
CSEN
Comisión
del Sistema
Eléctrico
Nacional

SPANISH ELECTRIC POWER ACT

(Unofficial English Translation)

First Draft

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PREAMBLE

Electricity supply is essential for our society to function properly. Its price is a crucial factor in the competitiveness of a substantial part of our economy. The technological development of the electricity industry and the way it is structured as regards its requirements for raw material supplies are determining factors in the evolution of other industrial sectors. Moreover, electricity transmission and distribution constitute a natural monopoly as capital-intensive activities requiring direct links to consumers whose demand for electric power - a non-storable product - fluctuates over relatively short periods of time. Furthermore, the fact that electricity cannot be stored means that supply must necessarily match demand at all times and requires electricity generation to be well-coordinated as well as the coordination of decisions involving investment in the generation and transmission of electric power. This combination of technical and economic characteristics imposes the need for the electricity sector to be regulated.

Consequently, the basic purpose of this Act is to regulate the electricity sector with the traditional, three-fold goal of guaranteeing the supply of electric power, its quality and the provision of such supply at the lowest possible cost. Environmental protection is yet another element to be taken into account in the equation and one of considerable importance given the characteristics of this particular sector of the economy. However, unlike previous regulations, the underlying conviction running through this Act is that the only state intervention necessary for electricity supply, its quality and its low cost to be guaranteed is the control entailed by the specific regulation itself. There is no need for the State to reserve the right to perform any of the activities involved in electricity supply. This approach moves completely away from the idea of public service which traditionally ran through legislation in the past, even though it had become less and less relevant in practice. Instead, the new legislation hinges on an explicit guarantee of supply to all those consumers nationwide who demand the service. The unified operation of the national electric power system ceases to be a public service belonging to and run by the State through a company with a majority state shareholding. Its functions are now to be performed by two private sector business entities whose respective responsibilities are the economic management and the technical management of the system. As far as economic management is concerned, the possibility of achieving some kind of theoretical optimisation of the system is no longer its basis and, instead, the decisions of the economic players become paramount within the framework of an organised bulk electric power market.

Lastly, state planning is restricted to transmission facilities in an effort to link it up with town planning and territorial regulation. The idea of planning as determining the investment decisions of electricity companies is discarded and replaced by planning that offers guideline parameters for the way the electricity industry is expected to develop in the near future, thus facilitating the investment decisions to be made by the different economic agents.

This Act also converts the principles of the Protocol signed by the Ministry of Industry and Energy and the leading electricity companies on December 11th, 1996, into legislation. The aforementioned Protocol was not enforceable in the same way as any general law but what it did do was put on paper a complex, overall design for the transition from a state-controlled, red tape-dominated system to a system for the sector that operated with greater freedom. It also represented an agreement reached with the main economic players in the industry on a far-reaching modification of the remunerative system that had been in force until then and on a phasing-in of full market liberalisation. Essentially, the Protocol was devised as a document whose full scope would be used to trigger a thorough process of change.

The technical complexity of some of the characteristics of the electric power industry make it necessary to ensure that it is run in a deregulated framework without any abuse of dominant positions and with strict respect for the practices of free competition. Consequently, this Act confers wide-ranging powers on the National Electric Regulatory Commission with regard to requesting information and solving disputes and they way in which it is to collaborate with the Administration departments responsible for fair trading and restrictive practices is set out. At the same time, the hierarchy of areas of activity corresponding to the State Administration and the National Electric Regulatory Commission is clarified in more detail, the coordination mechanisms between them are enhanced and the work performed by the Commission is granted greater continuity by establishing a system of partial renewal of its members.

Lastly, this Act makes an energy policy based on the progressive liberalisation of the market compatible with the achievement of other aims that also inspire it, such as improved energy efficiency, reduced consumption and environmental protection. The special arrangements for electricity generation, the demand-side management programmes and, above all, the promotion of renewable energies add to its position within the Spanish legal system.

The liberalising intention of this Act goes further than just restricting more tightly the State's activities within the electric power sector. Far-reaching changes are made to the way it is regulated through the expedient vertical segmentation of the different activities required for electricity supply. In electric power generation, the right to freely set up in business is acknowledged and this activity is run under the principle of free competition with economic remuneration based on the organisation of a bulk market. The principle of remuneration through investment costs fixed by the Administration through a process of standardisation of the different electricity generation technologies is no longer contemplated.

Transmission and distribution are liberalised by allowing third parties widespread access to the networks. Ownership of networks does not guarantee their exclusive use. The economic efficiency arising out of the existence of a single network which forms the basis of the so-called natural monopoly is now put at the disposal of the different players involved in the electric power system and consumers. Remuneration for transmission and distribution shall continue to be set by the Administration, thus avoiding any possible abuse of dominant positions that may stem from the existence of a single network. Likewise, to guarantee the transparency of said remuneration, regulated and non-regulated activities of electric power companies are to be legally unbundled in terms of economic remuneration.

Electricity retailing is officially introduced in this Act. It is not just a possibility to be submitted to the Government for its consideration but rather a reality that takes on a tangible shape under the principles of free trading and free choice of suppliers as set out in this piece of legislation. A transitional period is established so that the liberalisation of electricity retailing is phased in gradually, ensuring that full freedom of choice becomes a reality for all consumers within 10 years.

An electric power system is thus set up to operate on the basis of the principles of objectiveness, transparency and effective competition, where free, private enterprise will be able to take on its rightful leading role. All of the above will take place without prejudice to the necessary regulation of the industry's actual characteristics themselves, especially the need for it to function on the basis of economic and technical coordination.

This Act incorporates into Spanish legislation the provisions contained in the European Parliament and Council Directive 96/92/EC, dated December 19th, 1996, on common rules for the internal electricity market. This particular directive allows for different ways of organising electric power systems to exist at one and the same time with the introduction of a number of requirements that are essential to guarantee gradual convergence towards a European electricity market.

TITLE I

GENERAL PROVISIONS, ADMINISTRATIVE RESPONSIBILITIES AND ELECTRICITY PLANNING

Article 1. Purpose.

1. The purpose of this Act is to regulate the activities involved in the supply of electric power, consisting of generation, transmission, distribution, retailing and intra-Community and international exchanges, as well as the economic and technical management of the electric power system.

2. The aim of regulating these activities is to ensure:

a) That electric power supply meets consumer needs, and

b) That these activities are rationalised, made more efficient and optimised.

3. The activities involved in the supply of electric power shall be carried out in a coordinated way according to the principles of objectiveness, transparency and free competition.

Article 2. Arrangements for the activities.

1. Free enterprise is acknowledged as being entitled to carry out the activities involved in the supply of electric power as regulated under this Act.

2. These activities shall be carried out with guarantees for the supply of electric power to all consumers requiring the service nationwide and shall be deemed an essential service.

Article 3. Administrative responsibilities.

1. It is the responsibility of the State Administration, under the terms set out in this Act, to:

a) Exercise authority in electricity planning under the terms laid down in the following article.

b) Set the remuneration for power guarantees and for those activities that are deemed to be regulated activities pursuant to article 11.2 of this Act and lay down the economic arrangements for the remuneration of electric power generation under the special system.

c) Regulate the pricing structure and, where applicable, work out by means of a tariff the price of supplying electric power and, by means of a rate, the price corresponding to the use of transmission and distribution networks, as

well as lay down the criteria for the granting of guarantees by the agents as appropriate.

d) Perform the functions involved in regulation as set out in Title II.

e) Regulate the way the electricity generation market is organised and operated as well as create other organised electricity markets that might stem from it.

f) Regulate the terms under which the economic and technical management of the system is to be developed.

g) Lay down the basic regulations for electricity generation, transmission, distribution and retailing.

h) Impose penalties, within the scope of its jurisdiction, for any breaches committed as set out in this Act.

i) Set the minimum quality and safety standards that are to govern the supply of electric power.

2. It is also the responsibility of the State Administration with regard to the installations falling under its jurisdiction to:

a) Authorise electricity installations when their use may benefit more than one Autonomous Region or where the transmission and distribution goes beyond the territorial limits of one of these Regions.

b) Issue instructions, within the scope of its jurisdiction, for the expansion, improvement and adaptation of electricity transmission and distribution networks and installations in order to ensure adequate quality and security in the supply of electric power and with a minimum environmental impact.

c) Inspect, within the scope of its jurisdiction, through the National Electric Regulatory Commission, where applicable, and working with the technical services of the Autonomous Region where the installations are located, the technical conditions and, where applicable, economic conditions, and compliance with the conditions stipulated in the authorisations granted.

d) Impose penalties for all breaches committed in accordance with this Act and the provisions developing it.

3. It is the responsibility of the Autonomous Regions within the scope of their respective Statutes to:

a) Develop legislation and regulations for and to enforce the basic laws enacted by the State with regard to electricity.

b) Regulate the arrangements for service connection rights and the necessary actions to meet the supply requirements of users, without prejudice to the provisions made for the economic arrangements in article 16, point 8.

c) Authorise electricity installations when their use does not affect any other Regions or when the transmission or distribution does not go beyond each Region's territorial limits, as well as perform the inspection and penalising functions corresponding to said installations.

In any event, the authorisations for installations referred to in article 28.3 shall be deemed included.

d) Issue instructions for the expansion, improvement and adaptation of electricity transmission or distribution networks and installations falling under their jurisdiction in order to ensure adequate provision of the service.

e) Inspect, for the installations under their jurisdiction, the technical and, where applicable, economic conditions of the companies owning the installations and compliance with the conditions stipulated in the authorisations granted.

f) Impose penalties for all breaches committed within the scope of their jurisdiction, in accordance with the provisions of this Act.

4. The State Administration may enter into cooperation agreements with the Autonomous Regions in order to manage administrative activities relating to electricity installations more effectively.

Article 4. Electricity planning.

1. Electricity planning, which shall be considered as a guideline except with regard to transmission installations, shall be carried out by the State with the participation of the Autonomous Regions.

2. Electricity planning shall be submitted to the Chamber of Deputies (Lower House of Parliament).

3. Said planning must cover the following aspects:

a) Forecasts for electricity demand over the whole period under consideration.

b) Estimates of the minimum power to be installed in order to meet the forecast demand under criteria of supply security, energy diversification, improved efficiency and environmental protection.

c) Predictions for transmission and distribution installations, in line with forecast electricity demand.

d) The establishment of action strategies regarding quality of service, designed to achieve quality objectives, both for end-use and for those areas, whose demographic characteristics and types of consumption may make them more suitable for the determination of differentiated objectives.

e) Action steps affecting demand to promote and improve the service offered to users, together with energy efficiency and savings.

f) The evolution of market conditions in order to achieve guaranteed supply.

g) Environmental protection criteria that should determine electric power supply activities.

4. In the regulation of the provision of electric power supply, any plans and recommendations approved by International Bodies pursuant to Conventions and Treaties to which the Kingdom of Spain is party shall be taken into account.

Article 5. Coordination with town planning.

1. The planning of electricity transmission and distribution installations when they are located or run through non-building land must be taken into account in the relevant territorial planning regulation instrument. Likewise, insofar as these installations are located on any category of land classified as urban or building land, this planning must be covered in the relevant town planning regulation instrument, specifying the possible installations, the suitable classification of plots of land and, in both cases, the reservation of any land necessary for the siting of the new installations and the protection of those already in existence.

2. In the cases where electricity planning has not been taken into account in the town planning regulation instruments described in the point above, or when for justified reasons of emergency or exceptional interest relative to electric power supply it is advisable to set up electricity transmission or distribution installations, and provided that pursuant to other Acts a territorial or town planning regulation instrument is necessary according to the category of land affected, the provisions of article 244 of the Consolidated Text of the Land Uses and Town Planning Regulation Act, approved by Royal Decree-Law 1/1992, dated June 26th, or the relevant piece of Autonomous Regional Government legislation shall apply.

Article 6. The National Electric Regulatory Commission.

1. As the regulatory body of the electric power system, the National Electric Regulatory Commission aims to ensure effective competition in the system and its objectiveness and transparency for the benefit of all the agents operating in the system and that of consumers.

The Commission is set up as a public body with its own legal status and assets and full capacity to act. The Commission's activities shall be subject to the provisions of Act 30/1992, dated November 26th, on the Legal Regime for Public Administrations and the Common Administrative Procedure whenever it exercises administrative authority, to legislation covering Public Administration Contracts when contracting goods and services and it shall be subject to private law for all other activities.

The relationship between the National Electric Regulatory Commission and its employees shall be subject to labour law. Except for those holding executive management posts, employees shall be selected following official public procedures and in accordance with mechanisms based on the principles of merit and ability. These employees shall be subject to the general rules on the holding of incompatible posts established for employees working for Public Administrations.

The National Electric Regulatory Commission shall draft a preliminary budget every year following the format laid down by the Ministry of Economy and Treasury and shall forward it to the latter to be presented for the approval of the Government and later remitted to Parliament as part of the State Budget. The budget shall be an estimate and, provided they do not affect subsidies, any changes shall be authorised by the Ministry of Economy and Treasury if their amount does not exceed 5% of the planned total, or by the Government in all other cases.

Economic and financial control of the National Electric Regulatory Commission shall be exercised by the State Comptroller's Office without prejudice to those functions which are the responsibility of the National Audit Office.

The National Electric Regulatory Commission shall be attached to the Ministry of Industry and Energy which shall exercise control over the effectiveness of its activity and shall be governed by the provisions of this Act and the regulations that develop it, by the Provisions of the Budget Act that may apply and by Act 6/1997, dated April 14th, on the Organisation and Functioning of the State Administration.

2. The Commission shall be governed by a Board of Commissioners consisting of a Chairman who will be the legal representative of the Commission and eight Members.

The Ministry of Industry and Energy, the Secretary of State for Energy and Mineral Resources or any other high-ranking official from the Ministry that they delegate to, may attend the meetings of the Board of Commissioners albeit without voting rights, whenever they deem it expedient in view of the specific business to be dealt with on the corresponding agenda.

3. The Chairman and the Members shall be appointed from among persons with acknowledged technical and professional ability, through a Royal Decree on the suggestion of the Ministry of Industry and Energy, following the Minister's appearance before the relevant Committee of the Chamber of Deputies and a debate in order to determine whether the candidates proposed meet the requirements stated in this point.

The Chairman and the Members of the National Electric Regulatory Commission shall be appointed for a six-year term which may be extended for another six years.

Nevertheless, the National Electric Regulatory Commission shall partially renew its members every three years. The renewal will alternately affect five or four of its members as relevant.

If, during their term of office, any of its members were to relinquish their post, that member's replacement shall relinquish their post at the end of his or her predecessor's mandate. When the latter case occurs before one year has elapsed following the appointment, the limit set out in the second paragraph of this point shall not apply and the mandate may be renewed on two separate occasions.

4. The Chairman and the Members shall relinquish their posts for the following reasons:

a) Expiry of their term of office, although they shall continue to perform their functions until the appointment of the new members to replace them.

b) Their resignation as accepted by the Government.

c) Permanent disability for the performance of their functions, incompatibility arising subsequent to their appointment as a member of the Commission or a legal conviction for a fraudulent offence following an inquiry by the Ministry of Industry and Energy and dismissal by the Government, on the reasoned proposal of the Minister of Industry and Energy.

5. The Chairman and the Members of the National Electric Regulatory Commission shall be subject to the legal system against the holding of multiple incompatible posts applying to high-ranking officials in the State Administration. On dismissal from their post and for the following two years, they may not exercise any professional activity related to the electricity system. The economic compensation to be paid to them pursuant to this limitation and the conditions for them to qualify for this shall be determined by regulations.

