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# Federal Law Gazette

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# Act
# amending the law on renewable energy in the electricity sector[1]

**of 21 July 2004**

The Federal Parliament has passed the following Act:

Article 1

Act
relating to the priority given to renewable energy
(Renewable Energy Act - REA)

Section 1
**Aim of the Act**

(1) The aim of the Act is, in particular for climate protection, conservation and protection of the environment, to allow the sustainable development of energy supplies, to reduce national energy supply costs by catering for long-term external effects, to protect the environment, to help prevent conflict over fossil fuel resources and to promote the refinement of technologies for electricity generation from renewable energy sources.

(2) The aim of this Act is also to help increase the proportion of renewable energy in the electricity supply to at least 12.5 per cent by 2010 and to at least 20 per cent by 2020.

Section 2
**Scope**

(1) This Act regulates:

1. the priority connection to the power supply network of installations generating electricity from renewable energy sources and from methane in the territory of the Federal Republic, including Germany's exclusive economic zone (area of applicability of the Act),

2. the priority purchase of, transfer of and payment for this electricity by the power supply network operators,

3. the national adjustment of electricity purchased and paid for.

[1] This act serves to implement European Parliament and Council Directive 2001/77/EC of 27 September 2001 on the promotion of electricity produced from renewable energy in the internal electricity market (OJ EC L 283, p. 33), last amended by the Accession Act of 16 April 2003 (OJ EU L 236, p. 586).

(2) This Act does not apply to installations commissioned before 31 July 2004 that the Federal Republic of Germany or a single Federal State owns more than 25% of.

Section 3
**Definition of terms**

(1) Renewable energy sources are hydroelectric power, including wave, tidal, salt gradient and current energy, solar power, geothermal power, biomass energy, including biogas, landfill gas and sewage gas, and energy from biodegradable household and industrial waste.

(2) An installation is any independent technical facility for generating electricity from renewable energy sources and from methane. Two or more installations for generating electricity from similar renewable energy sources and from methane that have been set up in the area of applicability of the Act and are directly connected up to common structural installations or facilities that are technically necessary for operational purposes are understood to be a single installation unless otherwise stated under Sections 6 and 12; facilities that are not technically necessary for operational purposes include inverters, paths, power supply network connections and measuring, managing and monitoring equipment.

(3) The network operator is the party that, irrespective of who owns it, uses the installation for the purposes of generating electricity from renewable energy sources and methane.

(4) Commissioning is the first use of the installation after it becomes technically operational or after it has been overhauled, if the cost of the overhaul is at least 50 per cent of the cost of rebuilding the entire installation, including all structural installations or facilities that are technically necessary for operational purposes.

(5) The output of an installation is the electrical output that the installation can technically generate indefinitely when operating according to requirements, ignoring minor short-term deviations. For the purposes of determining the output on which remuneration is calculated, output used for reserves only is not included.

(6) The power supply network is the entire set of interconnected technical facilities for transferring and distributing electricity for the purposes of public supply.

(7) Power supply network operators are the operators of networks at all voltage levels for the purposes of supplying electricity to the public. Transfer power supply network operators are those responsible for high and extra-high voltage power supplies that are used to transfer electricity nationally to subordinate power supply networks.

Section 4
**Duty of purchase and transfer**

(1) Power supply network operators are obliged to connect to their power supply networks, immediately and as a priority, installations for generating electricity from

renewable energy sources or from methane and to purchase and transfer as a priority all of the electricity generated from renewable energy sources or from methane available from these installations. The purchase obligation referred to in sentence 1 exists, after the installation register has been set up according to Section 15(3), only if the installation operator has requested entry of the installation in the register. Notwithstanding Section 12(1), installation operators and power supply network operators can contractually agree to depart from the purchase priority if to do so would result in better integration of the installation into the power supply network. Power supply network operators can charge for any costs incurred as a result of an agreement according to sentence 3 to the extent that they can be proven when calculating payment for use of the power supply network.

(2) The obligations referred to in paragraph 1, sentence 1 apply to the power supply network operator whose technically suitable power supply network is closest to the installation, unless another power supply network has a connection point that is better from a technical and economic perspective. A power supply network is also deemed to be technically suitable if the carrying of the electricity is possible, notwithstanding the priority according to paragraph 1, sentence 1, through an economically reasonable extension of the power supply network; in this case, the power supply network operator is obliged, at the request of the party wishing to receive supply, to extend the system immediately. If the installation requires approval according to other legal requirements, the obligation to extend referred to in sentence 2 exists only if the installation operator has received approval, partial approval or a preliminary decision. The duty to extend includes all technical facilities necessary for operation of the power supply network and the connection installations owned or taken over by the power supply network operator.

(3) The obligation to ensure priority connection according to paragraph 1, sentence 1 exists even if the power supply network or a power supply network area is at times supplied to full capacity with electricity from renewable energy sources or methane, unless the installation is not fitted with a technical device for reducing the power supply if the power supply network is overloaded. The obligation referred to in paragraph 1, sentence 1 to ensure priority purchase of electricity generated in these installations only exists if the power supply network or the power supply network area has not been supplied to full capacity with electricity from installations for generating electricity from renewable energy sources or methane already connected to these installations; this does not affect the obligation immediately to extend the network according to paragraph 2, sentence 2. The power supply network operator is obliged, at the request of the installation operator, if electricity is not purchased, to show the meeting of requirements according to sentence 2, within four weeks, in writing, showing verifiable calculations.

(4) If required for the purposes of planning by the power supply network operator or the party wishing to receive supply or for establishing the suitability of the power supply network, data on the power supply network and on the installation necessary for a verifiable examination of network compatibility must be provided, on request, within eight weeks.

(5) The obligation to ensure priority purchase and transfer referred to in paragraph 1, sentence 1 exists even if the installation is connected to the power supply

network of the installation operator or a third party that is not a power supply network operator within the meaning of Section 3(7), and even if the electricity is supplied by passing through this power supply network, for the purposes of the commercial balance sheet, into a power supply network according to Section 3(6).

(6) Offshore transfer power supply network operators are obliged to purchase and transfer, as a priority, the quantities of power carried by the power supply network operator according to paragraph 1 or 5. If no domestic transfer power supply network is operated in the power supply network area of the network operator entitled to provide electricity, then the duty to purchase and transfer referred to in sentence 1 applies to the nearest domestic transfer power supply network operator. Sentence 1 correspondingly applies to other power supply network operators.

Section 5
**Duty to pay remuneration**

(1) Power supply network operators are obliged to pay for electricity generated in installations that only use renewable energy sources or methane and which they have purchased according to Section 4(1) or (5), pursuant to Sections 6 to 12. The obligation referred to in sentence 1 exists, for installations with an output of more than 500 kilowatts, only if an output measurement has been taken.

(2) Offshore transfer power supply network operators are obliged to pay for the quantities of power purchased from the power supply network operator according to Section 4(6) and paid for by the latter according to paragraph 1 in accordance with Sections 6 to 12. To be deducted from the remuneration are the avoided fees for using the power supply network, which are to be calculated according to good professional practice. Section 4(6), sentence 2 applies accordingly.

