

## Bill of amendments to the 2015 RES Law adopted by Sejm

On 27 June 2016 the President signed the bill of amendments to the 2015 RES Law (“**Bill of Amendments**”) which will enter into force as of 1 July 2016.

### Background

The **current incentive scheme addressed to the RES installations** is primarily regulated in the Act of 10 April 1997 – the Energy Law and the transitional provisions of the Act of 20 February 2015 on renewable energy sources (hereinafter referred to as, respectively, “1997 Energy Law” and “2015 RES Law”) and it **is based on tradable certificates of origin** whereby renewable energy producers receive:

- (a) price for electricity sold at competitive market (with the right of the renewable energy producer to sell the entire generation to the last resort supplier at a price equal to the average electricity price in the preceding year which is currently equal to PLN 169.99/MWh – approx. EUR 38.63/MWh), as well as
- (b) price for tradable certificates of origin purchased in particular by suppliers selling electricity to final consumers.

The foregoing incentive scheme operates so that market price for certificates may not exceed in practice the so-called “substitute fee” (“buy-out” price) which is an alternative method of fulfillment of the obligation to obtain and redeem certificates of origin. Such substitute fee is currently equal to PLN 300.03/MWh (approx. EUR 68.19/MWh) which operates as a cap for the market price of certificates. However, the average-weighted market price for certificates fell in May 2016 to PLN 94.10/MWh, which is approx. EUR 21.39/MWh, while on 2 June 2016 the quotation of green certificates was as low as PLN 69.70/MWh which is EUR 15.84/MWh.

**Under the 2015 RES Law**, as adopted in February 2015 and amended in December 2015, **the abovementioned certificate-based incentive scheme would be applicable, with certain modifications, to the RES installations commissioned by 1 July 2016 while the RES installations commissioned after that date would be authorized to benefit from the new auction-based incentive scheme.** Under the foregoing legislation, the auction-based incentive scheme would be also available to the RES installations commissioned before 1 July 2016 if the pertinent producer decided to start in the auction and give up the certificate-based incentive scheme upon winning the auction.

The Bill of Amendments significantly modifies the incentive schemes regulated under the 2015 RES Law in order to promote the auctions as well as the RES installations with stable generation profile. **Below please find basic information on the RES incentive schemes which will apply from 1 July 2016 onwards.**

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### The “auction system”

**[Financing]** The 2015 RES Act, as amended by the Bill of Amendments, will introduce a **new “auction system”** under which financial sources available within the incentive scheme would be collected from the final energy consumers by TSO and DSOs (so-called “RES Payers”) and then transferred through the state-controlled company named Settlement Operator S.A. (“SO”) to the RES operators selected within the auction either directly or – in case of RES installations below 0,5MW – through so-called “obliged purchasers”.

**[Form/period of support]** Auctions will be carried out **at least once a year in order to select the RES operators authorized to benefit from support** in the form of:

- a. the power purchase agreement concluded with the “obliged purchaser” and providing for sale of electricity for the price agreed within the auction – in case of RES installations below 0,5 MW; or
- b. right to compensation of the difference between: (a) the envisaged revenues from sale of the offered and actually generated electricity for the price agreed within the auction and (b) market value of the same electricity calculated based on average daily prices of electricity quoted at the commodity exchange in the day-ahead and two-days-ahead transactions – in case of RES installations with installed capacity of 500 kW or higher;

such support being limited to the maximum period of 15 years starting from commissioning of the pertinent RES installation but in any case ending not later than on 31 December 2035, save for the offshore wind installations where the support period may be extended to 31 December 2040. The maximum 15-year period of support may be further shortened by way of the regulation issued by the Minister of Energy.