6. The resources of the National Electric Regulatory Commission shall consist of:

a) The assets and securities which make up its net worth and the products and revenues arising from them.

b) The income generated in accordance with article 16.5 of this Act.

c) The transfers from the State Budget, if applicable.

Article 7. The Commission Consultative Council.

1. A Consultative Council shall be set up as the advisory body to the Commission. It shall be formed by a maximum of thirty-four members in which the State Administration, the Nuclear Safety Council, the Autonomous Regions, the electric power industry companies, the market and system operators, consumers and users and other social agents and agents for the defence and preservation of the environment shall all be represented. The Council shall be chaired by the Chairman of the National Electric Regulatory Council.

2. The Consultative Council may report on the activities carried out by the National Electric Regulatory Commission when performing the functions assigned to it under article 8. This report shall be mandatory as regards activities to be carried out in the performance of its second, third, fourth and seventh functions.

3. To facilitate its work, a Standing Committee shall be set up within the Consultative Council. This Committee will be formed by twelve members representing the following bodies: six representatives of the Autonomous Regions, one representative of the generation companies, one representative of the distribution companies and one representative of the market operator and one representative of the system operator, one representative of the State Administration and one representative of the qualified consumers.

The representatives of the Autonomous Regions shall be designated as follows: two from the Autonomous Regions with the highest electricity generation; two from the Autonomous Regions with the highest electricity consumption per inhabitant and the remaining two shall be designated for two year terms from among those Autonomous Regions that are not represented under the criteria set out above, in the order of highest generation and electricity consumption levels.

Article 8. Functions of the National Electric Regulatory Commission.

1. The National Electric Regulatory Commission shall perform the following functions:

First: Act as a consultative body for the Administration in all matters related to electricity.

Second: Participate through proposals or reports in the process of drafting general provisions and, in particular, in the development of the regulations of this Act.

Third: Participate, through proposals or reports, in the electricity planning process.

Fourth: Participate, through proposals or reports, in the process of drafting projects on the determination of tariffs and the remuneration of activities within the sector.

Fifth: Submit reports as part of procedures to authorise new generation and transmission installations whenever these matters are subject to the State Administration's authority.

Sixth: Issue any reports as requested by the Autonomous Regions, whenever they deem it appropriate in the exercise of their authority in questions relating to electricity.

Seventh: Prepare the Circulars on the development and implementation of the rules and standards contained in the Royal Decrees and Orders issued by the Ministry of Industry and Energy that may be issued to develop this Act, provided that these provisions explicitly authorise it to do so.

These provisions shall be known as Circulars and shall be published in the Government's Official Gazette, the "*Boletín Oficial del Estado*".

Eighth: Carry out the settlement of the costs of the transmission and distribution of electric power, of the permanent costs of the system and of those other costs that may be established for the system as a whole whenever it is explicitly made responsible for their settlement.

Likewise, it shall inform the Ministry of Industry and Energy every six months on the settlement of power carried out by the market operator in collaboration with the system operator.

Ninth: Inspect, at the request of the State Administration or the competent Autonomous Regions, the technical conditions of the installations, compliance with the requirements established in authorisations, the economic conditions and activities of agents operating in the electric power system insofar as they may affect the application of tariffs and criteria for the remuneration of activities in the electric power industry, and the effective unbundling of these activities under the terms whereby this is required.

Tenth: Act as an arbitration body in any disputes that may arise between agents carrying out activities stipulated in article 9 of this Act.

The performance of this arbitration function shall be free of charge and shall not be of a public nature.

This arbitration function - which shall be voluntary for the parties - shall be performed in accordance with Act 36/1988, dated December 5th, on Arbitration and with the regulatory law approved by the Government that may be issued with regard to the corresponding arbitration procedure.

Eleventh: Determine, under the terms set out in this Act, the specific agents of the system whose actions may be responsible for deficiencies in the supply to users and which that will lead to reductions in the remuneration of their activities.

Twelfth: Agree to institute disciplinary proceedings and to conduct said proceedings whenever they are the responsibility of the State Administration and to report, if requested to do so, on those disciplinary proceedings instituted by the different Administrations.

Thirteenth: Ensure that the activities referred to in this Act are carried out in the framework of free competition. To this end, whenever the Commission detects the existence of evidence of restrictive practices banned by Act 16/1989 of July 17th on Fair Trading, it shall notify the Fair Trading and Restrictive Practices Service, furnishing it with the information on all the facts it is aware of and, where applicable, a non-binding opinion on the classification of said facts.

Fourteenth: Solve any disputes that may be submitted to it with regard to the economic and technical management of the system and transmission and, especially, with regard to the contracts for third party access to the transmission and distribution networks under the terms that may be set in regulations.

Fifteenth: Authorise the stakes taken by companies with activities that are considered to be regulated activities, in accordance with point 2 of article 11, in any entity carrying out business activities. The authorisations may only be turned down when significant risks exist or there is a negative impact that may be direct or indirect on the activities regulated under this Act and authorisations may be given for these reasons that set out the conditions under which the aforementioned operations may be carried out.

Sixteenth: Furnish a compulsory report on company concentration operations or the takeover of one or more electricity companies by another that also carries out electricity activities when these have to be submitted to the Government for it to take a decision in accordance with the competition legislation in force.

Seventeenth: Carry out any other functions which are assigned to it by this Act or which it is given responsibility for in regulations stipulated by the Government on the suggestion of the Ministry of Industry and Energy.

Eighteenth: Agree on its internal organisation and operations, select and recruit its employees.

Nineteenth: Draw up an annual report of activities which shall be submitted to the responsible Committees in the Chamber of Deputies (Lower House) and the Senate (Upper House).

2. The National Electric Regulatory Commission may gather from the agents referred to in article 9 of this Act any information it may require in the performance of its functions. To do so, the Commission shall issue Circulars that must be published in the Official Gazette, "*Boletín Oficial del Estado*", detailing and specifying the content of the information to be requested and justifying the exact function such information is required for and how it is to be used.

The National Electric Regulatory Commission may carry out any checks it deems necessary with the aim of confirming the truthfulness of the information that it may be provided with in compliance with its Circulars insofar as it may be necessary for the performance of its functions.

Any data and information of a confidential nature obtained by the National Electric Regulatory Commission in the performance of its functions may only be passed on to the Ministry of Industry and Energy and to the Autonomous Regions within the scope of their jurisdiction. The employees of the National Electric Regulatory Commission who may be aware of such information are under the obligation to keep it secret.

Likewise, the National Electric Regulatory Commission shall have access to the records regulated under this Act.

3. The reports of the National Electric Regulatory Commission stipulated in its second, third, fourth and fifth functions in point one of this article shall be compulsory.

4. An ordinary legal appeal may be lodged to the Ministry of Industry and Energy against the decisions taken by the National Electric Regulatory Commission in the performance of its functions referred to in point 1 of this article and against its proceedings on the same questions that may determine the impossibility of continuing the procedure or may lead to the lack of a proper defence.

Any rulings that may be issued in the performance of the fourteenth function of point 1 of this article and of the Circulars referring to information shall be an exception to the stipulations of the paragraph above which shall conclude the administrative action.

TITLE II

ORGANISATION AND REGULATION OF SUPPLY

Article 9. Agents.

1. The activities involved in the supply of electric power as referred to in article 1.1. of this Act shall be carried out by the following agents:

a) Electricity generators, who are those individuals or bodies corporate whose function is to generate electric power as well as to construct, operate and maintain generation stations.

b) Self-generators of electricity, who are those individuals or bodies corporate that generate electricity mainly for their own use. A self-generator shall be deemed to generate electricity essentially for its own use when it uses up at least 30% of the electricity it generates itself when its installed power is less than 25 Mw and at least 50% when its installed power is equal to or greater than 25 Mw.

c) Whoever incorporates into the national transmission and distribution networks power from foreign systems by means of its purchase under the terms laid down in article 13.

d) The market operator, a business entity whose functions are those attributed to it by article 33 of this Act.

e) The system operator, a business entity whose functions are those attributed to it by article 34 of this Act.

f) Transmission agents, who are those companies whose function is to transmit electricity as well as to construct, maintain and operate transmission installations.

g) Distributors, who are those business entities whose function is to distribute electricity as well as to construct, maintain and operate distribution installations designed to place power at consumption points and to sell it to those end-customers that purchase electricity for a tariff or to other distributors who also purchase electricity for a tariff.

h) Retailers, who are those bodies corporate that have access to the transmission and distribution networks and whose function is to sell electricity to consumers with the status of qualified customers or to other agents in the system.

2. Consumers may purchase electricity for a regulated tariff or through the procedures stipulated in this Act when they are qualified customers. Exactly

which consumers shall be given the status of qualified customers shall be determined by regulations.

3. Generators participating in the generation market, distributors and retailers shall be deemed as qualified customers for the purposes of electricity purchases.

Article 10. Guarantee of supply.

1. All consumers shall be entitled to the supply of electric power on national territory with the quality and security conditions stipulated in regulations set by the Government with the collaboration of the Autonomous Regions.

2. The Government may, for a certain period of time, adopt the necessary measures to guarantee the supply of electric power whenever any of the following circumstances arise:

a) A definite risk for the provision of the supply of electric power.

b) Situations of shortage of supply of any one or more of the sources of primary energy.

c) Situations in which the physical safety or security of the people, equipment or installations or the condition of the electric power transmission or distribution network may be jeopardised.

In the situations described above, the Government shall determine the remuneration arrangements applicable to those activities that might be affected by the measures adopted, guaranteeing a balanced shareout of the costs in all cases.

When the measures adopted by the Government in accordance with the provisions of this point only affect one or more Autonomous Regions the decision shall be taken in collaboration with said Regions.

3. The measures adopted by the Government to address the situations described in the point above may refer to the following aspects among others:

a) Temporary limitations or modifications of the electricity market referred to in Chapter I of Title IV of this Act.

b) The setting of special obligations with regard to back-up supplies of primary sources for the generation of electric power.

c) The cancellation or temporary modification of the rights set out in Chapter II of Title IV for self-generators and generators under the special system.

d) Any modification of the general conditions of regularity in the supply generally or with regard to certain categories of consumers.

e) The cancellation or temporary modification of the rights and guarantees of third party access to networks.

f) The limitation or allocation of supply of primary energies to electricity generators.

g) Any other measures that might be recommended by the International Bodies Spain is a member of or that may be determined in the enforcement of those conventions it is party to.

Article 11. How the system works.

1. Electric power is generated within a framework of free competition based on a system of electric power supply bids from generators and a system of demand bids for electric power from consumers holding the status of qualified consumers, distributors and the retailing agents that may be determined by regulations.

The agents referred to in the paragraph above may freely agree the terms of the sale-purchase contracts for electric power that they sign, abiding by the minimum types and contents set out in this Act and in the Regulations that develop it.

2. The economic and technical management of the system, transmission and distribution are considered regulated activities and their economic arrangements and the way they work shall conform to the provisions of this Act.

Access for third parties to the transmission and distribution networks is guaranteed under the technical terms and conditions set out in this Act.

3. The retailing of electric power shall be freely performed under the terms of this Act and its economic arrangements shall be determined by the conditions agreed by the parties concerned.

4. Unless agreed otherwise, the transfer of ownership of electric power shall be deemed to take place at the moment when said electric power enters the purchaser's installations.

In the case of retailing agents, the transfer of ownership of the electric power shall be deemed to take place when said electric power enters the customer's installations, unless otherwise agreed.

Article 12. Activities on islands and outside the peninsula.

1. Activities involved in the supply of electric power that take place on islands and outside the Spanish peninsula shall be covered by special regulations that shall reflect the specific characteristics of their location, following a report from the Autonomous Regions concerned or the cities of Ceuta and Melilla.

2. When electric power is generated on islands and outside the Spanish peninsula, this activity may be excluded from the bidding system and shall be remunerated by taking the pricing structure stipulated in article 16.1 as a reference. Nevertheless, the Government may determine an additional remunerative item that shall take into consideration all the specific costs of these systems.

These specific costs should include the costs of fuels, operation and maintenance, investment and those corresponding to the necessary back-up generation capacity that are particularly unique in these areas.

Electric power transmission and distribution activities on islands and outside the Spanish peninsula shall be remunerated in line with the stipulations of points 2 and 3 of article 16.

3. The costs stemming from electric power supply activities when these are carried out on islands and outside the Spanish peninsula and cannot be defrayed with the income obtained in these territorial areas shall be integrated in the whole of the system for the purposes set out in article 16.

Article 13. Intra-Community and international electricity exchanges.

1. Intra-Community electricity exchanges may be freely carried out under the terms set out in this Act.

2. Purchases of power in other Community countries may be made by generators, distributors, retailers and qualified consumers, following an authorisation from the Ministry of Industry and Energy which may only be refused when the equivalent agents in the country where the power purchased is generated do not have the same capacity to enter into contracts.

This power may be purchased by means of any of the trading options that are authorised in the development of this Act.

Consequently, Community agents may participate in the market under the conditions and with the remuneration stipulated in regulations and that shall reflect the effective power that is guaranteed to the system among other circumstances.

3. Sales of power to other Community countries may be carried out by national generators and retailers following notification to the system operator and authorisation from the Ministry of Industry and Energy which may only refuse to give such authorisation when a definite risk for national supply is entailed.

4. Short-term exchanges aiming to maintain the conditions of quality and security of supply of electric power in the system shall be carried out by the system operator under the terms stipulated by regulation.

5. Exchanges of electric power with third countries shall always be subject to the administrative authorisation of the Ministry of Industry and Energy.

6. The remunerative arrangements governing intra-Community and international exchanges shall be stipulated in regulations whilst respecting the principles of competition and transparency that must govern the generation market. In any event, agents carrying out exports of electric power will have to pay the permanent costs of the system that correspond to them proportionally.

Article 14. Unbundling of activities.

1. The corporate aims of companies carrying out one or more of the regulated activities referred to in point 2 of article 11 must be limited exclusively to the performance of these activities. They cannot, therefore, carry out generation or retailing activities without prejudice to the possibility of sales to tariff consumers as acknowledged for distributors.

2. Within a group of companies, however, activities may be carried out that are deemed incompatible by the Act, provided that they are actually performed by different companies in the group. To this end, the corporate aims of a company may comprise activities which are incompatible under the point above, provided that only one of the activities is performed directly and the others are carried out through the ownership of shareholdings or stakes held in other companies which, if they engage in electricity activities, must comply with the stipulations of point 1.

3. Those firms that carry out regulated activities may take a stake in companies that carry out activities in economic sectors other than the electricity sector once they have obtained the authorisation referred to in the fifteenth function of point 1 in article 8.

TITLE III

ECONOMIC ARRANGEMENTS

Article 15. Remuneration of activities regulated under this Act.

1. The activities involved in the supply of electric power shall be remunerated economically in the manner provided by this Act, as charged to tariffs, rates and prices paid.

2. To determine the tariffs or rates and prices that consumers must pay, the remuneration of activities shall be stipulated in regulations with objective, transparent and non-discriminatory criteria that act as an incentive to improve the effectiveness of management, the economic and technical efficiency of said activities and the quality of the electricity supply.

Article 16. Remuneration of the activities and functions of the system.

1. The remuneration of generation activities shall include the following items:

a) On the basis of the bid price offered to the market operator for the different generation units, the electric power shall be remunerated in line with the marginal price corresponding to the bid made for the last generation unit that had to be brought into the system in order to meet the demand for electric power in line with the stipulations of article 23 of this Act.

