There is no direct electricity link between the two areas. The two co-operation bodies were set up with a view to looking after operational planning and co-ordination of production, including the import and export of electricity.

1.5. The 1976 Heat Supply Act.

Act no. 54 of 25 February on heat supply came into force on 1 January 1977. Up to then there had been no general sector legislation for electricity supply, which had solely been regulated by the act on Electrical Heavy Current Plants. The Act originated in the energy crises of the 1970s, where the objectives of safeguarding security of supply and an economically efficient energy system were pursued by means of developing joint supply and converting to multi-pronged energy supply.

The main elements in the Act were the establishment of a system of licences with associated obligations, provisions concerning choice of fuel etc. and statutory pricing directions.

The licence system meant that licences were necessary for electricity supply activity from production plants with capacity in excess of 25 MW or transmission and distribution plants designed for voltages over 100 kV. The aim of the licensing system was to introduce public regulation of the large-scale production and transmission installations in certain areas of relevance for energy policy, in particular security of supply and scope of investment. In the course of 1978 and 1979, licences were granted to all existing electricity production enterprises for a 20-year period, and licences have been granted to electricity supply enterprises on an on-going basis.

It was also laid down that when considerations of energy policy, including security of supply, so indicated, the Minister for Energy, upon reasonable notice, could order electricity supply enterprises to organise their production plants in such a way that specific fuels could be used, to utilise specific types of fuel in their production to a specified extent, and to maintain fuel stores to a specified extent.

Finally, price directions were laid down in the Act, based on the electricity companies being economically self-sustaining. This means that only the necessary costs of producing and distributing electricity, operational deprecations and interest payment on debt capital could be included in the price of electricity. Finally, upon the approval of the Electricity Price Committee, it was possible to include reserves for new investments and interest payment on investment capital. This was, in reality, a continuation of the earlier practice of the electricity companies to the effect that they should be economically self-sustaining. The background to this was that for the most part the

electricity supply was municipally and co-operatively owned. With some modifications, these price directions have remained in force up to the present.

1.6. Development in the electricity sector and in electricity legislation.
Together with other supply legislation in the area of heat and natural gas, the Electricity Supply Act contained efficient instruments for solving the problems faced by energy policy in the period subsequent to the energy crises. For a number of years, Danish energy policy was implemented by means of a combination of legislative regulation, economic measures and voluntary agreements. Especially at the beginning, an attempt was made to resolve the development of environmentally benign energy plants in agreement with the energy companies. With the amendment of the Heat Supply Act in 1990, however, more explicit regulation was introduced to ensure fuel reorganisation and the development of small-scale CHP.

At present CHP covers 40% of total heat supply and almost 50% of electricity supply. Furthermore, renewable energy has been significantly boosted and today RE-produced electricity (RE electricity) covers 10% of total electricity consumption. Denmark has simultaneously succeeded in maintaining the development in energy consumption at a more or less constant level despite economic growth.

At the same time as the established electricity companies converted to more environmentally benign electricity production, in recent years many new, independent producers have appeared in the form of small-scale and industrial CHP producers, private wind-turbine owners etc. Today production from these sources represents a growing amount of total production capacity.

During the 1990s, environmental objectives have become steadily more centrally placed in energy policy while the electricity sector has been preparing for competition and increased internationalisation. To a growing extent, the liberalisation of the electricity markets has become a central element for many electricity companies. Thus, these companies have had problems in taking on public service obligations unless there is clear legislative regulation in the area.

The Heat Supply Act has been amended 11 times since 1992. The many amendments of the Heat Supply Act in recent years are to a high degree symptomatic of the growing conflicts to do with regulation between objectives of energy policy and economic, corporate interests. The conflicts give rise to uncertainty about the division of responsibility and have an impact on the possibilities of realising energy policy objectives.

With Act no. 486 of 12 June 1996 concerning the Amendment of the Heat Supply Act (Access to the Electricity Supply Grid, etc.) (Act no. 486), the first step was taken towards adapting legislation to a more competitive market. The EU Commission

approved the Act in accordance with the rules on state subsidy in December 1997, and the Act came into force on 1 January 1998.The main elements of the Act are partial opening of the electricity market, provisions concerning the public service obligations of the electricity supply, and rules concerning system responsibility. The Act contains provisions about, inter alia, the prioritisation of CHP and renewable energy, the aim of which is ensure a reasonable balance between consideration for competition and protection of the environment and consumers. One important element in the Act is that all consumers - irrespective of whether or not they have free access to selecting their supplier - are obliged to purchase electricity from the prioritised plants.

With Act no. 486, Denmark is already fulfilling central parts of the electricity directive, which came into force on 19 February 1997 with a deadline for implementation in the Member States two years later. Thus, on 1 January 1998, market access was granted for electricity consumers with annual consumption of over 100 GWh per Consumption site, and electricity distribution enterprises with annual sales in excess of 100 GWh. This corresponds to approximately 90% of the Danish market being opened to competition. In terms of the electricity directive, the requirements are that 25% of the market should be open to competition in 1999, rising to 28% in 2000 and 30% in 2003. In order fully to fulfil the provisions about market access, by an amendment to the Executive Order concerning access to the electricity supply network etc., in February 1999 grid access was, moreover, granted to all producers for sales of their production, and own producers have also been granted grid access with a view to supplying subsidiaries and their own facilities. When the Act had come into force, ELSAM and ELKRAFT were now regarded as system-responsible companies west and east, respectively, of the Great Belt until their licences expired in 1998. By the 1998 Amendment of the Heat Supply Act in 1998, (Act. no. 89 of 10 February 1998), all existing licences, issued in 1978 and 1979 to expire 20 years later, were extended to 31 December 1999. This meant that ELSAM and ELKRAFT's licences as system-responsible companies were extended to 31 December 1999.In 1997 a corporate unbundling of ELSAM in the Jutland-Funen area was adopted. This took place, inter alia, as part of the implementation of Act no. 486. ELSAM's grid activities were unbundled in an independent company, I/S Eltra, which owns the 400 kV grid and which became the system-responsible company for Jutland and Funen on 1 January 1998. The partners are the distribution companies which, at the same time, are co-owners of ELSAM by virtue of their ownership of the production companies. In Zealand on 1 January 1998 a special unit of Elkraft, Elkraft System, was established to take care of system responsibility.

In addition to I/S Eltra, a number of other grid enterprises have been established in Jutland and Funen – typically in the form of partnerships – where the operation of the overall grid is unbundled from the existing production companies. Simultaneously, several production companies have reorganised into limited companies or another corporate form with limited liability.

In Eastern Denmark, where fewer and larger companies are a feature, the structure is under consideration. Københavns Belysningsvæsen (the Copenhagen Light Company) is an integrated supply and production company, owned and operated by the City of Copenhagen. The City of Copenhagen is co-owner of ELKRAFT, which is also owned by the Sjællandske Kraftværker (Zealand Power Plants), which is owned by a number of distribution companies including NESA. NESA is a limited company with primarily municipal ownership.

As part of the adjustment to a more competitive electricity market, the electricity companies have eased the previous statutory commitments so that a number of distribution companies are no longer obliged to purchase electricity from their own power plant. This has led to a number of mergers and the establishment of trading companies and procurement alliances in the distribution sector. The general background for the mergers was the wish to increase the efficiency and size of the companies in order to achieve a stronger position in a liberalised electricity market. In the case of the trading companies/procurement alliances, the aim is achieve the lowest possible purchase price for electricity, including forcing the prices of the Danish power plants down.

Finally, to an increasing extent Danish electricity companies have also aimed at non-Danish markets and co-operation partners.

With respect to the district heating sector, there are more than 400 companies, many of the largest of which are characterised by municipal ownership. There are, however, also a large number of district heating companies where the individual consumer is a shareholder. Many district heating companies are local companies with their own CHP production. There are, in addition, a number of district heating distribution companies that are linked to large heat transmission grids which utilise surplus heat from large-scale power plants. There is not the same trend to structural changes in the district heating sector as in the other parts of the energy supply system. The interest in the district heating sector is concentrated on the liberalisation of the electricity sector not having negative consequences for consumers of electricity.

1.7 The main content of the Electricity Reform Agreement.

The major elements in the Electricity Reform Agreement are market opening, corporate regulation, more efficient efforts for energy savings, a CO_2 framework, prioritisation of environmentally benign electricity production, conditions for the large-scale production companies, the establishment of an independent Energy Supervisory Board, and effects on taxation and government finances .Full market opening is to be implemented before the end of 2002, when all consumers can freely choose their electricity supplier. Advance opening of the market will be carried out for large-scale consumers to further promote the competitive strength of the corporate sector.

The primary aim of the future corporate regulation of the electricity sector is clear separation of monopoly and competitive areas. Production of and trade in electricity will be subject to competition while grid operation and system responsibility are to function as a public infrastructure placed at the disposal of all who use the system. Furthermore, special Supply-committed enterprises will be established that will offer electricity supplies to all consumers in the supply district. As a point of departure, the present distribution companies are to continue to function as grid companies. If they take on other tasks, such as electricity trading and supply-committed activity, these activities must be corporately unbundled. There are special requirements concerning consumer influence and public representation in grid, transmission, system-responsible and Supply-committed enterprises. For further details, reference is made to the Agreement in Annex 1 and to the content of the Bill below.

The Agreement means that there is general agreement that before the end of the year a draft of new energy saving legislation is to be drawn up with a view to achieving more coherent prioritisation of energy saving efforts.

With a view to Denmark being in a position to fulfil its international environmental commitments, new framework control is to be introduced in the form of, among other things, quotas for electricity producers' CO_2 emissions. Reference is made to the Bill concerning CO_2 quotas for electricity production, which is being presented at the same time as this Bill.

With regard to prioritisation of environmentally benign electricity production, the Agreement presupposes a continuation of the principle in Act no. 486 to the effect that all consumers are obliged to purchase electricity from prioritised plants. As part of this, and as an innovation, in future quotas are be announced for electricity purchase by consumers from renewable energy plants. At the same time certification of electricity produced from renewable energy sources is to be introduced where RE-producers will receive RE-certificates for their production. When acquiring these RE-certificates, consumers must document their purchase of electricity based on renewable energy sources. State subsidy for renewable energy production is to be discontinued and instead a more closely specified production subsidy is to be granted to the individual types of renewable energy in a transition period, financed over electricity prices. It is a precondition that before the end of 1999 a more detailed analysis and assessment of how to organise trade in renewable energy and make it more efficient is to be carried out on the basis of more closely specified considerations.

The Agreement has not provided any final clarification of the financial position of the power plants.

The Electricity Reform Agreement means that an independent Energy Supervisory Board is to be established to carry out a special sector-specific supervisory and complaints function in relation to the energy sector. The Council will replace the present Electricity Gas and Heat-Price Committee that was appointed pursuant to the Electricity Supply Act and the Heat Supply Act, respectively. In consequence of this, the Minister for the Environment and Energy has simultaneously with this Bill presented a Bill for the Amendment of the Heat Supply Act.

Finally, with respect to taxation and effects on government finances, there is agreement that in future the electricity companies are to be liable to general taxation and profit-margin taxation is to be introduced when companies are sold for the first time. It is also presupposed that the present rules concerning sales by local authorities of electricity-supply activity are not to be amended, cf. point 2 below and the Notes to 37.For the implementation of the agreement regarding the Finance Act for 1999, there is, moreover, agreement to introduce a distribution tax on the electricity grid. The Minister for Taxation is to present a Bill to this effect. Finally, the government production subsidies for RE electricity are to be restructured so that in future these will be financed over the price of electricity. In consequence of this, the Minister for the Environment and Energy has simultaneously with the presentation of this Bill presented a Bill for the Amendment of the Bill on Subsidies for Electricity Production and a Bill to Amend the Act on the Utilisation of Renewable Energy Sources etc.

2. The contents of the Bill

As mentioned above, the Bill is to implement the Agreement on the Legislative Reform of the Electricity Sector. However, on certain points the Agreement means that before final implementation, closer analysis and assessment must be carried out concerning trading in renewable energy and the financial obligations that the power plants will have imposed on them under market conditions. The present Bill contains the necessary legislative framework within which the more detailed implementation of these matters can take place in the form of rules issued by the Minister for the Environment and Energy when they have been submitted to the Energy Policy Committee of the Folketing (Danish Parliament). In addition, the Bill contains a number of proposals for authorisations with a view, inter alia, to issuing rules of a more technical nature.

An important focal point of the Bill is that all users of the electricity system in Denmark should have equal access to services from publicly regulated enterprises, which includes grid companies, transmission companies, Supply-committed enterprises and system-responsible companies. The Bill is to ensure that access to the infrastructure of the electricity system takes place on objective, transparent, reasonable and uniform conditions, and at price that has been established beforehand. This is the precondition for efficient competition being established as regards production and trading activity, which the Bill will make into activities subject to competition.

The Bill creates a parallel to the way in which the electricity sector is organised in Norway and Sweden in connection with liberalisation in these countries. In Norway and Sweden, via state ownership of the grids, the infrastructure is likewise publicly regulated, while production and trading in electricity are subject to competition. There is no state ownership in the electricity sector in Denmark. The Bill builds on the existing ownership structure in the electricity sector where, today, transmission and distribution companies and system-responsible companies are largely consumer and local-authority-owned.

Thus, a significant part of the Bill aims at regulation of the companies that are to provide electricity transportation and electricity-system services, making these available to all users. In the meaning of the Bill, these companies are "collective electricity-supply companies" where payment for services is not the result of commercial negotiation but laid down on publicly regulated conditions. With respect to ownership, such companies can also be privately owned.

Users of the electricity system should be understood in a broad sense. This means both the individual end users of electricity and those who only make use of the system for the transportation of electricity, for example companies that trade in electricity. Thus, trading companies should be able to use the system on equal terms with other consumers. No special regulation of trading companies is to be carried out.

a) The position of electricity consumers.
The position of electricity consumers is specified in Part 2 of the Bill. The three most important elements in the Bill are the right of all consumers to the supply of electricity by means of a supply offer from a supply-committed enterprise, consumers' right freely to choose their electricity supplier at a specified point in time, and consumers' obligation to contribute to the payment of general public service obligations and to maintain and develop environmentally benign electricity production. Supply-committed activity and its role in relation to consumer protection is described in more detail below.

It is proposed that the market be opened in a regulated process as laid down in the Electricity Reform Agreement. From the time the Act comes into force, the present provision that all consumers with annual consumption in excess of 100 GWh have free choice of supplier will be continued. The consumption threshold will be lowered to 10 GWh on 1 April 2000 and to 1 GWh from 1 January 2001. From 1 January 2003 all consumers will have the right freely to choose their electricity supplier. It is estimated that this is the earliest point in time where it will be administratively and technically possible to handle free choice of supplier for all consumers. Should it prove, contrary to expectation, not to be technically possible to open the market within the deadlines laid down in the Bill, it is proposed that the Minister for the Environment and Energy may change these following submission to the Energy Policy Committee of the Folketing.

It is an important element in current legislation that all domestic consumers should purchase a proportional share of prioritised, environmentally benign electricity production just as they are to carry, on an equal footing, a proportional share of the costs of public service obligations which benefit all consumers. These involve, for example, costs of research activities, the maintenance of fuel stores and reserve capacity, balancing services in relation to renewable energy and CHP production, energy savings activities etc. This principle is continued in the present Bill.

In addition, all consumers will be obliged to purchase a certain number of RE-certificates in relation to their consumption, from a point in time to be specified. Reference is made to the Notes below concerning environmentally benign electricity production.

b) Grid and transmission companies

Grid companies are a new concept in the legislation, as now a distinction is made between grid activity and supply activity. Grid activity takes care of the physical link on the distribution level between producer/transmission grid and the consumers of electricity, while supply activity purchases electricity with a view to selling it to end users.

Similarly, transmission companies take care of the physical link between producers and distribution grid/large-scale consumers on the transmission level. Hitherto, transmission activity has typically been carried out by ELSAM (now Eltra), ELKRAFT and a number of the large production companies. Transmission activity west of the Great Belt has recently been unbundled or is in the process of being unbundled from the production companies.

The electricity grid is the connection stage between producer and consumer and forms a natural monopoly in the market. In the coming regulation, it crucial that this monopoly cannot be abused. Thus, it is laid down in the Bill that the grid is to function as a public infrastructure which is placed at the disposal of all users of the electricity system, upon payment.

In their supply area, in accordance with the Bill, grid and transmission companies must: ensure the sufficient and efficient transportation of electricity, including converting and developing the grid, connect producers and consumers, place transportation capacity at disposal, measure supply and purchase, observe any conditions in plant approvals , and to the degree necessary and upon payment place the transmission grid at the disposal of the system-responsible company.

In addition, grid companies must: maintain technical quality, ensure that consumers are charged for the payment commitments laid down in the Act, provide and settle

electricity in accordance with agreement commitments for prioritised electricity, and carry out information and energy-saving activities.

Grid and transmission activity may only be carried out on licence. This will ensure, by means of conditions in the licences, that the public obligations imposed on the companies can be fulfilled. The distribution companies were not previously covered by the licensing system as the threshold for licences was formerly a voltage level of 100 kV.
Pursuant to the Bill, the establishment of new cables or significant reconstruction of voltage levels over 100 kV require the approval of the Minister for the Environment and Energy. These approvals thresholds are unchanged in relation to current legislation. There are approximately 100 distribution companies in the present electricity sector and approximately 10 companies with a transmission licence. As a point of departure, it is expected that all existing companies which already now are, or in future will be, covered by the licensing requirement will apply for a licence and will be able to continue their activity. In the long term, regulation is expected to lead to structural rationalisations and fewer companies.

Management by municipalities and counties and their participation in activity covered by the Bill are regulated by section 4 of the Bill. This lays down that municipalities may manage grid activity and electricity production by waste incineration (as regards the latter, special reference is made to the Notes to section 75), and that municipalities and counties may participate in all other activity covered by the Bill when the activity is managed by a company with limited liability.

This provision means that municipalities can choose not to unbundle their grid activity into independent companies with limited liability. The background to this proposal is that the core task of the municipalities in relation to electricity supply is grid activity, and that there is not thought to be the same financial risk connected with grid activity as with other activity under the Bill, for which reason it is not necessary to require that municipal grid activity should be unbundled into special companies with limited liability. However, price regulation for grid companies will also apply to municipal grid companies, and the economy of the municipal grid company must be kept account unbundled from other municipal activities.

The proposal should, however, be viewed in the context of the fact that it is presupposed in the Electricity Reform Agreement that all electricity companies – including municipal companies – are made liable to taxation on a line with limited companies. Thus, it cannot be excluded that in connection with the implementation of such tax liability it will prove necessary to adjust the provision on municipal grid activity, as the implementation of tax liability for a municipal grid company presupposes, inter alia, that it is possible to ensure sufficiently clear unbundling of the economy of a grid company.

c) System-responsible companies

Pursuant to the Bill, the system-responsible companies are to carry out a number of general tasks at transmission level. In all essentials, these tasks as similar to those in the current Electricity Supply Act. Thus, it is the task of the system-responsible companies to: ensure the physical stability and security of supply of the overall electricity system, to take care of foreign connections – including co-operation with system-responsible companies in other areas or countries, to ensure the adaptation and distribution of prioritised electricity production, to co-operate with the grid companies to ensure grid access and transit, to ensure equal access to information about purchase and sale of electricity, to carry out planning tasks and, together with the transmission companies, to ensure necessary conversion and new construction in the transmission grid, and to conduct non-commercial research activity in environmentally benign electricity.

In the terms of the Bill, the system-responsible companies are to be publicly regulated, neutral bodies independent of production and trading interests, thus securing the best possible conditions for competition. To ensure this, the requirements with regard to corporate unbundling are being tightened in relation to previously, including from production activity. In addition, the Minister for the Environment and Energy will now be able to appoint two members of the Boards of the system-responsible companies. These members must be independent of commercial electricity and heat-supply interests. Moreover, the Bill requires that the Board members and senior management may not take part in the operation or management of an electricity production or electricity trading company.

System-responsible activity can, pursuant to the Bill, only be carried out on licence and system-responsible companies can only perform the tasks laid down in the licence. However, system-responsible companies can still carry out the activities that are contained in the licence in a transmission licence on the condition of accounting unbundling of the two activities which must be licensed.

d) *Supply-committed enterprises*

As part of consumer protection, it is proposed that new supply-committed activity be established to offer all consumers in a specified supply area electricity supplies on reasonable terms and at competitive prices. These companies are to ensure that all consumers are offered a standard package of energy and energy-saving services.

Thus, supply-commitment, which today is the duty of the production and distribution companies, is to be transferred to the Supply-committed enterprises. The present distribution companies are expected to apply for licences for supply-committed activity. This activity is to be corporately unbundled from grid activity. Experience from countries where the way has been opened for competition in the electricity sector shows that there is a risk of the large consumers reaping benefits at the cost of the small

consumers if the market is merely freed without the necessary protection being built into legislation from the start.

Supply-commitment is of special importance in a transition period towards full market opening for all consumers. But also when full market opening has been implemented, there will be a need for Supply-committed enterprises that can ensure the protection of, in particular, small consumers with little mobility and limited possibilities for acting on the commercial market.

By means of their purchases of electricity on the market, the Supply-committed enterprises are to function as efficient and competent representatives of the individual consumer. It is expected that by virtue of their size, these companies will be able to match the individual purchases of large-scale consumers from the point of view of price. This task, which can be carried out on licence only, is expected to be conducted by the present distribution companies, perhaps in the form of co-operation across the boundaries of the present supply.

e) Electricity production

With regard to electricity production, one of the basic considerations in the Bill is to ensure continued development towards more environmentally benign electricity production as the same time as the advantage of market forces is exploited. The Bill is oriented towards a development where traditional electricity production is increasingly exposed to competition by means of closer association with the Nordic and European electricity market at the same time as renewable energy and CHP make increasing contributions to electricity production. The growing amount of renewable energy in the electricity system – according to the objectives of the Reform Agreement, 20% before the end of 2003 – and the technological development that has taken place within the area, make the gradual introduction of market forces and the reaping of efficiency benefits relevant also for renewable energy, in such a way that renewable energy plants are established and operated at the lowest possible cost to the national economy.

Electricity production will be regulated pursuant to the Bill by a combination of a licensing system and general, transparent and non-discriminatory approval rules. The aim of this is to ensure that the development of efficient, environmentally benign electricity production continues.

In accordance with the Bill, as in previous legislation, it will only be possible to carry out electricity production from plants over 25 MW on licence. A licence can be made conditional on orders issued pursuant to section 13 of the existing Heat Supply Act being fulfilled.

The establishment of new electricity production plants or significant changes to existing plants require the approval of the Minister for the Environment and Energy, who lays

down approval criteria for a specified period. The Bill removes the previous limit of 25MW for approval. The approval criteria must be general, transparent and non-discriminatory, and can include conditions concerning energy efficiency, utilisation of fuel, and environmental matters. An approval may be accompanied by terms to the effect that the producer contributes to the task of system responsibility by maintaining efficient operation of the grid, that the producer provides a guarantee for dismantling the plant, that the producer undertakes supply-commitment with district heating, and that the system-responsible company is notified of changes to the availability of a plant at least one year in advance.

Production companies supplying district heating will continue to have a supply-commitment to these at reasonable prices. Heat supply will continue to be covered by cost-based price regulation.

The Bill introduces new rules for the approval of electricity-production plants based on water and on wind offshore and in the exclusive economic zone. Among other things, these rules allow for an important part of the future development of wind power being expected to take place offshore. The first stage of this development was launched with the Order to the electricity companies pursuant to the current Electricity Supply Act to develop 750 MW offshore wind turbines. Plants for the utilisation of wave energy will also come under the rules.

The utilisation of energy from plants based on water and on wind offshore and in the exclusive economic zone, and feasibility studies for these, require the authorisation of the Minister for the Environment and Energy. The authorisation is to be granted for a specified area. In cases where the plants could have particular environmental impact, an assessment of the environmental consequences is also required.

f) Prioritisation of environmentally benign electricity production

It is a precondition in the Electricity Reform Agreement (point 5) that the principle in current legislation that all electricity consumers in Denmark are obliged to purchase electricity from prioritised plants be continued. The aim of this is to safeguard a basis for the continued utilisation of environmentally benign electricity production and to ensure that all consumers of electricity make an equal contribution to this.

There is to be no amendment of the existing rules concerning prioritisation of small-scale and industrial CHP based on natural gas and waste-based electricity-production plants. This means that grid companies and system-responsible companies are obliged to purchase electricity from these plants at current settlement prices, which corresponds to the costs of producing and transporting electricity, including fuel and operational costs etc. and long-term plant costs.

The “CHP guarantee” in current legislation will likewise be continued unchanged. This means that grid activity and system-responsible activity as prioritised production must purchase electricity from CHP plants other than those mentioned above, which are designed to supply district heating. In practice, these are large-scale CHP plants that supply large urban districts. However, this obligation only applies to the extent that electricity cannot be sold at prices that cover the necessary costs of the production mentioned. As CHP, as a general rule, is expected to be competitive, it is not expected that this provision will still apply, or only to a limited extent. The provision has been approved by the EU Commission in accordance with state subsidy rules for a limited period of time up to 2006.The Electricity Reform Agreement implies some important changes in the settlement of electricity from and development of renewable energy plants. The long-term aim is to create more competitive mechanisms on the RE-market. The background to this is that a growing share of electricity consumption will in future be covered by renewable energy. In accordance with the Agreement, 20% of electricity consumption is to be covered by renewable energy before the end of 2003. It is, thus, important, that the development of renewable energy takes place as cost-effectively as possible.

As renewable-energy based electricity cannot, in general, compete with conventional electricity production as yet, it will still be necessary to favour RE-electricity production in different ways. There will be a general re-organisation of state subsidies for renewable energy so that these are financed by consumers of electricity in the future.

In a transition period fixed settlement prices will be laid down to secure reasonable depreciation of already established plants, and until the market-based mechanisms are in place, for a period of time new plants will be ensured fixed minimum prices for the electricity they supply. These settling rules will be laid down in an Order after they have been submitted to the Energy Policy Committee of the Folketing. Reference is made to the Notes on sections 58 and 59.The Bill also introduces the fundamental principles for the establishment of the future. market-based mechanisms for RE-production. These are based on the Minister for the Environment and Energy, at a specified time, establishing rules for the issue of RE-certificates to producers of specified types of RE electricity. The RE-certificates will be tradable. The demand for RE-certificates will be established by all electricity producers from a specified point in time having the obligation to acquire a specific number of RE-certificates in relation to their electricity consumption, thus, in the long term, creating a financial market for RE Certificates. Consumer demand will subsequently contribute to the development of renewable-energy-based electricity production as the fundamental principle will then be that the price that the electricity producer can obtain for his electricity will be the market-based settling price and the price of the tradable RE-certificates.

To the extent that consumers do not fulfil their purchase commitments for RE-certificates, it is proposed that instead they pay the sum of DKK 0.27 for each kWh for

which they should have purchased RE-certificates. This sum will thus function as a maximum price for RE-certificates on the market. Via payments to the Treasury, funds from this will be placed in an RE-fund, the purpose of which is to buy RE-certificates from producers. The RE-fund is to buy up RE-certificates at a minimum price of DKK 0.10 per kWh.