Section 6
**Remuneration for electricity generated from hydroelectric power**

(1) For electricity generated by hydroelectric installations with an output of up to and including 5 megawatts, remuneration is as follows:

1. Up to and including an output of 500 kilowatts, at least 9.67 cents per kilowatt hour, and

2. Up to and including an output of 5 megawatts, at least 6.65 cents per kilowatt hour.

Sentence 1 applies to run-off river installations with an output of up to 500 kilowatts, which have been licensed since 31 December 2007, only if they have been set up:

1. in physical connection with a barrage or weir system part or all of which already exists or which has been newly established as a matter of priority for purposes other than the generating of electricity from hydroelectric power, or

2. without cross-obstruction throughout,

and, as a result, good ecological conditions have demonstrably been achieved or ecological conditions have demonstrably been considerably improved from before.

(2) For electricity generated by hydroelectric installations with an output from 5 megawatts to up to and including 150 megawatts, remuneration is only paid according to the provisions of this Act if:

1. the installation has been overhauled between 1 August 2004 and 31 December 2012,

2. the overhaul has resulted in an increase in the electrical operating capacity of at least 15 per cent, and

3. following the overhaul, good ecological conditions have demonstrably been achieved or ecological conditions have demonstrably been considerably improved from before.

Notwithstanding Section 3(4), hydroelectric installations with an output of more than 5 megawatts, which meet the requirements of sentence 1, are regarded as having been newly commissioned. The initial commissioning of an installation in physical connection with an already existing barrage or weir system is also regarded as having been overhauled within the meaning of sentence 1. Remuneration is only paid for the additional quantities of electricity to be allocated to the overhaul and is as follows:

1. Up to and including an output increase of 500 kilowatts, at least 7.67 cents per kilowatt hour,

2. Up to and including an output increase of 10 megawatts, at least 6.65 cents per kilowatt hour,

3. Up to and including an output increase of 20 megawatts, at least 6.10 cents per kilowatt hour,

4. Up to and including an output increase of 50 megawatts, at least 4.56 cents per kilowatt hour,

5. An output increase of more than 50 megawatts, at least 3.70 cents per kilowatt hour.

If the installation has an output of up to and including 5 megawatts before 1 August 2004, the electricity corresponding to this share of the output is also subject to remuneration according to paragraph 1.

(3) The presentation of an official licence for the installation according to the law relating to water shall be regarded as being proof of the achievement of good ecological conditions or ecological conditions that are considerably better than before within the meaning of paragraph 1, sentence 2 and paragraph 2, sentence 1, No 3.

(4) The minimum remunerations according to paragraph 2 are reduced each year, beginning on 1 January 2005, for any installations newly commissioned after this time,

by 1 per cent of the relevant value for the installations newly commissioned the previous year respectively and are rounded up to two decimal places.

(5) Paragraphs 1 to 4 do not apply to electricity obtained through storage installations.

Section 7
**Remuneration for electricity generated from landfill gas, sewage gas and methane**

(1) For electricity generated from landfill gas, sewage gas and methane installations, remuneration is as follows:

1. Up to and including an output of 500 kilowatts, at least 7.67 cents per kilowatt hour,

2. Up to and including an output of 5 megawatts, at least 6.65 cents per kilowatt hour.

For electricity generated from methane installations with an output of more than 5 megawatts, remuneration is 6.65 cents per kilowatt hour. Gas taken from a gas power supply network is regarded as being landfill gas, sewage gas and methane if the quantity of gas taken corresponds, in terms of the heat equivalent, to the quantity of landfill gas, sewage gas and methane supplied to the gas power supply network elsewhere in the area of applicability of the Act.

(2) The minimum remuneration rates according to paragraph 1 are increased by 2.0 cents per kilowatt hour respectively if the gas supplied according to paragraph 1, sentence 3 has been raised to the quality of natural gas or the electricity has been obtained using fuel cells, gas turbines, steam engines, organic Rankine installations, multi-fuel installations, in particular Kalina cycle installations, or Stirling engines. For the purposes of adjusting this provision to the state of the art, the Federal Ministry for the Environment, Conservation and Reactor Safety is authorised, with the consent of the Federal Ministry for Consumer Protection, Food and Agriculture and the Federal Ministry for Business and Employment, by means of a statutory instrument, to specify other methods or techniques within the meaning of sentence 1 or to exclude certain specified methods or techniques from the scope of sentence 1.

(3) The minimum remunerations according to paragraph 1 are reduced each year, beginning on 1 January 2005, for any installations newly commissioned after this time, by 1.5 per cent of the relevant value for the installations newly commissioned the previous year respectively and are rounded up to two decimal places.

Section 8
**Remuneration for electricity generated from biomass**

(1) For electricity generated in installations with an output of up to and including 20 megawatts, which use exclusively biomass within the meaning of the order issued according to paragraph 7, remuneration is as follows:

1. Up to and including an output of 150 kilowatts, at least 11.5 cents per kilowatt hour,

2. Up to and including an output of 500 kilowatts, at least 9.9 cents per kilowatt hour,

3. Up to and including an output of 5 megawatts, at least 8.9 cents per kilowatt hour, and

4. An output of more than 5 megawatts, at least 8.4 cents per kilowatt hour.

Notwithstanding sentence 1, remuneration is 3.9 cents per kilowatt hour if the installation also uses waste wood from the waste wood categories A III and A IV within the meaning of the waste wood order of 15 August 2002 (Federal Law Gazette I, p. 3302). Gas taken from a gas power supply network is regarded as being biomass if the quantity of gas taken corresponds, in terms of the heat equivalent, to the quantity of gas from biomass supplied to the gas power supply network elsewhere in the area of applicability of the Act.

(2) The minimum remunerations according to paragraph 1, sentence 1, Nos 1 and 2 are increased by 6.0 cents per kilowatt hour respectively and the minimum remunerations according to paragraph 1, sentence 1, Nos 3 and 4 by 4.0 cents per kilowatt hour if:

1. the electricity

   a) is generated exclusively from plants or parts of plants obtained from agricultural, forestry or horticultural operations or in the context of countryside protection and subject to no preparation or alteration other than that for harvesting, conservation and use in biomass installations,

   b) consists exclusively of liquid manure, within the meaning of Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ EC L 273, p. 1), amended by Regulation (EC) No 808/2003 of the Commission of 12 May 2003 (OJ EU L 117, p. 1), or of schlempe obtained from an agricultural distillery within the meaning of Section 25 of the Spirit Monopolies Act, in the version already published in Federal Law Gazette Part III, paragraph numbers 612-7, last amended by Article 2 of the Act of 23 December 2003 (Federal Law Gazette I, p. 2924), in respect of which there is no other duty of use according to Article 25(2)(3) or (3)(3) of the Spirit Monopolies Act, or

   c) is obtained exclusively from both groups of materials,

2. the biomass installation is licensed exclusively for operation using materials according to number 1 or, if no such licence has been provided, the installation operator proves, through a charge materials journal containing details and

evidence of the kind, quantity and origin of the materials used, that no other materials were used, and

3. No biomass installations in which electricity is obtained from other materials are operated at the same site.

Notwithstanding sentence 1, the minimum remunerations according to paragraph 1, sentence 1, No 3 are increased by 2.5 cents per kilowatt hour if the electricity is obtained through the burning of wood. The obligation to increase the minimum remuneration according to sentence 1 exists when the requirements according to sentence 1 have been met. As soon as the requirements according to sentence 1 are no longer met, the claim for increased remuneration finally lapses.

