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SK&S REPORT

CAPACITY FEE

ENERGY EFFICIENCY AUDIT

- ✓ Information on capacity fee
- ✓ Current status of capacity fee discounts
- ✓ Energy cost optimization measures
- ✓ Obligation to carry out an energy efficiency audit

Capacity fee

According to the Act of December 8, 2017 on the capacity market, **as of October 1, 2020 onwards the electricity users will be obliged to pay the capacity fee which will increase the cost of electricity supplies by approximately 10-13% on average.**

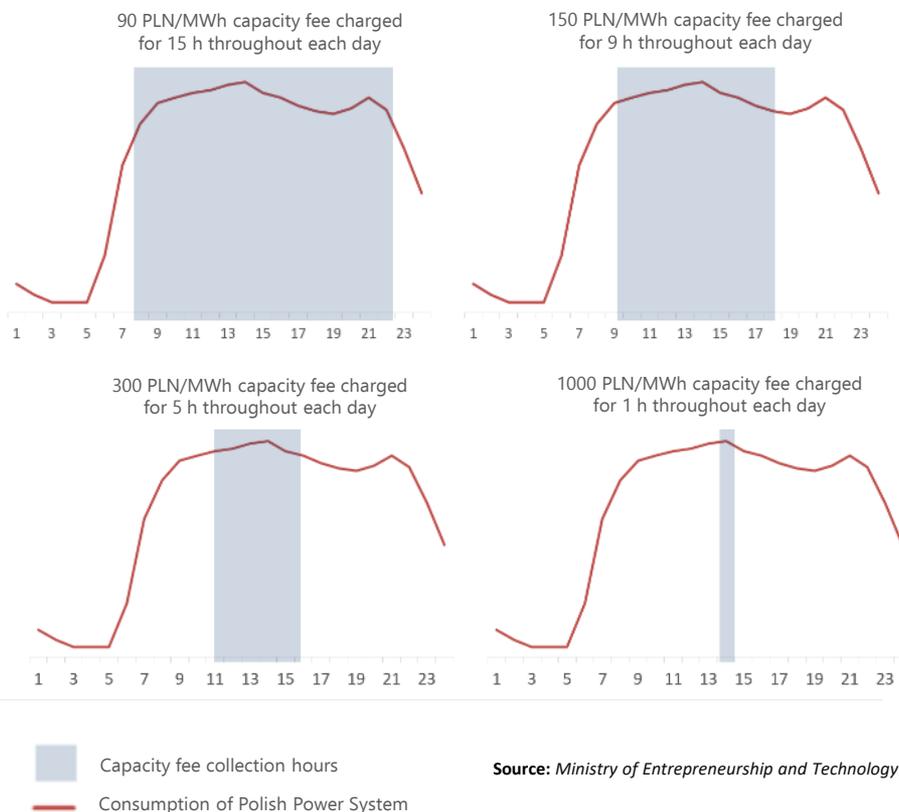
Information about the capacity fee

The capacity fee (additional quasi-tax) will be **included at the invoice for the distribution of electricity**. The capacity fee will finance the capacity market, i.e. mechanism aimed at securing uninterrupted supplies of electricity to end users.

According to the former Ministry of Entrepreneurship and Technology, the cost of the capacity market in the years 2021-2023 is to be between PLN 5.6 and 5.9 billion. This means that entrepreneurs would have to pay an additional fee in the estimated amount of **approx. PLN 42-45 / MWh** (on average for each megawatt hour of electricity supplied from the grid).

In practice, the capacity fee will be charged only on electricity consumed during peak hours to be determined by the President of ERO separately for each calendar quarter in terms of both the time of the day and the number of hours subject to the quasi-tax. Capacity mechanism is designed to stimulate the reduction of electricity consumption during the hours with highest consumption in order to reduce the need for development of new peak power capacities. However, this means that the actual amount of the capacity fee will be higher than 45 PLN / MWh and will vary depending on the number of hours covered by the quasi-tax. The **estimated rates of capacity fee** as presented in 2019 by the Ministry of Entrepreneurship and Technology are presented below and **range from 90 to 1000 PLN / MWh**. The actual amount of the rates, as well as the hours subject to the capacity fee, will

be determined by the President of ERO, and at this stage representatives of the ERO do not indicate the date of publication of this information (according to unofficial information it will take place by the end of September 2020).