It is also proposed that in certain cases the fund will be obliged to take over existing wind turbines. Should the owner of a wind turbine, in specified circumstances, be able to document that it is not possible to pay off the loans outstanding in the turbine as a result of the amended subsidy rules, the owner can request that the fund take over the wind turbine and the payment of the loans outstanding in it. The more detailed organisation of trade in RE-certificates, including issue, granting, and trade in these certificates, will be laid down by Order on the basis of more specified analysis. In accordance with the Reform Agreement, among other things consideration for securing a stable framework for various actors on the market, the necessary programme and technological development within the RE area and a market framework should also be included which can reduce price fluctuation for investors etc.

g) Terms for the large-scale production companies

Like the rest of the electricity supply system, the large-scale production companies have hitherto been regulated price-wise on the basis of the non-profit principle. This has meant that the production companies have only been able to include the necessary costs involved in the production of electricity in the price of electricity. Thus, in general, there has been no possibility of including the profit in the company. On the other hand, the production companies have been able to include reserves for new investments and interest payments on investment capital in the electricity price. In accordance with allocation rules, up to 75% of the capital costs can be set aside for a period of up to five years before the year when operations are commenced. This has meant that much of the investment in production plants has been written off already before commissioning.

Pursuant to the current Heat Supply Act, the production companies are obliged to carry out a number of commitments, inter alia, concerning the utilisation of biomass in electricity production. The existing Orders were made at a point tin time where the licensing authorities , by virtue of the ‘non-profit’ principle and the supply monopoly had a guarantee that the costs of these plants would be fully covered over the electricity prices. In the future, the prices of the production companies will not be regulated but will depend on the market price of electricity. There will, thus, be a possibility for profit and for loss. At the time the Bill was presented, there was no clarification of the financial obligations that the power plants will have to carry in this connection with regard to the costs that stem from Orders already imposed. On this basis, it is proposed that the Minister for the Environment and Energy , after submission to the Energy Policy Committee of the Folketing, will be authorised to lay down rules to the effect that electricity production from power-plant owned plants - as defined in section 5 -

shall not be covered by the above-mentioned purchase commitment for prioritised electricity production. As previously mentioned, it is also proposed that in connection with the granting of licences to production companies, the Minister for the Environment and Energy may lay down conditions to the effect that Orders already imposed pursuant to the current Electricity Supply Act with respect to environmentally benign electricity production plants shall be complied with.

The implementation of the possibilities provided by these provisions must be based on objective criteria which, on the one hand, take their point of departure in the fact that with authorisation in current legislation, commitments have been imposed on the companies that have not yet been met. In the case of the biomass Orders, to a certain extent this has to do with plants which should already have been constructed, pursuant to the Order. On the other hand, the financial framework conditions for the fulfilment of the Orders given have been amended. Apart from the changed price rules, other matters will become part of the evaluation of the financial point of departure of the production companies. These are: taxation status, the fulfilment of the district-heating obligations of the production companies and investments and dispositions carried out pursuant to the previous rules, which can be reserved pursuant to the provision in the Electricity Directive, Article 24, the "stranded costs". Within the framework of these considerations, a negotiated settlement will be sought with the electricity producers, so that the matter can be clarified by 1 January 2000 at the latest, when most of the large-scale licences for the electricity-production sector are to be renewed. "Stranded costs" include take-or-pay gas purchase agreements, decommissioning of old plants and pension commitments. The present Bill does not provide authorisation for the production companies not carrying the costs of these themselves. If there proves to be a need to assist the production companies to be released from these obligations, special legislation will be required.

h) Ownership, transfer, consumer influence, unbundling of activities etc.
Part 7 of the Bill lays down rules concerning transfer, consumer influence, loans, provision of security etc., and concerning unbundling of activities etc. The purpose of these provisions is to promote the structural development of the electricity sector which allows for a number of social considerations. The provisions are to ensure efficient competition, continued consumer influence in the electricity sector, and that the assets made available as a result of the introduction of new regulation are to the benefit of consumers and society.

As described in section 1 concerning the background to the Bill, the ownership of the electricity sector in Denmark is vertical in structure with the distribution companies as basic owners.

The Bill is fundamentally based on a structural development along the lines that the distribution companies as grid companies will continue to form the core of the

ownership structure. There will be a requirement concerning the continuation of predominant , direct or indirect (in the form of municipalities) consumer influence in the grid companies. If, however, this precondition has not been fulfilled when the grid company is established, an exemption will be granted from this requirement. General rules on consumer influence in the grid companies will be laid down. In the case of sale of grid companies to new owners, the requirements concerning direct or indirect consumer influence must still be fulfilled.

When the grid companies are established, other activities including trading and supply-committed activity, must be unbundled in separate companies. In Supply-committed enterprises, it will be a requirement that a minimum of three Board members must be elected by the consumers or the municipal councils in the supply area.

It is a condition for a licence to be granted to the grid company that direct or indirect owner shares in electricity-producing companies, transmission companies, Supply-committed enterprises and system responsible companies which, at the point in time at which the Act comes into force, are held by the grid company or by companies that directly or indirectly hold owner shares in the grid company, are transferred to the grid company so that it directly holds the owner shares in question. In this manner the original owners will continue to take care of owner interests - but now directly via the grid company. Should a grid company sell an electricity production company to new owners, as a point of departure, the purchase price may only be used within the framework of the grid company's performance of the activities as laid down in the licence. This ensures that the assets that have built up in the electricity production companies under the non-profit principle pursuant to the current Electricity Supply Act, will be to the benefit of the consumers and society. To the extent that there would have been free right of disposal of the assets realised by such sale pursuant to the current Electricity Supply Act, the Bill, however, makes no intervention. Thus, it will still be possible to have free disposal of, for example, the companies' free net capital.

In connection with the requirement concerning unbundling, as a general rule the same enterprise (company) cannot be granted a licence for supply-committed activity, system responsible activity, grid activity and transmission activity. However, it will be possible to grant a licence for, respectively, grid and transmission activity and transmission and system-responsible activity to the same company if it is judged that this being the case, the company will still be soundly operated. In these cases, account unbundling of the activities will be required. The two system-responsible companies are expected to continue to operate the overall transmission grid, including connections to countries abroad.

The system responsible company has overall responsibility for security of supply and constitutes the core in the co-ordination of the total electricity supply system. For this reason, there is a requirement concerning two public representatives on the Board,

appointed by the Minister for the Environment and Energy. It is also proposed that the state should have the pre-emptive right in the case of sale of the overall transmission grids and the system-responsible companies, or owner shares in these. The background to this is an interest in the capacity of the overall transmission grids and the system responsible companies to continue to ensure the fulfilment of the important tasks assigned to them in relation to making competition function efficiently and equally for all users of the system.

With respect to the sale of electricity supply enterprises, or parts or shares in these by municipalities and counties, the present provisions of the Electricity Supply Act are to be kept in operation unchanged, as resolved by Act no. 189 of 12 March 1997 on the Amendment of the Electricity Supply Act and the Act on Municipal Equalisation and General Subsidies to Municipalities and Counties (Sale of Electricity Supply Activity etc.).This legislation was adopted by the Government parties and the Socialist People's Party, the Centre Democrats and the Unity List, while the Liberal Party, the Conservative People's Party, the Progress Party and the Danish People's Party voted against. At that time the Christian People's Party was not represented in the Folketing. The fact that these provisions are to continue does not imply that the Electricity Reform Agreement means that the Liberal Party and the Conservative People's Party have consented to the provisions.

With respect to the ownership of collective electricity supply enterprises, it is proposed that electricity production and electricity trading companies or their subsidiaries together may own a maximum of 15% of these. Nor may electricity production or electricity trading companies or their subsidiaries, by virtue of special voting rights, exert controlling influence in the executive bodies of a collective supply company. Similar limitations are to apply to the access of Supply-committed enterprises to own capital shares in and exert influence on other types of collective supply companies. These rules have been proposed to avoid commercial interests acquiring significant influence in the collective enterprises by transfer after the Act has come into force, with the resulting risk that the collective enterprises do not place their services at the disposal of all users on transparent, objective, reasonable and uniform terms.

There can be no transfer of capital between collective electricity supply companies or from a collective electricity supply company to other enterprises. However, exemptions from this rule are the capital which was at free disposal pursuant to the current Electricity Supply Act, and the profit which the collective supply companies have at free disposal pursuant to the price stipulations.

i) Electricity prices and terms

Collective electricity supply companies will be covered by price regulation where the common point of departure is that the services of the companies are priced taking into account the costs to the companies of maintaining the activities laid down in their

licences. The sale of electricity by electricity production and trading companies is in future to be fixed by agreement; thus, pricing will be commercial. However, the heat supply will continued to be price regulated, protecting heat consumers from abuse by a monopoly. Furthermore, special rules will be laid down for electricity produced by waste incineration, which must continue to take place in companies that are financially self-sustaining.

The present price regulation is built on costs regulation where the price can include all necessary costs and any profit is returned to the consumers over the tariffs. However, the owners are ensured return on investment capital. The principles of this price regulation are to be continued for system responsible companies. In addition, incentive-promoting elements are to be built into the price regulation of grid and transmission activity. Financing terms for investments are to be changed in that the present provisions concerning allocations are to be abolished, thus providing collective electricity supply companies with more general rules for their funding.

The purpose of price regulation of grid and transmission activity is to create incentives for increased efficiency. For this reason, a framework must be established beforehand for the companies' revenues: that is, for how much can be charged over the tariffs for the services of a company. The framework will be established in such a way that the framework for the revenue of a company is to be reduced each year, meaning that each company will have to conduct on-going efficiencies to keep their costs within the framework of revenue. The Minister for the Environment and Energy is to lay down a general framework for all companies, and within the general framework the Energy Supervisory Board will annually lay down a revenue framework for each individual company, which is to reflect the efficiency potential of the company.

To the extent to which the companies are able to keep their costs under their revenue framework by means of efficiency improvements that exceed the requirement in the framework, the companies will make a profit. The profit is to be used to finance the future investments, activities and other expenses of the company and for return on investment capital. The company can, in addition, have part of the profit approved as extraordinary efficiency profits that can be freely used. This builds a limited profit possibility into the price regulation of grid and transmission companies that will create an incentive for efficiency improvements. The Minister for the Environment and Energy will lay down rules pertaining to what can be regarded as extraordinary efficiency improvements and how much of this is at free disposal. The company's potential for return on capital, including any investment capital, will thus also depend on the ability of the company to reduce costs in relation to the appointed revenue framework.

In the case of the system-responsible companies, cost-based price regulation will continue to apply, based on coverage of the necessary costs of the company.

This is necessary because it is difficult to establish a framework for the expenses of the company in advance. However, the Energy Supervisory Board can, if appropriate, order a system-responsible company to reduce the costs involved in certain activities or in general. Should the company have built up over-coverage by rational operation in relation to the budget, a sum may be taken from this as reasonable return on any investment capital.

The overall objective of price regulation of Supply-committed enterprises is to secure all consumers electricity supplies at reasonable prices. Price regulation is, in particular, to ensure that the small-scale consumers also share the profits when the electricity market is opened. No binding framework for companies' revenues can be laid down in advance as the purchase price of electricity depends on market conditions. The price which the supply-committed enterprise charges for the electricity supplied to the consumers is to be laid down at the beginning of the year on the basis of a budget which includes profits for the company. At the end of the year the profit margin is to be regulated so that the profits realised will depend on the efficiency of the supply-committed enterprise compared with the possibility of acting effectively on the market. The aim of this is to force the profit down if the company charges prices that are too high, and thus to protect consumers against the company transferring assets to other companies by means of its procurement policy, for example an electricity trading company or electricity production company under the same owner.

The costs involved in the services of all collective electricity supply companies, apart from services in relation to section 9 of the Act, which all electricity consumers in Denmark must pay their proportional share of , are to be shared among the purchasers of the services in accordance with reasonable, impartial criteria. This applies to consumer prices and to payment which is to be made by producers and payment for grid access and transit. Consumers prices are to be fixed in such a way that the costs are shared by those dependent on consumption and fixed rates in accordance with criteria that make allowance for reasonableness and energy efficiency. What is aimed at is that the consumer price reflects the variations in energy consumption, thus providing the motivation for increased energy consciousness.

All prices, tariffs and terms must be notified to the Energy Supervisory Board which checks, approves and publishes all information.

j) The Energy Supervisory Board

The Bill implies proposals regarding a new inspection authority - the Energy Supervisory Board - which is to replace the Electricity Price Committee and the Gas and Heat Price Committee.

The sector-specific regulation implied by the new Electricity Supply Act has as its objective to monitor and regulate the sales stage between the new tasks that are subject

to competition and the tasks still carried out by a natural monopoly. Regulation is necessary to ensure transparency and equal conditions for all who use the electricity supply system. Price regulation and financial inspection are aimed at discouraging the collective supply companies from taking advantage of their monopoly-like status, with increased costs and inefficiency as a result. Inspection is to create cost-effectiveness and encourage efficiencies in the collective supply companies by means of greater transparency and the possibility of comparing the costs and services of the companies.

Inspection of the companies is also to contribute to ensuring that the assets in the sector, created by consumers' payments pursuant to the earlier non-profit principle, are managed in a way that is to the benefit of all consumers. Experience from other countries shows that in a situation where the development trend is towards open. liberalised markets, special care must be taken of the position of the individual consumer. Therefore, inspection is to ensure consumers inexpensive service that is of uniform quality from the companies they are connected with. The present price committees consist of representatives of the parties in the electricity sector and this form of interest stewardship is not appropriate in the coming, more competitive energy market. In future it will be necessary for market regulation and financial inspection of the electricity supply sector to take place on an objective and neutral basis, independent of political or commercial special interests. This is necessary to ensure effective legislation, just as neutrality is to ensure confidence in the authority's handling of the competitive conditions of the companies. For these reasons, the Energy Supervisory Board is to be an autonomous committee consisting of a Chairman and 6 other members appointed by the Minister for the Environment and Energy. The members are to represent legal, economic, technological, environmental and business expertise. At least one of the members must fulfil the conditions necessary to become a High Court judge.

The guidelines for the tasks and competence of the Energy Supervisory Board are laid down in the Bill or in general rules laid down by the Minister for the Environment and Energy, who is the political accountable authority in the field of energy.

k) The Energy Complaints Board

It is proposed that it should be possible to take the decisions made by the Energy Supervisory Board before the Energy Complaints Board, which will be the general complaints body in the energy area. Thereby, when the Act has come into force, complaints about the decisions of the Electricity Price Committee, at present handled by the Competition Complaints Council will be transferred.

It is also proposed that the Energy Complaints Board should in general function as the complaints body in relation to decisions made by the Minister for the Environment and Energy. This will also apply should the Minister, in whole or in part, in accordance with the proposed powers of delegation, delegate the authority he holds under the Act to an

institution under the Ministry of the Environment and Energy. Reference is made to the specific Notes on Part 15.*3. Future legislative measures with relation to this Bill*1t appears from the Electricity Reform Agreement, that before the end of 1999 the Government is to draw up preparatory material for new energy saving legislation with a view to ensuring more coherent prioritisation of actions to achieve the greatest possible environmental benefit. By virtue of the clearer separation between monopoly services in grid companies and commercial services in supply-committed and trading companies, which form part of the reform, actors will have more well-defined roles in relation to savings efforts. It also appears from the Agreement that clear division of responsibilities and prioritisation of the various "public" energy saving activities is to be ensured as well as the best possible utilisation of local and popular engagement in the activity.

The present Bill creates the framework for the electricity saving activities that the electricity supply companies are to offer. Thus, the grid companies are to continue to map out electricity saving possibilities and to draw up a plan for implementing the savings. The grid companies, moreover, are to provide, free of charge, energy counselling for consumers in non-commercial areas (information campaigns, individual counselling of small consumers etc.). As part of their delivery service to consumers, Supply-committed enterprises should also be able to offer energy-saving services, as the users will have to carry the costs involved in these services.

But there is a need for broader enhancement of energy-saving actions. Energy savings are of great importance for realising the environmental goals and significant potential for savings remains. It is a feature of the energy saving area that there are many different measures and a large number of consumers who are to be influenced. This means that highly varied, co-ordinated action will be necessary in order to make use of new measures and include relevant actors in the work.

For this reason the Government intends to submit a Bill to Promote Energy Savings before the end of 1999 with a view to fulfilling this point in the Electricity Reform Agreement. The Bill is to cover a number of aspects which have not yet been finalised, but a number of the main features have emerged at this point: The Bill is to lay down general principles for the way in which energy saving action is to be prioritised, including creating the possibility of obtaining a broad, secure data basis concerning energy consumption etc.

The Bill is to introduce a number of new measures into the area of energy savings and the existing measures are to be further developed. There will be a multi-pronged effort which aims broadly at the different forms of energy consumption (electricity, district heating, natural gas, oil etc.) and a number of different sectors that consume energy: households, public institutions, business enterprises and the area of transport. The measures must be combined on the basis of a holistic view in order to have an impact on the different factors of importance for energy consumption, including the technical

(technological development, design etc.) and the household factors (making energy consumption visible, influencing consumers' behaviour). In this field, public authorities can show the way by means of demonstration projects.

At the same time it is important that both existing and any new subsidy schemes be tailor-made for the measures that produce the greatest possible effect. In accordance with the Electricity Reform Agreement, any profit from the payments made by the power stations for exceeding CO_2 quotas for electricity production must be used for energy-saving purposes.

It will be necessary to include a broad range of well-qualified actors and also to ensure the division of labour between central and local actors so that specific activities are locally anchored for reasons of visibility and engagement. For example, the role of the local authorities in local activities can be considered. Offering the implementation of energy savings to qualified actors should also be considered as a means of promoting efficiency and dynamism.

Financial and administrative consequences for the State

When the Electricity Supply Bill is amended, an RE Fund is to be established. The fund will buy up RE Certificates to the extent that the obligation to do this has not been fulfilled on the national level by purchase by electricity consumers and the Supply-committed enterprises. In accordance with the Electricity Reform Agreement, the RE Fund is, furthermore, to take over certain needy wind turbines when private wind-turbine owners so request. The administration of the RE fund in the Ministry of the Environment and Energy is estimated to involve three full-time equivalents, which are estimated at DKK 1 million. In addition, other running expenses are expected to amount to DKK 0.5 million. The Bill will not have any consequences for the State Budget. The costs of buying up RE Certificates and administration involved in this will thus be indirectly financed by means of the payments made by electricity consumers and the Supply-committed enterprises to the Treasury should they not have fulfilled their obligation to purchase RE Certificates. Likewise, the costs to the RE Fund of taking over wind turbines and the administration connected with this will be indirectly financed by means of the revenue that will accrue to the Treasury from the sale of the electricity produced by the wind turbines that have been taken over. This electricity is to be purchased in accordance with the rules about prioritised electricity at cost-determined prices. However, until the expenses to the RE Fund of taking over wind turbines have been covered by the sale of electricity from the wind turbines, the temporary lack of financing will have to be covered by the State Budget.

As administration is activity determined, additional revenue as a result of increased activity can be used for derived operational expenses, including salaries.

Moreover, the amendment of the Act assigns to the Ministry of the Environment and Energy a great number of tasks in connection with supervising that the conditions in the licences are complied with and other tasks in relation to the Act. These are as follows: a) approval of plants, including transmission grid, power stations and CHP plants and supervision of compliance with conditions; b) statement in connection with physical planning concerning matters with regard to plants which must be approved; c) issuing licences for electricity production, transmission, grid operation and supply commitment and supervision of compliance with conditions; d) approval of statutes for companies that must hold licences; e) announcement of preconditions for planning by the grid companies and system responsible companies, including approval of plans for research activities and assessment of this planning; and, f) establishing the framework for the market for RE Certificates and administration of this.

Both the Competition Agency and the Energy Agency are to provide the Energy Supervisory Board with secretarial services. In the case of the Energy Agency, the Bill will, to a higher degree than the earlier Electricity Supply Bill mean judging technical matters in connection with production and trading companies having an equal and as far as possible unhindered access to the grid. This applies to assessment of capacity, necessary reserve capacity, storage capacity, matters to do with measurement techniques including regulations for these, etc., just as tariff classification of the grid is dependent on the technical assessment, for example the necessary amount of balancing power for taking care of prioritised production, posting and distribution of this production etc., research and energy savings etc.

Administrative tasks in the Energy Agency in relation to tasks in connection with regulation in accordance with this Act, including secretarial services for the Energy Supervisory Board, are expected to involve a total of 15 full-time equivalents, an increase by 5 full-time equivalents in relation to the present Electricity Supply Bill.

The Competition Agency has estimated that it will require 22 full-time equivalents to administer the Electricity Supply Act and 1 extra full-time equivalent to administer the Heat Supply Act, an increase of 14 full-time equivalents in relation to the administration of the present Electricity Supply Act and the Heat Supply Act. There are many reasons for this increase in resource investment. The incentive regulation that the grid companies are now to be subject to is more active in nature than the previous monitoring of the prices of the distribution companies. This requires, on the one hand, significant development efforts in connection with the establish of financial reporting and benchmarking instruments. On the other hand, subsequent on-going inspection of the efficiency and maintenance of the system will be needed and supervision of the grid companies' compliance with revenue framework and fulfilment of the efficiency requirements. This vigorous inspection function and the resulting pressure on the grid companies for greater efficiency will be necessary to ensure that the energy reform leads to lower costs for industry and lower prices for consumers. The present price

monitoring system is also to be replaced in the case of the Supply-committed enterprises and system administration by an active inspection and approval procedure with the greater necessary activity that this will involve. Information activities are also to be greatly expanded. Sections 82 and 83 of the Bill establish a number of information tasks which are necessary for public oversight of the effects of the energy reform and for competition in production and trade to function. Finally, extra action will be necessary to safeguard against discrimination of the heat customers associated with combined power and heat production due to the Electricity Reform.

The tasks of the Bill in relation to administration of licences, approvals etc. and secretarial services for the Energy Supervisory Board presuppose an increase in resources devoted to these tasks. This has also been the case in other countries where liberalisation has taken place. Thus a total of 37 full-time equivalents are expected to be necessary, an increase by 19 full-time equivalents. The estimated cost of this increase is DKK 6.2 million. In addition other operating costs are expected at an estimated cost of a further DKK 2.2 as well as initial costs of DKK 1.1 million. There will be no financial consequences for the State Budget as it is a precondition that the licensees are to pay both the costs connected with inspection etc. and other administrative costs. Payment will take the form of a basic amount which is to be fixed for each licensee on the basis of turnover and type of licence and by payment for hours spent on individual inspection tasks. As the activities are regulated by demand, it will be permitted that extra revenue that results from increased activity can be used on derived operational costs, including salaries.

In all, the Bill will not have any economic or administrative consequences for the State as extra costs will be financed by means of corresponding extra revenue. A total expansion of the operating framework by DKK 11 million is presupposed, of which DKK 7.2 in wages bill.

Economic and administrative consequences for counties and municipalities

The Bill will have administrative consequences for municipalities and counties in that the participation by municipalities and counties in activity covered by the Bill – apart from grid activity and municipal production of electricity by waste incineration – is conditional on this activity being carried out in a limited liability company in which the municipality or county take part, financially or in management. The consequence of this will be that municipalities and counties which at present operate electricity supply as part of municipal activity will have to unbundle the electricity part of their electricity supply activities out into independent companies with their own budgets and liability. Thus, many municipalities will have to form companies and amend administrative procedures in accordance with this.

It has been assessed that the Bill will not imply any economic consequences for municipalities and counties as it is has not been presupposed that the municipalities will have to invest new funds in the companies established. Simultaneously, the economies of these new companies will be separated from the economy of the municipality.

Furthermore, cf. the section on consequences for business economy, no increases in electricity prices are expected and thus the municipalities and counties are not expected to incur increased costs for covering electricity consumption as a result of this.

Economic and administrative consequences for trade and industry

The business economic consequences of the Bill will mainly occur as a result of the expected efficiency gains of the distribution companies and the advancement of full market opening. In addition to this a number of the subsidies for renewable energy and small-scale CHP plants are to be changed from previously being financed over the Finance Act to future financing by consumers of electricity. The two first elements are expected to lead to a drop in the price of electricity while the reorganisation of subsidies will lead to an increase. All in all, the Bill is expected to result in lower electricity prices.

This should be viewed in connection with the fact that there are a number of matters involving taxes and duties in relation to the Electricity Reform Agreement which was entered into which, viewed in isolation, will lead to an increase in the price of electricity. With a certain degree of uncertainty, the electricity reform as a whole is expected to give rise to a fall in electricity prices for all commercial consumers. The reorganisation of subsidies for renewable energy, the altered taxes and duties and making the grid companies more efficient are expected as a whole to cause modest increases in the price of electricity. For the industrial sector, the average price, in isolation, is expected to rise by DKK 0.1/kWh in 2000 and to fall by DKK 0.2/kWh in 2002. The opening of the electricity market, which commenced in 1998, is expected to lead to a fall in electricity prices corresponding to DKK 0.2-0.4/kWh. It is uncertain how large a proportion of this fall in prices has already taken place. In industry there are expected to be some differences in the average development of prices. The expenses connected with inspection of the licensees and planning in the field of electricity are, as today, to be paid by the companies that are obliged to have a licence and the companies in the electricity sector. Inspection duties and thus the costs are expected to be larger than at present, cf. the Notes on the economic and administrative consequences for the State.

Pursuant to present legislation, electricity supply companies are regulated in accordance with the non-profit principle. The Bill means that the production companies and trading companies now have the possibility to make a profit. In addition, the Supply-committed enterprises will also have the possibility for regulated profit.

Environmental consequences

The new Electricity Supply Act is to contribute to Denmark being in a position to fulfil its international environmental commitments as well as the objectives contained in the national energy action plan, Energy 21. The objectives have to do in particular with a reduction of Denmark's CO_2 emission. Among the measures are a reduction of fuel consumption for the production of power and heat by ensuring reasonable conditions for CHP. In addition, the terms for a reorganisation of fuel consumption are to be fixed; this is to lead to reduced utilisation of fossil fuels and increased use of renewable energy sources. The Electricity –Reform Agreement presupposes that before the end of 2003, 20% of electricity production will be based on renewable energy.

Thus, the legislation provides a safeguard for the conditions for the development of environmentally benign energy sources in electricity supply being able to continue.

On-shore wind turbines
The objective of the Electricity Reform Agreement concerning increased development of renewable energy in relation to Energy 21 means increased development of on-shore wind turbines. However, a significant part of continued development on shore will have to take place in connection with the re-development of older, inefficient and badly located wind turbines. Therefore, in connection with the Electricity Reform, some particularly favourable schemes have been agreed on which are to promote the re-development of old wind turbines.

Sustainable development with wind turbines is predicated on considerable attention being paid, through planning and rural zone case administration, not only to the possibility of utilising wind resources, but also to neighbouring properties, nature, landscape and cultural historical assets. On 5 March 1999, the Ministry of the Environment and Energy issued for hearing a revised draft Circular on planning for and rural zone permits for the erection of wind turbines. The aim of the Circular will be to ensure that the planning and rural zone administration conducted by county councils and municipal councils has the necessary consideration for the above-mentioned interests.

It appears from the revised draft Circular, inter alia, that wind turbines should preferably be erected in groups in an easily perceived pattern in relation to the landscape. In addition, the distance to existing wind turbines should be a minimum of three kilometres.

Offshore wind turbines

Development with offshore wind turbines will mean very considerable CO_2 savings. The specific design and location of the offshore wind farms will take place on the basis of studies of environment and nature, including the impact on bird life. Efforts will be made for the impact on the environment and nature to be as little as possible. The areas in which the demonstration projects are expected to be erected have already been selected on the principle that environmental and natural interests will not be significantly affected.