(3) The minimum remunerations according to paragraph 1, sentence 1 are increased by 2.0 cents per kilowatt hour respectively if the electricity is electricity within the meaning of Section 3(4) of the Combined Heat and Power Act and the power supply network operator is presented with corresponding proof according to the work sheet FW 308 - Certification of combined heat and installations - Establishing the combined heat and power current of November 2002 (Federal Bulletin No 218a of 22 November 2002) published by the Arbeitsgemeinschaft für Wärme und Heizkraftwirtschaft - AGFW - e.V. Instead of the proof according to sentence 1, suitable documents provided by the manufacturer showing the thermal and electrical output and the current code may be presented for series produced combined heat and installations with an output of up to 2 megawatts.

(4) The minimum remunerations according to paragraph 1, sentence 1, Nos 1 to 3 are increased by 2.0 cents per kilowatt hour respectively if the electricity has been obtained from installations also operated using combined heat and power and the biomass is converted through thermochemical gasification or dry fermentation, the gas from biomass used for electricity generation has been raised to natural gas quality or the electricity has been obtained using fuel cells, gas turbines, steam engines, organic Rankine installations, multi-fuel installations, in particular Kalina cycle installations, or Stirling engines. For the purposes of adjusting this provision to the state of the art, the Federal Ministry for the Environment, Conservation and Reactor Safety is authorised, with the consent of the Federal Ministry for Consumer Protection, Food and Agriculture and the Federal Ministry for Business and Employment, by means of a statutory instrument, to specify other methods or techniques within the meaning of sentence 1 or to exclude certain specified methods or techniques from the scope of sentence 1.

(5) The minimum remunerations according to paragraph 1 are reduced each year, beginning on 1 January 2005, for any installations newly commissioned after this time, by 1.5 per cent of the relevant value for the installations newly commissioned the previous year respectively and are rounded up to two decimal places.

(6) The duty to pay remuneration does not apply in the case of electricity generated in installations commissioned after 31 December 2006 if it is not only biomass within the meaning of the order according to paragraph 7 or vegetable oil methyl ester that is used for ignition and back-up firing. In installations commissioned

before 1 January 2007, the share to be allocated for necessary fossil ignition and back-up firing is also regarded as electricity from biomass after 31 December 2006.

(7) The Federal Ministry for the Environment, Conservation and Reactor Safety is authorised, with the consent of the Federal Ministry for Consumer Protection, Food and Agriculture and the Federal Ministry for Business and Employment, by means of a statutory instrument to be approved by the Federal Parliament, to lay down provisions over which materials are regarded as biomass within the meaning of this provision, which technical methods have to be used for electricity generation and which environmental conditions are to be complied with.

Section 9
**Remuneration for electricity generated from geothermal power**

(1) For electricity generated from geothermal installations, remuneration is as follows:

1. Up to and including an output of 5 megawatts, at least 15 cents per kilowatt hour,

2. Up to and including an output of 10 megawatts, at least 14 cents per kilowatt hour,

3. Up to and including an output of 20 megawatts, at least 8.95 cents per kilowatt hour,

4. An output of more than 20 megawatts, at least 7.16 cents per kilowatt hour.

(2) The minimum remunerations according to paragraph 1 are reduced each year, beginning on 1 January 2010, for any installations newly commissioned after this time, by 1 per cent of the relevant value for the installations newly commissioned the previous year respectively and are rounded up to two decimal places.

Section 10
**Remuneration for electricity generated from wind power**

(1) For electricity generated from wind power installations, remuneration is at least 5.5 cents per kilowatt hour, subject to paragraph 3. For a period of five years calculated from the time of commissioning, the remuneration according to sentence 1 is increased by 3.2 cents per kilowatt hour for electricity generated in installations that have achieved, in this period, 150 per cent of the calculated yield of the reference installation (reference yield) according to the provisions of the annex to this Act. For other installations, this period is extended by two months for every 0.75 per cent of the reference yield by which its yield undershoots 150 per cent of the reference yield.

(2) Notwithstanding paragraph 1, sentence 3, the period according to paragraph 1, sentence 2 is extended for electricity generated in installations which:

1. replace or overhaul installations in the same administrative district commissioned before 31 December 1995, and

2. increase the installed output by at least three times (repowering plants)

by two months for every 0.6 per cent of the reference yield by which its yield undershoots 150 per cent of the reference yield.

(3) For electricity generated from wind power installations that have been established at least three nautical miles out to sea (offshore installations), remuneration is at least 6.19 cents per kilowatt hour. The coast line is regarded as being the coast line given on map No 2920 "German North Sea Coast and Adjoining Waters", 1994 issue, XII., and on map No 2921 "German Baltic Coast and Adjoining Waters", 1994 issue, XII. of the Federal Maritime Shipping and Hydrography Authority, scale 1:375,000[2]. For electricity generated in installations commissioned in the period up to and including 31 December 2010, the remuneration according to sentence 1 is increased by 2.91 cents per kilowatt hour for a period of twelve years calculated from the time of commissioning. This period is extended for electricity generated in installations established at least twelve nautical miles away and at a depth of at least 20 metres by 0.5 months for each full nautical mile above twelve nautical miles, and by 1.7 months for each additional full metre in depth.

(4) Notwithstanding Section 5(1), power supply network operators are not obliged to pay remuneration for electricity generated in installations for which proof has not been provided before commissioning that they can achieve at least 60 per cent of the reference yield at the planned site. The installation operator has to provide proof to the power supply network operator through presentation of an expert report drawn up according to the provisions of the annex to this Act by an expert appointed with the consent of the power supply network operator. If the power supply network operator fails to gives its consent within four weeks following the request of the installation operator, the Federal Environmental Authority shall appoint the expert after consulting Fördergesellschaft Windenergie e.V. (FGW). The costs of the report are shared equally between the installation and power supply network operators.

(5) The minimum remunerations according to paragraph 1 are reduced each year, beginning on 1 January 2005, and the minimum remunerations according to paragraph 3 are reduced each year, beginning on 1 January 2008, for any installations newly commissioned after this time, by 2 per cent of the relevant value for the installations newly commissioned the previous year respectively and are rounded up to two decimal places.

(6) The Federal Ministry for the Environment, Conservation and Reactor Safety is authorised to lay down, by means of a statutory instrument, provisions on the calculation and use of the reference yield in order to implement paragraphs 1 to 4.

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[2] Official notice: Available from the Federal Maritime Shipping and Hydrography Authority, 20359 Hamburg.

(7) Paragraphs 1 to 6 do not apply to electricity generated in wind power installations, the construction of which was approved after 1 January 2005 in a territory of Germany's exclusive economic zone or its coastal waters declared to be a protected area according to Section 38 in conjunction with Section 33(2) of the Federal Conservation Act or according to Federal State law. Sentence 1 also applies to the protection of those areas that the Federal Ministry for the Environment, Conservation and Reactor Safety notifies the Commission of the European Communities as being areas of Community significance or as European bird protection areas.

Section 11
**Remuneration of electricity generated from solar power**

(1) For electricity generated in installations generating electricity from solar power, remuneration is at least 45.7 cents per kilowatt hour.

