

Polish model of Capacity Market

As of 18 January 2018, the Act of 8 December 2017 on capacity market ("**Act**") has entered into force. The aims of the Act are:

- (a) to introduce incentives for construction of new generation capacities, as well as modernization and longer operation of the existing capacities;
- (b) to promote the services related to the demand side response (DSR);
- (c) to secure development of so-called "unstable" RES installations by using "stable" capacities;
- (d) to secure long-term power supplies to final customers during emergency periods.

Basic assumptions of the Capacity Market:

[Participants of the Capacity Market] The participants of the capacity market will be as follows: the transmission system operator (TSO), distribution system operators, settlement operator, capacity suppliers as well as owners of physical units used for offering capacity obligation.

The participants providing the product (service) on Capacity Market and receiving the remuneration for the product delivery will be capacity suppliers, i.e. entities operating the so-called "*Capacity Market Units*" (hereinafter "**CMU**") as its owners or entities authorized by its owner to operate:

- (a) physical generating units, including: generating units as well as electricity storage facilities capable of supplying power to the system (hereinafter the "**PGU**"), or

- (b) physical demand side response units supplying the power by temporary reduction of the power consumption from the electricity grid (by either

NEW OBLIGATIONS FOR CMU'S OWNERS	
EACH CMU	<ul style="list-style-type: none"> ➤ obligation to obtain Operator's approval on measuring systems compliance with technical conditions; ➤ participation in the procedure of certifying Capacity Market Units (obligatory as regards general certification), including the obligation to gather documentation necessary to prepare the application for certification;
PGU	<ul style="list-style-type: none"> ➤ obligation to implement billing systems to collect a capacity fee from final customers connected directly to generation devices; ➤ obligation to choose one form of support for generated energy;
PDSRU	<ul style="list-style-type: none"> ➤ obligation to carry out the demand-side reduction test as regards to the demand side response units included in the CMU.

actual reduction of capacity consumption due to the reduction of electricity consumption, using electricity storage or due to electricity generation "behind the measuring systems"; hereinafter the "**PDSRU**")

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The group of PGU and PDSRU shall include, respectively: foreign physical generating units and foreign physical demand side response units from those EU Member States which have their electricity systems directly interconnected to the Polish electricity system. These units will be able to participate in the capacity auction only if such solution will be agreed in agreement concluded between respective TSOs. Alternatively, a capacity obligation may be offered directly by the TSO designated for the pertinent EU Member State's system, directly interconnected to the Polish transmission system.

[Product traded at the Capacity Market] The product offered at the Capacity Market shall be the Capacity Obligation, i.e. an obligation to (a) guarantee readiness to deliver certain volume of the power to the system within the delivery period ("**Delivery Period**") and (b) actually deliver certain volume of the electric power during the emergency periods ("**Emergency Periods**").

Emergency Period shall be defined as any peak demand hours (any full hour from 7:00 am until 10:00 pm on working days) during which the planned reserves of the available capacity being at disposal of the TSO (Transmission System Operator) in excess of the planned demand of the NPG (National Power Grid) are determined within the daily planning process to be lower than the required minimum level of the available capacity reserves – provided that the TSO announces on the occurrence of the Emergency Period at least 8 hour in advance.

Capacity Obligation shall be offered with respect to the following Delivery Periods:

- (a) calendar year – during the main auction, or
- (b) calendar quarter – during supplementary auctions.

Capacity Obligation shall be specified in the Capacity Agreement concluded upon the auction between the Capacity Provider, the TSO and the settlement operator (a joint-stock company Zarządca Rozliczeń S.A., which will be responsible for payment of the remuneration due to the Capacity Provider) for the period of:

- (a) up to 15 years delivery – possibility limited to the New CMUs meeting the relevant expenditures coefficient specified as an amount per MW (the coefficient to be set forth in the auction's parameters and is assumed to be at ca. PLN 3.3 mln/MW),
- (b) up to 5 years delivery – possibility limited to the New and Modernized CMUs, as well as to the CMUs containing the DSR units – in each case meeting the relevant expenditures coefficient as set forth in auction's parameters (the coefficient to be set forth in the auction's parameters and is assumed to be at ca. PLN 0.5 mln/MW),
- (c) 1 year delivery – this will apply to the Existing CMU as well as these New CMUs and/or PDSRU which failed to meet the expenditures coefficient set forth as auction's parameters, as well as foreign physical units/interconnection physical units,

whereas under the transitional provisions the status of the New CMU in the first auction will be also granted to the existing units which commenced generation after 1 July 2017 – subject to meeting of



the relevant expenditures coefficient, taking into account the expenditures made since 1 January 2014 (it is expected that this parameter will be met, e.g. by the unit 11 of the Koźienice Power Plant).