Relation to EU law

The Environmental Impact Directive.
The Bill expressly ensures authority to implement Council directive 85/337/EEC of 27 June 1985 on the assessment of the impact of certain public and private projects on the environment (the Environmental Impact Directive), to be found in the Official Journal of the European Communities 1985, no. L 175, page 40, and Directive no. 97/11/EEC of 3 March 1997 on the amendment of Directive 85/337/EEC, to be found in the Official Journal of the European Communities 1997 no. L 73, page 5, in relation to installations for the utilisation of energy from water and wind in territorial waters and in the exclusive economic zone.

The Electricity Transit Directive and the Directive on Price Transparency
Council directive 90/547/EEC of 29 October 1990 concerning transit of electricity through the general grid (the Electricity Transit Directive), to be found in the Official Journal of the European Communities 1990, no. L 330, page 30, and Council directive 90/337/EEC of 20 June 1990 concerning Community procedure with regard to the transparency of the price of gas and electricity for the final user in industry (the Price Transparency Directive), to be found in the Official Journal of the European Communities 1990, no L 185, page 16, comprise the first stage in the realisation of the internal market for electricity. The Electricity Transit directive contains the obligation to allow transit of electricity thorough the general grid. The terms for transit are to be negotiated and fixed by means of agreements between the companies responsible for the grid in question. Requests for transit and entering into agreements are to be notified to the European Commission and the national authorities so affected. Requests corresponding to contracts for sale of electricity of at least one year in duration are covered by the regulations.

The Electricity Transit directive has been implemented in Danish law by the Minister, pursuant to the Electricity Supply Act, making supplementary conditions concerning transit of electricity through the general grid in the licences for the responsible companies, ELKRAFT and I/S Eltra (which took over the licence from ELSAM I/S with effect from January 1 1998).At present the Price Transparency directive has been implemented by agreement between the parties involved to the effect that the industry

association draws up the statistical information which it forwards to Statistics Denmark which in turn officially forwards it to Eurostat.

The Bill ensures authority for continued Danish implementation of the above directives.

The Electricity Directive.
European Parliament and Council Directive 96/92/EEC of 19 December 1996 concerning joint rules for the internal market for electricity (the electricity directive), to be found in the Official Journal of the European Communities 1997, no. L 27, page 20, entered into force on 19 February 1997. It is incumbent upon the Member States to implement the directive in their national legislation two years at the latest after entry into force.

By the adoption of the Bill and the Executive Orders that are to be issued with authority in the coming Act, the directive on the internal electricity market is to be implemented.

The directive is an important stage in the realisation of the internal energy market in accordance with the principles about an area without inner borders with free movement of goods, persons, services and capital. At present there are considerable structural differences between the different schemes for the regulation of the electricity sector in the different countries.

The directive lays down joint rules for the organisation and function of the electricity sector which are to apply in the next phase of the establishment of the internal energy market. The directive means that the electricity market will gradually be made competitive without losing sight of consideration for security of supply and protection of consumers and the environment.

When the directive has been implemented, obstacles will continue to exist for trade in electricity between the EU countries. It has been decided that the Commission is to review the directive with a view to presenting any proposals for the improvement of the internal electricity market. These proposals could come into effect from the year 2006. It is also presupposed in the electricity directive that the Commission is to present the necessary harmonisation proposals in relation to harmonisation demands which are not linked to the provisions of the directive, but which are necessary for the internal electricity market to function.

In its first report on the harmonisation demands in the field of electricity, the Commission has pointed to the need to harmonise the handling of electricity from renewable energy sources in the internal electricity market. Other areas which could come up are, for example, tariffing principles including border tariffs and harmonisation of technical standards.

The electricity directive makes the following obligations incumbent upon the Member States:

Market opening:
The directive lays down the legal framework within which the Member States are to ensure that the possibility is opened for competing suppliers of electricity to enter into commercial supply contracts with large-scale consumers and distributions companies, so-called privileged clients. Within the framework laid down in the directive, it is left up to the Member States to determine which clients should be able to enter into such agreements, which in the present Heat Supply Act are termed agreements concerning direct purchase/sale. The electricity directive allows for the possibility of the Member States deciding on limited market opening, where the development towards further opening will take place gradually over a longer number of years.

As a minimum, the Member States are obliged to implement the gradual opening of the electricity market. In the first phase, market opening corresponds to the Community share of the electricity consumed by end clients with annual consumption of more than 40 GWh. The consumption threshold is to be lowered to 20 GWh in the year 2000 and to 9 GWh in 2003, whereby the degree of market opening will be rising. The degree of market opening is regulated by the Commission annually, and on 1 January 1998 comprises c. 25% in the first phase, which is to be implemented by 19 February 1999 at the latest.

Market opening means that the final users or the distribution companies, which at minimum represent this percentage of the total consumers in the country, are to have the possibility of negotiating supply agreements with electricity suppliers other than the previous suppliers. However, all individual clients with an annual consumption of more than 100 GWh must be ensured this option in advance.

As the opening of the electricity market at the decision of the Member States can be implemented by the distribution companies being granted access to entering into direct supply agreements, the requirements of the electricity directive concerning the degree of opening have been fulfilled by the amendment of the Heat Supply Act (Act 486), which came into force on 1 January 1998.

System Access
With a view to the implementation of market opening, the Member States are to lay down rules that ensure consumers and suppliers/producers the necessary system access, either as negotiated access where the terms for system access are to be negotiated between the parties, or as regulated access, where access is granted to the system on the basis of public tariffs and/or other conditions and obligations for use of the system in question.

The directive also opens the possibility for the Member States choosing to organise system access as an exclusive purchaser scheme where the Member States select a single purchaser within the area covered by the system operator. Also in this model, a non-discriminatory tariff for the use of the system must be published. The single purchaser is obliged to take over a contract for electricity supply between a customer with free choice of supplier and a competing producer at a price that corresponds to the sales price which the single purchaser offers customers with free choice of supplier, minus the price of the published transmission tariff. The directive also allows for the possibility of combining a single purchaser scheme with negotiated third-party access.

The rules concerning market opening and system access are to be administered according to objective, transparent, non-discriminatory criteria and the Member States are to ensure that the parties negotiate fairly and honestly and that none of them abuse their negotiating position and thus prevent the negotiations from terminating with a positive result.

In order to promote transparency and to ease the negotiations on system access, the system operator, in the case of negotiated access, must publish price guidelines for the use of the electricity transmission and distribution systems.

Those responsible for the transmission and grid network may refuse access to the grid if the contract in question would prevent the company from looking after the public services which are its duty.

Settlement of disputes:
The Member States are to appoint a competent national authority to settle disputes concerning the contracts and negotiations mentioned. Submission of disputes to this authority has no influence on the possibility of claiming EU law.

Direct lines:
Provisions are to be established concerning authorisation, establishment and utilisation of direct lines, i.e. electric conduits which are independent or only linked to distribution and transmission installations without being a part of these.

System responsibility:
The directive presupposes that each individual distribution system and transmission system is to be subject to central administration and inspection with a view to the security, reliability and efficiency of the system. With a view to this, a system operator is to be appointed for each electricity transmission system, who is to be responsible for the operation, maintenance and, if necessary, development of the system.

The establishment of electricity production plants:

The electricity directive contains rules concerning the opening of the electricity production market in the EU, according to which either a licence procedure or a tendering procedure can be chosen. Irrespective of the procedure selected, the establishment of new capacity is to take place on the basis of objective, transparent, non-discriminatory criteria, laid down within the framework of the directive. In accordance with the licensing procedure, all who fulfil the criteria laid down have the right to receive permission for establishment. If the tendering procedure is chosen, as general rule it will only be possible to establish new production capacity when new capacity is offered on the basis of the planning of the authorities/exclusive purchaser. However, within this framework there should be special consideration for own producers or independent producers.

Public service obligations:
With consideration for general economic interests, the Members States may order the electricity companies to provide public service with a view to security of supply and the protection of consumers and the environment (public service obligations).

Such obligations must be clearly defined and they must be transparent, non-discriminatory and controllable; they must be made public by the Member States and notified to the Commission. The Member States may choose not to apply certain provisions in the directive if applying them would prevent the fulfilment of the public duties of the companies, on the condition that trade is not affected to such an extent as to be contrary to the interests of the Community, and system access may be denied if it would prevent the fulfilment of the public duties of the companies.

Unbundling and transparency of accounts
The directive contains rules concerning unbundling and transparency of accounts with a view to avoiding differential treatment, cross-subsidisation and distortion of competition. The Member States must have access to the accounts of the electricity companies. The directive also contains special requirements for accounting in vertically integrated companies which, in their internal accounts, must keep separate accounts for the different activities. Irrespective of ownership and legal status, the electricity companies must draw up annual accounts and have these audited and published in accordance with the provisions of national legislation concerning the annual accounts of limited companies adopted pursuant to the fourth Council Directive 78/660/EEC of 25 July 1978 on the basis of Treaty Article 54, section 3 , head g) , on annual accounts for certain forms of companies. (The latest amendment to the directive is Directive 94/8/EEC, and was implemented in Danish law by means of Consolidation Act no 526 of 17 June 1996).

Technical regulations:
It is presupposed that technical regulations will be laid down for the minimum requirements with regard to construction and operation which must be fulfilled for

being connected to the system. The requirements, which must be objective and non-discriminatory and ensure inter-operability, must be notified to the Commission in accordance with the directive on information procedure, cf. below.

Turnover:
Pursuant to the directive, the Member States must draw up appropriate, efficient mechanisms with a view to regulation, control and transparency in order to prevent any misuse of a domineering position, in particular which would harm consumers, and every type of aggressive behaviour. These mechanisms should take into account the provisions of the Treaty, in particular article 86.

Stranded costs/interim rules:
The electricity directive allows for the possibility that the Commission, upon application, can allow the Member States certain interim schemes in which obligations or operating guarantees, given before the directive came into force, will not be able to be fulfilled due to the provisions in the directive.

Relation to state subsidy rules:
The Bill continues a number of schemes which were submitted to the European Commission for approval previously, as they raise questions in relation to the state subsidy rules of the EU. As the Bill implies changes in the regulatory basis for these schemes, the schemes must be notified to the EU in accordance with the rules on state subsidy and will not come into force before receipt of the approval of the Commission.

The provisions of the Bill concerning the settlement rules for electricity from environmentally benign electricity production (Part 9), imply amendments of the previously applicable settlement rules which were approved by the EU Commission in accordance with the rules on state subsidy. These rules must be approved by the Commission before they come into force. The Bill also implies changes in the current principles for prioritised sale of environmentally benign electricity, including interim schemes in relation to the establishment of a market for RE Certificates which will have to be assessed pursuant to the rules on state subsidy.

The Information Procedure Directive:
The Bill is to be notified to the Commission pursuant to European Parliament and Council Directive 98/34/EEC of 22 June 1998 on an information procedure regarding technical standards and regulation, to be found in the Official Journal of the European Communities 1998, no L 204, page 37.

Hearing:
On 9 April 1999 the Bill was sent to the following for hearing: The Association of Danish Electricity Utilities, Elsam, Elkraft, Eltra, ELKRAFT System, the Danish Association of District Heating Plants, the Association of Danish CHP Plants, the

National Gas Company of Denmark, KOMGAS, the National Association of Local Authorities in Denmark, the City of Copenhagen, the Municipality of Frederiksberg, the Association of County Councils in Denmark, the Confederation of Danish Industries, CO Metal, the Danish Confederation of Trade Unions, the General Workers' Union in Denmark, the Economic Council of the Labour Movement, the Chamber of Commerce, Danish Commerce and Services, the Danish Federation of Small and Medium-Sized Enterprises, the Consumer Council, the Agricultural Council of Denmark, the Energy-Environment Council, the Electricity Saving Fund, the Danish Wind Turbine Association, the Waste Technical Co-operation, Reno Sam, the Wind Turbine Industry, the Organisation for Renewable Energy, the Danish Association of Commercial Gardeners, the Danish Association of Consulting Engineers, the Danish Association for the Conservation of Nature, Greenpeace Denmark, OOA, the Industry Association for Biogas, c/o the Danish Farmers' Union, WHF, the Danish Farmers' Union, the Federation of Energy and Environmental Offices, the Wind Energy Council, the Solar Energy Council, the Solid Fuel Group, the Biogas Group, the Association of Heat Pump Manufacturers, the Wave Power Association, the Danish Solar Cell Group, the Prime Minister's Office, the Ministry of Finance, the Ministry of Economic Affairs, the Ministry of Taxation, the Ministry of the Interior, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Housing and Urban Affairs, the Ministry of Business and Industry, the Ministry of Food, Agriculture and Fisheries, the Ministry of Research, the Electricity Price Committee and the Gas and Heat Price Committee, the Energy Complaints Council, the National Planning Department of the Ministry of the Environment and Energy, the Danish Environmental Protection Agency, and the National Forest and Nature Agency.

Indukraft, Elfor, NESA and the Sjællandske Kraftværker (Zealand Power Plants) have subsequently expressed a wish to reply to the hearing.

Evaluation of the consequences of the Bill

	Positive consequences/fewer costs	Negative consequences/extra costs
Economic consequences for the State, municipalities and counties	No	The Bill is not deemed to have significant economic consequence, as pursuant to the Bill electricity producers must themselves defray the costs of administering the Act.

Administrative consequences for the State, municipalities and counties	No	The Bill is deemed to require 15 full-time equivalents in the State. The Bill will also involve an increased administrative burden for municipalities and counties, as they must unbundle the electricity part of their electricity-supply activities into independent companies with their own economies and liability.
Economic consequences for trade and industry	A slight drop in electricity prices is expected for industrial customers. The possibility is opened for profit in connection with production of and trade in electricity.	The electricity-supply companies which must have a licence must themselves defray the costs of administering the Act, pursuant to the Bill.
Administrative consequences for trade and industry	No	The Bill will result in an increase in the administrative burden due to the altered requirements concerning companies and licences.
Environmental consequences	The Bill is expected to have positive consequences for the environment as a result of maintaining the development of environmentally benign energy sources.	No
Administrative consequences for citizens	No	No

Relation to EU-law	The Bill ensure the authority for continued Danish implementation of the transit Directives and the Directive on Price Transparency, and also contains provisions that implement those sections of the electricity directive that have not yet been implemented. The Bill also expressly ensures the authority to implement the Environmental Impact Assessment-directive/the directive to amend the Environmental Impact Assessment directive in the case of plants for utilising energy from water and wind in territorial waters and in the exclusive economic zone. Pursuant to the rules on state subsidy and the Information Procedure directive, the Bill must be notified to the European Commission.

Notes on the individual provisions of the Bill

On Part 1
Introductory provisions

On section 1

The aim of the Act is to ensure that the electricity supply of Denmark is organised and implemented in accordance with consideration for security of supply, the national economy, the environment and consumer protection. The Act is, simultaneously, within the framework of these targets, to ensure the consumers access to the most inexpensive electricity possible and continued influence on the administration of the assets of the electricity sector. Thus, the Act carries on the influence which the consumers have had as a result of electricity supply companies being owned directly by consumers or municipalities.

The target is a reflection of consideration for a balance between, on the one hand, overall societal conditions such as security of supply and the fulfilment of environmental commitments and, on the other hand, consideration for the consumers through consumer protection and a safe and inexpensive electricity supply.

Efficient application of financial resources aims at attaching increasing importance to the achievement of rationalisations, partly through price control of grid, system-responsible and supply-committed services, partly through competition for production of and trade in electricity. National economic consideration aims partly at national economic gains through improvements of efficiency, partly at the national economic deliberations which constitute the basis for the manner in which the targets regarding the environment and security of supply are implemented.

On section 2
The Act applies to production, transportation, trade and supply of electricity.

The principle that the Act applies on land and in territorial waters and within the exclusive economic zone will be continued unchanged from the existing Electricity Supply Act. The exclusive economic zone comprises waters outside of and bordering on the territorial waters up to a distance of 200 nautical miles from the, at any time, existing basis lines.

This implies that the utilisation of energy in the territorial waters and in the exclusive economic zone is comprised by the Act, which is particularly relevant in connection with the establishment of off-shore wind turbines. Special rules on this are to be found in sections 13-18.

The intention is not to change the existing delimitation in relation to the legislation concerning the oil and gas extraction activities in the North Sea. The production and transportation of electricity taking place on and between rigs etc. will thus continue to be exempted from the rules of the Electricity Supply Act.

Section 2(4) of the Bill contains general authority for the Minister for Environment and Energy to decide that installations and activities which are comprised by the Act shall partially or wholly be exempted from the provisions of the Act. The intention is, based on the authority of this provision, wholly or partly, to exempt small installations from the Act or from special approval or company requirements etc. in the Act. The intention is thus, for example, to exempt small electricity producing plants which have been approved under the Heat Supply Act from further approval requirements. Similarly, there will be no requirements that municipal activity with plants of this kind can only take place in companies with limited liability. It is, furthermore, being considered to exempt wind turbines on land and small RE plants from the special permission requirement under section 11 of the Electricity Supply Act.

Moreover, atypical or unusual plants may be exempted from the provisions of the Act. It will, for example, seem natural to exempt the supply grid of the Danish National Railway Agency, which today is considered a distribution company, from some of the provisions of the Act.

On section 3

The provision continues the existing provision according to which the Minister for Environment and Energy keeps a committee appointed by the Folketing, in practice the parliamentary Energy Policy Committee, informed about all matters of importance concerning Denmark's electricity supply.

On section 4

The provision laid down in section 1 implies that municipalities may legally be involved in grid activity and in the production of electricity from the incineration of waste. These types of municipal activity may be carried out without any requirements being made for the organisation of the activity. In addition, municipalities and counties may participate in all other activity covered by the Act, cf. section 2(1). However, this type of activity must be carried out by companies with limited liability. Finally, the current access for municipalities to operate so-called co-ordinate activity in independent companies, cf. subsection 2, will be continued.

The involvement of municipalities and counties in activities comprised by the Act will take place on the same terms as all other companies' involvement. This implies, *inter alia*, that the activity of municipalities and counties, under section 4(1), will no longer be restricted by the so-called self-sustaining principle of municipal law, but exclusively by the price provisions of this Act and, for any heat production, by the price provisions of Heat Supply Act, cf. however the Notes on section 75(3). As a consequence of this, it will be the Energy Supervisory Board and the Minister for Environment and Energy, and not the municipal supervisory authorities, that, in pursuance of the rules of the Act, have the competence to decide on any disputes in connection with the activity which municipalities and counties carry out in pursuance of this Act.

With regard to municipal grid companies and electricity generating waste incineration plants, section 4(1) implies that licence or permission may be granted to such a company even if it is operated as part of the municipal administration. Municipalities have, however, the possibility of choosing to carry out such activity in companies. Municipalities may not subsidise municipal grid companies, cf. in this connection the provision laid down in section 70(6).

In pursuance of section 4, municipal activity of electricity production from waste incineration may continue in today's well-known companies, including joint municipal companies. This type of activity must be economically self-sustaining, cf. section 75(3). The intention of the special rules for municipal waste incineration is to retain the structure which exists today in the area of municipal waste incineration. This implies retaining the Danish waste model which, *inter alia*, means a municipal right of directions and fixing of waste charges, which has proved extremely efficient. For further information, please see the provisions laid down in sections 48, 75(3) and section 101(3),(4) and (5) of the Act.

If the current price regulation of the Act causes a deficit in a municipal grid company which is not operated by a company with limited liability, it will eventually be the tax payers of the municipality who will have to cover the loss. The prohibition of municipal subsidies, pursuant to the provision laid down in section 70(6), does not prevent the municipality, as debtor of the company, from covering the loss.

According to subsection 2, it is possible for municipalities to participate in other activity which is related to the activity under the Act. The activity is to be carried out on commercial terms in independent companies with limited liability. The aim of this provision is to continue the provisions of the existing Electricity Supply Act (section 9 c compared with section 1(4)) according to which the municipalities may participate in other activity which is associated with the electricity supply. The provision that the activity must be carried out on commercial terms means that this activity will not be subject to price regulation under the Bill.

In Pursuance of subsection 3, the Minister for Environment and Energy may lay down rules governing the activity mentioned in subsection 2, including the activities which may be carried out under subsection 2. This provision will be implemented on the basis of the existing provisions on co-ordinate activity in Executive Order no. 874 of 20 November 1995 on profit, co-ordinate activity and energy consultancy in electricity supply companies which the Minister for Environment and Energy has issued in accordance with the existing Electricity Supply Act.

The provision laid down in subsection 4 specifies how the expressions "grid activity" and "electricity production activity" are to be understood when these activities are carried out as part of a municipality. The provision establishes that the provisions of the Act governing this are to be understood in the manner that they apply solely to the part of a municipality which carries out the activity in question. Where the Act, for example, contains restrictions regarding what a grid company may undertake, the specification of subsection 4 implies that this restriction does not apply to the municipality as such but solely to the municipal grid activity.

On Part 2

The position of electricity consumers

On section 6

Pursuant to section 6(1) of the Act, every person in Denmark has the right to be supplied with electricity upon payment. This implies that every person has the right to supplies of electricity from a supply-committed enterprise, cf. Part 6 and that anybody from the time mentioned in section 7(1) may freely choose supplier of electricity. Pursuant to the existing legislation, the Supply-committed enterprises and the distribution companies are subject to the supply commitment. With the provision of section 6(1) the obligation to supply is transferred to the Supply-committed enterprises in co-operation with the other collective supply companies.

The provision laid down in section 6(2) ensures that the consumers who have made use of the possibility of choosing another supplier than the supply-committed enterprise in the area has a right to resume deliveries from the supply-committed enterprise within a reasonable deadline and on reasonable terms. The Energy Supervisory Board will decide if the deadline and the terms offered are reasonable. The provision is a continuation of current provisions.

Collective electricity supply companies must, cf. the provision laid down in section 6(3), place their services at the disposal of the consumers on transparent, objective and uniform terms. The transparency requirement will ensure consumers access to information about the preconditions of the collective electricity supply companies' charges.

On section 7

The provision laid down in section 7(1) establishes that all electricity consumers have a right to choose their suppliers of electricity no later than 1 January 2003. Consumers with annual consumption of 1 GWh and over have a right to choose suppliers from 1 January 2001. Consumers with annual consumption of 10 GWh and over have a right to choose their own suppliers from 1 April 2000. Consumers with annual consumption of 100 GWh and over already have the right today to choose their own suppliers.

For the purpose of establishing the time for the right to choose supplier, consumption is counted per Consumption site within the latest 12-month-consumption measurement period before the cut-off date mentioned in subsection 1.

The provision laid down in section 7 concerns merely the question of from which time the end users may freely choose supplier. Provisions concerning the general access to the grid are to be found in sections 24-26.

Irrespective of the provisions of subsections 1 and 2, the provision of subsection 3 ensures companies with their own production of electricity the right to supply the electricity generated to their own facilities and to their own subsidiaries, cf. otherwise section 24. The provision is a continuation of current provisions. Pursuant to the provision of subsection 4, the Minister for Environment and Energy may specify rules governing the supply mentioned in subsection 3. The authority of subsection 4 aims at taking forward the rules of Executive Order no. 231 of 21 April 1998 as changed by Executive Order no. 92 of 11 February 1999. Consequently, in order to obtain access to supply of own facilities and subsidiaries under subsection 3, it will also in future be necessary to document a connection between the electricity which is consumed and the electricity which is generated at the parent company's production plant.

It may prove technically impossible for the system responsibility or the grid companies to implement the expansion of access to choice of supplier within the short deadline mentioned in subsection 1. In that case, having submitted them to the committee mentioned in section 3, the Minister for Environment and Energy is authorised, cf. the provision of section 7(5), to change the deadlines mentioned in subsection 1.

On section 8

All consumers have a duty to purchase a proportionate share of the electricity which the grid companies and the system-responsible companies are obliged to purchase pursuant to Part 9 of the Act. The price for the volume of electricity that must be purchased will be fixed under the provisions of Parts 9 and 10. The provisions imply that the costs of the environmentally benign production will be distributed proportionately among all consumers in Denmark under the same principles as in the existing legislation. As a result of the non-existent physical connection between the electricity systems in Jutland/Funen and on Zealand, the costs will be made up separately for the two areas and distributed among consumers in the respective areas.

Consumers may, subject to agreement with the grid company, free themselves of their purchase obligation under subsection 1 upon a payment which must be reasonable vis-à-vis the other consumers.

Section 8(3) introduces, as a new element, an obligation for consumers to acquire a proportionate share of RE certificates when this is required under the rules of Part 9. Section 61 of the Act authorises the Minister for Environment and Energy to decide the time for the introduction of the purchase obligation RE certificates.

Finally, cf. subsection 4, all consumers are required to defray a proportionate share of the licensees' necessary costs of implementing the public service obligations to which they are subject. The public service obligations which are to be defrayed by all electricity consumers within the coherent electricity supply system are exhaustively set out in section 9.

On section 9

The provision laid down in section 9(1) specifies the scope of the public service obligations whose induced expenditure is to be defrayed by all electricity consumers within a coherent electricity system. The provision is a continuation of the principles of defraying the costs of public service obligations in the existing legislation. However, the specific listing in section 9 implies that it will now be clarified what costs of public service obligations will be defrayed by all consumers in a coherent electricity system and what costs will be defrayed by the users through the charges. The costs of collective electricity supply companies which are not

comprised by subsection 1 will be charged through the individual company's charges and will thus be covered by the individual company's users, cf. the provision of subsection 2.

The total expenses of the Electricity Council will, however, be collected, in pursuance of section 25 of the Power Current Act, from the system-responsible company which distributes these among all the consumers within the coherent electricity supply system.

On Part 3

Electricity production

On section 10

Section 10(1) proposes that companies which operate electricity production from plants with an electricity capacity in excess of 25 MW are required to have a licence to carry out their activities. The provision continues the existing principles for what types of electricity production are subject to licence.

Electricity production plants with an original capacity of less than 25 MW but which, through expansion, achieve a capacity in excess of 25 MW are comprised by the obligation to hold a licence. Plants consisting of small, linked-up plants are regarded as one plant when establishing the licence threshold. Consequently, large wind turbine parks may be comprised by the obligation to hold a licence.

Licences for production are granted for a minimum period of 20 years. The licensee may thus count on a licence period which at least makes it possible to depreciate the investments made at the beginning of the licence period. Licences granted under the former legislation will be continued until the time of expiry for the individual licence, cf. section 98.

A licence can only be granted to an applicant who has the necessary technical and financial capacity. This enables the Minister for Environment and Energy to, after specific assessment, reject a licence application submitted by companies that do not have the necessary technical expertise or the necessary financial basis. This makes it possible, *inter alia* in consideration of the security of supply, to secure the preconditions for the production at the primary power plants to be carried out by competent companies and, otherwise, in a financially sound manner.

The provision laid down in subsection 4 enables the retention of the order to expand environmentally benign electricity production capacity that the licensees received under the existing legislation. It is a matter of orders to expand biomass, off-shore wind turbines and on-shore wind turbines. It has not been finally decided what orders, in accordance with this provision, will be required retained. This will not happen until after the final assessments and negotiations with the power plants on the future economic framework for the production sector, cf. in this connection the general Notes on the Bill, point 9.g. of the paragraph on the contents of the Bill.

Section 10(5) enables the Minister for Environment and Energy to grant exemptions from the terms which, on the basis of subsection 4, are included in the individual licence. This possibility is meant to be used if the financial conditions of the individual production companies develop in such a manner that it is necessary to ease the terms through an exemption in order for the producers concerned to continue operations on a sound financial basis.