(2) If the installation is being fitted to or on a building or a noise barrier, the remuneration is as follows:

1. Up to and including an output of 30 kilowatts, at least 57.4 cents per kilowatt hour,

2. An output of more than 30 kilowatts, at least 54.6 cents per kilowatt hour,

3. An output of more than 100 kilowatts, at least 54.0 cents per kilowatt hour.

The minimum remunerations according to sentence 1 are increased by 5.0 cents per kilowatt hour respectively if the installation is not fitted on the roof or as a roof of the building and if it forms an essential part of the building. Buildings are independently usable, covered constructions that can be accessed by people and are suitable or intended for the protection of humans, animals or property.

(3) If the installation is not fitted to or on a construction that has been built primarily for purposes other than the generation of electricity from solar power, the power supply network operator is only obliged to pay remuneration if the installation was commissioned before 1 January 2015:

1. within the scope of a development plan within the meaning of Section 30 of the Town and Country Planning Code, or

2. in an area in respect of which a procedure has been carried out according to Section 38, sentence 1 of the Town and Country Planning Code.

(4) For electricity generated in an installation according to paragraph 3, which has been established within the scope of a development plan that has at least been drawn up or amended for this purpose since 1 September 2003, the power supply network operator is only responsible for paying remuneration if it:

1. is located in areas that, at the time of the decision to draw up or amend the development plan, are already under seal,

2. is located in areas being converted from business or military use, or

3. is located in green areas that were identified for the building of this installation in the development plan and were being used as arable at the time of the decision to draw up or amend the development plan.

(5) The minimum remunerations according to paragraph 1 and paragraph 2, sentence 1 are reduced each year, beginning on 1 January 2005, for any installations newly commissioned after this time, by 5 per cent of the relevant value for the installations newly commissioned the previous year respectively and are rounded up to two decimal places. Beginning on 1 January 2006, the relevant percentage rate according to sentence 1 for installations according to paragraph 1 is increased to 6.5 per cent.

(6) Notwithstanding Section 3(2), sentence 2, two or more photovoltaic installations fitted either to or on the same building and commissioned within six successive calendar months for the purposes of calculating the level of remuneration according to paragraph 2 for respectively the last installation commissioned, are regarded as being a single installation even if they are not directly connected to common facilities or constructions that are technically necessary for operation.

Section 12
**Joint provisions regarding purchase, transfer and remuneration**

(1) Power supply network operators should not make compliance with the obligations under Sections 4 and 5 dependent on the conclusion of a contract.

(2) Where Sections 6 to 11 lay down different minimum remuneration levels depending on the output of the installation, the level of remuneration is in each case determined as a share of the output of the installation in relation to the threshold value to be applied in each case. Output within the meaning of sentence 1 applies, for the purposes of allocating to the threshold values of Sections 6 to 9, notwithstanding Section 3(5), to the quotient from the sum of kilowatt hours to be purchased in the respective calendar year according to paragraph 4(1) or 5 and the sum of full hours in the respective calendar year minus the full hours before commissioning and after final decommissioning of the installation.

(3) The minimum remunerations are to be paid from the time of commissioning in each case for a period of 20 calendar years plus the year of commissioning. Notwithstanding sentence 1, the minimum remunerations are to be paid for electricity generated in installations according to Section 6(1) for a period of 30 years and for electricity generated in installations according to Section 6(2) for a period of 15 years, plus the year of commissioning in each case.

(4) Setting off remuneration claims made by the installation operator according to Section 5 against a demand made by the power supply network operator is only

permissible if the demand is undisputed and final. The prohibition on set-off under Section 31 of the Order regarding general terms for the supply of electricity to rate-paying customers of 21 June 1979 (Federal Law Gazette I, p. 684), last amended by Article 1(1)(11) of the Order of 5 April 2002 (Federal Law Gazette I, p. 1250), does not apply where claims under this Act are used for set-off.

(5) At the request of the installation operator, the court having jurisdiction in the main action, looking at the facts of the specific case, may, at its own discretion, rule, by way of an interim injunction, that the liable party in respect of the claims referred to in Sections 4 and 5 has to connect up the installation as a matter of priority and purchase the electricity, and for this purpose has to pay an amount to be regarded as fair and equitable by way of a payment on account. The interim injunction may be issued even if the conditions referred to under Sections 935 and 940 of the Code of Civil Procedure have not been met.

(6) Electricity from two or more installations can be paid for using a common measuring device. In this case, the output of each individual installation is decisive when it comes to calculating the level of differentiate minimum remunerations. If electricity from two or more wind power installations for which different minimum remuneration levels are calculated is being paid for using a common measuring device, electricity quantities are allocated to wind power installations in relation to the respective reference yields.

(7) The minimum remunerations according to Sections 6 to 11 do not include turnover tax.

Section 13
**Power supply network costs**

(1) The costs required in relation to connecting up installations to generate electricity from renewable energy sources or from methane at the best possible connection point in the power supply network from a technical and economic point of view and in relation to the measurement devices required to establish the electricity supplied and purchased are borne by the installation operator. In the case of one or more installations having an output totalling up to 30 kilowatts, located on a site with an existing power supply network connection, the power supply network connection point for the site is regarded as being the most favourable connection point; if the power supply network operator allocates a different connection point to the installations, it is obliged to bear the additional costs thereby incurred. The connection process and the other facilities required to ensure the safety of the power supply network have to meet the technical requirements of the power supply network operator necessary in the specific case and comply with Section 16 of the Energy Industry Act. The installation operator may have the connection of installations and the construction and operation of measuring devices carried out by the power supply network operator or an expert third party.

(2) The costs required for extending the power supply network within the meaning of Section 4(2), necessary merely as a result of installations that are to be newly connected or have been reactivated, extended or overhauled in some other way, for generating electricity from renewable energy sources or from methane, for the

purchase and transfer of electricity from renewable energy sources, are borne by the power supply network operator in respect of which the extension is required. It must describe the investment specifically required, giving details of its costs. The power supply network operator may charge for the costs it has incurred in calculating the fee for use of the power supply network.

Section 14
**National adjustment rules**

(1) The transfer power supply network operators are obliged to record the differing volumes, the time in relation to the quantities of energy paid for according to Section 5(2) and the remuneration payments, provisionally adjust the quantities of energy in relation to one another straight away and settle the quantities of energy and the remuneration payments according to paragraph 2.

(2) The transfer power supply network operators establish, by 30 September each year, the quantity of energy they have purchased and paid for according to paragraph 5 and have provisionally adjusted according to paragraph 1 in the previous calendar year, and the share of this quantity out of all of the energy that electricity companies have supplied to end consumers in the area of the respective transfer power supply network operator in the previous calendar year. Transfer power supply network operators that had to purchase larger quantities than this average share can claim from the other transfer power supply network operators purchase and remuneration according to Sections 6 to 12, until these power supply network operators purchase a quantity of energy corresponding to the average.