This remunerative item shall be defined by likewise taking into account the losses incurred in the transmission grid and the costs stemming from the alterations to the normal workings of the bidding system.

b) The guarantee of power that each generation unit actually provides the system with shall be remunerated, and this will be defined by taking into account the verified availability and technology of the installation, both in the medium and long term, and in each scheduling interval, with its price being determined in line with the long-term capacity needs of the system.

c) The complementary electric power generation services needed to guarantee an adequate supply to the consumer shall be remunerated.

Exactly which services are considered complementary and their remuneration arrangements shall be determined by regulations, differentiating those that are compulsory from those that are optional.

2. The remuneration of transmission activity shall be stipulated in regulations and shall allow the remuneration due to each agent to be set by taking into account investment costs, operation and maintenance of installations and other necessary costs for the performance of the activity.

3. The remuneration of distribution activity shall be stipulated in regulations and shall allow the remuneration due to each agent to be set by taking into account the following criteria: investment costs, operation and maintenance of installations, the power carried, the model characterising the distribution areas, the incentives that may apply for the quality of supply and the reduction in losses, as well as other necessary costs for the performance of the activity.

4. The remuneration of the retailing activity due to be paid per tariff customer shall be worked out by taking into account the costs stemming from the activities deemed necessary to supply power to those same consumers and also, where applicable, those linked to demand-side management incentive schemes.

The remuneration of retailing costs to qualified consumers shall be freely agreed between the retailers and their customers.

5. The following items shall be considered to be permanent operating costs of the system:

- The costs for electric power supply activities carried out on islands and outside the Spanish peninsula that may be integrated into the system in accordance with point 3 of article 12.

- The acknowledged costs of the system operator and the market operator.

- The running costs of the National Electric Regulatory Commission.

6. The premiums referred to in article 30.4 of this Act shall be deemed to be supply diversification and security costs.

7. The remuneration for surplus power as defined in article 30.2., as furnished by generators under the special system, shall be the remuneration corresponding to the generation of electric power in accordance with point 1 of this article and, where applicable, a premium that will be determined by the Government after seeking the views of the Autonomous Regions as set out in article 30.4.

8. The economic arrangements for the service connections and other actions needed to meet the supply requirements of users shall be stipulated by regulations. A flat rate shall be paid for service connections nationwide in line with the power requested and the location of the supply. Income from this item shall, to all intents and purposes, be considered remuneration for distribution activity.

Article 17. Electricity tariffs.

1. The tariffs to be paid by consumers of the electric power supply - except those with the status of qualified customers - shall be the same throughout the national territory, without prejudice to their special types.

The structure of these tariffs shall include the following items:

a) The cost of generation of electric power which shall be worked out by taking into account the average price forecast for kilowatt per hour in the generation market during the period to be legally determined and which shall be revised separately.

b) The relevant rates for the transmission and distribution of the electric power.

c) The retailing costs.

d) The permanent costs of the system.

e) The costs of supply diversification and security.

2. Annually, or whenever special circumstances make it expedient, and following the appropriate procedures and reports, the Government shall approve or modify the average benchmark or reference tariff through a Royal Decree.

The conditions whereby a qualified consumer who has exercised his option right can return to the general tariff system if this still exists shall be laid down in regulations.

3. The tariffs and rates approved by the Administration for each category of consumption shall be exclusive of Value Added Tax.

In the event that electric activities are subject to regional government or local authority levies whose amount is calculated by rules that are not uniform nationwide, a territorial supplement may be included in the price of the electricity resulting from the bidding pool or the tariff which may be different in each Autonomous Region or local authority.

In any event, the equivalence between the cost charged to the electric companies through these levies and the funds obtained through the territorial supplement must be justified.

4. In order to guarantee maximum transparency in electric power supply prices, the bill sent to the user shall include a breakdown, as determined in regulations, of at least the amounts corresponding to the allocation of supply

guarantee of diversification and security costs and the system's permanent costs and the taxes levied on electricity consumption and the territorial supplements that may apply.

Article 18. Transmission and distribution rates.

1. The rates corresponding to the use of transmission networks shall be a single flat rate without prejudice to their special types on account of voltage levels and the use of the network.

2. The rates corresponding to the use of the distribution networks shall be a single, flat rate and shall be worked out by taking into account the voltage levels and the characteristics of consumption indicated by time bands and power.

3. Transmission and distribution rates shall be approved by the Government in the manner set out in regulations and shall be considered as maximum amounts to be charged.

The transmission and distribution agents must notify the Ministry of Industry and Energy of the rates they actually charge.

The differences between the maximum rates approved and those which may be charged by transmission and distribution agents and that are below these levels shall be borne by these same agents.

4. The procedure for assigning any losses of electric power they incur in their transmission and distribution shall be stipulated in regulations by taking into account voltage levels and consumption types.

Article 19. Collection and settlement of tariffs and prices

1. Electricity tariffs shall be collected by the companies that carry out electricity distribution activities by means of its sale to consumers. The amounts received must be treated as set out in this Act.

The payment procedure to be followed by qualified consumers for their purchases of electric power shall be stipulated by regulations. In any event, in addition to the costs stemming from the activities necessary for the supply of electric power, qualified consumers must pay for the permanent costs of the system and the costs of supply diversification and security in the proportion due to them.

2. The Government shall stipulate in regulations the procedure for allocating the revenues of the distributors and retailers amongst those agents carrying out the activities involved in the system in line with their share of the remuneration as laid down in this Act.

3. The owners of generation units, transmission agents, distributors, retailers and qualified consumers shall all abide by the conditions laid down jointly by the market operator and the system operator to carry out power settlement and payment operations which shall be public, transparent and objective.

Article 20. Accounting and information.

1. The bodies that perform one or more of the activities referred to in article 1.1. of this Act shall keep their accounts in accordance with Chapter VII of the Limited Liability Companies Act, even if they are not considered as such.

The Government shall establish any necessary adjustments to be made in the event that the agent carrying out the activity is not a limited liability company.

2. Notwithstanding the applicability of general accounting procedures to companies performing the activities referred to in article 1.1. of this Act or their parent companies, the Government may establish for them any special procedures for accounting and public disclosure of accounts that it deems appropriate so that the costs and revenues of electricity activities and the transactions carried out between companies of the same group may be clearly reflected.

Among the special accounting procedures to be established by the Government for companies which perform electric activities, special attention will be paid to the inclusion in the annual statement of accounts of information about business activities affecting the environment in order to achieve the progressive integration of environmental protection criteria into the economic decision-making processes of companies.

In the case of companies whose corporate aim is to perform the regulated activities in accordance with the provisions of article 11.2 of this Act they shall keep separate accounts, differentiating between the revenues and costs strictly attributed to transmission activity, distribution activity and, where applicable, those corresponding to retailing and sales to tariff customers.

Companies engaged in non-regulated electric activities shall keep separate accounts for generation activity, retailing activity and any other non-electricity related activities performed on national territory and all those other activities performed abroad.

Self-generators and generators operating under the special system of arrangements shall keep separate accounts in their internal accounting procedures for electric activities and non-electric activities.

3. In the report attached to their annual statement of accounts, the companies must explain the criteria applied for the allocation of costs in relation to other companies in the group that carry out different electricity activities.

These criteria must be maintained and may only be modified under exceptional circumstances. Any modifications - together with the reasons justifying them - must be explained in the annual report for the corresponding financial year.

4. Companies must furnish the Administration with all the information required from them, especially with regard to their financial statements which must be checked annually by means of external audits. The obligation to furnish information shall also cover the parent company of the company carrying out electricity activities or those of the group which engage in operations with it.

5. The annual statements must include information on business activities leading to projects for energy conservation and efficiency and reductions in environmental impact for which a claim is made for the allowance for investments provided for in this Act.

TITLE IV
ELECTRICITY GENERATION

CHAPTER I

Ordinary system

Article 21. Electric power generation activities.

1. The construction, operation and substantial alteration and shutdown of each electricity generation installation shall be subject to prior administrative authorisation procedures as set out in this Act and in the provisions developing it. The transfer of said installations shall be notified to the Administration granting the original authorisation.

The granting of administrative authorisation shall be regulated and shall be governed by the principles of objectiveness, transparency and non-discrimination.

2. Applicants for authorisations for electricity generation installations must certify the following:

a) The energy efficiency, technical and safety conditions of the proposed installations.

b) Proper compliance with environmental protection and environmental impact minimisation requirements.

c) The circumstances of the installation's location.

d) Their legal, technical and financial-economic capacity to implement the project.

3. The administrative authorisations referred to in point 1 of this article shall be granted by the responsible Administration without prejudice to the licences and authorisations necessary in accordance with any other provisions applicable and especially those concerning territorial and environmental planning and regulation.

The lack of any explicit decision regarding applications for authorisations referred to in this article shall mean the rejection of the authorisation. However, an ordinary appeal may be lodged to the relevant administrative authority.

4. An Administrative Register of Electricity Generation Installations is hereby created in the Ministry of Industry and Energy in which all those electricity generation installations that have been authorised must be entered together with their conditions and especially the power of the installation.

The Autonomous Regions with responsibilities in this area may create and administrate the corresponding territorial registers in which all the installations located in their territorial area must be entered.

Following a report from the Autonomous Regions, the procedure for making entries in and notification of information to the Administrative Register of Electricity Generation Installations, together with its organisation, shall be established through regulations.

5. The registration in the Administrative Register of Electricity Generation Installations shall be a prerequisite to be able to make electricity bids to the market operator. The Autonomous Regions shall have access to the information contained in this Register.

6. The holders of authorisations are required to maintain the levels of generation capacity stipulated in them and to provide the Administration with any information required with regard to events affecting the conditions that determined their award.

Any non-compliance with the conditions and requirements set out in the authorisations or any substantial variation in the facts that led to their being granted may lead to their revocation in the terms set out in the applicable penalising arrangements.

7. Generation activity shall include the transformation of electric power and, if relevant, its connection to the transmission grid or distribution network.

Article 22. Hydraulic resources use necessary for electricity generation.

1. When an administrative authorisation or licence is required to set up electricity generation units under Act 29/1985, dated August 2nd, on Water Resources, the provisions of the aforementioned Act shall apply.

2. When the State is the authority responsible for both water and energy matters, the authorisation for generation units and the licence for the use of the water resources needed by the former for its purposes may be covered by a single procedure and one decision, with the participation of the government departments or, where applicable, the river basin authorities responsible, in the manner and under the regulations legally established, without prejudice to the actual responsibilities of each department.

With regard to hydroelectric operations, the authorisation must conform to the provisions of article 21.

3. The procedure for the granting of licences and authorisations for the use of water resources for electricity generation or that necessary for the operation of non-hydraulic generation units as submitted by individuals must involve a prior report from the Administration responsible for energy matters

which must authorise the aforementioned generation units in line with the stipulations of this Act.

The authorisations and licences for the purposes mentioned in the paragraph above may not be granted when the report issued by the Administration responsible for authorising the generation units is negative.

Article 23. Generation market. Bidding system.

1. Electricity generators shall put forward economic selling bids for power through the market operator for each of the generation units they own whenever they are not covered by bilateral trading systems whose characteristics exclude them from the bidding process.

Those electricity generation units with an installed power of more than 50 Mw or, when this Act comes into force, that are subject to the system set out in Royal Decree 1538/1987, dated December 11th, on the determination of the tariff for the companies managing the public service, shall be obliged to make economic bids to the market operator for each scheduling interval except in the cases stipulated in article 25 of this Act.

Whenever their installed power is less than 50 Mw and more than 1 Mw, the electricity generation units not included in the point above may make economic bids to the market operator for those scheduling intervals they deem appropriate.

2. The minimum advance notice for bids to be made to the market operator, their horizon, the scheduling interval and the operating system, shall all be stipulated in regulations.

3. The order in which the electricity generation units are to be brought into service shall be determined starting from the one that has made the lowest bid until the demand for power in that scheduling interval has been met, without prejudice to any possible technical restrictions that might exist in the transmission grid or in the system.

Article 24. Demand for the power generated and its trading.

1. Electric power may be freely traded under the terms set out in this Act and in the Regulations developing it.

2. The qualified consumers and qualified agents referred to in article 9.3 of this Act may submit through the market operator bids to purchase electric power which, once accepted, would constitute a firm commitment for supply by the system.

The conditions whereby the aforementioned purchasing bids are to be made and the cases in which the request by the market operator for sufficient

payment guarantees would be fair and appropriate shall be stipulated by regulations. Likewise, the procedures required to incorporate demand into the bidding process may be regulated.

The purchasing bids made through the market operator must set out the time interval for which said supply is being requested and the acceptance of the settlement made.

The trading contract shall be deemed to be executed at the moment when the bids are matched and shall be perfected when the supply of electric power has been carried out.

3. Trading contracts may also be executed between qualified consumers and other qualified agents. These contracts must cover the power purchasing price, the time interval for the supply and the settlement system which might be at the market price or for differences with regard to that price. Exactly which elements of these contracts must be notified to the market operator shall be determined by regulations.

4. Different trading options shall be governed through regulations. For instance, the existence of contracts such as contracts of a financial nature that will abide by the bidding system, together with formal supply contracts made directly between qualified consumers and generators that will be exempted from the bidding system shall be regulated.

Article 25. Exceptions to the bidding system.

1. The Government may set up procedures that are compatible with the free competition market in generation in order to ensure the operation of the electric power generation units that use domestically produced primary energy fuel sources up to a limit of 15% of the total primary energy needed to generate the electricity required by the domestic market, as considered in annual periods, by taking the necessary measures aimed at avoiding any alteration in the market price.

2. Pursuant to Chapter II of this Title, the generators of electric power under the special system may incorporate their surplus power into the system without being subject to the bidding process.

3. Self-generators may incorporate their power into the system when the purpose of this power is to supply their own installations, those of their parent company or those of their subsidiaries when they hold the majority stake, and they must pay the permanent costs of the system in the proportion stipulated by regulations whenever that supply requires the use of transmission or distribution networks. If, once this supply has taken place, these same self-generators have surplus power, such surplus power would be subject to the stipulations set out in this Act for the ordinary system unless their generation is carried out under the special system.

To this end, those Spanish or foreign companies that directly or indirectly carry out any of the regulated activities referred to in point 2 of article 11 shall not be regarded as self-generators.

4. In accordance with the provisions of article 12, the generation of electric power on the islands and outside the Spanish peninsula may be excluded from the bidding system.

5. Intra-Community and international exchanges which under article 13.4 of this Act may be carried out by the system operator shall be excluded from the bidding system as will those operations involving the sale of power to other systems as stipulated by regulations.

6. Under article 24.4. of this Act, the types of contracts whose characteristics exclude them from the bidding system may be stipulated by regulations.

7. Those generation units which are not obliged to make economic bids pursuant to this article may receive remuneration for the sale of power equivalent to the marginal price for each scheduling interval in accordance with the stipulations of article 16, without prejudice to the special features of the remunerative system that might apply to them under this Act.

Nevertheless, all generation units referred to in this article must notify the market operator in the terms set out by regulations of the forecast generation for each scheduling interval.

8. In the cases set out in point 2 of article 10, the Government may take steps that directly or indirectly lead to an alteration in the bidding system.

Article 26. Rights and obligations of electricity generators.

1. Generators of electric power shall be entitled to:

a) Use in their generation units those primary energy sources they deem most suitable, whilst abiding by the outputs, technical characteristics and environmental protection conditions contained in the authorisation for that particular installation.

b) Contract the sale of electric power under the terms set out in the Act and the provisions developing it.

c) Dispatch their power through the system operator.

d) Have access to transmission and distribution networks.

e) Receive the remuneration that is due to them under the terms set out in this Act.

f) Receive the compensation they may be entitled to for the costs that they have incurred in any case of alterations made to the way the system works, as provided for in article 10.2 of this Act.