On section 11

The establishment of new production plants and significant alterations to existing plants must be approved by the Minister for Environment and Energy. This requirement is made to ensure that all production plants fulfil a number of conditions regarding energy efficiency and use of fuel. It is, *inter alia*, to ensure that the present high degree of co-generation of electricity and heat as well as the expansion of environmentally benign electricity production plants are continued.

With a view to ensuring equal treatment of applicants who wish to establish new production plants, the Minister for Environment and Energy will set up objective criteria for permission to establish new production plants within a more delimited period of time. The objective criteria will be: energy efficiency requirements in the form of requirements regarding the total energy efficiency of the production plants as well as the use of fuel to secure continued phase-out of CO_2-heavy fuels and to avoid the use of fuels with undesirable environmental effects.

The criteria may be made dependent on the type of plant if it is deemed necessary in order to comply with the aim of the Act. The expansion of biomass is an example of a type of plant where it will prove natural to set up separate objective criteria. Small plants which are not deemed to have a considerable negative impact on the environment, including small RE plants, may be exempted from the approval requirement pursuant to the general exemption provision of section 2(4).

In 1985 the Danish Folketing decided not to utilise nuclear plants for the generation of electricity. The provision laid down in section 11(4) will make any future establishment of nuclear production capacity impossible without a legislative amendment. The existing legislation has authorised the Minister for Environment and Energy, subject to the approval of the parliamentary Energy Policy Committee, to permit electricity production from nuclear production plants.

On section 12

For the purpose of safeguarding efficient electricity supply, it is necessary for the system-responsible company to be able to require that electricity producers regulate the production of electricity. This regulatory possibility for the system-responsible company is a precondition of efficient utilisation of the electricity supply grid. Consequently, the provision enables the Minister for Environment and Energy to accompany a permission to establish new production plants as well as significant alterations to existing plants, pursuant to section 11, or a licence under section 10 with conditions to the effect that the system-responsible company, when necessary for rational operation of the grid, may introduce regulation requirements regarding the production volume.

The production from CHP plants and renewable energy plants must be prioritised in the electricity supply grid, and these producers may therefore, only in exceptional cases and only where there are no other possibilities, be required to adjust the production volume.

A number of costs are linked to the dismantling of electricity production plants. To secure that the owner of a given production plant does undertake the dismantling of the plant, once it has outlived its usefulness, para 2 makes it possible that permissions pursuant to section 11 may be accompanied by conditions that the owner should provide security for the dismantling of the plant.

The electricity market is exposed to competition, but district heating remains a monopoly area. It is, therefore, proposed that district heating consumers should, at any time, be ensured stable supply through conditions placing CHP plants under a supply commitment. Due to electricity price fluctuations, situations may arise where it is not profitable to produce at a given CHP plant. Consequently, section 12(1)(3) makes it possible that a permission under section 11 may be accompanied by conditions that the owner should be required to assume the commitment to supply district heating to a specified supply area. For provisions regarding the fixing of prices for district heating from CHP production, please see otherwise section 75(2).

In pursuance of para 4, permissions may be accompanied by requirements to the effect that the system-responsible company must be notified at least one year in advance of significant alterations to the production volume, including a decision to shut down the plant. This duty of disclosure is a precondition for the system-responsible company to draw up a long-term plan for the future capacity need for the electricity supply grid as well as the planning of day-to-day operations.

Off-shore electricity production plants

In connection with the expected expansion of off-shore wind energy, the electricity production plants which utilise energy from water, currents and wind with associated supply line plants in territorial waters and in the exclusive economic zone are comprised by the Electricity Supply Act by Act no. 89 of 10 February 1998. The provisions of sections 13-18 are a continuation and expansion of these provisions.

On section 13

The provision establishes, in accordance with the State's sovereignty regarding the territorial waters and the State's rights in the exclusive economic zone, that the Danish State alone is entitled to utilise energy from the water and wind in the territorial waters and in the exclusive economic zone.

Pursuant to section 13(2), the Minister for Environment and Energy is required to give permission both to preliminary surveys and to utilisation of energy from water and wind in

the territorial waters and in the exclusive economic zone. Plants which are not directly production plants but are established with a view to preliminary surveys and similar activities, for example, measuring towers, are subject to approval under this provision. The provision relates only to electricity production plants based on the utilisation of energy from water and wind. In addition to wind energy plants, also wave power plants and plants which utilise current energy are comprised by the Electricity Supply Act if it proves relevant to use these types of energy.

The provision laid down in subsection 3 establishes that a permission is granted for a specific area. Subsection 3 implies, furthermore, that it is possible to distinguish between permissions to implement environmental surveys and other preliminary surveys and licences to utilise energy.

The provision laid down in subsection 4 continues the provisions of the existing Electricity Supply Act pursuant to which the Minister for Environment and Energy may specify the conditions for licences under section 13(2). The Minister for Environment and Energy may thus introduce conditions for reporting in connection with surveys and operational experience, introduce environmental assessment requirements, make demands for implementation of evaluation and monitoring programmes etc.

The provision laid down in subsection 5 authorises the Minister for Environment and Energy to prescribe rules governing or take decisions concerning conditions for acquiring a licence under section 13(2). This implies, *inter alia*, that the Minister for Environment and Energy may issue rules or take decisions on the specific area delimitation, what rights a licensee has within the area in question, time limits for the licences under section 13 as well as the payment of expenditure in connection with applications.

On section 14

With a view to securing expansion which utilises the area resource optimally and, simultaneously, safeguards societal, including national economic and planning consideration, the provision laid down in subsection 1 paves the way for establishing a central contracting-out procedure for licences under section 13, for example in the main areas which were identified in connection with the "Offshore wind farm-plan of action for Danish waters" of 1997. The central contracting-out procedure implies that the Minister for Environment and

Energy or an actor appointed by the Minister for Environment and Energy invites applications for permission to utilise a given area (area resource). By letting potential developers submit comparable tenders at the same time, the potential developers are ensured equal terms.

The provision laid down in subsection 1 implies, furthermore, that, in addition to the central contracting-out procedure, a special procedure may be organised for individual projects which are not part of the above central expansions. It is, therefore, proposed that an open-door procedure should be organised according to which an application for permission may be considered without prior invitation. If the Minister for Environment and Energy finds that the application is to be considered, which will be decided according to objective criteria, the Minister for Environment and Energy will make public the application received together with an invitation to other interested parties to submit their applications. This procedure will thus give all interested parties equal access and conditions. Examples of projects which may be considered under this provision are small and near-shore projects, which form no part of the central contracting-out procedure or projects which are based on the discovery of new areas which constitute no part of the central contracting-out round.

On section 15

The provision implies that the Minister for Environment and Energy may state particular conditions or terms which will constitute the basis for assessments of applications for permission under section 13 in connection with the central contracting-out procedure mentioned in section 14 or the special procedure for individual projects which form no part of the central contracting-out procedure mentioned in section 14.

The provision laid down in subsection 2 implies that the criteria mentioned in subsection 1 for assessing applications in connection with the contracting-out procedure mentioned in section 14 may affect the production plant itself or the relation to the infrastructure which links the plant to the coherent electricity supply system. It may, for example, be an assessment criterion to what an extent an applicant will contribute to establishing the necessary grid development in connection with the establishment of one of the plants comprised by section 16. Furthermore, the provision opens the possibility that the terms in connection with the assessment of an application received after an invitation to tender,

pursuant to section 14, may be that the consumers or others are to be able to participate as parties in the applicant's project.

On section 16

The provision continues and develops the provision laid down in section 1(6) of the existing Electricity Supply Act, according to which the Minister for Environment and Energy is required to approve the establishment of electricity production plants which utilise energy from water, currents or wind in the territorial waters and in the exclusive economic zone. Consequently, the provision implies that the establishment of electricity production plants which utilise the energy types mentioned in section 13 with related internal cable installations may take place only after prior permission from the Minister for Environment and Energy. Permission to establish transmission grids in the territorial waters and in the exclusive economic zone designed for voltages exceeding 100 KV is granted pursuant to section 21.

The provision implies, furthermore, that requirements may be stipulated as to the applicants' knowledge and financial background in connection with a permission under this provision. This includes requirements as to documentation for the applicant's technical capacity, production of the necessary technical assistance in consideration of sound establishment and operation as well as requirements as to the financial capacity of the applicant with a view to securing the necessary financial security for sound operation and compliance with the terms of a permission and for the dismantling of plants.

The authority of subsection 2 implies that the Minister for Environment and Energy may prescribe terms or rules governing the notification of permissions under section 16(1). This implies that the Minister for Environment and Energy may set up conditions or prescribe rules governing, *inter alia*, the construction, location, foundation, erection, marking out and installations, dismantling and provision of security for dismantling as well as safety and working conditions in connection with establishment and operations.

On section 17

The aim of the provision is to implement Council directive no. 85/337/EEC of 27 June 1985 on the assessment of the impact of certain public and private projects on the environment, the environmental impact assessment directive, and directive no. 97/11/EC of 3 March 1997

on the amendment of the above-mentioned directives with respect to plants for utilising energy from water and wind in territorial waters and in the exclusive economic zone. Plants for the utilisation of wind energy for energy production and plants for the production of hydro-electric energy are comprised by amendment directive Annex II, which indicates various categories of projects where Member States after a specific assessment and/or specified threshold values or criteria are to decide if the project has an impact on the environment which makes it imperative for the project to be subject to environmental impact assessment procedure.

The environmental impact assessment directive presupposes that the public is briefed on the assessments made and is ensured the possibility of commenting prior to the launching of the project. In accordance with this, section 17(1) establishes that permission under section 16 may only be notified on the basis of an environmental impact assessment and after the authorities and organisations affected have had the opportunity of commenting on it if the project in question is assumed to impact on the environment to a considerable extent. Those who are entitled to a hearing under this provision will be relevant interest organisations and local authorities and interests, in addition to the relevant government authorities.

It is assumed that the costs connected with the activities comprised by section 17 will be defrayed by the applicant for permission under section 16.

The authority of subsection 2 implies that the Minister for Environment and Energy may lay down rules for what projects will be comprised by requirements for environmental impact assessment procedure. This opens the possibility of, for example, prescribing rules for a so-called screening procedure to establish whether a project must be deemed to have a significant impact on the environment so that an environmental impact assessment procedure is necessary or to establish rules for threshold values or criteria with a view to deciding whether to implement an environmental impact assessment procedure. Rules may, for example, be laid down for which size a plant is to have before an environmental impact assessment procedure is necessary.

The authority of subsection 3 implies that the Minister for Environment and Energy may prescribe rules governing what minimum information and surveys are necessary to make an

environmental impact assessment. Furthermore, the Minister for Environment and Energy may decide that environmental impact assessments are to be carried out during and after the establishment of one of the plants covered by section 16. Moreover, the provision enables the Minister for Environment and Energy to demand, in special cases, that the environmental impact assessment of a given project be carried out by independent experts with a view to ensuring the quality of these assessments. The Minister for Environment and Energy decides what persons are deemed to have the expertise required to perform this task. This applies to new plants as well as to the plants comprised by section 18.

The authority of subsection 4 implies that the Minister for Environment and Energy may prescribe rules governing the procedure of informing the general public in connection with the environmental impact assessments under section 17(1) and the screening procedure mentioned in section 17(2) as well as in connection with applications pursuant to section 16. The Minister for Environment and Energy may thus lay down rules governing who should be entitled to responding to a hearing, what requirements should be made regarding the publication of environmental impact assessment reports etc. These rules will be drawn up so that all relevant interest organisations and local authorities and interests apart from the relevant government authorities have the opportunity to obtain information on and comment on the projects in question.

On section 18

With a view to clarifying various matters concerning large-scale off-shore wind energy, including the appropriateness of areas for expanding off-shore wind energy, the financial, environmental, systems and regulatory conditions etc., on 13 February 1998 the Minister for Environment and Energy, pursuant to section 13 of the current Electricity Supply Act, ordered Elsam, Eltra, Sjællandske Kraftværker (Zealand Power Plants), Københavns Belysningsvæsen (Copenhagen Energy) and Østkraft (Eastern Energy) to establish before the year 2008 large-scale demonstration plants corresponding to 750 MW off-shore wind energy. The provision of section 18 implies that these plants as well as other plants which have been granted temporary or final permission under the existing Electricity Supply Act are exempted from the provisions concerning contracting-out under section 14 and section 15. The plants concerned may only be established after having obtained a permission under section 13 to utilise energy, a permission under section 16 to establish electricity production

plants with related internal cable installations as well as a permission under section 21 to establish transmission grids.

On Part 4

The electricity supply grid

The collective electricity supply grid – Transmission and grid licences

On section 19

The provisions laid down in section 1 introduce an obligation to hold a licence for companies that carry out transmission activity and grid activity, respectively.

Pursuant to subsection 2, the licence, which is granted for a minimum 20-year period, is granted by the Minister for Environment and Energy for a specifically delimited area. Consequently, the licensee may count on holding a licence for a period of time which is sufficiently long for at least making it possible to depreciate investments made at the beginning of the licence period.

It appears from the provision laid down in section 97 that a company which when the Act comes into force was carrying out activity which in future will be subject to licence is entitled, under certain objective conditions, to be granted a licence for its activity. It appears from section 19 that it is a condition for obtaining a licence that the company fulfils the provisions of Part 7 (on company requirement, consumer influence etc.), the provisions of Part 8 (on the general licence requirements) and section 97(2) of the temporary provisions (on special requirements regarding the location of owner shares).

Transmission activity and grid activity are defined in section 5 of the Act. If a transmission company has a consumer directly connected to its grid, it follows from the provisions proposed that the company is also subject to licence as a grid company and must carry out the tasks vis-à-vis the consumer which are required of a grid company. The scope of the licence obligation in cases like these will be specified in connection with the issue of the licence.

On section 20

This provision lays down a number of common obligations for both transmission and grid companies. The special obligations for transmission and grid companies, respectively, follow from sections 21 and 22.

The licensees are obliged to ensure adequate and efficient transportation of electricity through the grid and maintain safe and efficient operation through maintenance as well as expansion of the grid infrastructure within the supply area, including connection of producers and consumers on the terms established. Any necessary conversion or new construction of transmission grids must take place in co-operation with the system-responsible company and in accordance with the planning for transmission grids, cf. on this section 28(3)(7) and (8).

Licensees are obliged to measure supply and purchase of electricity in the grid at all voltage levels. The measurements are to fulfil the requirements which the system-responsible company may have prescribed pursuant to the provision of section 28(3)(10) for measuring and collecting data.

In pursuance of subsection 2 the Minister for Environment and Energy may, if a licensee does not fulfil his commitments under subsection 1, order the system-responsible company to take care of this, including carrying out the necessary installation works with regard to the collective electricity supply grid.

This does not imply that ownership of the grid where the installation works are carried out will be transferred to the system-responsible company. The necessary costs will be covered under the provision of section 9.

For the purpose of ensuring that the system-responsible company can carry out the necessary installation works in pursuance of subsection 2, the provision laid down in subsection 3 enables the system-responsible company, if required with the assistance of the police, to gain access to the property of the transmission company or grid company in question.

On section 21

The provision implies that the establishment of new transmission grids designed for voltages of over 100 kV and important changes in similar, existing grids may only be carried out following prior permission from the Minister for Environment and Energy. The provision continues the provision of the existing Act according to which the establishment of new transmission grids and important changes in existing grids of over 100 kV are conditional on the approval of the Minister for Environment and Energy.

Permission to a transmission grid may only be granted if the applicant is able to document that there is sufficient need for the development. This question will normally be settled in connection with the planning of the development of the transmission capacity, which is required to take place under the provision of section 28(3)(7). The need may, furthermore, be settled in connection with the processing of an application for permission to utilise wind energy through off-shore wind turbines.

A permission to transmission grids may include requirements regarding application of specific technologies. The permission may be accompanied by terms concerning the organisation and operation of the grid, including the provision of security for dismantling of plants. This refers both to the dismantling of the plant in question when it has outlived its usefulness and to the dismantling of other specified old plants which are to be replaced by the plant which the application relates to.

Pursuant to subsection 2 of the proposal, the licensee is required to make the transmission grid available to the system-responsible company to the extent that the system-responsible company finds it necessary to carry out the tasks which have been imposed on it. The provision continues the provisions laid down in the existing Act.

The transmission companies' prices and terms are otherwise regulated through sections 69 and 70 of the Bill.

On section 22

Section 22 of the Bill establishes the tasks which apply specifically to grid companies. Pursuant to subsection 1(1), the licensees must ensure the technical quality of the distribution grid. This is to be achieved through continuous overhaul and maintenance of the

licensee's grid. The work is, to the necessary extent, to be carried out in co-operation with the system-responsible company to ensure co-ordination of technical matters.

Pursuant to para 3 of the provision, the grid company is to ensure the collection of payment from the consumers for the payment obligations which are prescribed by this Act, cf. section 9. The grid company is to organise the collection in such a manner that the consumer's total payments for supply of electricity, including the collection of energy charges etc. are conducted in the most expedient manner.

Pursuant to para 4, the licensees must, moreover, provide and settle the electricity which is supplied according to the purchase commitment laid down in this Act. This implies that the grid company is to be in charge of the settlement with the prioritised production plants and, in co-operation with the system-responsible company, ensure that the prioritised electricity is distributed proportionately among the consumers who are connected in the supply area as well as be in charge of the settlement of the prioritised electricity according to the settlement rules prescribed. As the costs have to be defrayed by all electricity consumers in the coherent electricity supply system pursuant to section 9, the grid company is required to settle the costs with the system-responsible company.

Pursuant to para 5 of the provision, the grid company must, in order to create greater transparency concerning market conditions, conduct information activity, which includes information on the consumers' opportunity of changing suppliers, on the potential risks of changing suppliers, on charges etc. The information activities may be co-ordinated with the system-responsible company.

Pursuant to subsection 1(6), grid companies are to map out the energy consumption, plan and secure the implementation of energy savings in the supply area. The provision is a continuation of existing principles for the integrated resource planning carried out so far. When mapping out and planning, the grid companies are to assess the realistic potential of savings and the costs of implementing them. This will establish the basis for prioritising the action in order to obtain maximum environmental value for money.

The Minister for Environment and Energy may decide, cf. subsection 4, that specified preconditions must be presented as the basis for planning. This will secure that uniform, societal criteria are used for the assessments and that the activities based on relatively low costs, seen in relation to the savings potential, will be prioritised.

Pursuant to subsection 1(7), the grid companies are to provide energy consultancy and advice on questions concerning electricity security matters to the consumers in the supply area. The provision is a continuation of the provisions on this matter in the existing Electricity Supply Act. Electricity supply companies carry out a number of electricity saving tasks today of a non-commercial nature: information campaigns and individual advice on energy saving behaviour and purchase and use of energy-efficient appliances etc. as well as outreach activity regarding major consumers (institutions, businesses etc.) to motivate these to implement energy saving measures. The activities are financed through the electricity bill as part of the payment for electricity supply services.

The provision proposed retains the role of the grid companies in relation to these activities. With a view to securing the efficient performance of the tasks, the Minister for Environment and Energy may, pursuant to subsection 4, lay down rules governing the execution of the tasks, including minimum requirements as to what companies are to offer or identify special action areas. There must, simultaneously, be room for flexibility and fresh initiatives.

The energy saving action must be in accordance with the planning pursuant to subsection 1(5) and the results of the individual savings initiatives will be evaluated to provide the grid companies and the authorities with an overall tool for prioritisation.

The activities which may thus be included in the consumer prices must be non-commercial and if the grid companies, in addition, carry out energy saving activities of a commercial nature, they have to be unbundled in independent companies under the provisions of Part 7. The Energy Supervisory Board must supervise that the grid companies comply with this.

The grid company must, cf. subsection 3, provide the users of the grid with all necessary information about the measurement of the electricity transported through the company's grid. It follows from this that, to the extent suppliers, Supply-committed enterprises, trading

companies and other users of the grid need measurement for settling their supplies, the grid company is required to communicate the necessary information about measurement of the electricity.

The Minister for Environment and Energy may, in pursuance of subsection 4, lay down rules governing the implementation of the provisions of subsections 1-3, including rules concerning invoicing and charging amounts. These provisions concerning invoicing will, *inter alia*, make it possible to ensure that the consumers' payments for various services will be transparent and that the costs of specified public service obligations will be itemised on the individual consumer's electricity bill.

Pursuant to subsection 5, the Minister for Environment and Energy may decide that the grid licensees in co-operation are to initiate research and development with a view to efficient energy application. This is aimed, in particular, at development activities regarding energy savings (behaviour, technical development projects etc.) which the existing distribution companies already are involved in to a certain extent.

The Minister for Environment and Energy may lay down rules or make decisions concerning the preparation of plans for research and development activities and the approval of these. The intention is that the rules laid down or decisions made by the Minister are to affect, exclusively, non-commercial development activities in environmentally important areas and that the funds earmarked for this are to be decided in accordance with the Community state aid rules governing research and development etc. The intention is that the licensees are to draw up plans of action, which must be approved by the Minister for Environment and Energy prior to implementation.

Direct electricity supply grids

On section 23

Direct electricity supply grids are lines which supplement the existing system. The provisions make it possible, under certain conditions, to establish direct lines for supply of customers.

It is only possible to construct direct electricity supply grids upon licence from the Minister for Environment and Energy. Pursuant to subsection 2, the licence may only be granted if the applicant has previously had a request to transport electricity through the collective electricity supply grid rejected and it has not been possible to find a solution to the capacity problem by submitting it to the Energy Supervisory Board. It is thus a condition for permission to establish direct lines that there is not already the necessary infrastructure to supply the customer concerned, including sufficient capacity in the existing grid. Consequently, direct electricity supply grids should not as a rule give rise to double cabling in relation to the collective electricity supply grid.

Pursuant to subsection 3, a licence may be subject to conditions to the effect that the grid be made available to the system-responsible company and to conditions under which requirements are made regarding the organisation and operation of the grid, cf. otherwise section 21.

Access to the collective electricity supply grid

On section 24

Pursuant to subsection 1 everybody has the right upon payment to make use of the collective electricity supply grid for transportation of electricity, cf. however section 25(5).

However, pursuant to subsection 2, transportation of electricity to consumers in Denmark may only take place with a view to supplying the consumers who have a right to have electricity supplied by another supplier than the supply-committed enterprise pursuant to the provisions of section 7(1) or section 7(3) on access to supply to subsidiaries etc. Moreover, the supply-committed enterprise has a right to use the grid for transportation of electricity to every consumer. The provision implies that the only restriction on the principled access to using the collective supply grid is that nobody, apart from the supply-committed enterprise, may transport the electricity to consumers who have no access to choosing their own suppliers. The provision must, therefore, be seen in connection with the provisions of section 7 concerning the points in time from when the consumers have a right to choose suppliers. A request for access to grids may, however, be declined for specific reasons, cf. section 25(5).

On section 25

The provisions laid down in subsections 1 and 2 comprise transportation of electricity pursuant to section 24. Transportation is required to take place in accordance with general charges and conditions i.e. that prices and conditions regarding access to the grid for transportation of electricity must be regulated through fixed prices and conditions in order to achieve maximum transparency.

Transportation and systems services related to delivery or reception of electricity through the collective electricity supply grid are paid for through general charges, which are to cover payment for both transmission grid and local grids. The system-responsible company will collect charges from the individual grid companies and publish the total charges and conditions for the area in question. If there is a shortage of transport capacity, the grid company and the system-responsible company may regulate the transportation need through special surcharges (bottleneck charges) which are fixed according to open and objective rules. The charging is to reflect the load on the system and the users of the system may not be exposed to any discriminatory treatment.

Pursuant to subsection 3 of the proposal, the conditions for electricity transit are settled by negotiation. Electricity transit is defined in section 5 of the Bill. It is thus possible to have individually agreed terms and prices in consideration of the scope of the transit, the load etc. Requests for electricity transit are to be addressed to the system-responsible company in the area.

Section 4 of the proposal contains provisions which are to ensure reasonable and speedy processing of applications for access to using the grid for transportation or transit of electricity.

Pursuant to subsection 5 of the proposal, the grid company and the system-responsible company may reject a request for transportation or transit on grounds of a lack of transportation capacity. Capacity problems may, for example, occur because the grid is temporarily fully utilised as a result of the grid company having to fulfil public service obligations in the form of a commitment to purchase from prioritised production.

Rejection of access to transportation intended for the supply of domestic consumers in the domestic grid is expected to occur in very few cases only, and it will as a rule be of short duration only until, for example, sufficient grid capacity has been established.

On section 26

Pursuant to subsection 1, plants and installations are required to fulfil established technical requirements and standards in order to be connected to the collective supply grid. This means that the connection will pose minimum problems to the collective supply grid.

Pursuant to subsection 2, the Minister for Environment and Energy may specify rules in this regard, including deciding that certain technical requirements and standards should be established by the system-responsible company. The existing Electricity Supply Act has held no similar provisions. Today the system-responsible company, in co-operation with the grid companies, draws up on its own the technical specifications for the connection of plants to the collective electricity supply grid. The system-responsible company is expected to continue managing this work. The directions are to be objective and non-discriminatory and to pay due regard to the individual categories of users' technical and financial capacity.

The system-responsible company, grid companies and transmission companies will, within the directions made public, be able to deny plants which do not fulfil current directions access to the grid.

It is required that draft technical requirements and standards of this kind be notified to the European Commission under Council directive 83/189/EEC of 28 March 1983 on an information procedure regarding technical standards and directions.

On Part 5

System-responsible activity

On section 27

Pursuant to subsection 1, system-responsible activity may only be carried out under licence. The provision is a continuation of the provisions of section 3 a(1) of the existing Act according to which the system-responsible company may only carry out its

activities under licence granted by the Minister for Environment and Energy. However, in contrast to earlier, it is not a precondition for obtaining a licence that the system-responsible company must own the transmission grid. It is deemed sufficient for safeguarding the tasks of the system-responsible company that the owners of the transmission grid must make the operation of the transmission grid available to the system-responsible company to the necessary extent. The granting of licence is conditional upon the company fulfilling the requirements in Parts 7 and 8 and section 97(2).

Licences are granted by the Minister for Environment and Energy for 20 years, cf. subsection 2. The existing system-responsible companies, Eltra and Elkraft System, are expected to apply for licences to take forward their companies when their present licences expire on 31 December 1999. If these companies fulfil the conditions in this regard, licences are expected to be issued to them with a geographical delimitation corresponding to the companies' present areas.

On section 28

The provisions indicate the tasks of the system-responsible companies. The reference to section 9 in the proposal indicates what tasks, pursuant to section 9, must be financed by all electricity consumers within the coherent electricity supply system.

The system-responsible company is required, pursuant to subsection 2, to observe confidentiality regarding commercial information and may not discriminate against users of the system or categories of users or show favour to its own companies or owners. The prohibition of discrimination is to ensure equitable, objective and non-discriminatory treatment of users and companies and prevent cross-subsidising from benefiting specific users or the system-responsible company's circle of owners.

The system-responsible company is required to carry out the tasks mentioned in subsection 3 of the proposal.

Pursuant to subsection 3(1), the system-responsible company is required to secure the technical quality and balance within the coherent electricity supply system and ensure the presence of the necessary supply capacity for the physical regulation of the system. Regarding daily operations, the system-responsible company is to ensure the availability of

sufficient production and grid reserves, also through overhauls of production plants and grids.

The system-responsible company monitors production volume, consumption and flow of reactive efficiency in the grid and maintains balance and frequency, voltage etc. The company carries out the necessary analyses and assessments of stability and security of supply and takes the necessary measures in case of irregularities etc. Finally, the system-responsible company is required to co-ordinate power cuts and establish coupling condition in the transmission grid.