(3) Electricity companies that supply electricity to end consumers are obliged to purchase and pay for the electricity received from the transfer power supply network operator responsible for them according to paragraphs 1 and 2 on a pro rata basis according to a profile disclosed in good time and being roughly equivalent to the actual electricity purchased according to Section 4 and Section 5. Sentence 1 does not apply to electricity companies that, in relation to all of the electricity supplied by them, supply at least 50 per cent of electricity within the meaning of Sections 6 to 11. The share to be purchased according to sentence 1 refers to the quantity of electricity supplied by the respective electricity company and is to be determined such that each electricity company receives a roughly equal share. The scope of the purchase obligation (share) is measured according to the ratio of the total electricity paid for according to Section 5(2) to the total electricity supplied to end consumers. The remuneration within the meaning of sentence 1 is calculated on the basis of the predicted average remunerations paid according to Section 5 by all power supply network operators per kilowatt hour in the last quarter, less the avoided fees for using the power supply network according to Section 5(2), sentence 2. The transfer power supply network operators are obliged to submit claims against electricity companies according to sentence 1 resulting from the adjustment according to paragraph 2, by 31 October of the year following supply. The energy quantities and remuneration payments are actually adjusted in monthly instalments by 30 September of the following year. The electricity purchased according to sentence 1 should not be sold under the remuneration paid for according to sentence 5 if it is marketed as electricity from renewable energy sources or as electricity similar to the latter.

(4) If, as a result of a final decision by the court in the main action, which is only received after settlement according to paragraph 2, sentence 1 or paragraph 3, changes are made to the quantities of energy or remuneration payments to be settled, then these changes have to be taken into account in the next settlement.

(5) The anticipated adjustment remunerations have to be paid in monthly instalments.

(6) Power supply network operators that are not transfer power supply network operators, and electricity companies are obliged to provide the data required for the calculations according to paragraphs 1 to 5 straight away and to submit a final statement for the previous year by 30 April. Power supply network operators and electricity companies can request that the final statements be certified by a chartered accountant or a sworn auditor by 30 June according to sentence 1 and by 31 October according to paragraph 2. Installation operators are obliged to provide the data required for the previous year's final statement by 28 February of the following year.

(7) End consumers who purchase electricity not from an electricity company but from a third party are treated in the same way as electricity companies within the meaning of paragraphs 2 and 3.

(8) The Federal Ministry for the Environment, Conservation and Reactor Safety is authorised, with the consent of the Federal Ministry for Business and Employment, by means of a statutory instrument, to lay down provisions relating to:

1. the adjustment procedure according to paragraph 1 in terms of organisation and time, in particular for determining those responsible and for ensuring optimum and equal forecasts with respect to quantities of energy and loads to be adjusted;

2. the setting or establishing of a standard profile according to paragraph 3, relating to the time, including the preliminary period, and relating to the method of disclosure of this profile and the underlying data, and

3. the more detailed determination of the data required according to paragraph 6 and the method of providing this data.

## Section 15
## **Transparency**

(1) Power supply network operators and electricity companies that supply electricity to end consumers, and companies affiliated to them, are entitled to indicate to third parties the difference between the remunerations paid according to Section 14(3), sentence 1 and 5 and their average electricity purchase costs per kilowatt hour or the average electricity purchase costs per kilowatt hour of the electricity company connected to their power supply network in the last completed financial year (difference costs) if they are proving the latter by means of a certificate from a chartered accountant or a sworn auditor that is to be published. When indicating difference costs, the number of kilowatt hours of electricity from renewable energy sources and from methane underlying the calculation according to sentence 1

has to be indicated in the same way. Costs that could be charged as part of the fees for using the power supply network should not be indicated separately.

(2) Power supply network operators are obliged to publish the information required for establishing the quantities or energy and remuneration payments to be settled according to Section 14 by 30 September of the following year. The information must show the extent to which the power supply network operator has purchased the quantities of energy from a subordinate power supply network and the extent to which it has passed it on to end consumers, power supply network operators or electricity companies that supply electricity to end consumers, or has used it itself. The Federal Ministry for the Environment, Conservation and Reactor Safety is authorised, with the consent of the Federal Ministry for Consumer Protection, Food and Agriculture and the Federal Ministry for Business and Employment, by means of a statutory instrument, to regulate the details of the publication obligation.

(3) For the purposes of increasing transparency and simplifying the national adjustment mechanism, a public register may be set up by means of a statutory instrument according to sentence 3, in which installations for the generation of electricity from renewable energy sources and from methane have to be registered (installation register). Fees may be charged for registration according to the statutory instrument according to sentence 3. The Federal Ministry for the Environment, Conservation and Reactor Safety is authorised, by means of a statutory instrument, to allocate the management of the installation register to a subordinate Federal authority or to transfer it to a legal entity under private law and to lay down the finer details relating to the organisation of the installation register, the information to be included, the registration procedure, data protection, the publication of data and the charging and level of fees.

## Section 16
## Special adjustment rules

(1) The Federal Office of Economics and Export Control limits, on request, for a single purchase point, the share of electricity according to Section 14(3), sentence 1 passed on by electricity companies to end consumers that are companies in the manufacturing industry or the railways in order thereby to reduce the costs incurred as a result of the forwarding of the quantity of electricity for these companies provided this does not threaten the aims of the Act and the limitation is compatible with the interest of electricity consumers at large.

(2) The limitation may only be imposed in relation to a company in the manufacturing industry if it is able to prove that, and to what extent, in the last completed financial year:

1. the electricity purchased from an electricity company according to paragraph 14(3), sentence 1 and consumed itself at a single purchase point exceeded 10 gigawatts,

2. the ratio of electricity costs to the gross value added to the company according to the definition given by the Federal Office for Statistics, Series 4, No 4.3 of June 2003[3] exceeded 15 per cent,

3. the quantity of electricity according to Section 14(3), sentence 1 is passed on to the company on a pro rata basis and consumed by the latter itself, and

4. the company has incurred difference costs as a result within the meaning of Section 15(1).

Electricity companies are obliged, at the request of the company, to provide proof to the Federal Office of Economics and Export Control straight away of the quantity of electricity passed on pro rata and the difference costs, including the data used for calculating the difference costs, by presenting a certificate from a chartered accountant or a sworn auditor for the last completed financial year; the costs for the certificate have to be borne by the end-consumer company. Compliance with sentence 1, No 3 and the difference costs are proven by presentation of the certificate; compliance with the other requirements of sentence 1 are proven by presentation of electricity supply contracts and electricity bills for the last completed financial year and reports by a chartered accountant or a sworn auditor based on the annual accounts for the last completed financial year. Purchase points are all physically connected electrical facilities of the company at an operating site that is connected to the power supply network of the power supply network operator via one or more connection points. Sentences 1 to 4 apply to independent parts of the company accordingly.

(3) For the railways, paragraph 2, sentence 1, Nos 1, 3 and 4 and sentence 2 apply in accordance with the following requirements:

1. Account is only taken of quantities of electricity that are consumed directly for the operation of rail transport services.