2. Generators of electric power shall be obliged to:

a) Carry out all those activities necessary to generate electric power under the terms set out in their authorisation and with particular reference to security, availability and maintenance of the installed power and compliance with environmental standards.

b) Submit selling bids for electric power to the market operator under the terms set out in article 23.

c) Be equipped with the metering apparatus enabling the power actually flowing into the corresponding network to be determined.

d) Abide by the conditions governing the way the bidding system works, particularly with regard to the procedure for settlement and payment of the power.

e) Enforce the measures that may be adopted by the Government pursuant to article 10 of this Act.

f) Satisfy any other obligations that may arise from the enforcement of this Act and the legislation developing it.

CHAPTER II

Special system

Article 27. Special system of electricity generation.

1. Electricity generation activities shall be regarded as generation under the special system in the following cases whenever they are carried out from installations whose installed power is no greater than 50 Mw:

a) Self-generators using cogeneration or other forms of electricity generation associated with non-electricity operations, provided they involve high energy output.

b) Whenever non-consumable renewable energies, biomass or biofuels of any type are used as primary energy, provided their holder does not engage in generation activities under the ordinary system.

c) Whenever non-renewable waste is used as primary energy.

The generation of electricity from reduction and treatment installations using waste from the farming, livestock and services sectors with an installed power equal to or less than 25 Mw shall also be regarded as generation under the special system whenever high power output is obtained.

2. Generation under the special system shall be governed by specific provisions and, in cases not provided for in these special provisions, by the general regulations on electricity generation where applicable.

The status of a generation installation falling under this special system shall be granted by the relevant bodies in the Autonomous Regions with responsibilities in this area.

Article 28. Authorisation for generation under the special system.

1. The construction, operation, substantial modification, transfer and shutdown of electricity generation installations under the special system shall be subject to prior administrative authorisation procedures as regulated.

The installations authorised for this type of electricity generation shall be given differentiated treatment according to their particular conditions, albeit without any type of discrimination or privileges between them.

2. Applicants for these authorisations must certify adequate technical and safety conditions for the proposed installations, proper compliance with environmental protection standards and adequate legal, technical and financial capacity for the type of generation they are to engage in. Furthermore, once the authorisations are granted, their holders must furnish the responsible Administration with periodic information on all matters that may affect the conditions that determined their award.

3. The authorisations referred to in point 1 shall be granted by the Autonomous Regional Administration without prejudice to any licences and authorisations that may be necessary in accordance with other provisions that may apply and, in particular, those relating to territorial planning and regulation and the environment.

The lack of any explicit decision regarding the applications for authorisation referred to in this article shall mean the rejection of the application. However, an ordinary appeal may be lodged to the relevant administrative authority.

Any non-compliance with the conditions and requirements established in the authorisations, or any substantial variation in the facts that determined their award may lead to their revocation.

Article 29. Use of the power generated under the special system.

The surplus power defined in article 30.2.a) shall be subject to the principles of regulation in Title II and those in Titles III and IV of this Act that may apply.

Article 30. Obligations and rights of generators under the special system.

1. Electricity generators under the special system shall be obliged to satisfy the following general obligations:

a) Apply safety standards and technical and standardisation certification regulations for installations and instruments as stipulated by the responsible Administration.

b) Comply with technical generation standards as well as those for transmission and for the technical management of the system.

c) Maintain the installations in the best possible operating conditions so as to avoid causing any harm or damage to people or installations owned by third parties.

d) Furnish the Administration with information on generation, consumption and the sale of power and on any other matters which may be laid down.

e) Properly comply with environmental protection requirements.

2. Generators under the special system shall be entitled to:

a) Incorporate their surplus power into the system, for which they will receive the remuneration determined in accordance with this Act.

For these purposes, surplus power shall be considered to be that which is the result of the momentary balances between the electricity transferred to the general grid and that received from it at all the interconnection points between generator-consumer, the generator or the self-generator and the general grid.

As an exception, the Government may authorise installations under the special system using renewable energies as a primary energy source to incorporate all the power they produce into the system. Nevertheless, whenever electricity supply conditions make it expedient, and following a report from the Autonomous Regions, the Government may limit for a certain period of time the amount of electricity that may be incorporated into the system by generators under the special system.

b) Connect their installations in parallel to the corresponding distribution or transmission company's network.

c) Use jointly or alternatively in their installations the power they purchase through other agents.

d) Receive from the distribution company the electric power supply they need under conditions set out by regulations.

3. The remuneration arrangements for electric power generation installations under the special system shall satisfy the stipulations of point 1 of article 16 for electric power generators.

4. In addition, the generation of electric power using non-hydraulic renewable energies or biomass, and by hydroelectric power stations whose power is equal to or less than 10 Mw shall receive a premium set by the Government so that the price of the electricity sold by these installations lies somewhere between the range of 80 to 90% of the average price of electricity calculated by dividing the revenue from electricity supply billing by the power supplied. The items used for the calculation of said average price shall be worked out exclusive of VAT and of any other tax levied on the consumption of electricity.

To work out the premiums, the voltage level on delivery of the power to the network, the effective contribution to environmental improvement and to primary energy saving and energy efficiency and the investment costs incurred shall all be taken into account so as to achieve reasonable profitability rates with reference to the cost of money on capital markets.

However, for the electricity generation installations referred to in article 27.1. c) of the first paragraph and in the second paragraph, for installations generating electricity through renewable energies - even when their installed power is higher than 50 Mw - and for hydroelectric power stations whose power stands at between 10 and 50 Mw, the Government shall work out the premium to be received to supplement the remuneration system.

As an exception, the Government may set a premium for solar energy over and above the limits specified in this article.

5. After seeking the views of the Autonomous Regions, the Government shall determine the right to the receipt of a premium supplementing the remuneration system for those electricity generation installations using non-consumable and non-hydraulic renewable energies, biomass, biofuels or waste from the farming, livestock or services sectors as primary energy, even when the installed capacity of the electricity generation installations is greater than 50 Mw.

Article 31. Registration in the Administrative Register of Electricity Generation Installations

Electricity installations falling under the special system must be entered in the Administrative Register of Electricity Generation Installations referred to in point 4 of article 21 of this Act. In each case, the entry shall specify the remunerative arrangements that apply.

TITLE V

ECONOMIC AND TECHNICAL MANAGEMENT OF THE ELECTRICITY SYSTEM

Article 32. Economic and technical management.

In order to ensure the correct functioning of the electricity system within the framework established by this Act, it is the responsibility of the market operator and the system operator respectively to take on the necessary tasks to perform the economic management referring to the effective development of the electricity generation market and the guarantee of the technical management of the electric power system.

Article 33. Market operator.

1. As the figure responsible for the economic management of the system, the market operator undertakes the management of the system of electricity purchasing and selling bids under the terms set out by law.

The market operator shall perform its functions with due respect for the principles of transparency, objectiveness and independence, under the monitoring and control of the Market Agents Committee referred to in point 4 of this article.

The market operator shall be a business entity whose shareholding structure may be formed by any individual or body corporate provided that their total direct or indirect stake in the company's share capital is no greater than 10%. Likewise, the sum total of the direct or indirect stakes of agents carrying out activities in the electricity sector must be no greater than 40%, and these shareholdings may not be syndicated under any circumstances.

2. The following shall be the functions of the market operator:

a) The receipt of the selling bids issued for each scheduling interval by the owners of electricity generation units.

b) The receipt and acceptance of the electricity purchasing bids and, where applicable, the appropriate guarantees.

c) The matching of selling and purchasing bids, starting on the basis of the lowest bid until demand is met in each scheduling interval.

d) The notification to the owners of generation units as well as to distributors, retailing agents, qualified consumers and to the system operator, of the results of the matching of bids, the scheduling of the power brought into the grid stemming from this and the marginal price of the electricity.

e) The receipt of information from the system operator regarding any alterations made to the matching on account of technical alterations or exceptional circumstances in the transmission grid or, where applicable, the distribution network.

f) The calculation of the final prices of power generation for each scheduling interval and their notification to all the agents involved.

g) The settlement and notification of payments and payment collection that must be made by virtue of the final price of the power resulting from the system, from the actual operation of the generation units, from the availability of the generation units in each scheduling interval and from those other costs that may be legally determined.

h) The receipt of information regarding the agents that have approached the system operator so that the system operator can confirm any circumstances that justify the exemption from requesting bids.

i) The publication of information on the evolution of the market with the stipulated regularity.

j) Any other functions that may be assigned to it by law.

3. The market operator shall have direct access to the Administrative Register of Electricity Generation Installations referred to in point 4 of article 21, as well as to the Register of Distributors, Retailing Agents and Qualified Consumers referred to in point 4 of article 45 and it shall coordinate its actions with the system operator.

4. The Market Agents Committee is hereby set up to supervise the way the economic management of the system works and to propose any measures that may lead to an improvement in the way the generation market works.

All agents with access to the market, together with the qualified consumers and the market operator and the system operator, are represented on the Committee of Market Agents.

The composition and functions of this body shall be developed through regulations.

Article 34. System operator.

1. As the figure responsible for the technical management of the system, the system operator's function shall be to guarantee the continuity and security of the electricity supply and the proper coordination of the generation and transmission system.

The system operator shall perform its functions in coordination with the market operator, according to the principles of transparency, objectiveness and independence.

The system operator shall be a business entity whose shareholding structure may be formed by any individual or body corporate, provided that their total direct or indirect stake in the company's share capital is no greater than 10%. Likewise, the sum total of the direct or indirect stakes of agents carrying out activities in the electricity sector must be no greater than 40%, and these shareholdings may not be syndicated under any circumstances.

The firm acting as the system operator shall have the proper separate accounting procedures for its technical management and transmission activities.

2. The system operator shall perform the following functions:

a) Give guideline forecasts and control the level of guaranteed supply of electricity in the system in the short and medium term.

b) Make short and medium-term forecasts, in coordination with the market operator, on the use of generation facilities, especially the use of hydro-electric reserves in accordance with demand forecasts, the availability of electricity facilities and the different hydraulic-related circumstances that might arise within the forecast period.

c) Schedule, using market criteria, the functioning of the electricity installations on the basis of the result of the matching of bids as notified by the market operator, the exceptions to the bidding system that may arise under the provisions of article 25 and the technical restrictions of the system.

d) Issue the necessary instructions for the proper operation of the generation and transmission system in line with the criteria of reliability and security laid down and manage the complementary services market that may be required to this end.

e) Determine the capacity of use of international interconnections and set up short term electricity exchange programmes with foreign electricity systems under the terms set out in article 13.4 of this Act.

f) Receive the necessary information on the maintenance plans for generation units, failures or other circumstances that may entail the exception from the obligation to submit bids under article 25 of this Act in order to verify them with the procedure laid down by regulations and which it will notify to the market operator.

g) Coordinate and modify, where applicable, the maintenance plans for transmission installations in order to ensure their compatibility with the

maintenance plans of the generation stations and sufficient availability of the network to guarantee the security of the system.

h) Set up and control performance reliability measures for the generation and transmission system, including any element in the electricity system that may be necessary, together with the contingency plans to restore service in the event of a general failure in the supply of electricity and coordinate and monitor their implementation.

When, as a consequence of the above, the order in which the electricity generation units are brought into service as a result of the matching of bids has to be varied, the system operator shall make every effort to abide by the economic priority order of said matching.

i) Collaborate with the market operator in the settlement of power.

j) Implement, within the scope of its functions, any decisions that may be taken by the Government to enforce the provisions of point 2 of article 10.

k) Issue operating instructions for the transmission grid including international interconnections for its manipulation in real time.

l) Carry out any other activities relating to the ones above that may be appropriate for the provision of the service, as well as any other functions that may be assigned to it by the provisions in force.

TITLE VI

ELECTRICITY TRANSMISSION

Article 35. Electricity transmission grid

1. The electricity transmission grid is made up of lines, equipment units, transformers and other electrical elements with voltages equal to or above 220 KV and any other installations, regardless of their voltage, whose functions include transmission or international interconnection and, where applicable, interconnections with Spanish electric power systems located on islands or outside the peninsula.

Any assets involving communications, protection, control, auxiliary services, land, buildings and other auxiliary items, whether electrical or not, which are required for the proper operation of specific transmission grid installations as defined above are also deemed to be elements making up the transmission grid.

2. The manager of the transmission grid shall be responsible for the development and expansion of the high voltage transmission grid defined in this article so as to guarantee the maintenance of and improvements to a network structured according to uniform, consistent criteria. Likewise, the manager of the transmission grid shall be responsible for managing any transit of electricity between foreign systems using Spanish electricity system networks.

The transmission grid manager may also engage in transmission activities under the terms set out in this Act.

3. Any technical standards that are required to guarantee the reliability of the supply of electricity and of the transmission grid installations and those connected to it shall be duly established. These standards shall take into account generally accepted criteria and shall be objective and non-discriminatory.

Article 36. Authorisation of electricity transmission installations.

1. The construction, operation, modification, transfer and shutdown of transmission installations covered by article 35.1 shall require prior administrative authorisation under the terms set out in this Act and in the regulations developing it.

An administrative authorisation for the shutdown of an installation may impose the obligation to dismantle it on the holder.

2. Applicants for authorisations for electricity transmission installation must adequately certify the following:

a) The technical and safety conditions of the installations and associated equipment.

b) Proper compliance with environmental protection requirements.

c) The characteristics of the installation's location.

d) Their legal, technical and financial-economic capacity to implement the project.

3. The authorisations referred to in point 1 shall be granted by the responsible Administration, without prejudice to any licences and authorisations required, in accordance with other applicable provisions and especially those relating to territorial planning and regulation and the environment.

The lack of an explicit decision regarding any applications for authorisation referred to in this article shall mean the rejection of said application. However, an ordinary appeal against this decision may be lodged to the relevant administrative authority.

In the case of transmission installations whose authorisation must be granted by the Autonomous Regions, these Regions shall request a prior report from the State Administration in which the latter will state the possible effects of the planned installation on the development plans for the grid, the technical management of the system and the economic arrangements regulated by this Act, which the authorising Administration must take into account in the granting of the authorisation.

The criteria determining whether the authorisations are awarded or not shall take into account the technical qualifications of the applicants and the circumstances of the installation within the electricity system as a whole, among other circumstances.

Authorisations for the construction and operation of transmission installations may be granted by means of a procedure ensuring competition that shall be initiated and decided by the responsible Administration. In this case, the State Administration report shall, in addition, set out the basic specifications for the competitive tender.

The tender specifications may include, where applicable, conditions relating to the use of the installation in the event of cessation of operation by the owner and which may involve its compulsory transfer or dismantling.

4. Holders of authorisations for transmission installations must be incorporated as Spanish companies or, where applicable, companies belonging to another European Union Member State with a permanent base in Spain.

Article 37. Content of authorisations for transmission installations.

1. Authorisations for transmission installations shall contain all the requirements that must be fulfilled during their construction and operation.

Owners of electricity transmission installations shall have the following rights and obligations.

a) To carry out their activities in the manner authorised and in accordance with the applicable provisions, providing transmission services on a regular and continuous basis with the quality standards that may be determined and keeping the installations in good repair and optimum technical condition.

b) To make the installations available for energy movements arising out of the provisions of this Act and to allow all authorised agents to use their transmission networks under non-discriminatory conditions in accordance with technical transmission standards.

c) To operate and maintain the installations they own in accordance with the instructions and guidelines referred to in point k) of article 34.2.

d) Acknowledgement by the Administration of a remuneration for the activities they carry out within the electric power system under the terms laid down in Title III of this Act.

e) To demand that the installations connected to those they own satisfy the stipulated technical requirements and are properly used.