The management of the technical quality and balance of the entire system will be secured by the system-responsible company through planning as well as monitoring and intervention in the system at the operating moment. The system-responsible company is under section 31 granted the necessary powers to maintain technical quality and balance.

For the use of the current and potential actors on the market and to illustrate the fulfilment of public service obligations, the system-responsible company will draw up annual surveys and forecasts, cf. para 2, including, *inter alia*, forecasts regarding the expected volume of the prioritised electricity which the consumers are obliged to purchase.

The provision laid down in para 3 imposes an obligation on the system-responsible company to co-operate with other system-responsible companies, including system-responsible companies abroad on the use of the existing co-ordination connections and on uniform guidelines for servicing the market actors.

The aim is to utilise the advantages of being able to exchange electricity with neighbouring systems and ensure uniform and mutually equal conditions for transportation of electricity between the countries. The link-up with other countries, especially Norway and Sweden, implies great advantages with respect to security of supply, resource utilisation and environmental impact. Danish electricity companies may use the advantages of hydro power in interaction with the wind turbine production and the CHP production in Denmark. Norway and Sweden may use the security of supply of the Danish system, which does not depend on the climate in the same manner as the Swedish and Norwegian production

systems. In addition, the competition in especially the Swedish and Danish markets with few producers will be limited without the interaction possibility.

This co-operation addresses in particular questions regarding access to and charging of transmission connections between the countries, but also questions with regard to balance handling, grid restriction etc. It is important that the agreements which the system-responsible company enters into concerning the use and operation of the co-ordination connections should contribute to optimal utilisation.

Pursuant to para 4, the system-responsible company is required to contribute to ensuring that the prioritised production is distributed proportionately to the consumers. This is to be undertaken in co-operation with the grid companies which, in pursuance of the Bill, will have the local responsibility for the electricity being proportionately distributed to the consumers.

Pursuant to para 5, the system-responsible company is required, in co-operation with the grid companies, to contribute to ensuring grid access and access to transit. Everybody may make use of the collective supply grid for transportation of electricity, cf. section 24. Transportation may, however, only be made to those who, under the provision of section 7, have a right to have electricity supplied according to their own choice of supplier. The conditions for electricity transit will be decided through negotiation with the system-responsible company. National security of supply has, in this connection, the highest priority.

A contributory reason for the market to operate optimally is also that the users of the grid are served efficiently and have equal and easy access to the necessary information concerning the access to the market, cf. para 6. The system-responsible company is required to contribute to providing an overview of the market by, as a minimum, regularly publishing information of charges for grid and systems services, periodical reports on the operation of the system, including electricity consumption, production, exchanges and statistics, forecasts for the prioritised production etc. This may also include that the company, *inter alia*, through modern information technology keeps the consumers informed of the prospects in the market in an objective and transparent manner.

The system-responsible company is required, cf. para 7, to draw up a plan for future demand for transmission capacity in the coherent electricity supply system and transmission connections to other grids. Together with para 2, this provision is a partial continuation of the integrated resource planning (IRP) and the planning which earlier took place in co-operation between the grid and production companies. Pursuant to these provisions, the system-responsible company has the responsibility for the continuation of this planning. The Minister for Environment and Energy may decide that specified preconditions are to constitute the basis for the planning.

If there proves to be a need for conversion or new construction of transmission grids, the system-responsible company is required to take the initiative to co-operate with the transmission companies on this, cf. para 8.

Para 9 imposes an obligation on the system-responsible company to draw up an annual environmental report, which gives an account of the development in the most important environmental matters for electricity and CHP production within its own system area. The account should contain a progress report on the previous year and a forecast regarding, for example, the following 10 years. Among the subjects of the report are the area's total emissions of CO_2, SO_2 and NO_x, accounts of residual products etc. The account is to be sent to the Danish Energy Agency. The provision is to be seen in connection with para 2 and para 7 as well as the Bill submitted simultaneously by the Minister on the establishment of CO_2 quotas for electricity production. The Minister for Environment and Energy may specify the content of the account, including the co-ordination of reports.

Measuring energy flows in the system is, in connection with the increased opening of the market, an important element for settling all transactions carried out, including electricity trade in the electricity market. It is important that the measurement is carried out correctly and under the same principles within the entire coherent supply area. The measurement comprises all production and consumption with the possibility, however, that production at plants below a specified *de minimis* threshold is estimated. For end users with a right to choose supplier, cf. section 7, energy measurements will also be carried out to the necessary extent. The system-responsible company will draw up, perhaps in co-operation with other

system-responsible actors, the necessary directions for the energy measurements of the grid companies, cf. para 10.

The system-responsible company will carry out the necessary settlement, cf. para 11, and charge the payments for carrying out the public service obligations. The provision is a continuation of the principle in the existing Act. The settlement presupposes, *inter alia*, that the system-responsible company collects data continuously from those responsible for measurements with a view to settling, *inter alia*, balance services, grid services, systems services and prioritised production.

On section 29

The provision authorises the Minister to secure that the electricity-supply companies contribute, through research and development, to an environmentally benign development within the electricity sector. The provision is a continuation of current provisions.

There may be a need, in particular, for ordering the collective electricity-supply companies to initiate research and development within specific areas where the market cannot be expected to initiate the research and development desired.

It is expected that the system-responsible company will assume the responsibility of ensuring that such research and development projects as are necessary for the development of environmentally benign electricity production plants will be carried out. They are, in particular, projects which are not immediately commercial but may, over time, prove economically sustainable. By placing the total responsibility for research and development tasks with the system-responsible company rather than dividing it up among several parties, it is expected that more holistic research and development planning will be achieved.

Only funds in accordance with the Community's framework provisions governing state aid for research and development etc. may be used for this purpose.

Subsection 2 of the proposal authorises the Minister for Environment and Energy to prescribe rules pertaining to the implementation of the above tasks. These rules could be requirements that the research and development action should be included in a research and development plan drawn up by the system-responsible company, that the plan should be

drawn up in close co-operation with the affected parties within the sector and that the plan should have obtained the approval of the Minister for Environment and Energy. Furthermore, requirements may be made to the effect that the results of the research and development action should, as a main rule, be made available to the public.

On section 30

The Minister for Environment and Energy is authorised to lay down rules to the effect that the system-responsible company must ensure that the necessary stores of fuel for electricity and CHP production are maintained. The provision which contributes to maintaining security of supply is a continuation of the principles laid down in section 9e of the existing Act according to which the electricity supply companies jointly, as a public service obligation, are responsible for maintaining the necessary stores of fuel. The provision places the responsibility for the implementation of the task with the system-responsible company. The provision makes it possible, for practical reasons, to lay down rules to the effect that the electricity production companies are required to assist in the purchasing and placing etc. of the stores.

The provision laid down in section 30(2) continues the possibility of the existing Electricity Supply Act to order the establishment of an electricity connection between Funen and Zealand. It is simultaneously specified that the duty, subject to order, to establish such a connection rests with the system-responsible companies.

On section 31

The provision indicates some key matters concerning the competence of the system-responsible company. Para 1 establishes that the system-responsible company, with a view to safeguarding the 24-hour and balance planning of the system and to fulfilling its commitments in general may collect the necessary information from companies subject to licence, consumers and other users of the grid.

Para 2 makes it possible for the system-responsible company both within the operational 24-hour period and immediately prior to it to demand the necessary conversions of the transactions planned by the grid, supply, production companies and other actors, including ordering necessary up and down regulations of the production. Reorganisation of planned transactions must take place according to open, effective and objective criteria.

On section 32

It is proposed that the Minister for Environment and Energy should appoint 2 members without voting rights to the Board of a system-responsible company. However, nothing prevents the Board from deciding that they are to have voting rights. It is assumed that the system-responsible companies will, as a rule, have a Board. However, if this is not the case, the provision will apply analogously to the corresponding body which is in charge of the company's overall management. The members will be appointed for a 4-year period and have the same rights and obligations as the other members. The aim of this representation is to secure that comprehensive public and societal interests will be represented in the management of the system-responsible companies which hold a key position concerning the implementation of the energy policy prioritisations in the electricity sector.

The public representatives are, simultaneously, to secure public insight into the managerial transactions. The representatives are to be independent of commercial interests and any interested parties. The intention is that the appointed representatives are to have an expert knowledge of energy matters and a societal commitment.

On Part 6

Supply-committed activity

On section 33

Supply-committed activity may only be conducted under licence. The licence is granted only to companies which fulfil the requirements laid down in Parts 7 and 8 and section 97(2). The licence is granted for one or several specifically delimited geographical areas which need not be physically interconnected. The licence is granted for 5 years as this is activity which does not require cost-consuming plants.

On section 34

The provision prescribes which services a supply-committed enterprise is required to offer the consumers who do not have or do not wish to make use of the free choice of supplier. They are supply of sufficient electricity, RE certificates and services concerning energy savings. Sufficient electricity means electricity enough to cover the consumer's total demand.

The supply-committed enterprise is required to manage the purchase obligation RE certificates for their customers, cf. section 62 and the Notes on this.

Pursuant to subsection 1(3) of the proposal, the supply-committed enterprise is, furthermore, required to offer services concerning energy savings to the consumers in the supply area. Section 22(1)(7) ensures that all electricity consumers are offered energy advice (information campaigns etc.) by the grid companies. In addition, however, especially large-scale energy consumers have a need for energy advice etc. of a commercial nature as, for example, planning, implementation and financing of energy saving measures in businesses, institutions, housing associations etc. These services are already supplied on a commercial basis by consultancy companies and some electricity supply companies.

It is to be expected that an offer of energy advice will prove a parameter in the future competition concerning supply of electricity to the consumers. In order to secure that the consumers who make use of the supply offer from the supply-committed enterprise also get access to efficient energy advice etc. in the above areas, it is proposed that the Supply-committed enterprises should make these services available together with the actual delivery of electricity.

The provision does not imply that the company itself must perform the advisory functions. The company may choose to enter into co-operation with other Supply-committed enterprises or contract-out the task. The costs of the activities are to be defrayed by the users in line with the costs of the electricity delivery.

Subsection 2 authorises the Minister for Environment and Energy to prescribe rules governing the scope of the services and the co-operation, including co-ordination with the grid companies' energy savings. Furthermore, the Minister may, pursuant to the provisions laid down in Part 10, demand account unbundling of the savings activities for the purpose of preventing cross-subsidising and unfair competition.

The Minister for Environment and Energy may specify rules governing the content of the commitments, including rules governing co-operation between several Supply-committed enterprises regarding the implementation of the commitments. The provision authorises the

Minister to, for example, prescribe rules to the effect that the company is to enter into co-operation with other companies in individual areas if the company's services and prices deviate considerably from what other supply-committed or commercial companies are able to offer.

On Part 7

Transfer, consumer influence, unbundling of activities, etc.

The aim of the provisions laid down in Part 7 is to promote a structural development in the electricity sector which, to the largest extent possible, ensures that the assets which are a result of the introduction of the new regulation of electricity supply will benefit the consumers and society, to ensure continued consumer influence and to ensure effective competition. Part 7 holds provisions governing transfers, consumer influence, qualification requirements, transactions between interconnected companies and unbundling of activities.

Transfer

On section 35

The State will be granted a pre-emptive right to transmission grids of more than 200 kV, grid connections to another country or owner shares in companies which are owned by such grids as well as to owner shares in a system-responsible company.

The objective of the provision is to ensure that the State, if the existing owners wish to sell, should have the possibility of safeguarding public interests which are linked to the operation of the overall transmission grid through State ownership. This might, for example, prove desirable in order to secure independence of commercial owner interests.

The provision will also apply to the surrender of shares in a company which holds a licence for both grid and transmission activity.

The pre-emptive right of the State to overall transmission grids and system-responsible companies will only prove relevant if the present owners wish to surrender these plants or companies. If the State fails to make known its intention to use its pre-emptive right within the fixed deadline of 3 months, it will lapse.

The pre-emptive right implies that the State has a preferential right to take over plants or companies at their value. The price will be fixed on ordinary market terms. In case of disagreement on the value of the asset in question, it will be fixed by the valuation commission pursuant to the rules of the Act on procedure in expropriation of real property.

If an agreement is entered into in contravention of the State's pre-emptive right, the agreement will be invalid. The legal effects of invalidity are a result of the general rules of Danish law.

On section 36

The provision is to be seen in connection with the temporary provisions of section 97. The provision is to ensure that the owner structure prescribed in section 97 be maintained as long as the ownership of the production company is kept within the same circle of owners. The owners of the grid companies will, consequently, not have the possibility of transferring owner shares to another company within the same circle of owners, including for example a trading company.

Under the present scheme, neither the electricity production companies themselves not their owners have had the free disposal of the assets which, since the commencement on 1 January 1977 of the existing Electricity Supply Act, have been accumulated in the electricity production companies, cf. for details section 74(3) and the Notes on this provision. As long as the ownership structure prescribed in section 97 is maintained, the price regulation of the grid company, cf. section 70, will ensure that the assets in the electricity production companies which under the present scheme have not been subject to the right of free disposal of the companies or their owners will, as was assumed, benefit the consumers and not be invested in, for example, risky commercial activities with the resulting risks of loss.

The aim of the provision laid down in section 36 is to prevent any circumvention of section 70. If it were possible for the grid company to transfer its owner shares in one electricity production company to a company within the same circle of owners, for example to a trading company, there would be a risk of such a transfer taking place at a price considerably below the market value of the electricity production company so that the real value would not be realised until a possible resale of the trading company. As trading companies will not

be comprised by any price regulation, the consumers would have no share in the gains realised in connection with such a resale. The provision laid down in section 36 serves the purpose of eliminating the risk of circumventing section 70 through such a sale within a community of interest.

The proposed organisational regulation of the electricity sector implies no general prohibition of sale. It is thus up to the grid companies to decide whether the electricity production companies wholly or partly are to be sold to companies which do not lie within the same circle of owners.

Pursuant to the provision laid down in subsection 2, the Minister for Environment and Energy may grant an exemption from the provision of subsection 1. Such an exemption will be granted to the extent where, in connection with the sale, there are owner shares available for capital which is mentioned in section 74(3).

On section 37

The provision is an unchanged continuation of section 10 b of the existing Electricity Supply Act, which was inserted by Act no. 189 of 12 March 1997. Two minor consequential amendments have, however, been made. the powers of the Electricity Price Committee will, in future, be exercised by the Energy Supervisory Board. Furthermore, it is specified in subsection 9 what is to be understood by electricity supply activity in this provision. Such a specification is necessary in consideration of the fact that the blanket term electricity supply activity, which under the current legislation comprises production, transmission and distribution of electricity, will not otherwise be continued in the Bill. It is proposed that the provision should continue to apply to all types of activity comprised by the Electricity Supply Act.

Act no. 189 of 12 March 1997 was passed by the Government Parties as well as the Socialist People's Party, the Centre Democrats and the Unity List whereas the Liberals, the Conservative People's Party, the Progress Party and the Danish People's Party voted against it. The Christian People's Party was not represented in the Folketing at the time. The fact that these provisions will be carried on does not imply that the Liberals and the Conservative People's Party, with the conclusion of the Reform Agreement, have accepted the provisions.

On section 38

The provision laid down in section 38 is to counter vertical integration which may result in commercial owner interests gaining considerable influence in the collective electricity supply companies. This kind of influence will prove detrimental to effective competition and may imply a risk of abuse. It is deemed difficult to avoid this risk through public supervision of the companies. This objective is safeguarded by limiting ownership and by a prohibition of commercial owner interests, due to special voting rights within the executive bodies, achieving the possibility of exercising controlling influence in the collective electricity supply companies.

The provision implies that there will be no possibility of transferring a collective electricity supply company to commercial parties in the electricity market and that there will only be limited access for commercial parties to invest in these companies.

The provision ensures that the system-responsible companies have a sufficiently neutral position on the market so that it may be expected that they will grant access to the overall electricity grid on equal and non-discriminatory terms. This provides the basis for the system-responsible companies to fulfil the independence requirements which the other Nordic countries have made as a condition for further integration of the Nordic electricity market.

Moreover, the provision eliminates the risk that commercial companies, as mentioned in subsections 1 and 2, as owners of distribution and transmission grids, will safeguard their own commercial interests at the expense of other potential users of the grid. The provision is, furthermore, to secure that the Supply-committed enterprises, when exercising their supply-committed activity, are independent of commercial production or trading interests.

Finally, the provision of subsection 2 ensures that the Supply-committed enterprises which to a certain extent also safeguard their own commercial interests cannot achieve significant influence in relation to other types of collective electricity supply activity.

With respect to the prohibition of commercial owner interests due to special voting rights in the executive bodies having the possibility of exercising controlling influence in the collective electricity supply companies, it follows from subsection 3 that this prohibition, in the circumstances, may also imply that the provisions in Statutes concerning distribution of special voting rights must be deemed invalid. This applies, however, only in the special cases where the Statutes are amended so that the commercial owner interests have the possibility of exercising controlling influence due to capital shares which they are already in possession of. If the commercial companies, as mentioned in subsections 1 and 2, obtain capital shares to which are attached such special voting rights in advance so that the commercial company achieves controlling influence in a collective electricity supply company, it is the acquisition of the capital share in itself which must be deemed in contravention of the provisions of subsections 1 and 2, and thus invalid.

The provision of section 38 applies only to acquisitions etc. which take place after the commencement of the Act whereas the owner structure in relation to existing companies will be regulated by the temporary rule of section 97.

On section 39

The provision laid down in section 39 imposes an obligation on the collective electricity supply companies to provide the Energy Supervisory Board with information about ownership matters, both regarding information about the companies' own owner shares in electricity production companies and other collective electricity supply companies and regarding information about which firms are in possession of owner shares in the company. With respect to information about which firms are in possession of owner shares in the company, the obligation is limited to information which the company is aware of. The reason is that it cannot be ruled out that situations may occur where the company is not in possession of this information nor immediately able to provide this information.

In accordance with section 53, the Minister for Environment and Energy will be able to demand that it should be laid down in the companies' Statutes that the company in future must keep a record of which firms have owner shares in the company. With respect to limited companies, it may thus be required that the companies keep a register of shareholders and that the shareholders’ names be entered in the register and that registration

may not be performed in the name of another as this is not sufficient to ensure compliance with the requirements of the Act.

Consumer influence

On sections 40-43

The proposed influence requirement of either section 40 or section 41 must be observed for a grid company to obtain and keep its licence, including having a licence renewed. The requirements are sought designed in such a manner that they already are fulfilled by existing companies which, in general, will be able to fulfil the conditions of obtaining a licence for grid activity. If, contrary to expectation, there are companies where the influence requirements are not fulfilled at the time of the submission of the Bill, it will be possible to grant an exemption from the requirement pursuant to the provision of section 40(4). With respect to the Supply-committed enterprises, it will be possible, in similar situations, to grant an exemption pursuant to the provision of section 43(3).

On section 40

The provision laid down in subsection 1 establishes that either directly or indirectly elected consumer representatives are to constitute the majority of the Board members of the grid company. It is assumed that grid companies, in general, will have a Board. However, if this is not the case, the provision will apply analogously to the corresponding body which is in charge of the overall management of the company.

In a grid company which, for example, is a consumer owned co-operative society with limited liability, the direct consumer influence requirement will be fulfilled if the Board of the grid company is elected by the members of the co-operative society. If the Board is instead elected by a committee of representatives elected by the members of the co-operative society, the provision of subsection 2 will apply.

The consumer influence requirement may also be fulfilled indirectly where one or several municipalities or counties, due to their share holding or otherwise, have a right to elect the majority of the Board of the grid company. This is based on the view that a majority of consumers in the supply area of a grid company have elected the local government and thus indirectly have influence on the appointment of the Board of the grid company. For grid companies that operate in the form of limited companies, it follows from section 49(6) of the Danish Companies Act that the majority of the members of the Board are to be elected by

the annual general meeting. In that case the influence requirement of subsection 1 will, for example, be fulfilled if the municipalities or the counties have controlling influence at the annual general meeting. The existing distribution companies where municipalities have dominant influence today due to ownership will thus fulfil the requirement even if the grid company is operated in the form of a limited company in future.

Subsections 2 and 3 concern a number of special cases where the consumer influence requirement is deemed fulfilled even if consumers and local authorities have had only indirect influence on the election of the Board of the grid company.

The provision laid down in subsection 3 does not apply if the management of a holding company is authorised by its Board to elect the Board in the grid company.

On section 41

If a grid company fails to fulfil the influence requirement of section 40, it follows from section 41(1) that a committee of consumer representatives must be established instead.

It is the task of the consumer representatives to elect the majority of the members of the Board of the grid company. Subsection 1 secures for the consumers of the supply area of the grid company a right to elect the members of the committee of representatives who are to elect the majority of the Board of the grid company. This means that consumer influence in the grid company is achieved in another manner than the one mentioned in section 40. The provision will, *inter alia*, have to be applied if changes in the circle of owners imply that the influence requirement of section 40 is no longer fulfilled, for example, if a grid company owned by a municipality is transferred to new owners.

Pursuant to subsection 2, the Minister may specify rules governing when a consumer from a grid company's supply area has a right to participate in the election of the members to the committee of consumer representatives or may himself stand for election to the committee of consumer representatives. This authority may, *inter alia*, be used to establish a residence requirement, including provisions to the effect that members of the committee of consumer representatives must step down if they move away from the supply area. Furthermore, the Minister may lay down rules governing the duration of the mandate of the members of the committee of representatives.

It appears from section 49(6) of the Danish Companies Act that the majority of the members of the Board must be elected by the annual general meeting unless the members of the Board are elected by the committee of representatives pursuant to section 59(3). As the committee of consumer representatives of section 41 are not elected in accordance with the provisions laid down in section 59 of the Danish Companies Act, it is specified in the provision that section 49(6) of the Danish Companies Act will not apply.

Pursuant to section 49(2) of the Danish Companies Act, the staff have a right to elect half of the number of members of the Board who are elected by the annual general meeting. In companies where the majority of the members of the Board are elected by a committee of consumer representatives pursuant to the provisions of section 41, the staff have the right to elect a number of members of the Board and substitutes for these corresponding to half the number of members who are elected by the committee of consumer representatives and the annual general meeting in all.

It appears from section 59(1) of the Danish Companies Act that the majority of the members of the committee of representatives must be elected by the annual general meeting of the company. Pursuant to section 41, the members of a committee of consumer representatives must, however, also regarding limited companies be fully elected by the consumers in the supply area of the grid company, and it is therefore specified in subsection 4 that the provision laid down in section 59(1) of the Danish Companies Act will not apply in relation to elections of committees of consumer representatives.

The possibility should not be excluded that one or several members of the committee of consumer representatives are appointed as members of the Board of the grid company. It is, therefore, laid down in section 41(4) that section 59(2) second sentence of the Danish Companies Act will not apply as this provision prescribes that a member of the committee of representatives cannot simultaneously act as a member of the Board.

On section 42

Pursuant to section 42(1) and (2), the grid company is to secure the establishment of a committee of consumer representatives under section 41 no later than 2 months after the grid company has failed to fulfil the influence requirement of section 40. The company is,

otherwise, required to draw up its Statutes in such a manner that it can implement either section 40 or section 41.

Pursuant to section 41, a committee of consumer representatives must, with respect to limited companies, be established by amending the Statutes of the limited company. The Statutes must be approved by the Minister for Environment and Energy pursuant to section 53(2) or be formulated in accordance with the rules which the Minister prescribes in pursuance of section 53.

On section 43

Pursuant to section 43, the rules laid down in sections 40, 41 and 42 governing consumer influence will also apply with respect to the Boards of Supply-committed enterprises. However, only one third of the members of the Board must be elected directly or indirectly by the consumers. The influence requirement will, in this connection, also be fulfilled if the directly or indirectly elected consumer representatives in the grid company attend to fulfilling the requirement concerning consumer representation in the supply-committed enterprise.

On section 44

The Statutes of the grid and Supply-committed enterprises must contain provisions which ensure the implementation of the consumer influence requirements of sections 40-43.

Pursuant to the provision laid down in subsection 2, the Minister for Environment and Energy may prescribe rules to the effect that the companies' Statutes are to be drawn up within the framework of standard Statutes decided by the Minister. Pursuant to the provision laid down in section 53(2), the Statutes must be approved by the Minister.

Standard Statutes may, *inter alia*, contain provisions to the effect that all consumers, irrespective of the volume of consumption, are to have the same influence in the company, rules governing the election of the top management of the company, rules concerning the protection of minorities and rules governing the election methods to be applied.

Qualification requirements

On section 45

Section 45 contains provisions which are to ensure that the system-responsible companies are operated independently of commercial interests in electricity production or electricity trading companies.

It follows from the provisions laid down in sections 38 and 97 that a system-responsible company cannot be directly owned by production or trading companies. The companies may, however, continue to have the same owners as the production companies. It has, therefore, been found necessary to make further qualification requirements to ensure that the management of the system-responsible company is independent of the management of the commercial companies.

The provision should also be seen in the light of the requirement of the electricity directive regarding the system-responsible company's independence, cf. Article 7(6) of the directive which reads as follows: “Unless the transmission system already is independent of production and distribution activities, the system operator is required, at least, managerially to be independent of other activities which do not concern the transmission system”.

Similarly, the existing Electricity Supply Act contains provisions which are to ensure the system-responsible company's independence, cf. section 3 a of the Act. Current legislation requires solely managerial separation and it is possible for the system-responsible entity to have the same manager or Board as the company's commercial activities. It is, however, open to question whether the existing legislation is sufficient to fulfil the requirement of the directive regarding managerial separation.

Giving loans, security etc.

On Section 46

Pursuant to section 46, collective electricity supply companies are not allowed to grant loans or provide security for other companies. The objective of the provision is to secure that the values of the collective companies are used, exclusively, in accordance with the price provisions of the Act. The aim of the provision is to prevent any circumvention of these provisions.

Therefore, the restriction of the collective electricity supply companies' right to enter into commitments does not apply to capital of which the companies have the free disposal, cf. otherwise section 74(3) and the Notes on this provision.

The provisions laid down in section 46 are targeted exclusively at the future and will not interfere with existing legal matters.

Section 46(1) does not regulate security or lending obligations assumed in connection with the establishment of the companies. It is, exclusively, section 102 which regulates what assets and liabilities may be placed with a legal entity when the Act comes into force, cf. Notes on this provision. Consequently, section 46(1) regulates only future opportunities of the collective electricity supply companies to grant loans or to provide security for other collective electricity supply companies.

Subsection 3 prescribes that agreements entered into by collective electricity supply companies with other companies are required to be made on market terms. The aim of this provision, like subsection 1, is to secure that the values of the collective companies are used exclusively in accordance with the price provisions of the Act and to prevent any circumvention of these provisions. The provision laid down in subsection 3 is, in particular, to prevent the collective electricity supply companies from, by purchasing at too high a price or by selling at too low a price, transferring funds between companies with interconnected interests, which would be contradictory to the intentions of the Act.

Unbundling of activities

On section 47

Subsection 1 establishes the main rule that a licence for supply-committed activity, system-responsible activity, grid activity and transmission activity cannot be granted to the same company and that the licensee of the company may solely carry out the activities which are comprised by the licence. According to subsection 2, a licence may, however, under certain conditions, be granted for grid activity and transmission activity to the same company or a licence for transmission activity and system-responsible activity to the same company.