**[Eligibility]** All the RES installations will be eligible to participate in the “auction” except for:

- a. the following types commissioned before 1 July 2016:
  - hydro power installations with total installed electric power exceeding 20 MW;
  - multi-fuel power plants which are not qualified as “dedicated multi-fuel power plants”;
  - non-CHP installations using biomass, biofuels, biogas and agricultural biogas with installed capacity exceeding 50 MWe which are not qualified as “dedicated multi-fuel power plants”;
  - CHP installations using biomass, biofuels, biogas and agricultural biogas with installed capacity exceeding 150 MWt which are not qualified as “dedicated multi-fuel power plants”.
- b. the RES installations commissioned between 1 July 2016 and completion of the auction in which given RES installation is selected unless the entire electricity from such installation generated before completion of the respective auction is sold at the commodity exchange and/or organized market by end of December 2016 and such manner of electricity sale was notified to the President of the Energy Regulatory Office not later than 14 days before the date of commissioning.

Subject to number of pre-requisites (i.a. prior conclusion of the intergovernmental agreement between Poland and the state in which the respective foreign RES installation is located, providing for mutual availability of incentive schemes in each country to RES installations located in both countries), the auctions will be available to the RES installations located abroad, it being however specified that the maximum volume of electricity generated abroad and purchased within Polish auction may not exceed the threshold



defined in regulation issued by the Council of the Ministers and in any case such threshold not exceeding 5%.

Besides, the Bill of Amendments provides for certain requirements applicable to biomass/biogas/biofuels used by the RES installation benefiting from the support scheme, including the requirement that the biomass used in the installation should be originally collected/produced in the distance not exceeding 300 km from the installation, it being specified that the Minister of Energy would be authorized to modify this requirement and limit the maximum distance of 300 km by way of secondary legislation.

**[Clusters and energy cooperatives]** Irrespective of the above, the Bill of Amendments establishes new forms of cooperation eligible to benefit from the auction-based incentive scheme, i.e.:

- a. "cluster" which is defined as an agreement between entities (entrepreneurs, communes, scientific units etc.) covering cooperation with respect to generation, balancing, distribution and trade in renewable and non-renewable energy within one distribution network with voltage lower than 110 kV within an area not exceeding the territory of one powiat, it being specified that the cluster will be authorized to conduct business activities regulated by the 1997 Energy Law (i.e. generation, distribution and trade in energy) based on the license granted to an entity appointed as a "coordinator of the cluster"; and
- b. "energy cooperative" which will be established as cooperative within the meaning of the Polish Cooperative Law conducting business activities in:
  - generation of electricity in RES installations of capacity not exceeding 10MW, and/or generation of biogas in RES installations with capacity not exceeding 40 million cubic meters per year, and/or generation of heat in CHP RES installations with thermal capacity not exceeding 30 MWT; as well as
  - balancing, distribution and trade in electricity, biogas and/or heat,
 for own use of the energy cooperative and its members interconnected to the defined distribution network with voltage lower than 110 kV and/or gas distribution network and/or central heating network within an area of rural and rural-urban communes.

Clusters and energy cooperatives are designed to promote cooperation of local groups of self-balancing energy generators and consumers within distribution networks with voltage lower than 110 kV which should decrease costs of transmission losses in distribution networks covered by clusters and energy cooperatives as well as costs of balancing within such networks. In particular, the energy cooperatives will be allowed to establish, upon prior consent of the President of the Energy Regulatory Office, the so-called "closed distribution systems" supplying electricity to not more than 1000 members of the energy cooperatives, such "closed distribution systems" being exempted from certain administrative burdens (e.g. exemption from obligation to develop grid codes, development plans, standard customers profiles of electricity use as well as exemption from tariff approvals if the tariffs applied within the "closed distribution systems" are lower than the pertinent benchmark tariffs applied within the adjacent area) which may allow for reduction of distribution costs within the "closed distribution systems". Besides, **both clusters and energy cooperatives shall be allocated separate auction baskets from 1 July 2017 onwards which will enable them to receive incentives to RES electricity generated by such clusters and energy cooperatives.** It nevertheless seems that restriction of clusters and energy cooperatives to the distribution networks with voltage lower than 110 kV (i.e. exclusion of distribution networks with voltage of 110kV) will make clusters



and energy cooperatives generally unavailable to number of wind farms interconnected to distribution networks at a voltage of 110 kV.