2. Any non-compliance with the conditions and requirements set out in the authorisations or any substantial variation in the facts that determined their award may lead to their revocation.

Article 38. Access to transmission networks.

1. Transmission installations may be used by agents and qualified consumers and by those authorised foreign agents pursuant to article 13. The price for the use of transmission networks shall be determined by the rate approved by the Government.

2. The manager of the transmission grid may only refuse access to the grid in the event that the necessary capacity is not available.

Any refusal must have justified grounds. The lack of necessary capacity may only be justified by criteria of security, regularity or quality of supplies, taking into account the requirements that may be stipulated to this end in regulations.

3. In those cases where disputes arise with regard to the enforcement of network access contracts, such disputes shall be settled by the National Electric Regulatory Commission pursuant to article 8 of this Act.

TITLE VII

ELECTRICITY DISTRIBUTION

Article 39. Regulation of distribution.

1. Electricity distribution shall be governed by the provisions of this Act and shall be subject to regulation taking into account the need to coordinate the way it works, the uniform legislation required, its joint remuneration and the powers and responsibilities of the Autonomous Regions.

2. The aim of the regulation of distribution is to set out and apply common principles that guarantee a suitable relationship between this and all other electricity activities, to determine the conditions for the transit of electricity through these networks, to ensure sufficient equality among those agents carrying out this activity in any part of the country and to establish comparable, common conditions for all electricity users.

This regulation shall consist of the basic legislation laid down, the provisions for the functioning and coordinated development of distribution networks nationwide and conditions for electricity transit through them.

3. The criteria for the regulation of electricity distribution to be established by taking into account electricity areas sharing common characteristics and linked to the formation of the transmission grid and that of this network with generation units shall be set by the Ministry of Industry and Energy following an agreement with the Autonomous Regions affected, with the aim of ensuring proper coordination of distribution activities.

Article 40. Authorisation of distribution installations.

1. The construction, modification, operation, transfer and shutdown of electricity distribution installations, regardless of their intended purpose or use, shall be subject to administrative authorisation.

An administrative authorisation for the closure of an installation may impose the obligation to dismantle said installation on its holder.

The responsible Administration shall refuse the authorisation when the statutory requirements are not duly met or when the company does not offer guarantees of the legal, technical and financial capacity required to undertake the proposed operation, or when it may have a negative effect on the way the system works.

Applicants must be incorporated as Spanish companies or, where applicable, companies from another European Union Member State with a permanent base in Spain.

2. The authorisation shall in no way be deemed granted on a monopoly basis, nor shall it grant exclusive rights.

3. The authorisations referred to in point 1 shall be granted by the responsible Administration, without prejudice to any licences or authorisations that may be required in accordance with any other applicable provisions and, in particular, those regarding territorial planning and regulation and the environment.

The lack of any explicit decision regarding applications for authorisation referred to in this article shall mean the rejection of said application. However, an ordinary appeal against this decision may be lodged to the relevant administrative authority.

Article 41. Obligations and rights of distribution companies.

1. Distribution companies shall be obliged to:

a) Supply electricity to tariff customers under the terms stipulated in the following Title.

b) Carry out their activities as authorised and in accordance with the applicable provisions, rendering distribution services on a regular and continuous basis, meeting the quality standards that may be set and keeping electricity distribution networks in good repair and optimum technical conditions.

c) Enlarge distribution installations whenever necessary to meet new electricity supply demand, without prejudice to the situation arising out of the application of the system stipulated by regulation for electricity service connections.

Whenever there are a number of distributors whose installations may be enlarged in order to cover new supplies and none of these distributors decides to undertake said enlargement the responsible Administration shall decide which of these distributors should do so by taking into account their conditions.

d) Notify the Ministry of Industry and Energy of any installation authorisations granted to them by other Administrations and of any relevant modifications to their activities for the purpose of cost acknowledgement in the determination of tariffs and the setting of their remuneration basis.

e) Furnish the Ministry of Industry and Energy and the responsible Administration with any information as required on prices, consumption, billing and sales terms and conditions as applicable to consumers, consumer breakdowns and volumes itemised according to types of consumption, together with any other information related to the activity they carry out within the electric power sector.

2. Distribution companies shall be entitled to:

a) Acknowledgement by the Administration of a remuneration for carrying out their activity within the National Electric Power System under the terms set out in Title III of this Act.

b) Purchase the electric power they need to supply their customers.

c) Receive the remuneration due to them for performing distribution activities.

3. The Government shall publish in the Official Government Gazette, the "*Boletín Oficial del Estado*", the different electricity areas into which the country is divided in accordance with point 3 of article 39, together with the distribution company or companies that are to act as network manager in each area.

The decision on what the electricity areas are to be and on who is to be the manager or managers of the network in each of the areas shall be taken after hearing from the distribution companies and following a report from the Autonomous Regions in question whenever the area comes under the territorial jurisdiction of more than one Autonomous Region and following an agreement with the relevant Autonomous Regions whenever the area is limited to the territorial jurisdiction of that Region.

The distribution network manager in each area shall lay down the criteria for the operation and maintenance of the networks, guaranteeing their security, reliability and efficiency in line with the applicable environmental legislation.

The network manager must treat any information it receives in the performance of its activity as confidential when disclosure of such information may lead to commercial problems, without prejudice to the obligation to furnish information to the Public Administrations arising out of this Act or the laws developing it.

Article 42. Access to distribution networks.

1. Distribution installations may be used by qualified agents and consumers and by those non-Spanish agents that may carry out intra-Community and international exchanges under the provisions of article 13 for electricity transit. The price set for the use of distribution networks shall depend on the rate approved by the Government.

2. The distribution network manager may only refuse access to the network in the event that the necessary capacity is not available.

Any such refusal must be made on justified grounds. The lack of necessary capacity may only be justified by criteria of supply security, regularity

or quality, taking into account the requirements stipulated by regulations to this effect.

3. Whenever disputes arise concerning the enforcement of network access contracts, these disputes shall be resolved by the National Electric Regulatory Commission pursuant to article 8 of this Act.

Article 43. Direct lines.

1. Qualified generators and consumers may request administrative authorisation for the construction of direct transmission or distribution lines, whose use would be excluded from the remuneration system stipulated in this Act for transmission and distribution activities.

2. Applicants for authorisations for the construction of direct lines must certify their legal, technical and economic capacity to undertake the work proposed, as well as the characteristics of the installation's location and compliance with environmental protection standards.

3. The construction of direct lines is excluded from the enforcement of the provisions on expropriation and rights of way set out in Title IX of this Act, and shall be subject to general legal stipulations.

4. Direct lines may only be used by those agents holding the administrative authorisation for them and by their installations or the subsidiaries in which they hold a significant stake. Access to them may not be granted to third parties.

For the use of the network to be opened up to third parties, its sale, transfer or contribution to a transmission or distribution company would be required so that the network in question becomes part of the general system.

TITLE VIII

ELECTRICITY SUPPLY

CHAPTER I

Supply to users and electricity demand-side management

Article 44. Supply.

1. Electricity supply to users shall be performed by the corresponding distribution companies in the case of tariff customers or by retailing companies in the case of consumers with the status of qualified customers.

2. Those bodies corporate wishing to act as retailers must receive prior administrative authorisation which shall be regulated and granted by the responsible Administration, taking into account compliance with any requirements stipulated in regulations and which shall certainly include the applicant's sufficient legal, technical and economic capacity. The application for an administrative authorisation to act as a retailer shall specify the territorial scope intended for the activity.

The authorisation shall in no way be deemed as granted on a monopoly basis and nor shall it grant exclusive rights.

To be able to purchase electric power to supply to their customers, the retailing companies covered under this point must be entered in the Register referred to in article 45.4 of this Act and must furnish the market operator with sufficient guarantees to cover their electricity demand as stipulated in regulations.

Article 45. Obligations and rights of distribution and retailing companies with regard to supply.

1. Distribution companies shall have the following obligations with regard to the supply of electricity. They shall be obliged to:

a) Cover the demand for new electricity supplies in the areas where they operate under equal terms and conditions and execute supply contracts in accordance with the requirements set by the Administration.

The conditions and procedures for the establishment of electricity service connections and the connection of new users to the distribution networks shall be legally stipulated through regulations.

b) Meter supplies in the manner stipulated in regulations, ensuring the accuracy of the metering and the accessibility of the metering apparatus in order to facilitate control by the responsible Administrations.

c) Charge consumers the appropriate tariff in accordance with the provisions of the State Administration.

d) Advise users in their choice of the most suitable electricity tariff for them.

e) Implement the demand-side management schemes approved by the Administration.

f) Encourage the rational use of energy.

g) Ensure the standard of service quality set out in regulations using the criteria of area differentiation and types of consumption as referred to in the chapter below.

h) Purchase the power they need to carry out their activities, paying for such purchases under the settlement procedure established for this purpose.

2. Retailing companies shall have the following obligations with regard to supply. They shall be obliged to:

a) Meter supplies directly or through the relevant distributor in the manner stipulated by regulations, ensuring the accuracy of the metering and the accessibility of the metering apparatus in order to facilitate control by the responsible Administrations.

b) Implement the demand-side management schemes approved by the Administration.

c) Encourage the rational use of energy.

d) Purchase the power they need to carry out their activities, paying for such purchases under the settlement procedure established for this purpose.

3. Distribution and retailing companies shall be entitled to:

a) Demand that user installations and reception apparatus meet the technical and construction specifications that may be set, and their proper use and compliance with the conditions laid down so that supply can take place without its quality being deteriorated or diminished for other users.

b) Bill and collect payment for the supply carried out.

4. An Administrative Register of Distributors, Retailing Agents and Qualified Consumers is hereby created in the Ministry of Industry and Energy. Following a report from the Autonomous Regions, the procedure for entries to be made in the Register and the notification of information to the Registrar, together with the organisation of the Register, shall be established.

Registration in the Administrative Register of Distributors, Retailing Agents and Qualified Consumers shall be a prerequisite for the submission of electricity purchasing bids to the market operator.

The Autonomous Regions with powers and responsibilities in this area may create and manage the relevant territorial registers in which all the installations located within their territorial jurisdiction must be entered.

Article 46. Demand-side management schemes.

1. Distribution and retailing companies, in coordination with the different agents that have an effect on demand, may develop action schemes which improve the service rendered to users and enhance energy efficiency and savings by means of suitable electricity demand-side management.

The achievement of the objectives set out for these schemes may lead to the acknowledgement of the costs incurred in their implementation in accordance with the provisions of Title III. For acknowledgement purposes, these schemes must be approved by the Ministry of Industry and Energy following a report from the Autonomous Regions within their territorial jurisdiction.

2. Notwithstanding the above, the Administration may take steps to foster improvements in the service to users and energy efficiency and saving, either directly or through economic agents, with the aim of saving energy and achieving greater efficiency in the end-use of electricity.

Article 47. Energy saving and efficiency plans.

1. Within the scope of their respective territorial jurisdictions, the State Administration and the Autonomous Regions may use energy saving and efficiency plans to lay down the basic standards and principles in order to foster activities aimed at achieving the following goals:

a) Optimisation of the output of energy transformation processes inherent in generation or consumption systems.

b) Analysis and control of the development of projects to create industrial plants that consume large amounts of energy according to national energy profitability criteria.

c) Improvements in output or the replacement of the type of fuel used in companies or industries with high energy consumption in the national interest.

Whenever these energy saving and efficiency plans provide for activities subsidised by public funds, the aforementioned Administrations may require the participating individuals or bodies corporate to submit an energy audit of the results achieved.

CHAPTER II

Electricity supply quality

Article 48. Electricity supply quality.

1. Electricity supply must be carried out by companies holding the authorisations provided for under this Act, with the characteristics and continuity that may be determined for the country through regulations, taking into account the area differentiation referred to in the point below.

To do so, electricity companies shall have the necessary staff and resources to guarantee the quality of service demanded by the regulations in force.

Electricity companies, especially distribution and retailing companies, shall foster the incorporation of advanced technologies for the measurement and control of the quality of electricity supply.

2. The State Administration shall lay down action strategies as regards service quality with the aim of achieving quality objectives, both for end-consumption and those areas whose demographic characteristics or types of consumption make them suitable for differentiated targets to be set.

To implement these action strategies, action programmes shall be set up in collaboration with the Autonomous Regions and, without prejudice to any other steps, these may be taken into consideration for the acknowledgement of costs for remuneration purposes following a report from the responsible Administration to authorise the corresponding distribution installations verifying that these investments meet the planned quality objectives.

The State Administration shall determine target indices of service quality and a range of values within which those indices may vary that must be met both on the level of individual users and for each geographical area serviced by a sole distributor. These indices must take into account the continuity of the supply with regard to the number of interruptions to supply and the duration of such interruptions and the quality of the product by reference to its voltage characteristics. Electricity companies shall be obliged to furnish the Administration with the adequately audited information required for the objective determination of quality of service. The data for the aforementioned indices shall be published annually.

Electricity companies may assert the existence of areas in which they are experiencing temporary difficulties to maintain the quality standard required. At the same time, they should submit a supply quality Improvement Plan that must be approved by the responsible Administration.

3. If distribution quality in an area is continuously low or entails serious problems for users, or if there is a combination of special circumstances that may jeopardise the security of the electricity service, the responsible Administration may set out guidelines for action to be taken by the distribution companies in order to restore service quality.

4. The procedure to work out the reductions that must be made to bills to be paid by users should it be confirmed that the individual service quality rendered by the company is lower than the statutory requirement shall be stipulated in regulations.

Article 49. Legal inspection authority.

1. The bodies attached to the responsible Administration shall carry out, on their own initiative or at the request of third parties, as many inspections and checks as may be necessary to validate the regularity and continuity of the provision of activities necessary for supply, and to ensure the safety of people and property.

2. The inspections mentioned in the previous point shall, at all times, ensure that the characteristics of the energy supplied are maintained within the officially authorised limits.

Article 50. Suspension of supply.

1. The electric power supply to consumers may only be suspended when this possibility is stated in the supply contract which may never claim technical or financial problems are making supply difficult, or in cases of force majeure or situations where the safety of people or property may be jeopardised, except for the provisions set out in the following points.

In the case of supply to qualified consumers, the conditions covering guarantee of supply and suspension as agreed shall apply.

2. Supply may be suspended temporarily, however, when this is essential for maintenance, security of supply, repairs of installations or service improvements. In all of these cases, the suspension shall require prior administrative authorisation and advance notice to users given in the manner set out in regulations.

3. Under the conditions to be stipulated in regulations, electricity supply may be suspended to private tariff consumers whenever at least two months have elapsed from the time when a demand note has been certified as made to them without the payment having been made. To this end, the demand note shall be sent using any means that allows its receipt by the party concerned or their representative to be recorded, together with the date, identity and its content.

In the case of Public Administrations, once two months have elapsed from the time when a demand note for payment has been certified as made to them, interest shall accrue at a rate equal to the legal money interest rate plus 1.5%. Should four months elapse from the first payment demand note being sent without the payment having been made, the supply may be interrupted.

In no event may electricity supply be suspended to those installations whose services have been declared as essential. The criteria to decide which services are to be regarded as essential shall be laid down in regulations. Nevertheless, distribution or retailing companies may accept the payments they receive from their customers that have supplies linked to services declared as essential when in a default situation on the payment of the bills corresponding to these services, regardless of the allocation that the customer - who may be private or public - may have charged to these payments.