The provisions laid down in subsections 1 and 2 imply that the existing companies which today carry out several activities subject to licence as a condition of obtaining a licence for an activity subject to licence, as a principal rule will have to carry out company unbundling of the other activities of the company. The implementation of the necessary company unbundling will have to take place in accordance with the other provisions of this Part and the temporary rule of section 97. Elkraft and Eltra own and operate considerable parts of the transmission grid today and are, simultaneously, system-responsible companies. Pursuant to subsection 2, it will remain possible to grant these companies a licence for both transmission activity and system-responsible activity, on condition that the companies otherwise fulfil the conditions for this.

Other parts of the transmission grid are today owned by distribution companies, and subsection 2 opens up for the possibility that the principal rule of company unbundling between activities subject to licence may be departed from if, for example, the operation of the transmission grid constitutes only a minor part of the company's activity area.

Subsection 3 establishes that, in a company which is granted a licence to operate two activities subject to licence, there must be unbundling of accounts between the activities. Unbundling of accounts is also prescribed in Article 14 of the electricity directive, cf. otherwise the Notes on section 85.

Subsection 4 establishes that if a collective electricity supply company, excluding municipalities, cf. subsection 5, wishes to operate other activities than those which are covered by the licence, this will have to take place within independent companies with limited liability. The provision covers the collective electricity supply activity, electricity production and trade in electricity as well as any other co-ordinate activities, including activities which are not linked to the electricity sector.

On section 48

The establishment and operation of waste-incineration plants are also, after the coming into force of this Act, to take place in companies with a self-sustaining economy, cf. also the Notes on section 75(3). For the plants which, when the Act comes into force, are owned by companies which have other electricity production, the provision will imply unbundling from

the company's other electricity production activities which, in future, as a main rule will be subjected to commercial pricing.

The provision does not rule out that so-called combined waste-incineration plants may continue to use other fuel types together with waste that is suitable for incineration such as straw, wood chips and natural gas.

On section 49

The content of the provision corresponds to section 9 f(5) of the current Electricity Supply Act, and it is not possible to make the funds mentioned liable to legal action by the licensee's creditors.

On Part 8

General provisions concerning licences

On section 50

In particular situations it will remain possible to set up special licence terms which are justified by the special circumstances of the company in question. The terms will, in that case, be based on objective criteria and may only concern matters where the Act makes it possible for the Minister for Environment and Energy to decide the terms.

The intention of the provision is, furthermore, to specify that it is possible within the otherwise established framework to establish conditions within the licences against the background of future directives, recommendations or decisions under the auspices of the EU. Among the existing EU rules it is, in particular, a matter of Council directive 90/547/EEC of 29 October 1990 on the transit of electricity through the overall grids.

In addition, the provision makes it possible that the licences for production companies may contain conditions to the effect that the Minister may decide that the companies, in future, are to maintain a specified minimum capacity. The aim of the provision is to secure the maintenance of sufficient domestic production capacity if the competition from imported electricity, over time, develops in such a manner that it leads to a substantial reduction in Danish electricity production capacity.

A similar provision is proposed regarding licences for transmission companies where also, to safeguard the security of supply, requirements may be made for the companies to ensure specified transmission capacity of national transmission connections as well as the foreign connections.

It may, thus, be made a licence condition that the production as well as the transmission companies assume the responsibility of contributing to the necessary reserve to safeguard the security of supply. The condition will, if required, be presented to licence applicants on the basis of objective, non-discriminatory criteria.

On section 51

The costs connected with the Environment and Energy Minister's supervision of the licensees must, as is the case today, be defrayed by the enterprises subject to licence. The obligation to defray costs comprises the activities which are a necessary precondition of the licence supervision.

The Bill implies that a very large number of companies will be subject to licence and it is to be expected that the Environment and Energy Minister’s tasks of supervising the companies subject to licence, especially in a transitional period, during which the licences are to be issued, will be considerably larger than today.

The Bill continues, furthermore, the existing practice according to which electricity sector companies pay a contribution to finance the tasks of the Minister for Environment and Energy concerning the planning etc. in the electricity area. The amount will, in future, not have to be defrayed by the production companies and businesses which are exposed to competition, but solely by the collective electricity supply companies.

Pursuant to the Bill, the licensees are required to own the plants which are used for the implementation of their activities subject to licence. In special cases, however, exemptions may be granted from the requirement. It is of considerable significance to the entire thinking behind the Bill that the licensees should have full title to grid and capital goods. This is, *inter alia*, a precondition of ensuring user influence with regard to the administration of the assets of the electricity sector. The aim of the provision is, therefore, to preclude structures where

the licensee, for example, sells the grid but continues the activity, for example on the basis of a leasing agreement with the buyer.

If, for example, to safeguard the security of supply, it proves necessary, in special situations, to depart from the requirement that the licensee must own the plants which are used for the activity subject to licence, the Minister has the possibility of granting an exemption from the requirement through the authority laid down in section 5. Such an exemption might, for example, prove relevant if a grid licensee gave up or lost his grid operation licence, but did not wish to sell his grids. To safeguard the security of supply, it would in such a situation be necessary to grant a licence to a company which did not own the grids in question.

On section 52

Licences are granted for at least 20 years to companies with physical plants. The licence period for the system-responsible company is granted for 20 years and for Supply-committed enterprises for 5 years. Section 52 makes it possible, 5 years after the issue of a licence and subject to 1 year's notice, to decide new licence requirements. The notice must, if required, be given 4 years after the issue. Only such new conditions as are authorised by the Act may be decided.

On section 53

The provisions to the effect that licences are exempted from legal action and may only be transferred to others subject to the Minister’s approval are a continuation of existing provisions which are still deemed necessary.

Under the provision of subsection 2, collective electricity supply companies’ regulations and changes of these are subject to the approval of the Minister for Environment and Energy. The provision will have no impact in relation to municipalities which carry out grid activity pursuant to section 4(1), first sentence, as the regulation of the management of municipalities is to be found in the Local Government Act.

On section 54

The provision contains rules to the effect that the court, in case of repeated violations of the Act or if wrongful information is submitted in connection with an application, may revoke a

licence. The Minister for Environment and Energy may, in case of bankruptcy or suspension of payment, revoke a licence. Thus, there must be decisive reasons for revoking a licence.

Pursuant to subsection 2, the Minister may, however, instead choose to order the licensee to comply with the obligations under the Act or the licence. The court may decide that the violation of such an order may imply revocation of the licence.

On Part 9

Environmentally benign electricity production

On section 55

Environmentally benign electricity production

The provision proposed defines the concept of RE electricity. In pursuance of the provisions laid down in sections 59 and 60, the Minister for Environment and Energy may prescribe rules governing the settlement of RE electricity and the allocation of RE certificates to producers of RE electricity.

It appears from subsection 1 that the definition of RE electricity comprises electricity generated by wind energy, biomass, including biogas, solar energy and wave power as well as from hydro-power plants under 10 MW. Waste is not comprised by the concept of biomass.

In pursuance of subsection 2, the Minister may specify rules governing the delimitation of the various types of RE electricity. It is expected that, *inter alia*, rules will be prescribed which delimit biomass from waste. The point of departure of these rules will be the definition of the types of biomass which, in accordance with Executive Order no. 798 of 23 October 1997 on subsidies for electricity production, are entitled to electricity subsidies of DKK 0.17 per kWh. The delimitation of RE electricity to comprising electricity from hydro-power plants of below 10 MW implies that the electricity from large-scale hydro-power plants is not entitled to receive RE certificates. If it proves that some hydro-power plants of

10 MW and below are competitive in relation to electricity generated in Denmark through traditional energy types as, for example, natural gas, rules may be decided to the effect that the threshold of 10 MW should be lowered.

Pursuant to subsection 2, the Minister for Environment and Energy may, furthermore, prescribe rules to the effect that other energy sources and technologies than those mentioned in subsection 1 are to be comprised by the concept of RE electricity.

It is assumed that this authority will be applied in relation to technologies which, at the present moment, are not fully developed.

General prioritisation of environmentally benign electricity production

On section 56

Co-generation of electricity and heat and the application of renewable energy in the supply of electricity are of great importance to energy policy. The conversion of district heating plants to CHP and the increased application of renewable energy are the most important measures to achieve reductions in the environmental impact from energy production. The volume of electricity production by CHP and some types of renewable energy, for example wind energy, is, however, relatively difficult to regulate in relation to demand as the distribution of production over a 24-hour period, a week and a year is highly conditional on weather conditions. It is, therefore, important to secure that the differences between production and demand, owing to insufficient regulatory power, should be reduced in order not to strain the economy of the plant.

The system-responsible company is, therefore, required to offer balancing services to reduce this type of variation in relation to agreements made on the supply of electricity, i.e. to purchase and resell surplus electricity and supply electricity that is needed. Any net costs from this will be defrayed through the system-responsible company's charges. The provision is a continuation of the principles of the existing legislation.

The Minister for Environment and Energy may lay down rules governing the implementation of the provision, including what plants are comprised, the scope of the obligation and the conditions which may be imposed on the producer. The production of CHP plants during a

24-hour period, a week and a year will be decided by weather conditions and technical solutions, including the installation of a heat accumulation tank, whereas the scope of wind energy generation will be determined exclusively by weather conditions. There may, consequently, be reasons for providing different balancing services for different technologies and for plants with different settlement systems.

With respect to small-scale CHP producers, the system-responsible company is required solely to offer balancing services in relation to the heat-linked electricity production. The system-responsible company must, simultaneously, be able to impose conditions to the effect that variations should, to a reasonable extent, be sought reduced in connection with the construction and operation of the plant.

Similarly, subject to circumstances, conditions may be made regarding the balancing of electricity from other renewable energy production than small-scale CHP. In connection with the Environment and Energy Minister's analysis and assessment of how trade in RE electricity may be organised in a market with RE certificates, the system-responsible company's balancing services in relation to plants covered by RE certificates will be assessed.

In respect of the large-scale CHP plants the system-responsible company may have the necessary expenditure regarding the balancing services, as a result of deviations between the notified and the actual electricity production, covered by the producer.

Prioritised sale of environmentally benign electricity production

On section 57

The provision of subsection 1 continues the rules and principles of prioritising environmentally benign electricity production of section 9 a(1) and section 9 e(1)(3) of the current Act on electricity supply. It should be noted that there will be no continuation of the principle that the purchase obligation for small-scale CHP plants will be reduced to the extent that agreements are made on direct purchase for the site of consumption which is linked to the plant in question.

The provision implies, furthermore, that the system-responsible companies and the grid companies are obliged to take electricity from the wind turbines which the RE Fund, pursuant to section 66, are under an obligation to take over. The purchase obligation should be seen in the light of the system-responsible companies and grid companies' concurrent duty to pass on the electricity to the consumers, cf. sections 22 and 28, the consumers' purchase obligation, cf. section 8 and the distribution of costs among all electricity consumers within a coherent electricity supply system, cf. section 9.

The authority of subsection 2 will be used to carry forward the so-called CHP guarantee for large-scale CHP plants as set out in current Executive Order no. 231 of 21 April 1998. The scheme will, consequently, only apply to the plants and production volumes specified in the Executive Order.

With the authority of subsection 2, the Minster for Environment and Energy will, furthermore, be able to specify rules to the effect that RE electricity remains a priority, but that this electricity is not guaranteed a fixed settlement price. The authority is assumed applied to the extent only that RE certificates for RE electricity are issued under section 60. Whether RE electricity is to remain a priority if RE certificates are issued for it will be assessed in connection with the Environment and Energy Minister's analysis and assessment of how trade in RE electricity may be organised in a market with RE certificates.

The reason for the provision laid down in subsection 3 is that when the Bill was submitted, there was no clarification of the future economic framework for the production sector, cf. in this connection point 2.g) of the general Notes on the Bill. Against this background it is proposed that the Minister for Environment and Energy, after submission to the parliamentary Energy Policy Committee, may prescribe rules to the effect that electricity production from plants owned by electricity utilities or plants established by these companies are not to be comprised by the purchase obligation, mentioned in subsection 1, regarding prioritised electricity production and, therefore, that electricity from these plants is not either to be comprised by the settlement rules which are a consequence of sections 58 and 59.

Settlement rules for prioritised electricity

On section 58

With the provision of subsection 1, the principles of the settlement provision of section 9 a of the current Electricity Supply Act will be continued. Prioritised electricity supplied by small-scale and industrial CHP as well as from electricity production plants which use waste as fuel will thus be settled according to the principles which are indicated in section 58(1). RE electricity, including RE electricity generated from CHP plants will be settled according to the provisions laid down in pursuance of section 58(3) or section 59.

The Minister for Environment and Energy may, pursuant to subsection 2, specify rules governing which plants are comprised by subsection 1 and the calculation of the settlement price of subsection 1. The organisational changes which are a result of the Electricity Reform Agreement mean that there is a need for establishing principles regarding the calculation of the settlement price. These rules will be decided on the basis of the principles mentioned in subsection 1. It is assumed that, pursuant to the provision, calculation rules will be laid down for how the settlement price or sub-elements of this (including capacity payment) are to be calculated.

Similarly, provisions may be prescribed to the effect that the grid companies and the system-responsible companies are only under an obligation to settle electricity from small-scale CHP plants under the principles described here when the electricity is produced as co-generation with heating.

The reason for the provision of subsection 3 is that, at the time of the submission of the Bill, there was no clarification of the future economic framework for the production sector, cf. in this connection point 2.g) of the general Notes on the Bill. Against this background it is proposed that the Minister for Environment and Energy, after submission to the parliamentary Energy Policy Committee, may prescribe special settlement rules for electricity generated from plants owned by electricity utilities or plants established by these companies. In this connection the Minister may decide that special settlement prices are to apply to plants which utilise certain fuels or energy sources. The authority comprises also RE electricity.

On section 59

The implementation of the Electricity Reform Agreement implies a considerable change of the current principles for settlement of RE electricity. From having been based on statutory settlement prices as well as disbursement of state electricity production subsidies, the intention is that the settlement of RE electricity, over time, will consist of the market price for electricity as well as the revenue from the sale of RE certificates. The demand for RE certificates will be ensured by imposing on all electricity consumers an obligation to buy a fixed minimum number of RE certificates relative to their electricity consumption. The intention is to secure a continued rise in the RE electricity share of electricity consumption in Denmark simultaneously with the introduction of market mechanisms to secure a low level of costs. A successful market for trade in RE certificates is expected to be established in the year 2003. There is, therefore, a need for special transitional schemes for the settlement of RE electricity. Against the background of estimates of the economy based on RE electricity produced at different types of plants, temporary rules will be laid down, securing both reasonable conditions for RE producers who, when the Act takes effect, have invested in the production of RE electricity, and making it attractive to continue investing in plants which produce RE electricity.

In pursuance of subsection 1, the Minister for Environment and Energy may prescribe temporary rules of this kind for the settlement of different types of RE electricity. The settlement rules will be decided in accordance with the guidelines of the Electricity Reform Agreement. The rules will be laid down in an Executive Order after submission to the parliamentary Energy Policy Committee. With a view to securing the transition to a market for RE certificates, the Minister for Environment and Energy may, furthermore, prescribe rules for the extent in terms of time of the settlement price and the surcharges in the transitional period. For further information, please see Notes on section 60.

In accordance with the Electricity Reform Agreement, rules will, *inter alia*, be decided to the effect that electricity from existing wind turbines within a transitional period will be settled with DKK 0.33 per kWh and a surcharge of DKK 0.10 per kWh. The Electricity Reform Agreement defines existing wind turbines as wind turbines purchased under a binding, unconditional contract before the end of 1999 and having the necessary licences. Existing wind turbines will, in addition to the DKK 0.33 + DKK 0.10 per kWh have disbursed DKK 0.17 per kWh for a total electricity production corresponding to a specified

number of full-load hours. The number of full-load hours is calculated from the time when the turbine was set up initially. The number of full-load hours is converted to a total production of kWh by multiplying it with the nominal capacity established in the type approval and by the grid connection. According to the Electricity Reform Agreement a 600 kW wind turbine will be entitled to DKK 0.17 per kWh for the first 12,000 full-load hours. A wind turbine of this kind is, therefore, entitled to the DKK 0.17 surcharge for the first 7,200,000 kWh (600 x 12,000). The intention is that the administration of the full-load-hour scheme is to be managed by the grid companies with the possibility of lodging complaints with the Energy Supervisory Board.

Electricity from all new wind turbines which will be connected to the grid until the end of 2002 will also be ensured a basic price of DKK 0.33 per kWh for a period of 10 years. In addition, they will have a surcharge in connection with the sale of RE certificates, cf. Notes on section 60 and section 65.

Until a detailed assessment of the economy of existing, small biomass plants has been carried out, electricity from these plants will be settled according to the principles of the settlement rules which have applied so far. Furthermore, a surcharge will be granted of DKK 0.27 per kWh corresponding to the present subsidy totalling DKK 0.27 per kWh. The intention is to improve the settlement rules governing electricity generated at biomass plants.

In accordance with the Electricity Reform Agreement, it is assumed that the Minister for Environment and Energy, pursuant to subsection 1, may also prescribe special settlement rules for RE electricity generated at small plants such as solar cell plants and minor household wind turbines.

The provision of subsection 2 is to be seen in connection with the obligation of the RE Fund to take over wind turbines under section 66. The provision implies that the costs related to the take-over obligation of the RE Fund will be defrayed by the revenue generated from the sale of electricity from the wind turbines the RE Fund takes over and operates. It is assumed that also the RE Fund's costs of administering the take-over scheme will be financed over the settlement price. For further information, please see Notes on sections 64 and 66.

The reason for the provision of subsection 3 is that, at the time of the submission of the Bill, there was no clarification of the future economic framework for the production sector, cf. in this connection point 2.g) of the general Notes on the Bill. Against this background it is proposed that the Minister for Environment and Energy, after submission to the parliamentary Energy Policy Committee, may prescribe special settlement rules governing RE electricity generated at plants which are established as a result of orders given in pursuance of section 13 of the existing Electricity Supply Act. The provision of subsection 3 will, consequently, comprise *inter alia* the biomass plants, off-shore wind turbines and on-shore wind turbines which will be established in future as a result of orders given in pursuance of section 13 of the existing Electricity Supply Act, but which, as a result of the amended rules of this Act, cannot be financed by the electricity price.

RE Certificates

On section 60

It is assumed in the Electricity Reform Agreement that a market will be established for renewable energy. Sections 60-66 hold powers for the Minister for Environment and Energy to specify rules governing the implementation of such a market. According to the Electricity Reform Agreement, "a detailed analysis and assessment is to be conducted of how trade in renewable energy may be organised and made effective, having regard to securing, *inter alia*, a stable framework for different actors in the market, the necessary programme and technology development within the RE area etc." before the end of 1999. Consequently, the specification of how a market for renewable energy can and is to be organised depends on the result of the analysis. The main principles are, however, expected to follow the principles outlined in the Notes on this provision and in the Notes on sections 61-65.

It is expected that "trade in renewable energy" mentioned in the Electricity Reform Agreement will be implemented through trade in RE certificates which document that a certain volume of RE electricity has been produced. In conformity with the electricity consumers' obligation to take prioritised electricity under the provision of section 8, electricity consumers will, therefore, also after the introduction of an obligation to purchase RE certificates, be guaranteed that the volume of RE electricity which corresponds to the electricity consumers' total purchase of RE certificates has been generated.

The present obligation for the electricity consumers to purchase prioritised electricity, cf. section 8 implies that the costs of prioritised electricity will be distributed solely among all electricity consumers within the areas of the individual system-responsible companies. When establishing a successful market for RE certificates, the expenditure of purchasing RE certificates will, by contrast, be distributed equitably among all electricity consumers in Denmark. A market for RE certificates will, therefore, contribute to a more equitable distribution of costs, linked to a target of RE electricity accounting for 20% of electricity consumption in Denmark at the end of 2003.

The provision of subsection 1 implies that producers of RE electricity, as part of the establishment of a market for RE certificates, will receive RE certificates relative to the volume of RE electricity they generate. This will imply, in general, that RE certificates will be allocated relative to the volume of RE electricity supplied to the 10-20 kV electricity grid.

Subsection 2 authorises the Minister for Environment and Energy to lay down rules governing which producers are to receive RE certificates. The Minister for Environment and Energy may thus prescribe rules to the effect that only producers who are certified under the rules laid down in pursuance of this provision may receive RE certificates. The provision authorises, furthermore, the Minister for Environment and Energy to prescribe rules governing when individual producers will receive RE certificates. The provision is to be seen in connection with the temporary provisions regarding settlement of RE electricity which are laid down in pursuance of section 58(3) and section 59(1) and (3). When RE electricity is no longer settled under the temporary rules, the intention is that the producer will instead be allocated RE certificates relative to the electricity production. The market price for RE certificates as well as the market price for the volume of electricity supplied will, subsequently, constitute the aggregate settlement for the RE electricity. Moreover, subsection 2 authorises the Minister for Environment and Energy to prescribe all necessary rules for RE certificates to be issued in a safe manner. The Minister for Environment and Energy may, in this connection, lay down rules as to who will issue the RE certificates and rules as to how the issue of RE certificates will be supervised.

Furthermore, subsection 2 authorises the Minister for Environment and Energy to specify rules governing the allocation of RE certificates. The Minister for Environment and Energy may thus, *inter alia*, lay down rules governing how many kWh an RE certificate is to represent as well as rules for how this volume of RE electricity is to be calculated.

Depending on how the market for RE certificates is designed, it is thus possible for RE certificates to be allocated relative to the volume of RE electricity supplied to the electricity grid.

The Minister for Environment and Energy may also decide rules to the effect that the number of kWh which are necessary to have one RE certificate allocated varies according to the energy source or technology applied. Moreover, the provision authorises the Minister for Environment and Energy to prescribe rules governing the allocation of RE certificates to producers as well as the supervision of this.

Finally, subsection 2 authorises the Minister for Environment and Energy to lay down rules governing trade in RE certificates. The Minister for Environment and Energy may consequently prescribe rules for how trade in RE certificates is to be organised and registered. The Minister for Environment and Energy may, for example, decide rules to the effect that RE certificates purchased for the purpose of meeting the purchase obligation of section 61 are to be registered in a special record. The analysis of organising trade in renewable energy mentioned in the Electricity Reform Agreement will clarify what specific rules must be laid down with a view to this provision.

On section 61

The provision imposes on all electricity consumers a duty to purchase RE certificates relative to their electricity consumption from a date decided by the Minister. Electricity consumers are entitled to purchase more RE certificates than they are obliged to purchase. The number of RE certificates which electricity consumers in Denmark are obliged to purchase will be decided annually by the Minister for Environment and Energy. Pursuant to the provision of section 3, the parliamentary Energy Policy Committee will be informed of the size of the purchase obligation. The volume will be decided with a view to meeting the target mentioned in the Electricity Reform Agreement that RE electricity should account for 20% of electricity consumption in Denmark at the end of 2003. The volume will,

consequently, be established in such a way that the purchase obligation does not exceed the number of RE certificates which are expected to be available.

It follows from subsection 2 that the Minister for Environment and Energy will reduce the purchase obligation under subsection 1 in such cases where it proves impossible to fulfil it. This provision should be seen in connection with the understanding in the Electricity Reform Agreement that it is possible to regulate the purchase obligation. This may, for example, prove necessary as a result of natural fluctuations in the production of RE electricity: in a less windy year or as a result of natural fluctuations in heat demand and thus in the production of the heat-linked RE electricity at biomass-fired CHP plants.

On section 62

The provision of subsection 1 lays down that the Supply-committed enterprises undertake the obligation of purchasing RE certificates for the electricity consumers who do not have, or do not wish to make use of, free choice of electricity supplier or who only meet part of their purchase obligation through own production.

Section 2 establishes that electricity consumers who are able to choose their suppliers freely under the provision of section 7 may either undertake the purchase obligation themselves or may request the supply-committed enterprise to purchase RE certificates on their behalf. Electricity consumers with a free choice of supplier may also request others than the supply-committed enterprise to purchase RE certificates. If they make use of this possibility, the responsibility for meeting the purchase obligation does, in general, still rest with the electricity consumer in question.

Subsection 3 authorises the Minister for Environment and Energy to specify rules governing the documentation of the fulfilment of the purchase obligation. The detailed drafting of the rules about when and how the fulfilment of the purchase obligation under section 61 is to be documented depends on the analysis mentioned in the Electricity Reform Agreement of a market for renewable energy. It will, for example, be possible to establish that documentation for fulfilling the purchase obligation is to be provided annually.

The intention is that an electricity consumer's obligation to purchase RE certificates may be fulfilled wholly or partly through own production of RE electricity. If the electricity

consumer in his own installation has connected a plant which generates RE electricity, as is the case for example with solar cells in buildings, the obligation to purchase RE certificates may be fulfilled wholly or partly by setting off own production. It will also be considered that several electricity consumers may fulfil their obligation to purchase RE certificates through local production.

On section 63

The provision prescribes that in case of insufficient fulfilment of the purchase obligation under section 61, an amount of DKK 0.27 per kWh is to be paid to the Treasury . The amount of DKK 0.27 per kWh constitutes an indirect maximum price for RE certificates as those who are responsible under section 62 are to pay only DKK 0.27 per kWh for not having fulfilled the obligation. As the amount works as an indirect maximum price and, consequently, is of significance for meeting the targets for the expansion of plants generating RE electricity, it may prove necessary at a later stage to change, by statute, the size of the amount that is payable.

The RE Fund

On section 64

Pursuant to the provision, a fund is to be set up, called the RE Fund. The fund is primarily to purchase RE certificates under the provision of section 65 and to take over wind turbines under the provision of section 66. The Minister for Environment and Energy is, however, authorised to lay down rules to the effect that the RE Fund also in other ways may promote RE electricity, for example by purchasing more RE certificates or support the expansion of plants generating RE electricity. This authority is assumed to be exercised if the RE Fund, after having fulfilled the obligation of section 65, has not spent an amount corresponding to that paid into the Treasury pursuant to section 63.

The provision of subsection 2 proposes that the State every year fixes an amount in the Budget to cover the costs associated with the tasks mentioned in subsection 1. The proposal will have no consequences for the Budget as the costs of the tasks mentioned in subsection 1 appear simultaneously as revenue in the Budget. The proposal implies that the RE Fund is self-financing. This means, however, that both the RE Fund’s costs and revenue appear in the Budget. The obligation to purchase RE certificates under section 65 as well as the

operating costs of the RE Fund for this will thus be financed through the amount paid in under section 63.

Similarly, the RE Fund is indirectly self-financing with regard to the obligation to take over wind turbines under the provision of section 66. The reason is that electricity from wind turbines which the RE Fund takes over pursuant to section 66 will be settled at a payment which corresponds to the take-over costs of the RE Fund, including the costs of the Fund's administration of the scheme, cf. 59(2). There will be expenses for the RE Fund in connection with the take-over of wind turbines until revenue is generated from the sale of electricity from these wind turbines. The expenses of section 66 will thus, for a short period of time, not be covered through self-financing, and within this period it will only be possible to operate the take-over scheme if funds are earmarked for it in the Budget.

Pursuant to subsection 3, the Minister for Environment and Energy may prescribe rules necessary for the establishment and operation of the RE Fund, including rules governing the management of the RE Fund and the application of the resources of the fund.

The provision of subsection 4 proposes that the resources of the Fund should defray the costs of the administration of the RE Fund. For this, please see the Notes on subsection 2.

On section 65

According to subsection 1, the RE Fund is obliged to purchase RE certificates at a minimum of DKK 0.10 per kWh if the purchase obligation of section 61 has not been fulfilled at national level. The provision will contribute to securing that RE certificates, in accordance with the Reform Agreement, may be sold at a minimum of DKK 0.10 per kWh.