The maximum contract periods indicated in point (a) and (b) hereinabove may be extended by additional two more years in case of the New and Modernized CMU with low carbon dioxide emission (≤ 450 kg / MWh) as well as the CHP - under an additional condition of supplying to the heating system.

The amount of remuneration in long-term contracts is to be indexed with the inflation rate.

[Participation in the Capacity Market] In general, the Capacity Market is supposed to be technologically neutral but it should also *“consider how the parameters of certain technologies contribute to security of supplies”*. Capacity Market will not be open to those PGUs, which:

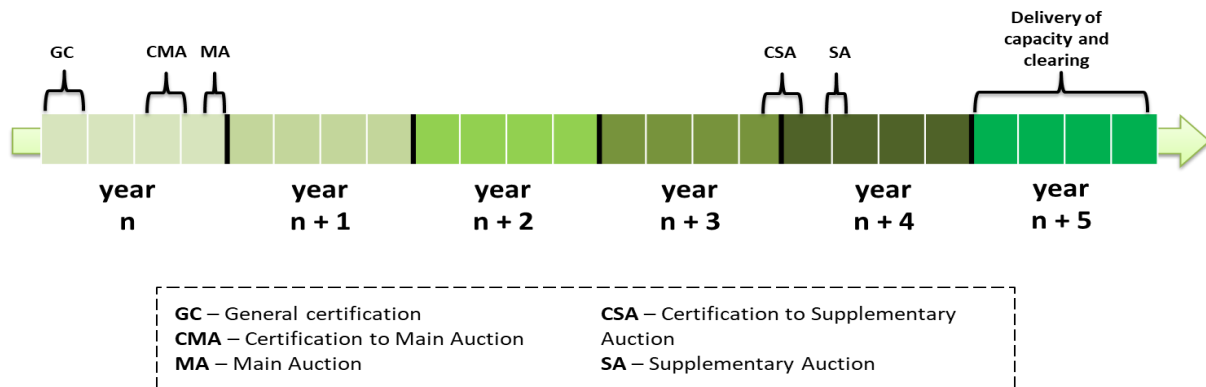
- (a) provide the TSO with the services of a character and manner of remuneration close to the Capacity Obligation (the list of such services will be published by the President of the ERO based on the content of the TSO grid code),
- (b) benefit from the RES incentive schemes (such exemption however being not applicable to multi-fuel combustion units or hybrid units), or
- (c) are foreign PGUs enjoying the cogeneration support system.

Capacity Market will be open to foreign physical units from those EU Member States whose power systems are directly connected to the NPG. The Act determines three geographical zones (Lithuania, Sweden and the synchronous profile zone, covering systems of Germany, Czech Republic and Slovakia, directly connected to the Polish grid), for which the Minister of Energy will each time define within the auction’s parameters the maximum volumes of Capacity Obligations that can be offered by entities from the aforementioned zones (it is assumed it would be ca. 1 GW starting from 2025). The foreign capacities will be allowed to offer their product within the main auction in one of the following scenarios:

- (1) capacity is offered using the interconnection physical units (interconnectors) - in this variant operators of the neighboring transmission systems will be considered as Capacity Providers; rules for the settlement of Capacity Obligation performance will be agreed in advance within the contracts concluded by the Polish TSO with the relevant foreign TSO;
- (2) capacity is offered using directly the foreign physical units selected within the so-called “preliminary auctions” carried out separately for each of zones and allowing winners of the preliminary auctions (i.e. units whose offers turned out to be the cheapest and did not exceed the volume allocated to zone) to the capacity auction - in this variant, the Capacity Providers will be the operators of the foreign physical units, which will be entered into the Register of Capacity Market after the announcement of the results of the preliminary auction. Before the main auction, the TSO may not disclose the prices offered within preliminary auction.



[Timeframes] It is expected that the capacities necessary to cover the peak electricity demand in a given year shall be contracted in line with the following schedule:



whereas:

- (a) main auctions are to be carried out between 1 and 22 December of the fifth year preceding the Delivery Period,
- (b) supplementary auctions are to be carried out in the first quarter of the calendar year preceding the Delivery Period.
- (c) none of the CMUs, excluding PGU generating annually more than 30% of electricity in cogeneration, may take part in both main auction and supplementary auction for the same delivery year.