4. Once payment of the amounts owing has been made by the consumer to whom supply has been suspended, this supply shall be restored immediately.

Article 51. Technical and security standards for electricity installations.

1. Electricity generation, transmission and distribution installations, together with those designed for electricity reception by users and the technical elements and materials for electricity installations must satisfy industrial technical and security standards pursuant to the Industry Act 21/1992, dated July 16th, without prejudice to the provisions of the relevant Autonomous Regional Government legislation.

2. The technical regulations mentioned in the point above aim to:

a) Protect individuals and the integrity and functionality of property that may be affected by the installations.

b) Achieve the required regularity of electricity supplies.

c) Establish standards to facilitate installation inspection, prevent over-diversification of electricity equipment and unify supply conditions.

d) Achieve maximum rationality and technical and financial use of the installations.

e) Increase the reliability of the installations and improvements to the quality of electricity supply.

f) Protect the environment and the rights and interests of consumers and users.

g) Achieve suitable efficiency standards in the use of electricity.

3. Without prejudice to any other authorisations regulated under this Act, and for the purposes set out in this article, the construction, enlargement or modification of electricity installations shall require the corresponding administrative authorisation prior to their initiation under the terms set out in regulations.

TITLE IX

EXPROPRIATION AND RIGHTS OF WAY

Article 52. Public utility.

1. Electricity generation, transmission and distribution installations are declared to be of public utility for the purposes of the compulsory expropriation of property and necessary rights for this activity and of the constitution and exercise of right of way.

2. This declaration of public utility covers the purposes of compulsory expropriation of electricity installations and their sites when for energy efficiency, technological or environmental reasons it is considered expedient to replace them with new installations or to substantially alter them.

Article 53. Request for declaration as public utility.

1. The company concerned must apply for the specific acknowledgement of the public utility of installations covered under the point above, including a specific, itemised list of the properties or rights that the applicant considers necessary to expropriate.

2. The request shall be made public and a report shall be obtained from the bodies affected.

3. Once the procedure has been completed, acknowledgement of public utility shall be approved by the Ministry of Industry and Energy if the authorisation of the installation corresponds to the State, without prejudice to the powers and responsibilities of the Council of Ministers in the event of opposition from public bodies, or by the responsible body in the Autonomous Regions in all other cases.

Article 54. Consequences of the declaration of public utility.

1. The declaration of public utility shall in all cases entail the need to take over the properties or acquire the rights affected and shall involve urgent takeover for the purposes of article 52 in the Compulsory Expropriation Act.

2. Likewise, it shall implicitly involve authorisation for the establishment of the electricity installation on or over lands of public domain, use or service or those owned by the State, the Autonomous Regions, or lands set aside for public use, owned directly or communally by provinces or municipalities, their works and services and areas of public right of way.

Article 55. Supplementary law.

With regard to the subject regulated in the previous articles, the provisions of general legislation on compulsory expropriation and of the Civil Code shall apply as supplementary legislation wherever appropriate.

Article 56. Right of way.

1. The right of way of electricity shall be regarded as a legal right of way, shall encumber the property of others in the manner and with the scope determined in this Act and shall be governed by its provisions and the provisions developing it and the legislation referred to in the preceding article.

2. Overhead right of way comprises the right to pass over the affected property together with the setting up of poles, pylons or fixed supports to hold up power transmission cables.

3. Underground right of way comprises occupation of the subsoil by conductor cables at the depth and with the other characteristics provided for in the applicable land development legislation.

4. Both types of right of way shall also include the right of passage or access and temporary occupancy of land or other properties necessary for the construction, supervision, maintenance and repair of the corresponding installations.

Article 57. Limits on the constitution of rights of way.

Right of way for high voltage lines may not be imposed:

a) Over buildings and their yards, farmyards, schools, sports fields, gardens and orchards that may be enclosed, annexed to houses which already exist when the right of way is granted, provided that the area of the orchards and gardens is less than half a hectare.

b) Over private property of any kind if it is technically possible to install the line, without varying its path any more than may be legally allowed, over land subject to public domain, use or service or land that is owned by the State, Autonomous Regions, provinces or municipalities or by following boundaries of privately-owned estates.

Article 58. Civil relationships.

1. Easement of electricity right of way does not prevent the owner of the encumbered property from enclosing it or building on it provided that the right of way is left free and provided that it is so authorised by the responsible Administration which shall take into special account the legislation in force with regard to safety.

The owner may also request changes in the path of the line if there are no technical difficulties to prevent it and in which case said owner must bear the costs of the alteration.

2. Any alteration to the path of a line as a result of projects or plans approved by the Administration shall entail the payment of the cost of this alteration.

TITLE X

BREACHES AND PENALTIES

Article 59. General principles.

1. The actions and omission detailed in the following articles are regarded as administrative breaches.

2. The administrative breaches stipulated in this act shall be deemed without prejudice to any civil and criminal liabilities or liabilities of any other kind that may be incurred by the companies responsible for electricity activities or their users

Article 60. Very serious breaches.

The following are very serious breaches:

1. Failure to comply with the conditions and requirements applying to installations in such a way that entails a clear danger for people and property.

2. Failure to comply with the instructions of the market operator or the system operator or the provisions for purchasing and settlement of power._

3. The use of instruments, apparatus or elements subject to industrial safety that do not comply with the statutory standards whenever they jeopardise or seriously damage people, property or the environment.

4. The interruption or suspension of the electricity supply to an area or population group without the legal requirements to justify it.

5. The refusal to supply electricity to new users for no justified reason.

6. The refusal to allow the statutory checks or inspections as agreed in each case by the responsible Administration, by the National Electric Regulatory Commission or the prevention of the same.

7. Charging consumers tariffs that have not been authorised by the Administration.

8. Charging authorised tariffs in an improper manner so that the prices are altered by more than 15%.

9. Failure to comply with the obligations arising out of the application of the tariff system or the payment collection criteria.

10. Any other action linked to electricity supply or consumption which involves an alteration of more than 15% in the amount actually supplied or consumed.

11. The refusal, when this is not simply an occasional or isolated case, to furnish the Administration or the National Electric Regulatory System with the information it requests or to allow statutory accounting checks and control.

12. The unauthorised reduction of electricity generation or supply capacity.

13. The performance of incompatible activities under the provisions of this Act.

14. The performance of electricity activities without the proper authorisations or in installations that lack such authorisations.

15. Regular failure to comply with instructions issued by the responsible Administration on the enlargement, improvement or adaptation of electricity networks and installations with the aim of ensuring suitable service provision and continuity of supply.

16. The non-submission of bids, when this is not merely an occasional or isolated case, to the market operator by electricity generation installations that are obliged to do so in accordance with this Act without any confirmation from the system operator.

17. The non-maintenance of the accounting required under this Act or its maintenance with essential flaws or irregularities that prevent a true picture of the assets and financial position of the entity from being gained.

18. The performance of practices aimed at falsifying the free formation of prices in the generation market.

19. The unjustified refusal of access to the transmission or distribution network.

20. Serious breaches when a definite penalty for the same type of breach has been imposed on the offender some time during the three years prior to the commission of this breach.

21. Repeated failure to achieve the objective service quality indices and the non-drawing up of Improvement Plans for service quality as set out in article 48.2 of this Act.

Article 61. Serious breaches.

The actions detailed in the article above are regarded as serious breaches when the circumstances involved prevent them from being considered as very serious and, especially:

1. The occasional and isolated case of refusal to furnish the Administration or the National Electric Regulatory Commission with the information it requires under the provisions of this Act.

2. Failure to comply with safety measures even when these do not entail any clear danger for people and property.

3. Any unjustified delay in the commencement of provision of service to new users.

4. Failure to comply with the instructions issued by the responsible Administration on the enlargement, improvement and adaptation of electricity networks and installations aiming to ensure adequate service and continuity of supply.

5. Repeated non-compliance in the consumption of electricity required from the market operator by qualified consumers, distributors and retailing agents.

6. The improper charging of authorised tariffs so as to alter the price by more than 5% and less than 15%.

7. Any other action in the supply or consumption of electricity that may entail an alteration of more than 10% to the power actually supplied or consumed.

8. The incorporation of power to the system by generators covered by the special system in a manner other than the one set out in article 30. 2.a) in this Act.

9. The non-submission of bids to the market operator by electricity generation installations that are obliged to do so under this Act without any confirmation from the system operator.

10. Unjustified delays attributable to the market operator when exercising its function of matching bids or settlement.

11. Unjustified delays attributable to the market operator as regards the notification of the results of the settlement or its duty to furnish information on the market evolution.

12. Any action taken by the system operator when deciding on the order in which electricity generation installations are brought into service that may entail an unjustified alteration of the result of the matching of bids.

13. The refusal or confirmation of the authorisation referred to in article 34.2.f) without sufficient justification.

14. The failure of the system operator to provide the market operator with punctual notification of the relevant information for settlement purposes.

15. Failure to achieve the service quality indices set out in article 48.2 of this Act.

Article 62. Minor breaches.

Those infringements of compulsory rules covered in this Act and in the legislation developing it that do not constitute either a serious or very serious breach in pursuance of the two articles above are regarded as minor breaches.

Article 63. Determination of penalties.

The following circumstances shall be taken into account when determining the corresponding penalties.

1. The danger caused by the breach to the life and health of persons, the safety of things and the environment.

2. The importance of the damage or deterioration caused.

3. The damage caused to the continuity and regularity of supply.

4. The level of involvement in the action or omission classified as a breach and the gain obtained from it.

5. Premeditation to commit the breach and any reiteration of it.

6. Recidivism within one year in the commission of more than one breach of the same type when this has been so declared by final judgement.

Article 64. Penalties.

1. The breaches defined in the preceding articles shall be penalised as follows:

- Very serious breaches, with a fine of up to Ptas.500,0000,000.
- Serious breaches, with a fine of up to Ptas.100,000,000.
- Minor breaches, with a fine of up to Ptas.10,000,000.

2. Whenever the breach leads to a quantifiable gain, the fine may total up to twice the amount of the gain obtained.

3. The amount of the penalty shall be adjusted to take into account proportionality criteria and the circumstances stipulated in the previous article.

4. Should the infringement persist after sufficient time has elapsed for it to cease new fines may be levied following the opening of the relevant penalising procedures.

5. The commission of a very serious breach may entail the revocation or suspension of the administrative authorisation and the consequent temporary barring from operating in the market for a maximum period of one year. The revocation or suspension of the authorisations shall be approved in all cases by the authority responsible for granting them.

To this end, the Administration involved in the case shall inform the responsible authority of the facts.

Article 65. Penalising procedure.

The procedure for imposing penalties shall conform to the principles of articles 127 to 138 of Act 30/1992, dated November 26th, on the Legal Regime for Public Administrations and the Common Administrative Procedure, and the provisions of Royal Decree 1398/1993, dated August 4th, or the relevant Autonomous Regional Government legislation, without prejudice to any special procedures that may be established by regulations for the imposition of penalties as provided for in this Act.

Article 65. Responsibility for imposing penalties.

1. Within the scope of the State Administration's jurisdiction, very serious penalties shall be imposed by the Council of Ministers and serious penalties by the Minister of Industry and Energy. The imposition of minor penalties shall fall under the responsibility of the Director General for Energy.

2. Within the scope of the jurisdiction of the Autonomous Regions, the provisions of their own legislation shall apply.

Article 67. Lapsing of breaches and penalties.

The period after which the breaches detailed in this Chapter shall lapse is four years for very serious breaches running from the time they were committed, three years for serious breaches and one year for minor breaches.

The penalties imposed for very serious breaches shall lapse after four years, after three years for serious breaches and after one year for minor breaches.

ADDITIONAL PROVISIONS

First. Administrative control of electric utilities.

1. When failure to comply with the obligations of companies carrying out the activities and functions regulated under this Act may affect the continuity and security of the electricity supply and in order to guarantee its maintenance, the Government may approve administrative control of the relevant company pursuant to article 128.2 of the Constitution and may take appropriate steps to implement this.

For this purpose, the following shall constitute causes for administrative control of a company:

a) Suspension of payments or bankruptcy of the company.

b) Improper management of the activity whenever it may be attributed to the company and may give rise to its shutdown and the interruption of supply to users.

c) Any serious and reiterated lack of proper installation maintenance that may jeopardise their safety.

2. In the preceding cases, if the companies carrying on electricity activities and functions do so only through installations which have been authorised by an Autonomous Region, the administrative control shall be approved by the latter.

Second. Occupation by high voltage overhead lines of maritime-land areas in the public domain.

For the purposes set out in article 32 of the Coasts Act 22/1988, dated July 28th, in exceptional cases and for duly certified reasons of public utility, following the joint proposal of the Ministries of Public Works, Environment and Industry and Energy, and taking into account environmental and landscape values, the Council of Ministers may authorise the overhead running of high voltage lines over maritime-land public domain areas, provided they are not located on coastal stretches consisting of beaches or other areas subject to special protection.

Third. Consequences of the lack of explicit decisions.

Any applications for administrative rulings which must be issued in accordance with the provisions of this Act and specific legislation regulating nuclear issues may be regarded as rejected if an explicit decision is not given before the deadline set out to this effect in the provisions developing it.

Fourth. Amendment of articles 2 and 57 of the Nuclear Energy Act.

1. Point 9 of article 2 of Act 25/1964, dated April 29th, regulating Nuclear Energy, shall now read as follows:

"Article 2. Definitions.

9. "Radioactive waste" means any waste material or product which has no envisaged use and which holds or is polluted with radionuclides at activity concentrations or levels that exceed those set by the Ministry of Industry and Energy, following a report from the Nuclear Safety Council".

2. The first paragraph of article 57 of Act 25/1964, dated April 29th on Nuclear Energy, shall now read as follows:

"In the case of nuclear installations, the cover to be demanded under article 55 of this Act shall be Ptas.25bn. Nevertheless, the Ministry of Industry and Energy may set a different limit, not lower than Ptas.1bn, in the case of the transport of nuclear substances or any other activity whose risk does not require higher cover in the opinion of the Nuclear Safety Council. These amounts shall be raised by the Government, on the suggestion of the Ministry of Industry and Energy, whenever international commitments accepted by the Spanish State so require or whenever necessary after time has gone by or changes occur in the Retail Price Index in order to maintain the same level of cover."

Fifth. Amendment to Chapter XIV of the Nuclear Energy Act.

Chapter XIV of Act 25/1964, dated April 29th, regulating Nuclear Energy, shall now read as follows:

"CHAPTER XIV

Breaches and penalties with regard to nuclear issues

Article 91.

Without prejudice to any civil, criminal or any other type of liabilities which may be incurred by companies carrying out activities regulated by this Act, any acts and omissions involving failure to comply with or infringement of the provisions of this Act, of Act 15/1980, dated April 22nd, setting up the Nuclear Safety Council, and the regulations implementing it, shall be regarded as administrative breaches.

a) The following are very serious breaches:

1. The carrying out, without obtaining the mandatory authorisation, of any activity which requires one, in accordance with this Act or the regulations that develop it.

2. The continuance of an activity when the corresponding authorisation has been suspended or has expired, or not immediately ceasing or suspending the installation's operation when ordered to do so by the Nuclear Safety Council when there is the probability of a serious risk to the health and life of persons or the safety of things.

3. The performance of any activity regulated under this Act without securing adequate civil liability cover for any damages that it may cause in the manner and with the limits set out by law or regulations, except in matters referring to second and third category radioactive installations.

4. Failure to comply with the terms, requirements, obligations, limits, conditions or bans imposed in authorisations and licences or in official operating documents when such non-compliance entails a serious risk to the life and health of people and the safety of things.