2. The purchase point is the total of all consumer points for operation of rail transport services by the company.

(4) In order to limit the quantity of electricity passed on pro rata, a specific percentage rate is laid down for the purchase point according to paragraph 2, sentence 1, No 1 or paragraph 3, No 2. The percentage rate is to be laid down such that the difference costs for the quantity of electricity passed on pro rata forming the basis of the remuneration anticipated according to Section 14(3), sentence 1 and 5 are 0.05 cents per kilowatt hour. For companies whose purchase of electricity within the meaning of paragraph 2, sentence 1, No 1 was less than 100 gigawatt hours or whose ratio of electricity costs to gross value added was less than 20 per cent, and for the railways this only applies in respect of everything in addition to 10 per cent of the electricity purchased in the last completed financial year at the purchase point in question according to paragraph 2, sentence 1, No 3 or paragraph 3, No 2 and consumed itself; proof that the value has been exceeded is to be furnished in corresponding application of paragraph 2, sentence 3. If the company is being supplied by more than one electricity company at the time proof is furnished

[3] Official notice: Available from the Federal Office for Statistics, 65180 Wiesbaden.

according to paragraph 2, sentence 2, then the limitation in sentence 1 applies in respect of each of these electricity companies pro rata according to the extent to which they supply this end consumer at this purchase point in comparison with one another; the company has to provide the electricity company with the information required for calculating this share. If the benefit to be accorded as a result of this rule would exceed 20 million Euros for all railways, by way of a departure from sentence 1, the percentage rate for railways is to be laid down such that this sum is not exceeded.

(5) If the product from the share according to Section 14(3), sentence 4 and the average remuneration according to Section 14(3), sentence 5 for the end consumers not benefiting from this rule would increase by more than 10 per cent as a result of the application of this rule with reference to the data for the calendar year preceding the decision, then the percentage rate according to paragraph 4, sentence 2 in respect of all companies whose requests according to paragraph 6 meet the requirements according to paragraph 2 or paragraph 3, notwithstanding paragraph 4, sentence 5, is to be determined uniformly such that this value is not exceeded. The quantity of electricity that has already benefited from a decision applying beyond 31 December 2004 within the meaning of Section 21(6) has to be taken into account.

(6) The request, including all request documents according to paragraph 2 or paragraph 3 and details of the electricity company and the transfer power supply network operator responsible, is to be submitted by 30 June of the current year in each case (exclusion deadline). The decision applies to the party submitting the request, the electricity company and the transfer power supply network operator responsible. It comes into force on 1 January of the following year for a period of one year. The effects of a previous decision are not taken into account when calculating the ratio of electricity costs to the gross value added according to paragraph 2, sentence 1, No 2 and paragraph 4, sentence 3.

(7) Federal Office of Economics and Export Control is subject to the expert supervision of the Federal Ministry for the Environment, Conservation and Reactor Safety when carrying out the tasks assigned to it under this Act.

(8) The claim made by the transfer power supply network operator responsible for the end consumer submitting the request at the purchase point concerned according to Section 14(3), sentence 1 against the electricity company in question is limited according to the decision of the Federal Office of Economics and Export Control according to paragraphs 1 to 6; the transfer power supply network operators have to take these limitations into account within the framework of Section 14(2).

(9) The application of paragraphs 1 to 8 is the subject of the progress report according to Section 20.

## Section 17
## **Proof of origin**

(1) Installation operators can have proof of origin of electricity generated from renewable energy sources provided by any person or organisation that is entitled to work as an environmental expert or an environmental expert organisation according to the environmental audit law for the electricity generation sector.

(2) Proof of origin must contain details on:

1. the type and essential elements of the energy sources used for generating the electricity, including details of the extent to which the electricity is electricity from renewable energy sources within the meaning of European Parliament and Council Directive 2001/77/EC of 27 September 2001 on the promotion of electricity produced from renewable energy in the internal electricity market (OJ EC L 283, p. 33), last amended by the Accession Act of 16 April 2003 (OJ EU L 236, p. 586),

2. when biomass is used, whether it is exclusively biomass within the meaning of the statutory instrument according to Section 8(7),

3. name and address of the installation operator,

4. the quantity of electricity generated by the installation, the time period during which the electricity was generated, and the extent to which the electricity has been paid for according to Sections 5 to 12, and

5. the location, output and time of commissioning of the installation.

(3) Proof of origin should only be used with full disclosure of the details required according to paragraph 2.

## Section 18
## Prohibition on double marketing

(1) Electricity generated from renewable energy sources and from methane and landfill gas, sewage gas or methane fed into the gas power supply network and gas generated from biomass should not be marketed or supplied in any other way more than once.

(2) Installation operators that claim remuneration according to Sections 5 to 12 do not have to pass on proof in relation to electricity generated from renewable energy sources and from methane. If an installation operator passes on proof in relation to electricity generated from renewable energy sources or from methane, no remuneration should be claimed for this electricity according to Sections 5 to 12.

## Section 19
## Board of arbitration

The Federal Ministry for the Environment, Conservation and Reactor Safety may set up a board of arbitration to settle any disputes and questions relating to the application of this Act where the parties concerned may participate.

Section 20
**Progress report**

(1) The Federal Ministry for the Environment, Conservation and Reactor Safety must report to the German Parliament by 31 December 2007 and then every four years, with the consent of the Federal Ministry for Consumer Protection, Food and Agriculture and the Federal Ministry for Business and Employment, on the state of market penetration of installations for generating electricity from renewable energy sources and from methane and changes in electricity production costs in these installations and, if applicable, must suggest changes to the level of remunerations according to Sections 6 to 12 and sliding scales according to technological and market developments for installations commissioned after this time. The progress report also covers storage technologies and the ecological assessment of the effects of using renewable energy sources on the environment.

(2) Installation operators whose installations have been commissioned since 1 August 2004 and who have claimed remuneration according to Sections 5 to 12, and power supply network operators are obliged, for the purposes of establishing electricity production costs on a sample basis within the meaning of paragraph 1 and of ensuring the proper functioning of the adjustment mechanism according to Section 14, are obliged to provide the Federal Ministry for the Environment, Conservation and Reactor Safety and its staff, if so requested, with details of all facts that may be relevant in terms of establishing electricity production costs and the adjusted energy quantities and remuneration payments according to Section 14. Where the installation and power supply network operators are business professionals within the meaning of the Commercial Code, the accounts also have to be presented, on request, if they can provide information on facts that have to be taken into account when establishing electricity production costs and the adjusted energy quantities and remuneration payments. The principles of data protection have to be observed.

Section 21
**Transitional provisions**

(1) For electricity generated by installations commissioned by 31 July 2004, the previous provisions on remuneration rates, on the duration of the remuneration claim and on the provision of measurement data are to be applied subject to the following:

1. For electricity generated by hydroelectric power installations, the previous rule applies only for an output of up to and including 5 megawatts;

2. For electricity generated by run-off river installations having an output of up to and including 5 megawatts before 1 August 2004, Section 6 applies if the installation has been modernised and, after modernisation, good ecological conditions have demonstrably been achieved or ecological conditions have demonstrably been considerably improved from before. Section 6(3) applies accordingly. Notwithstanding Section 3(4), these installations are regarded as having been newly commissioned after modernisation;

3. For electricity generated by biomass installations commissioned after 31 December 2003, the remuneration rates under Section 8 of this Act apply from 1 August 2004;

4. For electricity generated by biomass installations commissioned before 1 January 2004, the minimum remuneration is increased according to Section 8(2) of this Act;

5. For electricity generated by biomass installations commissioned before 1 August 2004, Section 8(6), sentence 2 of this Act applies;

6. For electricity generated by wind power installations commissioned after 31 March 2000, the annex to Section 10(1) of this Act applies for the purposes of calculating the reference yield;

7. For electricity generated by installations for generating energy from solar power commissioned before 1 January 2004, Section 8 of the Renewable Energy Act of 29 March 2000 (Federal Law Gazette I, p. 305), last amended by the Act of 22 December 2003 (Federal Law Gazette I, p. 3074), in the version valid on 22 July 2003 is applicable;

8. For electricity generated by installations for generating energy from solar power commissioned after 31 December 2003, Section 8 of the Renewable Energy Act of 29 March 2000 (Federal Law Gazette I, p. 305), last amended by the Act of 22 December 2003 (Federal Law Gazette I, p. 3074), in the version valid on 1 January 2004 is applicable, paragraphs 3 and 4 thereof only applying to electricity generated by installations commissioned after 30 June 2004.