**[Pre-qualification to the auction]** “Pre-qualification procedure” shall be established to pre-qualify entities authorized to submit offers within the auction:

- a. pre-qualification criteria aimed at selection of reliable investors with feasible RES projects that meet the criteria for the incentive scheme;
- b. pre-qualification certificate authorizes to participate in auctions launched generally not later than 12 months after pre-qualification;
- c. pre-qualification procedure shall not apply to RES installations commissioned before 1 July 2016, whose operators are required to submit the declaration of participation in auction scheme instead.

The offers submitted during auctions shall be accompanied by statements in which RES installation operators declare *inter alia* that:

- the RES installation does not use the wood other than “energetic wood” (pol. ‘drewno energetyczne’), biomass contaminated in order to acquire higher calorific value, fossil fuels (in case of installation incinerating biomass) in electricity generation process;
- the maximum cap of state aid is not to be exceeded in case of selection of the offer;
- the maximum share of local biomass in the total amount of biomass provided to the RES installation is not exceeded.

**[Main auction rules]** Auctions shall be carried out based on the following basic assumptions:

- a. the auctions for the renewable energy will be carried out separately within the following “technology” baskets:
  - i. electricity generated in the RES installations with installed capacity  $\leq 1\text{MW}$  and load factor exceeding 3504 MWh/MW/annum irrespective of the technology used;
  - ii. electricity generated in the RES installations with installed capacity  $\leq 1\text{MW}$  using biodegradable waste fraction (waste incineration plants);
  - iii. electricity generated in the RES installations with installed capacity  $\leq 1\text{MW}$  and load factor exceeding 3504 MWh/MW/annum and CO<sub>2</sub> emission not exceeding 100 kg/MWh;
  - iv. electricity generated by the participants of the so-called “cluster” in the RES installations with installed capacity  $\leq 1\text{MW}$ ;
  - v. electricity generated by the participants of the so-called “energy cooperative” in the RES installations with installed capacity  $\leq 1\text{MW}$ ;
  - vi. electricity generated using exclusively the agricultural biogas in the RES installations with installed capacity  $\leq 1\text{MW}$ ;
  - vii. electricity generated in the RES installations with installed capacity  $\leq 1\text{MW}$  not qualified under the baskets i) –vi) above;
  - viii. electricity generated in the RES installations with installed capacity  $> 1\text{MW}$  and load factor exceeding 3504 MWh/MW/annum irrespective of the technology used;
  - ix. electricity generated in the RES installations with installed capacity  $> 1\text{MW}$  using biodegradable waste fraction (waste incineration plants);



- x. electricity generated in the RES installations with installed capacity >1MW and load factor exceeding 3504 MWh/MW/annum and CO<sub>2</sub> emission not exceeding 100 kg/MWh;
- xi. electricity generated by the participants of the so-called “cluster” in the RES installations with installed capacity >1MW;
- xii. electricity generated by the participants of the so-called “energy cooperative” in the RES installations with installed capacity >1MW;
- xiii. electricity generated using exclusively the agricultural biogas in the RES installations with installed capacity >1MW;
- xiv. electricity generated in the RES installations with installed capacity >1MW not qualified under the baskets viii) –xiii) above;

the auctions within the abovementioned baskets should be carried out separately for electricity generated in RES installations commissioned before 1 July 2016 and after that date;