As regards the first and the second Delivery Periods (years 2021-2022), the period between the main auction and the Delivery Period will be shortened as the main auctions for the Delivery Periods in years 2021-2022 will take place in 2018 (similarly to the main auction for the Delivery Period in year 2023). Main auctions for periods 2021-2023 are to take place respectively on: 15 November, 5 December and 21 December 2018. First preliminary auction for foreign units will take place in 2019, which means that foreign physical units will be able to participate in the main auction for the delivery period in the year 2024. For periods 2021-2023 foreign capacities may participate in capacity market only within the supplementary auctions.

Rules of the Capacity Market shall be prepared by the TSO until 28 February 2018 and approved by the President of ERO until 30 March 2018. The certification for the main auction for Delivery Periods in years 2021-2023 will be carried out jointly in the period from 5 September 2018 to 31 October 2018.

According to the “Functional solutions for the capacity market” (document announced by Polish government on 30 September 2016, hereinafter “**Solutions**”), the main auctions related to the Capacity Market should be carried out within the period of at least 10 years. The Act does not provide for any limitation to functioning of the Capacity Market but it states that the Council of Ministers shall assess the functioning of Capacity Market by the end of 2024 and shall submit to the Parliament a proposal for amendments and/or elimination of the Capacity Market.



[Certification preceding auctions] Formation of the CMU,s which would be allowed to participate in the auctions, will take place in the following stages:

General certification	Certifications to the main and supplementary auctions
<ul style="list-style-type: none"> - carried out annually during the first 10 weeks of the calendar year (except for 2018 when it will take place between 3 April and 29 May), - the aim of the general certification is to gather basic data on all PGUs and PDSRUs as well as on the planned achievable capacity of these units within the period of the next 5 years, 	<ul style="list-style-type: none"> - carried out: between 14th and 4th week preceding the main auction (certification for the main auction), and between 16th and 4th week preceding the additional auction (certification for the supplementary auction), - the aim is to define CMUs and entities operating respective CMUs, which are entitled to participate in the main/supplementary auction with respect to the relevant CMUs,
<ul style="list-style-type: none"> - obligatory for generation units with gross achievable capacity not lower than 2MW and voluntary for the PDSRU; general certification is not carried out for foreign units. 	<ul style="list-style-type: none"> - CMU may cover exclusively the units entered into the Register of the Capacity Market: (i) within the general certification, (ii) based on results of preliminary auctions, or (iii) under the agreement with the neighboring transmission system's operator, - applies to CMUs which are not covered by the Capacity Agreement for the Delivery Period covered by the auctions.

Certification may be granted to the PGUs and PDSRUs with net achievable capacity not lower than 2 MW, as well as groups of such units aggregated in CMU with combined net achievable capacity between 2 and 50 MW. The achievable capacity of a single PGU included in the aggregated CMU may not exceed 10 MW. It is also not allowed to aggregate PGU and PDSRU in one CMU.

It is however allowed to configure CMU comprised of planned PDSRUs – in such case PDSRU's identification data are to be presented before the demand-side reduction test is carried out, whereas demand-side reduction test has to be carried out no later than one month before the delivery period.

First general certification will be carried out between 3 April and 29 May 2018. Certification to the main auction for the delivery periods falling for 2021-2023 is to commence on 5 September 2018 and close on 31 October 2018. The certificate may not be issued if the PGU:

- provides the TSO with the services of a character and manner of remuneration similar to the Capacity Obligation (the list of such services will be published by the President of the ERO),
- benefits from RES incentive scheme and at the same time is not a multi-fuel combustion unit or a hybrid unit,
- benefits from the CHP incentive scheme as a foreign PGU.



[Rules pertaining to the auctions] Auctions shall be carried out for the entire area of the Polish grid with use of the dedicated IT system.

The available capacity offered in the main auction by single CMU shall be equal to the product of:

- (a) the net achievable capacity of the CMU, and
- (b) the availability correction coefficient which reflects the actual average availability of the capacity of given type/technology, calculated on the basis of the historical data for such technology for the last 5 years, taking into account planned and unplanned losses of capacity (in the initial 3 main auctions this coefficient for PDSRUs will amount to 1).