(2) Section 4(2) only applies to electricity generated by installations commissioned three months after notification of the establishment of the installation register in the Federal Bulletin. For electricity generated by other installations, Section 4(1), sentence 2 applies three months after separate written request by the power supply network operator, giving the contact details for the installation register and stating the legal consequences of a failure to submit a request.

(3) For electricity generated by biomass installations that also use waste wood from the waste wood categories A III and A IV within the meaning of the waste wood order of 15 August 2002 (Federal Law Gazette I, p. 3302) and were commissioned before 30 June 2006, Section 8(1), sentence 1 is to be applied instead of Section 8(1), sentence 2.

(4) Section 10(4) only applies to installations commissioned after 31 July 2005.

(5) Until the issuing of a statutory instrument according to Section 8(7), to the extent that this Act refers to such a statutory instrument, the biomass order of 21 June 2001 (Federal Law Gazette I, p. 1234) applies instead. Section 8(6) is not affected.

(6) Notwithstanding Section 16(6), sentence 1, the request is to be made in 2004 on 31 August. Requests for the limitation of the share of electricity within the framework of the special adjustment rules according to the Renewable Energy Act of 29 March 2000 (Federal Law Gazette I, p. 305), last amended by the Act of 22 December 2003 (Federal Law Gazette I, p. 3074), that were made before 1 August 2004, are to be treated and decided on according to the provisions previously applicable thereto provided they have not been made by companies in respect of which the share of electricity is already limited beyond 1 August 2004. Decisions by the Federal Office of Economics and Export Control on the limitation of the share of electricity in accordance with the provisions referred to in sentence 2, which were notified to the party submitting the request before 1 August 2004, are extended to 31 December 2004 irrespective of sentence 4. Decisions within the meaning of sentence 3 that are valid beyond 31 December 2004 are invalid from 1 January 2005 if the company submitted a request according to Section 16(1) before 1 September 2004 and this request has not been finally refused.

**Annex**
(to Section 10(1) and (4))

1. The reference installation is a wind power installation of a certain type for which a yield equal to the reference yield is calculated according to its output curve at the reference location measured by an institution entitled to do so.

2. The reference yield is the quantity of electricity specified for each type of wind power installation, including the respective hub height, that this type would produce over the course of five years of operation if built at the reference location calculated on the basis of a measured output curve. The reference yield is to be determined according to generally recognised rules of engineering; compliance with generally recognised rules of engineering is assumed if the procedures, principles and calculation methods contained in the Technical Guidelines for Wind Power Installations, Part 5, of Fördergesellschaft Windenergie e.V. (FGW), in the version[4] applicable at the time the reference yield is being calculated, are used.

3. The type of wind power installation is determined by the type name, the rotor circle, the nominal output and the hub height according to the manufacturer's details.

4. The reference location is a location determined by a Rayleigh distribution with an average annual wind speed of 5.5 metres per second at a height of 30 metres above the ground, a logarithmic height profile and a roughness length of 0.1 metre.

5. The output curve is the relationship, calculated for each type of wind power installation, between wind speed and power output, irrespective of hub height. The output curve is to be determined according to generally recognised rules of engineering; compliance with generally recognised rules of engineering is assumed if the procedures, principles and calculation methods contained in the Technical Guidelines for Wind Power Installations, Part 5, of Fördergesellschaft Windenergie e.V. (FGW), in the version[5] applicable at the time the reference yield is being calculated, are used. If the output curve has been determined according to a comparable procedure before 1 January 2000, this may be used instead of the output curve determined according to sentence 2 if no building of installations of the relevant type was started in the area of application of this Act after 31 December 2001.

6. The report according to Section 10(4) drawn up to prove that installations at the planned location can achieve at least 60 per cent of the reference yield have to contain descriptions of the physical location, be based on location-specific wind measurements or extrapolatable operating data from a neighbouring wind park and add these to existing wind databases for a prognostic assessment with long-term reference. The decisive factor when calculating energy yield is the free flow of air to the wind power installation.

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[4] Official notice: Available from Fördergesellschaft Windenergie e.V., Stresemannplatz 4, 24103 Kiel.
[5] Official notice: Available from Fördergesellschaft Windenergie e.V., Stresemannplatz 4, 24103 Kiel.

7. Institutions which, according to the technical guidelines "General requirements relating to the competence of examining and calibrating laboratories" (DIN EN ISO/IEC 17025), April 2000 [6] issue, are correspondingly accredited by an accreditation authority recognised by the State or evaluated with the involvement of State authorities, are, for the purposes of this Act, entitled to measure the output curves according to number 5 and to calculate the reference yields of installation types at the reference location according to number 2 and to determine the achievable energy yields at the planned location according to number 6.

[6] Official notice: Available from Beuth Verlag GmbH, 10772 Berlin.

Article 2

Amendment of the environmental audit law

The following sentence is added to Section 15(9) of the environmental audit law in the version published on 4 September 2002 (Federal Law Gazette I, p. 3490):

> "Section 6 applies accordingly to the performance of activities by environmental experts or environmental expert organisations based on other legal regulations."

Article 3

Amendment of the Combined Heat and Power Act

The following sentence is inserted after to Section 4(3), sentence 2 of the Combined Heat and Power Act of 19 March 2002 (Federal Law Gazette I, p. 1092), last amended by Article 136 of the Order of 25 November 2003 (Federal Law Gazette I, p. 2304):

> "The usual price is the average price for baseload electricity at the EEX electricity exchange in Leipzig in the previous quarter respectively."

Article 4

Entry into force, expiration

This Act comes into force the day after publication. At the same time, the Renewable Energy Act of 29 March 2000 (Federal Law Gazette I, p. 305), last amended by the Act of 22 December 2003 (Federal Law Gazette I, p. 3074), expires.

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The constitutional rights of the Federal Council are protected.

The above Act is hereby executed. It is to be published in the Federal Law Gazette.

Berlin, 21 July 2004

The President of the Federal Republic of Germany
Horst Köhler

The Chancellor of the Federal Republic of Germany
Gerhard Schröder

The Federal Minister for the Environment, Conservation and Reactor Safety
Jürgen Trittin

# First Act
# amending the Renewable Energy Act

## of 7 November 2006

The Federal Parliament has passed the following Act:

## Article 1

The Renewable Energy Act of 21 July 2004 (Federal Law Gazette I, p. 1918), amended by Article 3(35) of the Act of 7 July 2005 (Federal Law Gazette I, p. 1970), is amended as follows:

1. Section 5(2), sentence 2 is worded as follows:

   To be deducted from the remuneration are the avoided fees for using the power supply network calculated according to Section 18(2) of the electricity power supply network fee order."