- b. the Council of Ministers would be obliged to issue secondary legislation allocating total volumes and values of electricity that may be purchased in given year in each basket (for the first time, such budgets for each basket would be announced by end of August 2016);
- c. the offer which is not selected in given basket may be sold in auction carried out for the next basket whereas the sequence of the auctions carried out for respective baskets will be determined by the Council of Ministers (e.g. if the offer qualified under basket (i) is not selected within the auction carried out for this basket, it may compete within the auction launched subsequently for another basket in accordance with time schedule provided by the Council of Ministers);
- d. selection of the RES operators would be based on the criterion of the lowest unit price offered for renewable energy up to the total volume allocated to the basket and in case of the same unit price offered – based on the criterion of the time of submission of the offer; in case the remaining volume of energy to be sold within the auction is less than the volume specified in the next lowest offer, the remaining volume is not sold within the auction;
- e. reference prices would be set for each RES technology so that all the offers providing for prices higher than the reference price shall be rejected; besides, an offer shall be also subject to rejection if the offered price increased by the unit amount of other state aid granted to the project in any form is higher than the reference price;
- f. the fixed price for electricity agreed within the auction would be binding on the parties within the whole incentive period (15-year or shorter if the Minister of Energy decides so with respect to RES installations selected within the auction in a given year) save for yearly indexation of such price with annual average index of retail prices of consumer goods and services, described by President of Central Statistical Office;
- g. the fixed volume of purchased electricity agreed within the auction for each year would be binding on the parties within the whole incentive period (15-year or shorter if the Minister of Energy decides so with respect to RES installations selected within the auction in a given year) and will be verified after each three-year settlement period and upon completion of the entire incentive period; the quantity of electricity covered by the compensation rights shall be however decreased by the volumes generated in those hours for which an average market price quoted on the day-ahead market is negative for at least 6 subsequent hours;



- h. commissioning of the new RES installation covered by the auction should occur not later than within 48 months (save for solar energy where the deadline is 24 months and offshore wind installations where the deadline is 72 months) following the auction, such commitment to be secured with bank guarantee or money deposit in the amount of PLN 30/kW of the installed capacity;

The auction rules, in particular division into “technological baskets”, prefer the installations with stable generation profile (multi-fuel plants, hydro-power plants, hybrid RES installations covering RES installations with both stable and unstable profile) over the technologies dependent on weather conditions. The technologies with less stable generation profile (photovoltaic, on-shore wind farms) are likely to compete exclusively in baskets specified in points a).vii) and a).xiv) above.

**[Penalty for generation shortfall]** If the RES installation is selected within the auction to benefit from the auction-based incentive scheme and generation from such RES installation falls in any 3-year settlement period below 85% of the volume offered within the auction and accruing to such period, the beneficiary (operator of RES installation) shall be subject to financial penalty in the amount calculated as:  $0.5 * C_A * (E_{OA} - E_{WA})$ , where:

- $C_A$  - price offered within the auction for electricity generated from respective RES installation,
- $E_{OA}$  - volume of electricity to be generated from respective RES installation within given 3-year settlement period in accordance with offer submitted in the auction,
- $E_{WA}$  - volume of electricity actually generated from respective RES installation within given 3-year settlement period.

As a result, the financial penalty would be calculated based on the entire missing volume of electricity, including the admissible 15% shortfall.

**[Penalty for inappropriate load factor assessment]** Under the Bill of Amendments, if the load factor arising from the auction (basket) is not met during the support period (save for specific situations defined in the Bill of Amendments which are outside control of the RES operator), the RES operator will be obliged to pay back the entire support received under the auction scheme.

### Status of the RES installations commissioned before 1 July 2016

**[Eligibility under the auction scheme]** As regards the RES installations commissioned before 1 July 2016, the operators will be authorized to participate in the auctions and benefit from the new auction-based incentive system, except for:

- hydro power installations with total installed electric power exceeding 20 MW;
- multi-fuel power plants which are not qualified as “dedicated multi-fuel power plants”;
- non-CHP installations using biomass, biofuels, biogas and agricultural biogas with installed capacity exceeding 50 MWe which are not qualified as “dedicated multi-fuel power plants”;
- CHP installations using biomass, biofuels, biogas and agricultural biogas with installed capacity exceeding 150 MWt which are not qualified as “dedicated multi-fuel power plants”.

In any case, the total period of support available to the existing RES cannot exceed 15 years from first generation confirmed by certificate of origin.



**[Eligibility under certificate-based scheme]** Under the 2015 RES Law, as currently in force, the operators of the RES installations commissioned before 1 July 2016 are authorized to benefit from the current support scheme based on the tradable certificates of origin for the period not exceeding 15 years from first generation confirmed by certificate of origin. Under such scenario, the operators have the rights to:

- (a) sell the entire generation to the last resort supplier at a price equal to the average electricity price in the preceding quarter, and
- (b) receive tradable certificates of origin purchased in particular by suppliers selling electricity to final consumers.