Source: Ministry of Entrepreneurship and Technology

Capacity fee

Current status of capacity fee discounts

While adopting the capacity mechanism, it was anticipated that industrial consumers (energy-intensive users) would be able to benefit from discounts on the capacity fee - analogous to discounts on renewable energy fee, or discounts on cogeneration fee. The discount on the capacity fee was actually provided in the statute subject to the condition precedent that the European Commission declares such discount being State aid compatible with the internal market (or the Commission issues a decision stating that this measure does not constitute State aid at all). Despite the 2.5-year period since the adoption of the Act on the capacity market, **the notification of the discount on the capacity fee for industrial customers has not been successful, and thus there is a high probability that it will not enter into force.**



Remedial action

As a result of the capacity fee entry into force, it is not only necessary to include this fee in budgets for electricity supplies (distribution services) but it is also necessary to verify optimization measures available to reduce the burden associated with this fee, such as:

- measures to improve energy efficiency, including reducing peak electricity consumption;
- investments in own energy generation sources (renewable energy sources, cogeneration installations, other);
- investments in energy storage, etc.

In addition, customers have the possibility to earn income from the provision of the so-called „DSR services”, i.e. reduction of the grid electricity consumption at the request of the transmission system operator (within selected hours when the operator identifies the risk of insufficient generation reserves). Such services can be provided to the operator either directly or through a professional aggregator, i.e. an entrepreneur who, having a direct contract with the TSO, concludes a relevant DSR contract with the electricity end-user, prepares such end-user to provide the services and pays the agreed remuneration for provide these services. In this way, customers can derive revenues from DSR services contracted by the operator on the capacity market (i.e. may provide services financed from the capacity fee) or under other DSR programs organized by the operator outside the capacity market.

SK&S Energy and Infrastructure Team will be happy to provide you assistance in terms of identification and implementation of proper instruments to optimize the cost of purchasing electricity.

Energy efficiency audit

As of 1 October 2020 there would be 4th anniversary since the Act of 20 May 2016 on energy **efficiency entered into force, such act imposing on entrepreneurs the obligation to perform the enterprise energy efficiency audits at least once every 4 years, with the first audit to be carried out no later than October 1, 2017.** Thus, **entrepreneurs that performed the energy efficiency audit in 2016 and 2017 are required to perform the next audit soon.**

Considering the time necessary to carry out the energy efficiency audit (including the necessary measurements and calculations as well as preparing the report) and notifying the President of ERO on the conclusions of the audit, as well as bearing in mind the current situation related to the state of the epidemic and sanctions for violation of the audit obligation (financial penalty up to 5% of revenue entrepreneurs in the previous tax year), one should remember to contract the services related to the energy efficiency audit early enough.

Energy efficiency audit delivered by professionals may also identify activities/investments that will help to increase energy efficiency, reduce energy consumption and optimize the costs of purchasing energy, as well as obtain additional revenue from the sale of so-called white certificates awarded in connection with the implementation of energy efficiency investments.

An obligation to perform the energy efficiency audit applies to any entrepreneur which at least in one of the last two financial years:



employs over **250 employees**

or/and



the annual net turnover from the sale of goods, goods and services and financial operations exceeded the PLN equivalent of **EUR 50 million**, or the sum of its balance sheet assets prepared at the end of one of those years exceeded the PLN equivalent of **EUR 43 million**.

Entrepreneurs belonging to capital groups but not meeting the above employment and financial conditions individually are not required to perform the energy efficiency audit.

Energy efficiency audit

Entrepreneurs would be exempted from the obligation to perform the energy efficiency audit if they implemented:

- energy management system specified in the Polish Standard for energy management systems, requirements and recommendations of use (PN-EN ISO 50001) certified by an independent entity, or
 - EMAS environmental management system,
- if an energy efficiency audit was carried out under these systems.

To be exempted from the obligation to carry out an audit, energy inspections carried out regularly by owners of an energy management system in accordance with the PN-EN ISO 50001 standard must meet the minimum requirements set out in the Energy Efficiency Act.

The provisions of the Anti-Crisis Shield do not modify the date of the energy efficiency audit. Due to the current epidemiological situation and the growing demand of enterprises for energy auditing, we recommend selecting the auditor in advance.

The sanction for failure to carry out an energy efficiency audit is a financial penalty imposed by decision of the President of ERO in the amount of up to 5% of the income of the punished entrepreneur obtained in the previous tax year.

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