The RE Fund’s expenses for purchasing these RE certificates as well as the administration of the purchase obligation will be financed by the Treasury . The costs will, however, pursuant to section 63, be covered indirectly through the amount paid into the Treasury . For this, please see the Notes on section 64.

On section 66

The provision will implement the guarantee laid down in the Electricity Reform Agreement that if "changes in the surcharge for wind turbines result in the wind turbine owners being

unable to settle the debt of investing in wind turbines, the State will, at the request of the wind turbine owner, guarantee that the system responsibility will take over the wind turbine and the payment of the unpaid debts of loans which, prior to the submission of the Act, were raised to finance the purchase of the wind turbine." It is proposed that it should not be the system-responsible companies but the RE Fund that should take over the wind turbine and pay the debts outstanding.

The provision proposed implies that all of the following conditions have to be fulfilled before the guarantee comes into effect:

a) the wind turbine must be privately owned. Consequently, wind turbines owned by electricity utilities are not comprised;

b) loans to finance the wind turbine must be raised prior to the submission of this Act;

c) wind turbine owners are required to establish that it is a change of the surcharge which has prevented them from settling the debt of investing in the wind turbine;

d) wind turbine owners are required, within a time limit decided by the Minister for Environment and Energy, to request the RE Fund to take over the wind turbine and settle the debt of it.

The provision laid down in subsection 3 implies that rules may be prescribed to the effect that the request for take-over must be submitted within a certain deadline. This makes it possible to make a general statement of the expenses connected with the RE Fund's take-over of the wind turbines and the debts outstanding under subsection 1.

The provision of subsection 4 proposes that the RE Fund, after having taken over a wind turbine, may dismantle, resell or operate it.

The provision of subsection 5 implies that the funds derived from the take-over of wind turbines under subsection 1 will revert to the Treasury . These funds will be applied indirectly via the Budget to finance the scheme. For this, please see the Notes on section 64.

Connection etc. of environmentally benign electricity and CHP production plants

On section 67

The provision continues the principles of section 9 a(4-6) laid down in the existing Electricity Supply Act. Regarding these provisions, it is specified, in accordance with practice in the area, that it is the exclusive responsibility of the owner of the plant to defray the costs which would be linked to connection to the 10-20 kV electricity grid, irrespective of whether the grid company, on the basis of objective criteria, chooses another connection point. The exemption clause of subsection 3 comprises also wind turbines established in the exclusive economic zone and in the off-shore territory.

On section 68

Electricity production from wind turbines which are not owned by electricity utilities have up to now been regulated in accordance with Part 2 of Act on the utilisation of renewable energy sources etc. , cf. Consolidation Act no. 837 of 7 October 1992 with subsequent amendments. However, as a result of the Electricity Reform Agreement, electricity from these wind turbines will, in future, be regulated pursuant to this Act. It is therefore necessary that the powers vested in the Minister for Environment and Energy pursuant to Part 2 of Act on the utilisation of renewable energy sources etc. should be continued in this Act.

Consequently, the provision carries on the powers laid down in Part 2 of Act on the utilisation of renewable energy sources etc. to the extent that these powers do not appear elsewhere in the Act. The intention is that the principles governing grid connection of wind turbines which appear from Act on the utilisation of renewable energy sources etc. as well as Executive Order on the connection of wind turbines to the electricity grid, cf. Executive Order no. 1148 of 13 December 1996 as amended by Executive Order no. 392 of 23 June 1998 should be continued for wind turbines established on shore. Furthermore, rules may be laid down governing the principles for grid connection of wind turbines in the off-shore territory and in the exclusive economic zone.

Moreover, the provision of subsection 1 prescribes that the Minister for Environment and Energy may lay down rules governing the distribution of the costs of being connected to the electricity grid. The Minister for Environment and Energy may *inter alia*, under the

provision, prescribe rules for what costs may be imposed on wind turbine owners in the form of subscription payment.

The provision of subsection 2 prescribes that the Minister for Environment and Energy may lay down rules to the effect that the collective electricity supply companies, including the grid companies, are required to calculate how many kWh the individual wind turbines have generated. The provision should be seen in connection with the fact that the size of the surcharge which, for a transitional period of time, will be granted for electricity generated by wind turbines is, *inter alia*, conditional on how many kWh the individual wind turbine has generated.

Under the current rules of the Executive Order on the connection of wind turbines to the electricity grid, cf. Executive Order no. 1148 of 13 December 1996 as amended by Executive Order no. 392 of 23 June 1998, the electricity supply companies will decide on matters regarding the fulfilment of the connection conditions, the distribution of the costs of grid connection and the settlement terms of wind turbine power.

Complaints against the decisions may be lodged with the Danish Energy Agency, but the right of appeal to the Minister for Environment and Energy has been precluded. Pursuant to subsection 2, the Minister for Environment and Energy may lay down rules to the effect that decisions in accordance with subsection 2 may be delegated to the collective electricity supply companies. It is expected that this competence will be delegated to the grid companies. This delegation to the private sector is considered expedient as the grid connection of wind turbines is often undertaken by electricity consumers who already have established contact to the grid company in whose area the wind turbine is to be placed. It is, furthermore, the local grid company which measures and settles electricity generated by the wind turbine. The current scheme has been successful and it is, therefore, seen as safe to take it forward. It is assumed that the delegation authority will not be used to any larger extent than so far.

The Minister for Environment and Energy will supervise rules issued in accordance with subsections 1 and 2. It is expected that the Minister for Environment and Energy, pursuant to the provision of section 78(3) will transfer the right of appeal to the Danish Energy

Agency and that the right of appeal to the Minister for Environment and Energy will be precluded pursuant to section 90(1)(1).

The provisions of subsections 3 and 4 are a continuation of the powers laid down in section 10 e of Act on the utilisation of renewable energy sources etc., cf. Consolidation Act no. 837 of 7 October 1992 with subsequent amendments. The size of the charge levied in pursuance of the provision of subsection 4 will correspond exclusively to the costs defrayed for this purpose.

On Part 10

Prices and terms for electricity

Prices and terms of electricity supply companies

On section 69

The prices of the collective electricity supply companies are regulated by sections 69-77. The common point of departure regarding the regulation of prices is set out in subsection 1 according to which the prices for the services are fixed in consideration of the companies' costs regarding purchase of energy, wages, services, administration, maintenance, other operating costs and depreciation as well as return on capital. By capital is understood funding in a broad sense: for investment and consolidation as well as dividend for investors.

The regulation will apply to pricing in all the parts that are regulated i.e. both prices for consumers and price fixing for services between different collective electricity supply companies among themselves. The proposal implies that the current possibility of including an amount in advance as provisions for new investments will cease to exist. The intention is that companies are to finance investments in the same way as other companies i.e. through borrowed funds, by raising investment capital or by accumulating capital in the company.

Pursuant to subsection 2, the Minister for Environment and Energy may, *inter alia*, lay down rules governing the calculation of operational depreciation. The aim is to ensure uniform principles for depreciation in consideration of the scope and life of the investment and the financing requirements of the company.

Furthermore, the Minister for Environment and Energy may lay down rules governing the making up of the company's capital, including any investment capital. Not all collective electricity supply companies have a made up and well-defined investment capital today, but the provision makes it possible to establish the size of investments which the owners have made in the companies under the current Electricity Supply Act and in the time prior to this Act. Furthermore, the provision may be used to determine a regulatory capital concept for grid and transmission activity which does not necessarily reflect the company's specific capital position, but is the capital base which is regarded as necessary in order to keep up and operate a grid of a specific extent and composition. The intention is to be able to establish a well-defined, uniform basis for return on investment.

The provision makes it possible, furthermore, to establish the rates of return which may be applied when including return on capital, inclusive of investment capital. The rates will be determined as a maximum in consideration of the risks and the level of return in comparable sectors. The specific circumstances of the individual company will prove decisive for whether, and if relevant to which extent, return on investment may be achieved by the company and its owners, cf. in this connection section 70(4) and section 71(2).

Finally, the Minister may lay down rules governing accounting and budgeting, including unbundling pertaining to accounts between different activities. The Minister may, in this connection, prescribe rules to the effect that collective electricity supply companies are required to draw up annual accounts and have these audited and published in accordance with the provisions of the Danish Company Accounts Act. The aim of these rules which the Minister may prescribe will be primarily to secure transparency and comparability in accounts and budgets in consideration of public interest in the companies' economy and compliance with the price provisions and the Energy Supervisory Board's control of it, including transparency etc. regarding activities under the same licence. The rules will have to be drawn up in consideration of the provisions of Article 14 of the electricity directive.

On section 70

The provision regulates prices and charges for the services of grid and transmission companies. The provision lays down a new principle for price fixing as the revenue permitted to cover the costs of the grid and transmission companies' operation, maintenance, administration and construction of grids as well as measurement and invoicing is decided

pursuant to a revenue framework, that is a framework for how much may be levied through charges for the company's services. The revenue framework includes also return on the capital which, cf. section 69(2) and pursuant to the approval of the Energy Supervisory Board, is the regulatory capital volume. The revenue framework is to be determined on the basis of the costs of efficient operation of the company. To the extent that the companies have costs which exceed the permitted level for collection through the charge, the companies will show a loss.

Pursuant to subsection 2, the Minister for Environment and Energy will prescribe a general revenue framework for all companies for a specified number of years. Within the general framework the Energy Supervisory Board decides an annual revenue framework for each of the companies affected. The intention of the provision is for the Minister to lay down general requirements to the effect that the revenue framework is to be reduced by a percentage every year for all companies so that all companies must undertake running improvement of efficiency to keep their costs within the revenue framework. The Minister may, in addition, decide that the revenue framework is to be reduced by a general percentage rate which applies to all companies as well as decide a framework for the Energy Supervisory Board's establishment of an individual percentage rate which depends on the level of efficiency of the individual company.

Furthermore, the Minister may decide a framework for how large a reduction requirement regarding the revenue framework a company may be faced with in a single year, and perhaps also accumulated over a number of years. Moreover, the Minister may decide that some of the companies' activities at year end are to be included in the revenue framework with the actual costs defrayed by the company in connection with the activity. This applies to costs of activities which may not give rise to revenue for the company, for example trade in electricity for balancing purposes and purchase of electricity to cover grid loss, costs of safeguarding consumer influence under the provisions of sections 40-43 as well as energy consultancy, including consultancy on electricity safety issues. It also applies to activities where the company itself has no impact on the costs, for example costs of overhead grids.

The Minister may decide the levels for return on the regulatory capital volume which, as mentioned in the Notes on subsection 1 first paragraph, may enter into the establishment of

the revenue framework. The establishment must take place, *inter alia*, in consideration of a reasonable return on the investment capital.

The provision obliges, furthermore, the Energy Supervisory Board, within the general revenue framework decided by the Minister for Environment and Energy, to establish an annual revenue framework for each of the companies affected. When establishing the individual revenue framework for the individual company, the Energy Supervisory Board must take the company's efficiency potential into consideration.

Pursuant to subsection 3, the Energy Supervisory Board may grant an exemption from the revenue framework established by the Board itself if it is necessary for the company to carry out responsibilities imposed on it pursuant to the Act. The provision does not aim at protecting companies which continuously fail to improve efficiency but at ensuring the maintenance of grid services for all. Security of supply is thus considered of greater importance than efficiency. The provision is only targeted at altogether special cases and may, in particular, be applied where conditions preventing the company from fulfilling the revenue framework cannot be blamed on the company.

Subsection 4 prescribes that any type of revenue in the company must be used to cover the expenses of the activities subject to licence. This means that also grid companies' revenue from owner shares in associated companies (power plants, small-scale CHP, wind turbines, trading companies etc.) must be used to cover the expenses of the activities subject to licence.

To the extent that the companies are able to keep costs within the revenue framework, the companies will make a profit. If a company has a profit, it has the possibility of achieving a return on the investment capital or of having extraordinary efficiency gains approved. Profit in the form of extraordinary efficiency gains is not required, in contrast to all other revenue in the company, to be used to cover expenses of the activities subject to licence. Such profit is thus at the free disposal of the company's owners. Revenue from owner shares in associated companies may not be included in the establishment of efficiency gains.

The Minister for Environment and Energy may prescribe rules for what may be considered extraordinary efficiency gains, and for a framework regarding what extraordinary efficiency gains are at the disposal of the company. It is thus possible to introduce a ceiling for how much may be recognised as efficiency gains, for example in relation to the company's turnover or capital base, and in this connection that return on investment capital together with efficiency gains may not exceed a certain percentage of the company's revenue permitted. The provision may also be used to establish that only part of the revenue achieved within the revenue framework may be recognised as extraordinary efficiency gains. Furthermore, qualitative requirements may be established regarding the source of the efficiency gains, for example that it must be a matter of continuous cost-reducing effect. Moreover, rules may be specified governing efficiency gains in connection with a merger of two companies, both of them subject to price regulation through a revenue framework.

Subsection 5 states that companies which in their prices have included realised losses from co-ordinate activity under the provisions of section 9(6) of the current Electricity Supply Act may not apply the provision of subsection 4 second sentence until the loss mentioned has been covered. The provision secures that no company comprised by this provision or its owners may have the disposal of profit in the form of return on investment capital or extraordinary efficiency gains until the losses of the company have been covered. Thus, any efficiency gain is to be used to cover earlier realised losses until they have been fully settled. The provision will prove significant to SEAS Transmission A/S where earlier realised losses are expected to be fully settled no later than 31 December 2009. No other circumstances or companies are expected to be subject to this provision.

The provision of subsection 6 that municipalities are not allowed to subsidise municipal activity which is not carried out by companies with limited liability does not prevent the municipality, as debtor, from covering any losses of such activity.

On section 71

In principle, the Bill retains the current price regulation governing the system-responsible companies as these in their prices may include necessary costs in relation to the types of costs which are mentioned in section 71(1).

Necessary costs are costs which the company defrays on the basis of managerial economic considerations with a view to maintaining efficient operation. This corresponds to the existing Electricity Supply Act, but the provisions laid down in subsection 3 of the Bill on approval of prices imply tighter supervision of whether the costs are necessary.

Subsection 2 of the Bill establishes that any revenue in the company must be used to cover the expenses of the activities subject to licence, i.e. the point of departure is that any margin over the break-even point in the accounting year compared with the previous price fixing is not regarded as profit but must be charged back over the prices in that year or the following years.

The principle of charge-back does, however, not apply to profit in the form of reasonable return on investment capital. This implies that if the company through rational operation in relation to the budget has generated a margin over the break-even point, an amount may be deducted from this as reasonable return on any investment capital. The question of reasonableness will be assessed on the basis of the company's operating and risk conditions. In the system-responsible companies there will, pursuant to the proposal, be no other profit opportunities. Consequently, it is proposed that access to accumulating profit through efficiency engineering under the existing Electricity Supply Act should be abolished for these companies.

Pursuant to subsection 3 of the Bill the Energy Supervisory Board is required to approve the price fixing on the basis of the notification mentioned in section 76 of the proposal. The approval will be granted in connection with every price fixing, i.e. prior pricing on the basis of the budget and subsequent making up at the end of the accounting year. Approval may be accompanied by terms, for example to reduce costs which are not deemed necessary or to introduce general efficiency improvements regarding future operation. The Minister for Environment and Energy may lay down rules governing the terms of approval to ensure uniform and established practice.

On section 72

Supply-committed enterprises will, pursuant to the proposal, be subject to price regulation which takes into consideration that the companies are to be able to act commercially. Subsection 1 proposes that the Supply-committed enterprises may include the categories of

costs which are mentioned in section 69 as well as a profit which is reasonable in relation to the volume of turnover and the efficiency of purchasing electricity and other costs. The profit is to be fixed on the basis of a specific assessment of the individual supply-committed enterprise's efficiency compared with the existing opportunities of acting efficiently in the market. It is thus assumed that the company will act efficiently when purchasing electricity and that it, in that connection, will investigate the prospects of long and short-term agreements and secure sufficient reserve supplies. Furthermore, it is assumed that the company's own costs are kept at an efficient level. For further information, please see point i) of the general Notes on prices and terms for electricity.

Pursuant to subsection 2 of the proposal, the Energy Supervisory Board is required to approve the price fixing on the basis of notification from the company. The approval may be accompanied by terms, for example for more efficient and less costly purchases of electricity. It is, furthermore, proposed that the Minister for Environment and Energy may prescribe rules governing the content of the terms.

On section 73

The provision implies that the prices of the collective electricity supply companies' services are to be distributed among the purchasers of the services against the background of reasonable, objective and non-discriminatory criteria to make it impossible to cross-subsidise in favour of certain categories. This applies to consumer prices as well as payment to be provided by producers and payment for grid access including transit.

Consumer prices are to be fixed in such a manner that the costs are distributed between consumption-depending and fixed charges according to criteria which take into consideration reasonableness and energy efficiency. The aim is for consumer prices to reflect differences in energy consumption and thus provide motivation for increased energy consciousness.

In the situations only where it is laid down in the provisions of the Act will the consumers not have to defray the costs themselves. This applies, for example, to sections 67 and 68. In these cases the costs will have to be defrayed by all consumers within a coherent electricity supply system, cf. section 9.

On section 74

The provision is to ensure that the capital which the collective electricity supply companies intend to pay interest on under the above provisions will be made up by the company and submitted to the Energy Supervisory Board to enable the Authority to intervene in case of wrongful or unreasonable statements. The statement is to be specified for different categories of capital, i.e. borrowed capital and investment capital and, for grid and transmission companies, also the regulatory capital volume, cf. section 69. According to subsection 2, the Energy Supervisory Board is to make up the volume of the capital, including investment capital, which is to constitute the basis for establishing the rate of return which may legally be included in the prices. Furthermore, net capital is to be calculated. The provision should be seen against the background of the need for securing an impartial statement of this capital, which is of considerable importance for whether the price fixing may be regarded as lawful.

When making its decision, the Board is required to take into consideration the company's financing conditions and turnover so that no capital will be approved which is not commensurate with the volume of turnover and the company's situation, including capital position in general.

The intention of the provision laid down in subsection 3 is to specify that it will still be possible, after the implementation of the Act, to have the disposal of the capital which the company has had at its disposal in pursuance of the current Electricity Supply Act.

Production prices

On section 75

Electricity production company prices and terms in connection with the sale of electricity depend, in general, on the market conditions. These conditions are regulated by the general competition legislation. However, the prices of a number of prioritised or renewable electricity productions are regulated separately in Part 9 of the Bill, just as the price fixing for electricity from CHP plants which deliver to the district heating supply is comprised by the proposed subsection 2. These matters are thus subject to the Energy Supervisory Board.

Owners of CHP plants are, pursuant to subsection 2 of the proposal, not allowed to utilise their position to achieve advantages which are considered unreasonable for the district heating consumers. The provision which comprises plants supplying external consumers of district heating is to protect the district heating side which is dependent on the supply monopoly from having the elements of the production costs which cannot be ascribed to the heat production off-loaded on the price of heating. The provision applies, in principle, both to large-scale CHP plants owned by electricity utilities and small-scale CHP plants which are often owned by district heating companies. The latter will, however, until further notice, be ensured sale of the electricity under the current schemes for prioritised electricity production.

The large-scale CHP plants are comprised by a CHP guarantee which ensures the owners the possibility of defraying the necessary costs linked to the co-production as prioritised electricity production.

The price regulation is to secure that agreements on distribution of the CHP advantage between the electricity and district heating sides are reasonable for the district heating consumers and that the price of district heating only includes costs which are necessary for the production of district heating.

The provision implies for the existing CHP plants that the principles for the distribution of the CHP advantage, which the parties have established in the existing agreements on supply of district heating, will be retained also in future so that no costs will be off-loaded on the heat side compared with the background to these agreements.

When establishing new large-scale CHP plants, the district heating companies themselves will have the possibility of establishing the plants or, as has been the case so far, of entering into agreements on purchases of district heating from a plant owned by others. The price regulation is to secure, also here, that only necessary costs will be included in the price of heating.

Companies which generate electricity by waste incineration will, as regards the company's supplies of electricity, be comprised by the rules of Part 9. The electricity will be prioritised

in the load distribution and will be able to achieve a guaranteed settlement price under the provisions of section 57(1) and (3).

The plants comprised by the provision are primarily plants set up to cover local needs for waste removal through waste incineration and a local heat demand.
Waste incineration plants have been established, primarily, with a view to managing waste. The production of electricity and heating is merely a secondary objective. Electricity production from waste incineration plants accounted for only approximately 2 % of total electricity production in 1997.

The provision laid down in section 75(3) ensures that an economic self-sustaining principle, corresponding to the self-sustaining principle reflected in section 48 of the Environmental Protection Act and Part 4 of the Heat Supply Act, will apply to all companies which own and operate waste incineration plants as the waste management company as a whole, i.e. inclusive of revenue from the associated electricity production, is to be economically self-sustaining as has been the case so far.

Profit or loss concerning electricity production must be included in the calculation of the waste management price/waste charge and in the heat prices. For municipalities which produce electricity under section 4(1) first sentence, the rule laid down in subsection 3 first sentence comprises the municipality's general waste management and the revenue from the associated electricity production, cf. section 48 of the Environmental Protection Act. The prices of heating will continue to be regulated under the Heat Supply Act. Any profit, including revenue from associated electricity production and calculated with a reasonable return on investment capital will have to be reflected in lower waste management prices/waste charges and lower prices regarding the company's heat supplies.

The provision of subsection 3 makes it impossible for the companies to off-load costs on the users of the waste treatment plant or on the district-heating consumers by selling the associated electricity at prices which are lower than the maximum settlement price. The waste treatment plant will be ensured sale of the electricity generated at a settlement price prescribed in the Act or pursuant to the Act.

The provision contributes to achieving uniform terms for all waste incineration plants irrespective of ownership. The Minister for Environment and Energy will be able to decide rules for the distribution of costs. The supervision of the distribution of costs among electricity, heat and waste management will be undertaken by the Energy Supervisory Board whereas the fixing of the waste charge under the Environmental Protection Act and the supervision of this in general will continue to be subject to the rules of the Environmental Protection Act.

For existing waste incineration plants owned by electricity utilities it will, in connection with the company-related unbundling under section 48 and transition to price fixing under section 75, be necessary to draw up an opening account under the provisions of section 101.

Pursuant to subsection 4, the Minister for Environment and Energy may lay down rules governing the distribution of the costs.

Supervision of prices, establishment of rules

On section 76

It appears from the provision that the circumstances mentioned in subsection 1(1-6) must be notified to the Energy Supervisory Board. Notifications are generally public, cf. section 82, and serve to secure transparency and to make it possible for the Board to control prices and terms. Prices, charges and terms comprise prices according to fixed rates as well as negotiated prices, for example concerning transit. Both prices for consumers and prices agreed in other parts which are regulated through licences must be notified, for example the prices of balancing services etc. Supply terms comprise, for example, connection terms for consumers and producers, conditions for grid access etc.

The basis of the fixing of prices refers to budgets, accounts etc. , possibly in standardised form and, subject to circumstances, supply agreements of considerable scope, for example in Supply-committed enterprises. The Energy Supervisory Board may specify the scope and form of the basis which is to be notified.

The documentation of unbundling of commercial activities refers in particular to accounts showing that commercial activities have been unbundled under the provisions of Part 7. Furthermore, the Board may, for example, check that the grid companies only exercise their

energy-saving activities free of charge in non-commercial areas so that the activities constitute no competition to other companies.

Para 5 ensures the supervision of SEAS Transmission A/S continuously complying with the terms of settling losses from co-ordinate activities which the company was made subject to in connection with approval pursuant to the provisions of section 9(6) of the current Electricity Supply Act.

Finally, grid and transmission companies are required to notify accounts, budgets and other information as specified by the Board for the purpose of establishing the revenue framework under section 70.

It appears from subsection 2 that the Energy Supervisory Board may, furthermore, require that the owners of CHP plants notify the sales prices of district heating as well as the basis of the fixing of prices. The provision is expected to be used where there is a need to follow the distribution conditions in detail to avoid any abuse of a dominant position, cf. section 75(2).

The Energy Supervisory Board may, pursuant to subsection 3, lay down rules governing notifications under the above provisions. Requirements may thus be made for what will have to be notified, the content and form of the notifications as well as the time limits for notifications.

On section 77

It appears from subsection 1 that the Energy Supervisory Board may give orders to change prices and terms, cf. for this the Notes on section 76(1), if the Board finds that these must be deemed to be contrary to the provisions of this Act, cf. otherwise the provisions of sections 69-73 and section 75(2) and (3).

If an unlawful matter in connection with negotiations about grid access cannot be stopped through an order, pursuant to subsection 1, the Energy Supervisory Board may, according to subsection 2, order the licensees to enter into an agreement about the matter on usually prevailing terms for similar agreements. Emphasis should, in this connection, be attached to the market practice for agreements of similar duration and scope.

Furthermore, the Energy Supervisory Board may, under subsection 3, decide that a collective electricity supply company must reduce the consumer prices if the company has made a transaction which is not deemed reasonable for the consumers. This could, for example, be unlawful transactions to benefit co-ordinate companies and, in the circumstances, for example also unreasonable transactions in connection with Supply-committed enterprises' purchase of electricity. The Energy Supervisory Board may, furthermore, decide that the company, to a specified extent, is required to spend its profit on this.

On Part 11

The Energy Supervisory Board

On section 78

The present price committees, the Electricity Committee and the Gas and Heat Price Committee, comprise representatives of the energy sector's Danish parties. This protection of interests is not expedient in a future more competitive energy market. It is therefore proposed that a new supervisory authority, called the Energy Supervisory Board, should be set up as an independent body to operate on an objective and neutral basis without direct involvement from the parties of the sector.

The members of the Energy Supervisory Board will be appointed by the Minister for Environment and Energy but will in the daily work and in the processing of individual cases act altogether independently of the Minister for Environment and Energy. The general administrative basis of the Board is laid down in the Bill and will be further consolidated through rules of law with authority in this. The Minister for Environment and Energy cannot change the Board's specific decisions and cannot remove the appointed members within their period of appointment.

The Energy Supervisory Board is not only to take over the tasks which up to now have been managed by the two energy price committees. The practice of these committees has, to a large extent, been characterised by retrospective control of the individual companies' prices and terms and has, therefore, in accordance with current legislation, been characterised by decisions concerning individual cases within the framework of the self-sustaining principle. With the establishment of the new Energy Supervisory Board the stage is set for a more forward-looking, proactive Authority where the regulation with a cost framework and

benchmarking is to provide the sector with an incentive to co-operate and improve efficiency.

Furthermore, the Bill will, to a larger extent than the existing Electricity Supply Act, imply assessment of technical matters as a result of the fact that production and business companies are to have equal and, as far as possible, free access to the grid. This applies to the evaluation of capacity conditions, necessary reserve capacity, stocks capacity, measuring-technical conditions, including instructions for them etc. , just as parts of the charging of the grid depend on a technical assessment, for example on the necessary volume of balancing power to safeguard the prioritised production, management and distribution of this production and the like, research and energy savings etc.

With a view to fulfilling their obligations under the Act, especially the obligations listed in section 8, the collective electricity supply companies will, subject to circumstances, be compelled to enter into agreements and/or demonstrate behaviour which under normal circumstances would be regarded as contrary to the provisions of section 6 of the Competition Act (restrictive trade agreements) or section 11 (abuse of dominating position). However, it follows from section 2(2) of the Competition Act that, *inter alia*, the provisions laid down in sections 6 and 11 are not applied "if a restriction of competition is a direct or necessary consequence of public regulation". The decision on whether a restriction of competition is a direct or necessary consequence of public regulation must, pursuant to section 2(4) of the Competition Act, be taken by the Authority etc. that has established the regulation in question or, if the regulation is established by law or an EC regulation, by the Minister concerned.