Nevertheless, the Bill of Amendments provides that the right specified in point (a) above would be limited as of 1 January 2018 onwards to the RES installations with the total installed capacity below 0.5MW and the biogas-fueled RES installations. This means that **almost all the RES installations with installed capacity equal to or exceeding 0.5MW (except for the biogas-fueled installations) will be deprived of the right to sell the electricity at the regulated price from 1 July 2018 onwards.** Besides, the Bill of Amendments establishes separate certificates of origin awarded to biogas-fueled power plants with separate redemption quotas for such certificates established at the level of 0.65%, i.e. at a level generally corresponding to the maximum generation from the existing biogas-fueled power plants. The foregoing amendment will ensure separate (higher and more stable) incentives for the operators of the existing biogas-fueled power plants. On the other hand, the **redemption quotas for the certificates of origin awarded to the existing non-biogas RES installations will be most likely decreased by the Minister of Energy below statutory level of 19.35% which means that the current oversupply of these certificates will not be reduced and thus the level of support addressed to non-biogas RES power plants will remain relatively low.**

As a result of the abovementioned changes, the last resort suppliers will most likely approach the RES operators by end of 2017 in order to re-negotiate and/or even terminate the power purchase agreements currently in force with respect to the non-biogas RES installations. As a consequence, the operators of RES installations with lower load factor (such as wind farms) will face significant risk of lower prices for their generation, such prices to be most likely corresponding to spot prices as determined at the day-ahead market or balancing market. The foregoing risk, together with relatively low prices for the certificates of origin, may force the vast majority of wind farm operators to participate in auctions which will increase competition within the auction, specifically in auction baskets designed for installations with lower load factor. In order to improve their position within the auction, the operators of RES installations with lower load factor (e.g. wind farm) may also consider development of a RES installations with stable generation (e.g. biogas or biomass-fueled installations) in the vicinity of the existing power plant in order to create a hybrid RES installation with higher load factor and be able to compete in auction baskets envisaged for stable generation. Such scenario would nevertheless require i.a. a time-consuming permitting process and increase operational expenditures of the entire hybrid installation.



### Modifications to the certificate-based incentive scheme

Under the 2015 RES Law as amended by the Bill of Amendments, the current support scheme based on tradable certificates of origin is adjusted as follows:

- a. RES installations commissioned after 1 July 2016 cannot benefit from current scheme;
- b. the total period of support cannot exceed 15 years from first generation confirmed by certificate of origin;
- c. hydro-power installations with installed capacity exceeding 5 MW deprived of the right to support in the form of certificates of origin;
- d. multi-fuel power plants using biomass, biofuels, biogas and agricultural biogas, other than “dedicated multi-fuel power plants”, may obtain only limited number of certificates in each year corresponding to the average annual “green generation” in the period 2011-2013 and such certificates to be further subject to correction with “co-efficient” set by the Council of Ministers;
- e. the certificates of origin shall not be granted to RES electricity generated in those hours for which an average market price quoted on the day-ahead market is negative for at least 6 subsequent hours;
- f. the Bill of Amendments will establish separate certificates of origin (so-called “blue certificates”) awarded to biogas-fueled power plants with separate redemption quotas for such certificates established at the level of 0.65%, i.e. at a level generally corresponding to (or below) the maximum generation from the existing biogas-fueled power plants, which will ensure separate (higher and more stable) incentives for the operators of the existing biogas-fueled power plants; on the other hand, the redemption quotas for the certificates of origin awarded to the existing non-biogas RES installations will be most likely decreased by the Minister of Energy by way of regulation below statutory level of 19.35% which means that the current oversupply of these certificates will not be reduced and thus the level of support addressed to non-biogas RES power plants will remain relatively low;
- g. if the price of certificates of origin quoted at the Polish Power Exchange is lower than the substitute fee for the period of more than 1 month, there will be limited possibility to pay “substitute fee” as an alternative method of the fulfillment of the obligation to obtain and redeem certificates of origin;
- h. “substitute fee” set at PLN 300,03/MWh.



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