5. The absolute refusal or reiterated resistance to cooperate or serious, wilful obstruction of inspection and control functions that are the responsibility of the Nuclear Safety Council.

6. The deliberate concealment of relevant information from, or supplying of false information to, the Administration or the Nuclear Safety Council whenever this behaviour entails a serious risk to people or things.

7. Failure to apply technical or administrative steps established generally or specifically for an activity, failure to meet the deadlines required for their implementation, and omission of the requirements or corrective steps necessary to satisfy legal provisions or regulations when in all cases a serious risk may be entailed to the life and health of people and the safety of things.

8. Failure to comply with or an unjustified delay in compulsory reporting in the case of emergencies which may entail a serious risk to people or property.

9. The handling, transfer or disposal in any form of radioactive substances or equipment producing ionising radiation subject to government control.

b) The following are serious breaches:

1. Failure to satisfy the applicable legal regulations or provisions or the terms and conditions of authorisations or official operating documents when this

does not constitute a very serious breach, except for those of minor significance.

2. The omission of corrective steps required to comply with legal provisions or the terms and conditions of authorisations and failure to apply the general or specific technical or administrative measures that may be established for an activity, or the failure to meet the deadlines specified for their implementation, when none of these cases constitutes a very serious breach.

3. The operation of radioactive installations that require the relevant declaration if this has not been made.

4. Failure to inform the authority that granted the authorisation or the Nuclear Safety Council of any temporary non-compliance with its terms and conditions.

5. The operation of category two and three radioactive installations without civil liability insurance cover for the damages which they may cause in the manner and within the limits set by laws or regulations.

6. The concealment of information from or submission of false data to the Administration or the Nuclear Safety Council whenever this does not constitute a very serious or a minor breach.

7. The prevention, hindering or delaying of inspections through acts or omissions, provided that this behaviour cannot be considered a very serious or a minor breach.

8. Unjustifiable failure or delay in mandatory reporting in cases of emergencies provided that they do not entail a serious risk to people or property.

c) The following are minor breaches:

1. Any delay in complying with administrative measures, whenever this does not constitute a serious or very serious breach.

2. Failure to provide information to the authorities that granted the authorisations or licences and to the Nuclear Safety Council, or the submission of incomplete, inaccurate, erroneous or delayed information which hinders the necessary control of installations or activities, whenever they do not constitute another breach and do not have serious consequences.

3. Non-cooperation in inspections when this is a mere delay in the compliance with the duty to supply information, establish communication or make an appearance.

4. Any breaches committed due to simple negligence provided that the attendant risk entailed is not great.

5. Any simple irregularity or merely formal non-compliance with legal or regulatory provisions when they are also of minor significance.

Article 92. Classification of breaches.

The following circumstances shall be taken into account when classifying breaches:

1. The danger arising from the breach to the life and health of people, the safety of things and the environment.

2. The importance of the damage or deterioration caused to people and things.

3. The extent of involvement and the gain obtained.

4. The failure to comply with prior warnings or orders made by the responsible authorities.

5. Premeditation or negligence in the commission of the breach and its reiteration.

6. Fraud and collusion in its perpetration.

7. Due diligence in identification of the breach and in its reporting to the responsible bodies, provided that suitable corrective steps are taken.

8. Recidivism within one year in the commission of more than one breach of the same type when this has been declared by final judgement.

Article 93.

1. In the case of category one nuclear and radioactive installations, breaches with regard to nuclear energy legislation shall be penalised as follows:

a) Very serious breaches, with a fine of up to Ptas.500,000,000.
b) Serious breaches, with a fine of up to Ptas.100,000,000.
c) Minor breaches, with a fine of up to Ptas.10,000,000.

2. Very serious and serious breaches may, jointly with the stipulated fines, entail the revocation or temporary suspension of permits, licences or authorisations.

The amount of the penalty shall be adjusted to take into account proportionality criteria and the circumstances stated in the previous article.

The fines may be reiterated over time until the behaviour constituting the breach ceases.

3. In the case of category two and three radioactive installations, the financial penalties shall be reduced at their maximum levels to half of those indicated above.

Article 94.

1. The procedure for imposing penalties shall conform to the procedural principles of articles 127 to 138 of Act 30/1992, dated November 26th, and the provisions of Royal Decree 1398/1993, dated August 4th.

2. The Nuclear Safety Council shall propose the initiation of the corresponding penalising proceedings with regard to those facts that might constitute a breach in the area of nuclear safety and radiological protection, informing the body responsible for filing the proceedings of both the breach observed and the relevant facts so that they may be evaluated and issuing any reports that may be necessary so that the facts covered by the enquiry may be properly assessed.

3. Within the jurisdiction of the State Administration, penalties for very serious breaches committed by the owners of category one nuclear or radioactive installations shall be imposed by the Council of Ministers and serious ones by the Minister of Industry and Energy. The imposition of minor penalties shall be the responsibility of the Director General for Energy.

In the case of penalties for breaches committed by the owners of category two and three radioactive installations, these shall be imposed by the Ministry of Industry and Energy if they constitute very serious breaches and by the Director General for Energy in the event of serious or minor infringements.

Within the jurisdiction of the Autonomous Regions, the provisions of their own legislation shall apply.

4. In all matters which do not conflict with the types of penalties described in the preceding articles and which are complementary to them, the system of breaches and penalties in force in the area of health protection against ionising radiation and the installation and use of X-ray equipment for diagnosis purposes shall remain in force.

5. In no event shall more than one penalty be imposed for the same event, although claims may be made for other liabilities that may be implied from other concurrent events or breaches.

Article 95.

The periods after which the breaches shall lapse under this Act will be five years for very serious breaches, three years for serious breaches and one year for minor ones. The aforementioned periods of time shall run from the time when the breach was committed and they shall be interrupted from the moment the proceedings are instituted against the alleged offender, with the interested party's knowledge.

No action may be brought for the imposition of a penalty under the provisions of this Act after the expiration of the following periods of time: five years for very serious breaches, three years for serious breaches and one year for minor ones. The lapsing periods shall run from the day on which a final judgement is given and shall be interrupted by the institution, with the interested party's knowledge, of the corresponding proceedings."

Sixth. Fund to finance the nuclear fuel second cycle.

The amounts collected from electricity tariffs, rates or prices, together with any financial yields they generate, that are intended to meet the expense of the works corresponding to the second stage in the nuclear fuel cycle and management of radioactive wastes produced by the electricity industry, shall be used to form a provision and this amount shall be deemed a deductible item for the purposes of Corporation Tax.

The same treatment shall be given to other forms of financing the expense of radioactive waste management.

The amounts making up the provision may only be invested in expenses, works, projects and fixed assets arising out of actions contemplated in the Plan for Radioactive Wastes approved by the Government.

The amounts intended to make up the provision referred to in this Provision shall be regarded as a cost of supply diversification and security under article 16.6 of this Act.

Seventh. Shutdown of nuclear power stations currently in moratorium.

The Eighth Additional Provision of the Electric Power System Act 40/1990, dated December 30th, is declared to be in force and is redrafted to read as follows:

1. The Lemóniz, Valdecaballeros and Trillo Unit II nuclear power station construction projects are declared definitively halted and the authorisations granted are cancelled

2. The owners of the construction projects that are halted shall receive, under the terms set out in this provision, compensation for their investments in them and the cost of their financing by means of the allocation for this purpose of a percentage of the turnover for sales of electricity to users.

The compensation must be fully paid up within a maximum term of twenty-five years beginning on January 20th, 1995.

The Ministry of Industry and Energy shall establish the procedure for calculating the annual amount necessary to pay off the compensation and, thus, the compensation amount still pending payment which shall be set on December 31st each year and broken down by projects and holders.

The interest linked to the compensation shall be determined by taking into account the interest rate on inter-bank deposits in pesetas plus a differential of 0.30.

Pursuant to point 7, should the owners of the halted construction projects assign to third parties the right to collect all or part of their compensation, the different interest rates applicable to the assigned amount shall be determined by taking into account the interest rate on inter-bank deposits in pesetas, plus a differential of up to 0.50. The circumstances in which assignment conditions may take place at fixed interest rates calculated by taking into account the interest rates for State issues plus a maximum differential of 0.50, and which would enable full payment of the compensation amounts pending payment at a fixed rate within the maximum period envisaged, shall be stipulated in regulations. In any event, the conditions for each assignment, including the applicable interest rates, must be authorised by Government approval.

3. The base value for this compensation as of January 20th, 1995, is set at Ptas.340,054,000,000 for the Valdecaballeros nuclear power station, Ptas.378,238,000,000 for the Lemóniz nuclear power station, and Ptas.11,017,000,000 for unit II of the Trillo nuclear power station.

The share-out of the compensation corresponding to each project among its proprietors shall be carried out according to the amounts and the manner that they agree. The agreements reached to this effect must be submitted to the Ministry of Industry and Energy for approval.

This base value shall be modified whenever necessary by the Ministry of Industry and Energy in order to take into account the disinvestments arising from the sales of equipment made after this date and the expenses resulting from maintenance, dismantling and closure programmes for the installations that may be authorised by the aforementioned Ministry.

Disinvestments must be authorised by the Ministry of Industry and Energy. The proprietors of the installations must, by means of procedures guaranteeing

free competition and suitable conditions of sale, carry out any disinvestments determined by the aforementioned Ministry.

Likewise, in order to caiculate the compensation amount pending payment, the Ministry of Industry and Energy shall take into account the disposal value of the land or sites of the installations or the properly substantiated market value, in the event that their proprietors start up operation.

4. The annual total represented by the compensation contemplated in this provision shall be at least Ptas.69,000,000,000 in 1994. This minimum amount shall be increased by 2 per cent each year until the amount to be compensated is fully paid up.

The amount resulting from applying the turnover percentage referred to in point 5 and the minimum amounts stated in the previous paragraph must be allocated to each of the installations whose construction projects have been definitively halted under point 1 of this provision and with the base values and the calculation procedure established in point 3 above.

In the event that the amounts referred to in the previous paragraph prove to be insufficient to meet the acknowledged interest linked to the compensation referred to in paragraphs three and four of point 3 of this provision, the compensation for the corresponding owner must be as much as the aforementioned interest payments that year.

In no case may the holders of compensation rights receive an amount greater than the amount to which they are entitled from the values established in point 3 of this provision and the interest due in accordance with point 2.

5. The percentage of electricity sales turnover allocated for compensation -which for the purposes of article 16.6 of this Act is regarded as a specific cost - shall be determined by the Government and shall be a maximum of 3.54 per cent.

The collection and distribution of the aforementioned percentage shall be carried out in the manner stipulated in article 19 of this Act. The National Electric Regulatory Commission shall take the necessary steps in the settlement procedure so that the recipients of the compensation receive the amount they are entitled to annually before March 31st of the following year.

6. In the event of any changes in the economic arrangements or any other circumstance with a negative impact on the amount defined in point 5 or on the collection by the holders of the rights to compensation of the amounts established in the first and third paragraphs of point 4, the State shall take the necessary steps for the provisions of those points to take effect and for full payment to be made within the maximum term of twenty-five years as mentioned in the second paragraph of point 2 of this Additional Provision.

7. The owners of the construction projects referred to in point 1 of this provision may, without any explicit or implicit repurchase commitment or agreement, assign to third parties the compensation right acknowledged under this Act.

In particular, these rights may be assigned in full or in part, on one or several occasions, to open funds which shall be known as "Securitisation Funds for Assets resulting from the nuclear moratorium", as envisaged in the Fifth Additional Provision of Act 3/1994, dated April 14th, whereby Spanish legislation on lending institutions is adapted to the Second Directive for Banking Coordination and other modifications affecting the financial system are introduced. These funds shall be entitled to issue securities which shall be regulated under point 3 of the Fifth Additional Provision of Act 3/1994, dated April 14th, and the legal system provided for in articles five and six of Act 19/1992, dated July 7th, on Mortgage Securitisation Funds, with regard to any questions which are not strictly specific to mortgage investments and with the following special considerations:

a) The assets of the funds shall consist of those compensation rights which they are assigned and the income earned by them and their liabilities are made up of any securities that may be issued in the future and, in general, of any other type of financing.

b) The provisions of the second point of number 2 and of the second paragraph of number 6 of article 5 of Act 19/1992, dated July 7th, are not applicable to these funds.

c) The tax basis for these funds shall be that described in number 10 of article 5 in Act 19/1992, dated July 7th, on Mortgage Securitisation Funds and their Management Companies.

The administration of these funds by the management companies shall be exempted from Value Added Tax.

The Securitisation Funds of Assets resulting from the nuclear moratorium may, in each financial year, freely allocate the amount corresponding to the amortisation of the compensation rights which make up their assets.

d) When the securities issued by Securitisation Funds of Assets resulting from the nuclear moratorium are offered to institutional investors such as pension funds, collective investment institutions or insurance companies, lending institutions or brokerage firms that regularly and professionally engage in investments in securities and that undertake not to assign these securities at a later date to any other agents apart from those already mentioned, or when these securities are to be placed among non-resident investors and are not traded nationally, their evaluation by a rating institution, their representation through account entries, or their quotation on a Spanish organised secondary market shall not be compulsory.

e) The assignment of compensation rights or their pledge as surety may only be contested under paragraph two of article 878 of the Code of Commerce, by means of a claim by the trustees in bankruptcy in which fraud in the assignment or establishment of lien is duly proven, but in all cases the third party who was not an accessory to this shall not be affected.

In the case of bankruptcy, suspension of payments or a similar situation affecting the entity assigning the compensation rights of the nuclear moratorium or any other entity responsible for the collection of the amounts related to such rights, the entities assigning the aforementioned compensation rights shall be perfectly entitled to separation under the terms provided for in articles 908 and 909 of the Code of Commerce.

f) The management companies of Mortgage Securitisation Funds may extend their corporate aims and the scope of their activities in order to be able to administer and represent Securitisation Funds of Assets resulting from the nuclear moratorium and, to that effect, may change their existing registered name to that of "Asset Securitisation Fund Management Companies". Other companies may also be set up to manage Securitisation Funds of Assets resulting from the nuclear moratorium under the terms that may be established in regulations.

8. The shutdown shall have the effects provided for in the tax legislation for the termination or start-up of the corresponding projects.

9. Pursuant to regulations applicable for the determination of the taxable base for Corporation Tax, should the base prove negative as a result of the shutdown approved in this provision, the amount may be offset within a maximum of ten years beginning from the tax year when the aforementioned taxable base proved negative.

10. The amortisation corresponding to the assets belonging to projects whose construction is definitively halted shall be completed within a maximum of ten years from the time this Act comes into force.

Eighth. Amendments to the Act setting up the Nuclear Safety Council.

1. Article 2 d) of Act 15/1980, dated April 22nd, setting up the Nuclear Safety Council, is amended to read as follows:

"d) Inspect and control nuclear and radioactive installations during their operation in order to ensure compliance with all established requirements and conditions, both of a general nature and those specific to each installation, with the authority to suspend their operation for safety reasons. Likewise, in accordance with article 94 of Act 25/1964, dated April 29th, on Nuclear Energy, once a penalising procedure in the area of nuclear safety and radiological protection has been initiated the Nuclear Safety Council shall issue a compulsory report within a period of two months so that the facts which are covered by the enquiry may be properly evaluated.

This report shall be issued when the proceedings are initiated by another body or if they are initiated as a result of a reasoned request made by the Nuclear Safety Council itself but information other than that notified by the aforementioned body also forms part of the proceedings".