It will thus be the responsibility of the Minister for Environment and Energy to assess if the restrictive trade agreements and/or behaviour which may constitute abuse of a dominant position must be deemed a direct or necessary consequence of the regulation which follows from the Act or from rules which the Minister has prescribed pursuant to the Act. If the restrictive trade agreement or behaviour concerns matters which are regulated by the rules which the Energy Supervisory Board has prescribed pursuant to the Act, it will be the responsibility of the Board to perform the assessment in question.

If the Environment and Energy Minister and/or the Energy Supervisory Board finds that an agreement or behaviour is no direct or necessary consequence of this Act or of rules prescribed pursuant to the Act, it will be the responsibility of the Competition Authority to assess if the provisions of the Competition Act have been violated. The powers which under this Act are vested in the Energy Supervisory Board may be exercised even if the Competition Authority establishes that there is no violation of the provisions of the Competition Act.

In accordance with section 78(3), an Executive Order will be issued with a view to specifying the tasks of the Energy Supervisory Board.

The mixture of new and old tasks makes it natural to service the Board's secretariat with professional assistance from the Competition Authority (which has serviced the present price committees) as well as from the Danish Energy Agency. Detailed division of tasks in connection with the secretariat-related service will be agreed between the Minister for Business and Industry and the Minister for Environment and Energy. A procedure will have to be established regarding the secretariat service which supports the independence of the Board in its daily work.

The costs related to the establishment and operation of the Energy Supervisory Board must be defrayed by the enterprises and companies which are supervised. The Minister for Environment and Energy may, pursuant to the provision of subsection 7, lay down rules to the effect that a charge is payable when a complaint is lodged with a view to defraying the costs of the Board. The point of departure is, however, that no charge will be required when consumers etc. lodge a complaint whereas it may prove expedient to make complaints lodged by the collective electricity supply companies and the commercial parties subject to charges.

On section 79

The members of the Energy Supervisory Board must have knowledge of the sector but are not required to represent the parties of the energy sector or otherwise have any special connection to it. The activity of the Board is not to be characterised by "protection of interests" but by decisions made on an altogether objective basis. This is the background to

the requirement of the Act that at least one member must fulfil the conditions of becoming a High Court judge.

On section 80

The Energy Supervisory Board may process and decide cases on its own initiative or on the basis of a notification or a complaint. Apart from deciding on complaints and performing supervisory tasks, it is thus possible for the Board to initiate general analyses and surveys of the sector with a view to assessing the relation between costs and services or to work for mergers and co-operation between companies in order to achieve efficiency gains through structural rationalisations to benefit the consumers.

The Energy Supervisory Board's supervision of prices, contracts, supply terms etc. comprises competence to, after negotiation, interfere with regard to unlawful as well as unreasonable matters, cf. section 77.

On section 81

It has been carefully examined whether there is a need for a provision of this nature which provides a public authority with right of access to private property. It has been found necessary to include the provision to ensure the Energy Supervisory Board's ability to perform its tasks in pursuance of the Act on an effective and safe basis, which, it has been assessed, could not possibly be achieved in any other manner. The provision must, *inter alia*, be seen in the light of Article 22 of the electricity directive in pursuance of which Member States are required to establish proper, effective mechanisms with a view, *inter alia*, to supervision in order to prevent any abuse of a dominant position etc.

The Energy Supervisory Board's access to a company's property is restricted to the premises of the property where the information necessary for the Board's performance of its tasks is to be found. Usually, they are the company's administration premises.

In accordance with established legislative practice, the provision contains no requirement of a Court order as there is no legal substance for the court to decide on.

On sections 82 and 83

Even if the Bill attaches much importance to ensuring the Energy Supervisory Board's independence, it is necessary to secure close co-operation between the Board and the other energy authorities. Pursuant to section 82, the Energy Supervisory Board is, therefore, required to draw up an annual report for the Minister for Environment and Energy. Similarly, the Board is required to publish analyses and statistics for this information to be made available for the work of the other energy authorities.

For the purpose of securing that the forthcoming market opening in the electricity area takes place in a manner which enables the consumers to see through the terms of different suppliers, the Act provides the Board with competence to take the necessary steps to secure transparency concerning prices, charges, discounts and terms. The Board may lay down rules for how this information is to be made public to the customers.

Co-operation between the Energy Supervisory Board and the Minister for Environment and Energy is, furthermore, sought enhanced through provisions on exchange of information. Similarly, the Energy Supervisory Board is obliged to draw the Environment and Energy Minister's attention to matters which the Board finds may prove of importance to the Minister's work. This co-operation may, in particular, prove relevant in connection with the Energy Supervisory Board's supervision of compliance with the licence obligations of production companies and of the collective supply companies.

On Part 12

Duty of disclosure, accounting

On section 84

Pursuant to subsection 1, the authorities may demand all information which is deemed necessary for their activity or for decision on whether a matter is comprised by the provisions of the Act, including accounts, accounts material, transcript from books, other business papers and electronically stored data. The provision secures the implementation of Article 13 of the electricity directive.

The provision laid down in subsection 2 is, for example, to secure that the authorities are able to order the companies mentioned to surrender the necessary data basis for the preparation of, for example, consumption and production statistics. The authorities may, furthermore, order the companies to draw up statistical analyses of the trend in the electricity consumption and its distribution among various consumer categories and objects of application and to surrender this information to the authorities. The provision ensures authority to continuous implementation of Council directive 90/377/EEC of 29 June 1990 on price transparency which imposes an obligation on Member States to secure that suppliers of electricity to large-scale electricity consumers in industry are obliged to, under confidentiality, report to the Commission on prices and sales terms etc. in accordance with the specified requirements of the directive regarding the statistical information.

The directive has been implemented through an agreement between the parties involved to the effect that the industry association prepares the statistical information and forwards it to Statistics Denmark, which sends it officially to Eurostat.

The provision contains express authority for the Minister to order the companies affected to surrender the information in accordance with the requirements of the directive. In this and similar situations there may be a need for also imposing obligations on electricity businesses pursuant to subsection 2. Besides, the provision is primarily targeted at the licensees.

The aim of subsection 3 is to secure that the system-responsible companies are able to demand from the other collective electricity supply companies and from electricity production companies and electricity businesses the information which is necessary to perform their tasks. As a result of the nature of the system-responsible companies' tasks, these will be in considerable need of the possibility to collect information from other companies.

Subsection 4 imposes an obligation on the collective electricity supply companies to communicate to other companies, for example users of the electricity system, sufficient information to secure that transmission and distribution of electricity may be managed in a manner which is compatible with safe and efficient

operation of the interconnected system. The provision covers, *inter alia*, the system-responsible companies' duty of disclosure under Article 7(4) of the electricity directive.

On section 85

The provision imposes a duty on electricity production companies and electricity businesses to comply with the rules of the Danish Company Accounts Act. The existing Electricity Supply Act contains no similar accounting requirement. For the companies which are not today obliged to comply with the rules of the Danish Company Accounts Act, the provision may mean that some companies will have to change their accounting.

The provision requires, furthermore, unbundling of accounts in the situations where the companies simultaneously operate non-electricity-related activity.

In other situations it is a consequence of the unbundling requirement of the Act, including section 47, that there will also be account unbundling between transmissions, grid and supply-committed activities as well as non-electricity-related activities.

Pursuant to subsection 3, the Minister for Environment and Energy may specify rules governing the accounting of the companies. The rules will have to be drawn up in consideration of the provisions laid down in Article 14 of the electricity directive.

The provision is to be seen in connection with section 69(2) according to which the Minister for Environment and Energy may prescribe rules governing the budgeting and accounting of collective electricity supply companies.

On Part 13

Sanctions

On section 86

The provision of section 86 enables the Energy Supervisory Board to impose daily or weekly default fines if an order issued by the Energy Supervisory Board, in pursuance of section 77, is not complied with in time. The provision is, *inter alia*, to be seen against the background of Article 22 of the electricity directive according to which Member States are required to establish appropriate, effective mechanisms with a view to regulation, supervision and transparency to prevent any abuse of a dominant position, especially detrimental to the consumers, and any kind of aggressive behaviour. The execution of orders concerning prices etc. is deemed particularly urgent, especially in the present situation with the introduction of competition in an area which has been monopoly-regulated so far. It should, for example, be noticed that decisions on prices or other terms regarding customers, *inter*

alia large-scale industrial consumers, may have contractual consequences, for example the termination of a contract entered into if the Energy Supervisory Board's orders are not complied with in time. Decisions on grid charging will affect a very large number of grid users and may therefore have overall significant consequences. Simultaneously, the prospects of achieving efficiency improvements in the collective electricity supply companies are deemed to depend, to a large extent, on compliance with the revenue framework and the possibility to intervene directly.

On sections 87 and 88

Sections 87 and 88 contain criminal provisions which are to contribute to ensuring compliance with the Act. The provisions are based on the same principles governing criminal provisions as in the existing Electricity Supply Act.

On Part 14

Complaints, the Energy Complaints Board etc.

On section 89

The provision proposes that the independent Energy Complaints Board established pursuant to section 5(2) in the Act on state subsidies to defray the costs of carbon dioxide charges of certain companies with considerable energy consumption, cf. Consolidation Act no. 850 of 13 November 1995 is to be the appeals Board regarding decision made, pursuant to the Act, by the Minister for Environment and Energy and the Energy Supervisory Board. This means that, when the Act comes into force or later, cf. section 103, the complaints which today are considered by the Competition Complaints Board regarding the decisions of the Electricity Price Committee will be transferred to the Electricity Complaints Council. The Council is, in addition, to be the Board of appeal in relation to a number of other decisions taken by the Minister for Environment and Energy and the Energy Supervisory Board in pursuance of the Act.

On section 90

Subsection 1(1) should be seen in connection with the general delegation authority of section 92 according to which it is being contemplated to wholly or partly transfer the Environment and Energy Minister's powers, under the Act, to the Danish Energy Agency. In this connection it will prove expedient to make it impossible for the Agency's decisions to be appealed to the Minister. Simultaneously, the Minister will be authorised to specify rules governing who are entitled to complain and what decisions may be appealed as it is simultaneously assumed that certain decisions of minor importance will be finally decided by the first instance.

Subsection 1(2) provides the Minister with general powers to prescribe rules for charges, including the size of charges, when a complaint is lodged with the Energy Complaints Board.

On section 91

The Act on state subsidies to defray the costs of carbon dioxide charges prescribes a composition of the members of the Energy Complaints Board with a view to the types of cases which the Board is to consider under this Act. There will be a need for another composition of members of the Board in connection with complaints under the Electricity Supply Act. It is therefore proposed that a composition of the Board which is deemed expedient for this type of cases should be laid down under section 91.

On section 92

The provision contains general authority for the Minister for Environment and Energy to empower an organisation under the Ministry or another Authority to exercise the Minister's powers pursuant to the Act. It is expected that the Minister, wholly or partly, will delegate his powers under the Act to the Danish Energy Agency as is the case under the existing Electricity Supply Act.

On Part 15

Entry into force, revocation and interim provisions

On section 93

For the Act to operate in practice, a number of Executive Orders and other administrative fundamentals as, for example, paradigms for licence letters, regulations requirements etc. as well as the Energy Supervisory Board will have to be established. Furthermore, the existing electricity supply companies will have to implement a number of organisational, administrative and contractual adjustments for the purpose of fulfilling the requirements of the new Electricity Supply Act.

The aim is, therefore, for the Act in its entirety to enter into force on 1 January 2000 with the necessary interim rules.

It is proposed that the commencement date of the Act should be decided by the Minister with the possibility that parts of the Act may take effect before other parts, including entry into force in whole or in part of the individual provisions of the Act. This is deemed expedient, *inter alia* in consideration of the fact that parts of the Act may not be put into force before receipt of the European Commission’s approval pursuant to the state aid rules. Similarly, it may prove relevant to put parts of the Act into force on an earlier date in consideration of the implementation of the electricity directive. Practical reasons may, moreover, advocate gradual implementation.

Revocation

On sections 94, 95 and 96

The provisions are to be seen in the context of section 93 and are to make possible a staged revocation of the Electricity Supply Act concurrently with the replacement of it by the provisions of this Act. Section 95

authorises the Minister to revoke the provisions of Act on the utilisation of renewable energy etc., which concern wind energy plants, including the settlement price of power for these plants. The provisions will be revoked simultaneously with the commencement of the provisions laid down in Part 9 of this Act, which subsequently will regulate these matters.

Section 96 opens , *inter alia*, the possibility of Executive Order no. 1148 of 13 December 1996 as amended by Executive Order no. 392 of 23 June 1998 on amendment of Executive Order on the connection of wind turbines to the electricity grid and Executive Order no. 270 of 2 May 1991 on type approval and certification of wind turbines remaining in force until they are replaced by new rules issued in pursuance of this Act.

On section 97

This rule contains provisions governing the conditions under which the existing companies in the electricity area are entitled to a licence for activity which under this Act is subject to licence. The point of departure is that companies which, when the Act comes into force, are carrying out activity, including activity which in contrast to earlier is made subject to licence, will be, at the commencement of the Act, entitled to a licence for the activity.

The provision is, in particular, aimed at securing that the present distribution companies may obtain both a grid licence, and a licence for supply-committed activity, if they so wish and if they fulfil the conditions.

Subsection 2 prescribes that it is a condition for a licence to be granted for collective electricity supply activity that (parts of) the electricity production companies, transmission companies, system-responsible companies and Supply-committed enterprises are owned directly by the company which is to carry on the grid activity.

Under the existing scheme there are no particular provisions as to who may own electricity supply companies. The companies concerned are at the moment often grouped in one legal person, but the Bill means that independent companies with limited liability will, to a certain extent, have to be established with a view to implementing electricity production and electricity supply activity. Capital shares of these newly established companies will have to be placed in the company (or other type of legal person) that in future will be required to carry on the grid activity. As it appears from section 47(2), grid and transmission activity may, however, only be carried out within the framework of one legal person.

If capital shares of electricity production companies, transmission companies, system-responsible companies and Supply-committed enterprises, at the time of the submission of the Bill, are owned indirectly by the company which will have to carry on grid activity, in the sense that the grid company

owns capital shares indirectly as a result of ownership of capital shares in other companies etc. , the provision implies that the capital shares will have to be transferred to the grid company. Capital shares in the companies in question which directly or indirectly are owned by the owners of the future grid company will also have to be transferred to the grid company before this activity may obtain the required licence. It is, similarly, a condition for the granting of licence to transmission companies, system-responsible companies and Supply-committed enterprises that the owner shares of these companies have been transferred to the grid company or grid companies affected.

Thus, subsection 2 presents an organisational requirement according to which it is a condition for the granting of licence that, in relation to existing electricity supply companies (or owner shares thereof) within a joint circle of owners, a legal structure should be established with the grid company being the direct parent company for the other companies.

The provision serves a dual objective:

the Bill implies that electricity production companies (power plants etc.) will no longer be subject to the self-sustaining principle which has been statutory since the commencement on 1 January 1977 of the current Electricity Supply Act. The self-sustaining principle implies that the assets accumulated are, in general, to be used to reduce the costs of the company's future operation and to the extent the existing scheme has made it possible to accumulate assets in the electricity production companies, it has therefore been assumed that these assets were to benefit the consumers, cf. however section 74(3).

Placing the direct ownership of the electricity production companies in the grid company means that dividend from electricity production companies or capital profit when giving up owner shares in these companies may, in general, only be used for the grid company's activities subject to licence, cf. section 70. In accordance with the preconditions which constitute the background to the existing scheme, it is therefore ensured that the assets accumulated within the period of time since 1 January 1977 will benefit the consumers. As appears from the Notes on section 74(3), the grid company will, by contrast, as the owner of (shares of) electricity production companies, be able to continuously have the disposal of both its net capital, which derives from the time prior to the commencement on 1 January 1977 of the current Act, and the capital which it has been able to freely dispose of already under the existing Electricity Supply Act.

Under the existing scheme, owners of electricity production companies have, as already mentioned, not been able to entertain any justified expectations of (additional) free capital emerging which could be used as dividend or the like. Once the electricity production companies are no longer subject to the self-sustaining principle, it must be assumed that this will imply a rather considerable increase in the value of

the electricity production companies. This increase in value will also, pursuant to the proposed scheme, benefit the consumers.

The provision is to be seen in connection with section 36 which secures that the owner structure described will be maintained as long as the electricity production company is kept within a joint circle of owners, cf. for details the Notes on this provision.

In relation to transmission companies, system-responsible companies and Supply-committed enterprises, subsection 2 ensures that commercial owner interests will have no influence on the operation of the collective electricity supply companies, which might prove detrimental to free competition and pose a risk of abuse. The provision is, on this point, to be seen in connection with section 38, which counters this risk as regards the time following the commencement of the Act.

Pursuant to subsection 3, the Minister for Environment and Energy has the possibility of granting an exemption from the condition of subsection 2 if special consideration so indicates.

It is not possible to preclude the possibility that the provision laid down in subsection 2, if it proves impossible to grant an exemption from it, may imply that a licence will only be obtained in connection with transfer of owner shares between companies which are not deemed to belong within the same circle of owners. This might be the case if, for example, the company which applies for a grid licence is partly owned by a legal person that is not in possession of owner shares in the transmission companies etc. which otherwise belong within the joint circle of owners. The same will apply if the requirement of subsection 2 means that the mutual relations between the owners' shares in a transmission company etc. are displaced. The requirement for owner shares to be transferred to the grid company might constitute a compulsory acquisition measure, which is unintentional.

Access to exemption is expected to be used only in the very cases where the enforcement of subsection 2 might constitute a compulsory acquisition measure.

On sections 98 and 99

Section 98 contains temporary provisions which maintain licences and permits granted earlier in accordance with their substance and term. The vast majority of the production licences will expire by the end of 1999. It is possible, pursuant to subsection 2, for a company subject to licence, once it has submitted its application for a licence, to continue its activity temporarily without a licence until the Minister for Environment and Energy has decided upon the application. Subsection 3 provides, furthermore, authority for the licence requirements regarding grid and Supply-committed enterprises to be

put into effect gradually. Section 99 is to secure authority for decision on the necessary temporary provisions.

On section 100

The Bill introduces new rules for price regulation of the sector. The self-sustaining principle will be abolished and production and trade will be wholly exempted from price regulation, whereas the price regulation of the collective electricity supply companies will be brought up to date.

In connection with the transition to new price regulation, there is a need for provisions for the making up of the companies' margin over the break-even point and under-absorption until the commencement of the Act. Similarly, there is a need for securing that unused funds set aside to reserves are paid back to the consumers as a consequence of the repeal of the existing reserve rules. These outstanding amounts must, under the provision for the collective supply companies, be notified and settled over the future prices and charges subject to the Energy Supervisory Board's specific decision. Against the background of their statements, the collective supply companies are to draw up an opening balance which is to constitute the basis for their future price fixing.

The provision laid down in subsection 5 ensures that SEAS may continue to include the realised losses from the former operation of co-ordinate activity of tomato production.

On section 101

Parts of the provision correspond to section 100 with regard to securing making up of unused provisions and the margin over the break-even point and under-absorption. Furthermore, the provision is to secure that the production companies make statements of costs which they have assumed or have had imposed, including failed costs, fulfilment of supply obligations regarding district heating customers and the utilisation of biomass and the expansion of wind energy. The companies will make up the scope of their obligations pursuant to provisions laid down by the Minister.

Pursuant to subsection 2, the statement will constitute the basis of the companies' financial preliminary statement of account in connection with the fixing of prices under section 75 of this Act.

Subsections 3 and 4 contain provisions governing the special financial statement which is to constitute the background to the preliminary statement of account in the electricity production companies which, when the Act comes into force, are carrying on activity in the form of incineration of waste. It will, *inter alia*, be required that the statement should contain information on how the plant is financed and on the estimated remaining life of the plant.

Subsection 5 ensures authority for the Minister for Environment and Energy to approve that the owner, in connection with unbundling of waste incineration activities and the associated electricity production in a special self-sustaining regulated company, may be granted payment from the waste incineration company to the company which unbundles the waste incineration plant. The payment corresponds to the necessary loan capital which is a result of the fact that the assets are increased because provisions made earlier over the electricity price are taken out of the statement. If this payment is granted by the waste incineration company, it will have to be included in the preliminary statement of account pursuant to subsection 2.

Subsection 6 is to secure that the Minister, after the financial obligations of the power plants have been settled, may take decision on how the power plants' general economic transition from self-sustaining to market terms is to proceed. The Minister is, in this connection, to approve the scope of the obligations mentioned in subsection 1 and decide on how they are to proceed in future.

On section 102

It follows from sections 4, 47 and 48 that it may, when the Act comes into effect, prove necessary, to a certain extent, to demerge an existing legal entity into several independent legal entities, including companies with limited liability. Every single one of these independent legal entities will, in future, have to carry on a definite activity such as electricity production, supply-committed activity, grid activity etc. The manner in which this demerger is implemented may have a decisive impact on the fixing of the prices which the individual company will be able to charge for its services in future, cf. in this connection especially the provisions laid down in Part 10 of the Act as the level of costs of the individual company will depend on what assets and liabilities "accompany" the company in connection with the demerger of existing legal entities.

The aim of the provision laid down in section 102(1) is to specify that the demerger must be implemented in such a manner that the assets and liabilities included in the existing company are placed with the respective new legal entities where they naturally belong. This will, simultaneously, make explicit that the owners, in connection with a demerger of existing legal entities, are not allowed to withdraw capital from these. Pursuant to section 102(2) this will be ensured in connection with the Energy Supervisory Board and/or the Environment and Energy Minister's approval or decision on the companies' preliminary statements of account under sections 100 and 101.

The provisions laid down in subsections 1-2 are not expected to be administered in a manner that will create obstacles to an expedient future structure. It may, for example, prove natural for electricity supply companies with a joint circle of owners that general administrative tasks should be placed in one single company which will make its services available to all companies within the circle of owners.

In these cases the provision will prove no obstacle to administrative staff and associated assets in the form of computer systems or the like being placed in the company in question even if the staff carry out tasks for a number of other legal entities.

Especially in relation to the liabilities of existing legal entities, it may, in the circumstances, prove difficult to attribute a specific liability to specific assets or activities. In that case a reasonable, discretionary distribution of the liability must be carried out among the legal entities that are to operate in future.

It is made explicit in subsection 1 second sentence that the distribution of the liabilities exclusively concern the internal relationship between the independent legal entities which will have to be established pursuant to the Act. The provision specifies, consequently, that there will be no statutory change of debtors in relation to the existing companies' creditors. The legal entity which, when the Act comes into force, is liable for a given liability will thus, in relation to creditor, not be exempted from this obligation, irrespective of whether the liability in question in the internal relationship between the legal entities which are established is attributed (wholly or partly) to another legal entity.

On section 105

The provision authorises the Minister to lay down the necessary interim rules which are deemed necessary in consideration of the fact that it must be expected, in connection with the transition to the new legislation, that a need may arise for interim rules which cannot possibly be established in advance.

ANNEX

The following amendments were made during the readings of the Bill in the Folketing:

In section 5

1) ”Public” shall be amended to ”Collective” in the definition of the transmission grid.

In section 8

2) Subsection 4 shall now read:

“(4) Unless otherwise laid down in the provision in (5), every electricity consumer in Denmark must meet a relative share of the necessary costs of the collective supply companies in implementing the public service obligations as ordered in accordance with this Act or other legislation, or rules or decisions pursuant to this Act, cf. section 9.

3) The following shall be added as a new subsection after subsection 4:

“(5) Electricity consumers shall be charged for the costs to the grid companies and the system-responsible companies of the surcharge of a maximum of DKK 0.27 mentioned in section 59 (1), point 2 in accordance with the following principles:

1) A proportionate share of the total costs to the grid companies and the system-responsible companies of the surcharge within a coherent electricity supply system shall be charged for annual electricity consumption of 100 GWh or under per place of consumption, including a proportionate share of the costs of the surcharge that can not be covered under the provision in no. 2.

2. Sums shall not be charged to cover the costs to the grid companies and the system-responsible companies of the surcharge mentioned in section 59 (1) for the electricity consumption that exceeds 100 GWh per place of consumption.

In section 17

4) “and decisions in connection with this” shall be added after “delimitation” in subsection 4, no. 2.

In section 21

5) The following shall be added as a new subsection after subsection 1:

“(2) Upon reasonable payment, the licensee shall place the transmission grid at the disposal of the system-responsible company to the extent that the system-responsible company finds this necessary for discharging the tasks imposed upon it.”

Subsection 2 shall now become subsection 3.

In section 25

6) In subsection 1, “the grid companies” shall be amended to “the grid and transmission companies”.

In section 50:

7) In section 50, subsections 2 and 3, “he” shall be amended to “the Minister”.

In section 54:

8) The following new subsections shall be added after subsection 3:

“(4). If contravention of the provisions, terms or orders pursuant to this Act or rules issued in pursuance of this Act should mean disregarding significant considerations of the security of supply, the Minister for Environment and Energy can temporarily revoke the licence. In connection with the decision, the Minister for Environment and Energy shall advise the person in question of access to test the case in court, cf. (5).

(5) He whose licence has been temporarily revoked pursuant to (4) may require the case tested in court.”

In section 66

9) In subsection 2, “before the Bill was presented” shall be amended to “29 April 1999.”

In section 79

10) Point 3 in subsection 1 shall be deleted.

In section 80

11) “or” shall be added after the word “initiative”.

In section 97

12) In subsection 2, “at the time the Bill is presented” shall be amended to “29 April 1999”.

In section 100

13) In subsection 1, point 1, “upon the decision of the Energy Supervisory Board” shall be amended to “pursuant to rules laid down by the Minister for Environment and Energy”.

14) In subsection 1, point 2, “guidelines laid down by the Energy Supervisory Board” shall be amended to “rules laid down by the Minister for Environment and Energy”.

15 The following new section shall be added after section 104:

“105. The local authority officials who serve in a municipal company covered by this Act at the time at which the municipality establishes the companies made necessary for the continuation of the aforementioned company under the terms of this Act, are obliged to serve in one or more of these companies while retaining their employment with the municipality.

(2) The companies mentioned in (1) shall offer the officials mentioned in (1) transition to employment in the companies in question.

(3) The municipality shall pay salary etc. and meet pension payments in accordance with established rules to the officials who do not wish to proceed to employment pursuant to (2).

(4) An official who, pursuant to (3), chooses to retain his employment by the municipality, and who, pursuant to (1), is obliged to serve in the company made necessary by this Act, shall not in consequence have any right to severance pay, availability allowance or pension. The official is obliged to accept the changes in the scope and nature of his employment which follow from the establishment of the companies made necessary by this Act.

(5) The companies shall refund the wages etc. paid pursuant to (3) from taking over operations and, upon agreement with the municipality, shall pay current pension contributions to the municipality for the pensionable age for which the official qualifies from the take-over.

(6) The local authority officials seconded to one or more of the companies mentioned in (1), shall have the right to participate on equal terms with the staff of the companies in question in the election of employee representatives to the board of the company and is also eligible for this, should the election of employee representatives in the company in question be possible pursuant to the general rules of the Danish Companies Act or the Danish Private Companies Act.”

Sections 105 and 106 shall now become sections 106 and 107.