



**FOLKETINGET
STATSREVISORERNE**



**FOLKETINGET
RIGSREVISIONEN**

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**Extract from Rigsrevisionen's report
submitted to the Public Accounts Committee**

The supervision of the utility sector

1. Introduction and conclusion

1.1. Purpose and conclusion

1. The transmission and distribution of electricity, natural gas, district heating and water to homes and companies (the consumers) is handled by a number of utility companies. When the consumers pay their electricity bill, they pay both for the actual electricity used and for the distribution of the electricity. The electricity grid and the pipelines that are used for the transmission and distribution are owned by different companies. The companies are called electricity, natural gas and district heating grid companies but are referred to as utility companies in this report. Electricity and district heating are supplied to each individual house or company through one cable and one pipe, respectively. This means that the utility companies hold a monopoly on distributing utilities to the consumers. Payment for the transmission and distribution is automatically directed to the utility company that owns the relevant grid, and the consumers, therefore, cannot change to another utility company to achieve a more favourable price of transmission and distribution of electricity, natural gas, district heating and water.

2. Approximately 600 utility companies operate in the electricity, natural gas and district heating sectors. The companies are often part of a group in which some companies have a monopoly and others operate in competitive markets where, for instance, electricity, broadband and heat pumps are sold in competition with other suppliers. As the utility companies become part of major groups, the potential for inter-company transactions within the group increases. The utility companies are, therefore, under an obligation to ensure that agreements made with group-affiliated companies concerning purchase or sale of services and products are entered under market conditions similar to the conditions of fully competitive markets to ensure that the utility companies are not buying services at too high a price and passing on the cost to the consumers. If the agreements are not entered under such conditions, they are illegal, cf. the electricity, natural gas and district heating supply acts and legislation on promoting energy savings.

3. The utility companies are subject to regulations and supervision to prevent that the consumers are overcharged for distribution of energy. In the electricity, natural gas and district heating sector, the Ministry of Climate, Energy and Utilities is responsible for the regulations and the Danish Utility Regulator (Forsyningstilsynet) is responsible for the supervision. The Utility Regulator is an independent organisation and is not accepting instructions from any other parties. One of the tasks of the Utility Regulator is to check that agreements by the electricity and natural gas utility companies are made under market conditions similar to the conditions of fully competitive markets and that the prices charged by the district heating utility companies based on agreements with group-affiliated companies include only necessary costs.

Monopoly

Monopoly means that only one organisation in the market provides a certain product or service.

Competition in utility markets

The price and quality of a product or service sold in utility markets should reflect the price and quality obtainable in a fully competitive market. In the report, the term *competitive conditions* is considered generic and referring to what is called market conditions and competitive conditions in the Danish utility sector laws.

Group-affiliated companies

These are all part of the same group with a parent company having a controlling interest. The companies can be sister companies sharing the same parent company. The legislation also refers to related companies which means that the companies are jointly owned by another company, which may have only a minority interest in the companies. References made to group-affiliated companies in this report include also related companies.

4. In the water supply sector, the Danish Water Regulatory Authority (in the Danish Water Sector Act referred to as the Secretariat for Water Supply) under the Ministry of Industry, Business and Financial Affairs is responsible for the supervision. However, it is not the Water Regulatory Authority's task to check whether agreements made by the water supply companies are made under market conditions similar to the conditions of fully competitive markets, and the Water Regulatory Authority is, therefore, not included in the report.

5. Rigsrevisionen initiated the study in February 2022 because the utility companies have in recent years increasingly become part of major groups. If agreements entered among group-affiliated companies are not made under conditions similar to the conditions of fully competitive markets, there is a risk that the utility companies enter unduly expensive agreements and pass the bill on to the consumers who are overcharged for the distribution of electricity, natural gas and district heating.

6. The purpose of the study is to assess whether the Utility Regulator's supervision of the utility companies' agreements with group-affiliated companies are made under conditions similar to the conditions of fully competitive markets.



Main conclusion

The Utility Regulator's supervision of whether the utility companies' agreements with group-affiliated companies are entered under conditions similar to the conditions of fully competitive markets is not satisfactory. The consequence is that citizens and companies may have been overcharged for the distribution of electricity, natural gas and district heating.

The basis upon which the Utility Regulator checks the utility companies' agreements with group-affiliated companies is incomplete

The study shows that the Utility Regulator's knowledge of the group of companies that are to be checked is inadequate. The Utility Regulator has neither collected nor included the necessary information about agreements entered and the financial position and ownership of the companies to be able to assess where the greatest risk of error and violations lies. In addition, the Utility Regulator has no risk-based model for the selection of companies and types of agreements that should be checked.

The Utility Regulator has informed Rigsrevisionen that it will develop an overall supervision strategy in 2023 which will define a framework for planning and conducting risk-based supervision.

The Utility Regulator's supervision of group-affiliated companies' agreements has been inadequate

The study shows that the number of checks carried out by the Utility Regulator was significantly lower in the period from 2020 to 2021 than in the period from 2018 to 2019. Moreover, the Utility Regulator has primarily carried out checks in two areas that make up a small part of the total costs of the utility companies and, with the exception of one agreement, it has not checked pricing in the district heating companies' agreements with group-affiliated companies.

The study shows that despite inadequate risk assessments, the Utility Regulator has identified violations of law in just under half of the agreements checked. The majority of the utility companies whose agreements with group-affiliated companies were deemed to be in conflict with the law, were instructed by the Utility Regulator to lower consumer prices by approx. DKK 62 million. It is Rigsrevisionen's assessment that the Utility Regulator would probably find more violations of law, if the control by the agency was based on a risk assessment and the agency to a greater extent also included prices in its supervision of the district heating companies' agreements with group-affiliated companies.

The Utility Regulator can issue instructions or criticize the utility companies when they are unable to produce written agreements or documentation for agreements entered with group-affiliated companies. In the period from 2018 to 2021, Danish Utility Regulator issued instructions on and criticized such violations. The Utility Regulator also has the authority to fine companies until they comply with the instructions or to report the companies to the police for specific violations of the utility laws. The Utility Regulator has not resorted to any such measures in the period referred to because the companies have followed the instructions given by the Utility Regulator.

The study found that the Utility Regulator has failed to followed up on the effect of its control and responses to violations of law.