2. Article 10 of Act 15/1980, dated April 22nd, setting up the Nuclear Safety Council, is amended by the addition of the following points:

"3.m) The inspection and control services necessary to fully guarantee the proper use and operation and the safety of nuclear installations manufacturing fuel and its proper manufacture."

"5.m) The inspection and control services stated in point m) of number 3 in this article shall be defrayed through a single monthly rate resulting from the levy of 0.8 per cent on the invoiced value of sales of fuel elements manufactured in the installation.

The tax shall be paid monthly and must be settled by the taxpayer liable within the month following the month the tax falls due".

Ninth. Cooperative societies.

Consumer and user cooperative societies may carry out, under the terms resulting from the laws regulating them, electricity distribution activities in accordance with this Act and the regulations that develop it.

These cooperative societies must adapt their accounting to the provisions of article 20.1 and their activities to those of article 14 of this Act.

Tenth. Special legislation with regard to nuclear energy.

Electricity generation installations subject to the special legislation with regard to nuclear energy shall be governed by this legislation as well as by the provisions of this Act.

Eleventh. Updating of penalties.

The Government shall periodically update by Royal Decree the amount corresponding to penalties provided for in Title X of this Act and Chapter XIV of Act 25/1964, dated April 29th, amended by the Sixth Additional Provision of this Act, taking into account any variations in the retail price index.

Twelfth. Amendments to Royal Decree-Law 1302/1986.

1. The list of works, installations and activities subject to an environmental impact evaluation as set out in Schedule I of Royal Decree-Law 1302/1986, dated June 28th, on Environmental Impact Evaluation, is extended to include the following activity:

"Construction of overhead electric power lines whose voltage is equal to or greater than 220 KV and whose length exceeds 15km."

2. The provisions of the paragraph above shall not be applicable to any procedures for the authorisation of overhead electric power lines whose voltage is equal to or greater than 220 KV and whose length exceeds 15km that have been initiated prior to the coming into force of this Act.

Thirteenth. Costs of strategic stock of nuclear fuel.

The Government may decide on the amount to be charged to income from electricity consumption that is to be allocated to finance the costs associated with the strategic stock of nuclear fuel.

The amounts referred to under this Provision shall be regarded as supply diversification and security costs for the purposes of this Act.

Fourteenth. Rights of way.

The overhead and underground electric power rights of way referred to in article 56 of this Act, established for the transmission, distribution and supply network, include those telecommunications lines and equipment that may pass through them both if they are for the electricity operation service itself or for the public telecommunications service and without prejudice to the valuation which may be applicable should this right of way deteriorate.

Likewise, the existing authorisations referred to in article 54.2 of this Act include those telecommunications lines and equipment that may pass through them, with the same objective scope and autonomy resulting from the paragraph above.

TRANSITORY PROVISIONS

First. Application of previous provisions.

Until the issuing of the regulations developing this Act which are necessary to put into practice some of its precepts, the corresponding provisions in force with regard to electricity shall continue to apply.

Second. Effects of previous authorisations.

1. Those persons who, when this Act comes into force, are proprietors of authorised installations, may continue to carry out their activities within the terms of the authorisation. These authorisations are deemed to be transferred to the companies that must be set up in due course in accordance with the Fifth Transitory Provision or in accordance with the requirement to adopt the form of a business entity as set out in article 9.1 g) for distributors.

2. Any procedures to authorise electricity installations initiated prior to the date when this Act comes into force shall be carried through to a final decision in accordance with previous legislation.

Third. Renewal of the National Electric Regulatory Commission.

As of the time when this Act comes into force, the current Electric Regulatory Commission (*Comisión del Sistema Eléctrico*) shall be known as the National Electric Regulatory Commission (*Comisión Nacional del Sistema Eléctrico*) , taking on the powers and responsibilities attributed to it under this Act. The members of the current National Electric Regulatory Commission shall continue to hold the office to which they were appointed on the Commission until the end of their five year mandate.

Once the period stipulated in the paragraph above has elapsed, the new members of the Board of Commissioners of the National Electric Regulatory Commission shall be appointed. Within three months of their appointment, a draw by lots shall take place amongst all the members of the Board of Commissioners of the National Electric Regulatory Commission to decide on the first renewal as stipulated in point 3 of article 6 of this Act.

Fourth. Domestically produced coal.

The Government may set up any necessary incentives to make the proprietors of electricity generation installations use domestically produced coal in sufficient quantities to meet those amounts set annually as a target by the Ministry of Industry and Energy. This target shall, in any event, abide by the limit referred to in article 25.1 of this Act as of the year 2004.

Where applicable, these incentives shall incorporate a maximum average premium equivalent to one peseta per Kwh for those generation stations and insofar as they have actually used domestically produced coal and for the amount equal to their consumption solely of domestically produced coal.

Fifth. Unbundling of activities.

1. The requirement to unbundle regulated and non-regulated activities through their performance by different bodies corporate as stipulated in article 14 of this Act shall be applicable to entities which, at the time this Act comes into force, carry out electricity generation and distribution activities jointly, whenever the Government provides for this by Royal Decree and which must be in force before December 31st of the year 2000. The National Electric Regulatory Commission shall issue a report before December 31st, 1998, on the possible repercussions for the companies affected as a result of commitments or circumstances existing at the time this Act comes into force and on the impact legal unbundling may have on the remuneration system of companies, and shall propose a date for its implementation. In any event, a minimum of one year must

elapse between the publication of the report by the National Electric Regulatory Commission and the Government's decision by Royal Decree.

Any bodies corporate set up subsequent to the coming into force of this Act may only obtain authorisations for the construction of electricity generation installations or to act as retailing agents on certification of their compliance with the requirements stemming from article 14.

2. Investment assets related to the different electrical activities made in compliance with the requirement for unbundling of activities in this Act shall be subject to the system set out for investments in branches of activity in Act 29/1991, dated December 16th, as modified by Act 43/1995, dated December 27th, regulating Corporation Tax, adapting certain taxation concepts to the European Communities Directives and Regulations, even if they are carried out prior to the Government decision referred to in point 1.

Notarial fees and Trade and Companies and Property Register fees corresponding to the legal procedures necessary to adapt to the requirement on unbundling of activities imposed by this Act shall be reduced to 10 per cent.

3. Until such a time when, in accordance with point 1 of this provision, the requirement is made to unbundle activities, electricity companies must start to separate the accounts of their regulated electrical activities.

Transactions relating to generation, intra-Community and international exchanges, transmission and distribution made with the different agents of the electric power system shall be allocated separately and the companies shall act in the different roles of generators and distributors in a separate manner.

Sixth. Costs of the transition to competition.

Acknowledgement is made of the existence of costs involved in the transition to a competitive market system as provided for in this Act for the companies owning electricity generation installations which, as of December 31st 1997 are included within the scope of Royal Decree 1538/1987, dated December 11th, on the determination of the tariff for companies managing the electricity service, the receipt of a fixed remuneration expressed in pesetas per KWh which shall be calculated in the terms set out in regulations as the difference between the average revenues obtained by these companies through the electricity tariff and the remuneration acknowledged for generation in article 16.1 of this Act.

During a maximum period of 10 years from the coming into force of this Act, the Government may annually set the maximum amount of this fixed remuneration with its appropriate share-out. However, if market conditions make it advisable, once the conditions and undertakings stipulated in this Transitory Provision have been satisfied, the Government may reduce the aforementioned period of 10 years.

Any costs stemming from this remuneration shall be passed on to all electricity users as permanent costs of the system under the terms set out by regulations and as of December 31st, 1997, their overall basic amount may never exceed Ptas.1,988,561 million, with this figure including the current value of the guaranteed coal consumption incentives referred to in point one of the Fourth Transitory Provision.

Should the average generation cost referred to in article 16.1 of this Act throughout the transitional period prove to have an annual average higher than 6 pesetas per Kwh, this surplus shall be deducted from the aforementioned current value.

Seventh. Registration in Administrative registers.

Electricity generation installations with valid authorisations at the time this Act comes into force shall notify the Ministry of Industry and Energy and the responsible body in the Autonomous Region within three months of the details set out in point 4 of article 21 in order to be formally entered in the Administrative Register of Electricity Generation Installations.

Within the same time limit of three months, any distributors and customers whose status is regarded as qualified under this Act shall notify the Ministry of Industry and Energy and the responsible body in the Autonomous Region of their details, particularly those regarding consumption, for these to be entered in the Register of Distributors, Retailing Agents and Qualified Customers as stipulated in point 4 of article 45.

Eighth. Generation premiums for cogeneration and the economic arrangements of Royal Decree 2366/1994 of December 9th.

1. Those installations authorised under the special system subsequent to the coming into force of this Act that generate electricity as a spin-off of non-electric activities, whenever they entail high energy output and their installed capacity is higher than 10 Mw and equal to or less than 25 Mw, together with cogeneration installations with that same power, shall receive a generation premium over the prices resulting from the bidding system.

Taking into account the elements stipulated by regulation, the Government shall set the amount of the premiums, giving special consideration to the voltage level at which the power is delivered, together with the investment costs incurred by the owners of the installation for the purposes of achieving reasonable profitability rates with reference to the cost of money on the capital market.

This premium may be received whilst the remuneration of the costs of the transition to competition for electricity generating companies referred to in the Sixth Transitory Provision still applies.

2. Those electricity generation installations which, on the coming into force of this Act, are covered by the arrangements set out in Royal Decree 2366/1994, dated December 9th, on the generation of electricity by hydraulic installations, cogeneration and other installations fuelled by renewable energy sources, together with any referred to by the Second Additional Provision of the same Royal Decree, shall keep to these same arrangements whilst the remuneration of the costs of the transition to competition for electricity generation companies referred to in the Sixth Transitory Provision still applies.

From the year 2000 onwards, following an Agreement by the Government Delegated Committee for Economic Affairs and through a Ministerial Order, the values set out in article 14 of Royal Decree 2366/1994 may be modified in line with any variations that may occur in the costs structure of the electricity system and in the tariff arrangements.

Nevertheless, the generation installations referred to in this point may choose to be covered by whatever economic arrangements are applicable to them under this Act by means of express notification to the market operator.

Ninth. "Red Eléctrica de España, S.A."

1. "Red Eléctrica de España, S.A.", shall carry on the functions assigned by this Act to the system operator and to the manager of the transmission grid.

The adjustment of shareholdings as stipulated in article 34.1 must occur within six months of the coming into force of this Act by means of the transfer of shares or, where applicable, of preferential subscription rights. The corporate articles of association must be modified within the same period of time in order to introduce the limitation on the maximum shareholding established in said article.

The limitation on the maximum shareholding mentioned in article 34.1 shall not apply to the stake corresponding to the Sociedad Estatal de Participaciones Industriales which shall maintain a stake in the share capital of Red Eléctrica de España, S.A. of at least 25% until December 31st in the year 2003, and shall maintain a 10% stake thereafter.

2. The business entity that must take on the functions of market operator in pursuance of article 33 of this Act shall be set up by "Red Eléctrica de España, S.A." which shall subscribe for that part of the capital that is not taken up by other shareholders and within six months should dispose of that same stake.

3. Notwithstanding the stipulations of article 13.4 of this Act, any contracts drawn up for long-term intra-Community and international exchanges of electricity and entered into by "Red Eléctrica de España, S.A." prior to the coming into force of this Act shall remain valid and effective until their expiry, in line with the final date agreed in the contract.

The power originating from the aforementioned contracts shall be remunerated at the price and in the conditions set out in said contracts and shall be excluded from the bidding system.

Tenth. Benefits granted by Act 82/1980, dated December 30th

Electricity generation installations that, in accordance with provisions and resolutions set prior to this Act coming into force, enjoy any of the benefits regulated by Act 82/1980, dated December 30th, shall retain their right to these same benefits after this Act comes into force.

The conditions and procedures for the adaptation of such installations to the special generation system provided for under this Act shall be stipulated in regulations.

Eleventh. Special remunerative arrangements for distributors.

Until the year 2007, distributors whose operations date back prior to January 1st, 1997, and that are not covered by Royal Decree 1538/1987, dated December 11th, on the determination of the tariff for companies managing the electricity service, may have recourse to any tariff arrangements the Government approves for these distributors and which shall ensure them an adequate economic remuneration in all cases.

In pursuance of article 9.3 of this Act, the distributors referred to in this Transitory Provision may purchase power as qualified customers. Such purchases shall entail the definitive waiver of that amount in the tariff arrangements set out under the paragraph above.

These distributors must, in any case, purchase the electric power as qualified agents for that part of their consumption exceeding the consumption recorded in the 1997 financial year, increased by the percentage of their vegetative growth as determined by regulations.

Twelfth. Manager of the distribution network.

As stipulated in article 41.3., whenever the distribution company or companies that are to act as the distribution network manager in each area are decided, the owners of distribution networks shall be regarded as such and shall take on the obligations stipulated for the distribution network manager in this Act.

Thirteenth. Qualified customers.

Notwithstanding the content of article 9.2 of this Act at the time when it comes into force, those consumers recording annual consumption of more than 15 Gwh shall be given the status of qualified customers.

The owners of rail transport installations including metropolitan railways shall also be considered as qualified customers.

The status of qualified customers shall be bestowed on those customers consuming 9 Gwh from January 1st in the year 2000 onwards. The limit shall be reduced to 5 Gwh from January 1st, 2002 and, from January 1st, 2004 to 1 Gwh.

In any event, from the year 2007 onwards, all consumers of electric power shall be regarded as qualified customers.

The Government is authorised to modify the limits set out in this Provision if market conditions make such a modification expedient.

Fourteenth. Transfer of functions from OFICO.

The National Electric Regulatory Commission shall take over the functions formerly performed by the Office for Electric Power Compensation (OFICO), in the manner determined by the Government.

The transfer of such functions and of the resources required for their performance shall be set out in regulations. Once the transfer has been completed, the aforementioned Office will cease to exist.

Fifteenth. Island systems and systems outside the peninsula

A transition to competition period leading up to December 31st of the year 2000 is set for the generation of electricity in island systems and systems outside the peninsula as covered by article 12 of this Act, provided these same systems are kept separate from the electricity system on the Spanish peninsula.

During this transitional period, the legal unbundling of activities shall not be a requirement although the separation of accounts for regulated and non-regulated activities shall be required, however, from the time this Act comes into force.

Sixteenth. Plan promoting the Special Arrangements for Renewable Energies

In order for renewable energy sources to satisfy at least 12% of Spain's total energy demand by the year 2010, a plan shall be drawn up to promote renewable energies and whose objectives shall be taken into account in the setting of premiums.

REPEAL PROVISION

The Electric Power Act 40/1994, dated December 30th, is repealed except for the Eighth Additional Provision and any other rule contradicting the provisions of this Act.

FINAL PROVISIONS

First. Nature of this Act

1. This Act is considered to be a basic piece of legislation pursuant to article 149.1., 13th and 25th of the Constitution.

2. References to administrative procedures which shall be regulated by the responsible Administration are excluded from this basic nature and in all cases the provisions of Act 30/1992, dated November 26th, on the Legal Regime of Public Administrations and the Common Administrative Procedure must be complied with.

3. The precepts in Title IX regarding compulsory expropriation and rights of way are to be generally applied under the provisions of article 149.1., 8th and 18th of the Constitution.

4. The installations referred to in article 149.1.,22nd of the Constitution shall be governed by this Act and the provisions developing it.

Second. Entry into force

This Act shall come into force on the day following the day of its publication in the Government Official Gazette, the *Boletín Oficial del Estado*.

Congress of Deputies, Spanish Parliament, November 13th, 1997.

Federico Trillo-Figueroa Martínez-Conde
PRESIDENT OF THE CONGRESS OF DEPUTIES