2. In Section 7(2), Section 8(4) and (7), Section 14(8) and Section 20(1) the words "Business and Employment" are replaced by the words "Business and Technology" and in Section 7(2), Section 8(4) and (7) and Section 20(1) the words "Consumer Protection, Food and Agriculture" are replaced by the words "Food, Agriculture and Consumer Protection".

3. Section 14(6) is removed.

4. The following Section 14a is inserted after Section 14:

"Section 14a
Communication and publication duties

(1) Installation operators, power supply network operators and electricity companies are obliged to provided one another with the data required for the national adjustment according to Section 5(2) and according to Section 14, in particular the data given in paragraphs 2 to 5.

(2) Installation operators are obliged:

1. to tell the power supply network operator the location and the output of the installation,

2. for biomass installations according to Section 8(1), sentence 1, to tell the power supply network operator the energy sources used according to Section 8(2) and give it details regarding the technologies used according to Section 8(3) and (4), and

3. to provide the power supply network operator with the data required for the previous year's final statement by 28 February of the following year.

(3) Power supply network operators that are not transfer power supply network operators are obliged to provide details received from the installation operators according to paragraph 2, details of remuneration payments actually made and the other details required for the national adjustment to the earlier transfer power supply network operator:

1. in full as soon as they have become available, and

2. submit the final statement for the previous year in full in respect of each individual installation by 30 April of any given year electronically using the form provided on its website; Section 12(6) applies accordingly.

The following are required in particular in order to determine the remuneration payments and quantities of energy to be adjusted according to sentence 1:

1. Details of the voltage level at which the installation is connected,

2. The level of avoided power supply network fees according to Section 5(2), sentence 2,

3. Details of the extent to which the power supply network operator has taken quantities of energy from a later power supply network, and

4. Details of the extent to which the power supply network operator has supplied quantities of energy according to number 3 to end consumers, power supply network operators or electricity companies or has consumed it itself.

For transfer power supply network operators, sentences 1 and 2 apply accordingly provided that the details and the final statement according to sentence 1 for installations that are directly or indirectly connected to their power supply network according to Section 4(5) are published on their website.

(4) Transfer power supply network operators are obliged, under the provisions of paragraph 3:

1. to give the electricity companies for whom they are responsible, as soon as they become available, details of the quantities of energy to be purchased and paid for on the basis of the remuneration payments actually made according to Section 14, and

2. to present the electricity companies for whom they are responsible with a final statement for the previous year by 30 September of the following year.

Paragraph 3, sentence 2 applies accordingly.

(5) Electricity companies are obliged to give their transfer power supply network operator responsible straight away details of the electricity they have purchased and the quantities of energy supplied to end consumers and to present the final statement for the previous year by 30 April.

(6) Section 14(4) applies accordingly.

(7) Power supply network operators and electricity companies may request that the final statements according to paragraph 3, sentence 1, No 2 and paragraph 5 by 30 June of any given year and according to paragraph 4, sentence 1, No 2 by 31 October of any given year be certified by a chartered accountant or a sworn auditor.

(8) Power supply network operators are obliged to present the final statements according to paragraph 3, sentence 1, No 2 and paragraph 4, sentence 1, No 2 before expiry of the respective deadlines set by the Federal power supply network agency electronically using the form provided on its website; for electricity companies, this applies in respect of the details according to paragraph 5 and its average electricity purchase costs per kilowatt hour accordingly."

5. Section 15 is amended as follows:

a) Paragraph 2 is worded as follows:

"(2) Power supply network operators and electricity companies are obliged to publish on their websites:

1. the details according to Section 14(1) to (5) as soon as it has been received, and

2. a report on the specification of the data provided by them according to Section 14a immediately after 30 September of any given year,

and to keep it there until the end of the following year; Section 14a(3), sentence 3 is not affected. The details and the report must enable an informed third party to ascertain, without any further information, the adjusted quantities of energy and remuneration payments in full; they may be used to draw up the report according to Section 20."

b) In paragraph 3, sentence 3, the words "the charging and level of fees" are replaced by the words "the official acts relating to fees and the fee rates".

6. Section 16(4), sentence 5 and paragraph 5 are removed.

7. The following Sections 19a and 19b are inserted after Section 19:

"Section 19a
Duties of the Federal power supply network agency

(1) The Federal power supply network agency is responsible for ensuring that:

1. the electricity companies are only charged for the remunerations paid according to Section 5(2), less the avoided power supply network fees,

2. the data according to Section 15(2) is published and the data according to Section 14a(8) is presented, and

3. only the actual difference costs according to Section 15(1), sentence 1 are indicated to third parties.

(2) For the performance of the duties according to paragraph 1, the provisions of Part 8 of the Energy Industry Act, excluding Section 69(1), sentence 2, paragraph 10, Sections 91, 92 and 95 to 101 and Section 6, apply accordingly.

(3) The decisions of the Federal power supply network agency according to paragraph 2 are taken by the decision-making boards; Section 59(1), sentences 2 and 3 and paragraphs 2 and 3 and Section 60 of the Energy Industry Act apply accordingly.

(4) Federal power supply network agency charges costs (fees and expenditure) for official acts according to paragraph 2 in conjunction with Section 65 of the Energy Industry Act. The Federal Ministry for Business and Technology is authorised, with the consent of the Federal Ministry for Finance and the Federal Ministry for the Environment, Conservation and Reactor Safety, to regulate fee rates without the approval of the Federal Council.

Section 19b
Provisions regarding administrative fees

(1) A party deliberately or negligently acting in contravention of an enforceable order according to Section 19a(2) in conjunction with Section 65(1) or (2) or Section 69(7), sentence 1 or paragraph 8, sentence 1 of the Energy Industry Act is acting in breach of administrative rules.

(2) Breaches of administrative rules are punishable by an administrative fine of up to one hundred thousand Euros.

(3) The administrative authority within the meaning of Section 36(1), No 1 of the Breach of Administrative Rules Act is the Federal power supply network agency."

8. The following sentence is added to Section 20(1):

"The report also contains details of the activities of the Federal power supply network agency according to Section 19a."

9. The following paragraph 7 is added to Section 21:

"(7) Decisions by the Federal Office of Economics and Export Control on the limitation of the share of the quantity of electricity according to Section 16 for 2006 are, as far as Section 16(4), sentences 2 and 3 are applicable, to be amended ex officio notwithstanding the other rules in Section 16 with effect from 1 January 2006."

**Article 2**

Section 28(2) of the Electricity Power Supply Network Fee Order of 25 July 2005 (Federal Law Gazette I, p. 2225), amended by Article 3(3) of the Order of 1 November 2006 Federal Law Gazette I, p. 2477), is amended as follows:

1. Under number 7, the word "and" is replaced by a comma.

2. Under number 8, the full stop is replaced by the word "and".

3. The following number 9 is added:

"9. The power supply network fees deducted the previous year according to Section 5(2), sentence 2 of the Renewable Energy Act."

**Article 3**

This Act comes into force on 1 December 2006.

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The constitutional rights of the Federal Council are protected.

The above Act is hereby executed. It is to be published in the Federal Law Gazette.

Berlin, 7 November 2006

The President of the Federal Republic of Germany
Horst Köhler

The Chancellor of the Federal Republic of Germany
Dr Angela Merkel

The Federal Minister for the Environment, Conservation and Reactor Safety
Sigmar Gabriel