In case of CMUs aggregating capacity sources with different availability correction co-efficient, the lowest co-efficient will apply.

NEW OBLIGATIONS FOR DSO

- obligation to cooperate with TSO within certification process, within carrying out demand-side reduction tests and as regards settlement of capacity obligation;
- obligation to implement billing systems due to appointing DSO as capacity fee payer;
- agreeing conditions on decommissioning physical unit being part of Capacity Market Units (CMU), connected to DSO grid;
- obligation to include capacity fees in distribution tariffs.

Actual level of support as well as the way of functioning of Capacity Market will be regulated on a regular basis by the Minister of Energy by setting auctions parameters based on the draft parameters developed by the TSO. The auction parameters will include i.a.:

- demand for the available capacity,
- maximum offer prices,
- number of auction's rounds
- as regards the New and Modernized CMUs - capital expenditures per unit correlated with the net achievable capacity which will work as a threshold to determine the maximum duration of the Capacity Agreement concluded with respect to the relevant units;
- maximum volumes of Capacity Obligations for relevant foreign zones.

Auction parameters will be determined by the regulation of the Minister of Energy, issued each time no later than 18 weeks before the commencement of the main auction.

During the auction it will be possible to amend the declared validity period of the Capacity Agreement, however it will not be allowed to make any changes to yearly volumes of the available capacity.

In case the auction was carried out in breach of the law or against the conditions of the auction or if the participant of the auction behaved contrary to the law or to the regulation of the Capacity Market, the Minister of Energy and the President of ERO will be entitled to annul an auction by way of decision made within 14 days from the completion of the auction.



[Setting the auction prices] The Capacity Market will be based on the Dutch auction system, i.e. the closing price – the price of balance between demand and supply for capacity, specified as a result of subsequent rounds of auction – will be uniform for every CMU winning the auction (“pay as clear” auction).

In the event that several exit offers indicate the same price, for the purposes of establishing the list of entities to be covered by Capacity Agreements, offers will be ranked according to the following criteria:

- (a) firstly - according to criteria of the coefficient of CO₂ emission per unit;
- (b) secondly - according to the criteria of the time of submitting exit offers.



As regards foreign physical units, the price of the exit offer on capacity market is determined based on the price specified in the offer within the preliminary auction, while in the case of CMU consisting of interconnectors, the offer price is determined in line with the provisions set forth in the agreement concluded between the Polish TSO and the respective operator of a foreign transmission system.

[Capacity Agreement] It is expected that the Capacity Agreements will be concluded in an electronic form, for each CMU separately, as of, respectively: (i) TSO’s announcement on the preliminary outcome of the auction under the condition precedent of announcing the final outcome of the auction – in case of conclusion of the Capacity Agreement as a result of an auction, or (ii) entry made in the Register of the Capacity Market – in case of transactions at secondary market. The template of the Capacity Agreement will be attached to the Rules of the Capacity Market prepared by the TSO.

If as a result of auction completion the Capacity Obligation arises for CMU comprising of interconnectors, the agreement between TSO and the operator of foreign transmission system is automatically transformed into a Capacity Agreement.

[Secondary market and capacity relocation] It is expected that CMU will be allowed to transfer the Capacity Obligation on a secondary market to another CMU, based on an *ex-ante* principle – starting from the date of completion of the supplementary auction (i.e. auction launched with respect to quarters) until the end of a given delivery year, it being specified that trades on the secondary market must cover exclusively the entire period following the transaction made at the secondary market (either entire or part of the delivery period). However, it will be not allowed to transfer the Capacity Obligation as regards to:

- (a) the first year of the deliveries agreed for the New CMU;
- (b) CMUs which were imposed a penalty not yet paid;
- (c) CMUs which ended the test emergency period with negative result;
- (d) PDSRUs which failed to conduct the demand-side reduction test;
- (e) CMUs comprised of interconnectors.



Furthermore, if - during an Emergency Period - there is an excess of the Performed Corrected Capacity Obligation over the Corrected Capacity Obligation (see comments below), it will be allowed to transfer such excess to another CMU in a form of the Relocation Volume based on *ex post* principle (i.e. after the Capacity Obligation has been performed in excess).

Secondary market activities, as well as capacity relocation, has to be notified to the registry of the capacity market at appropriate dates (transactions on secondary market at least one day prior to the start of the period covered by the transaction, while capacity relocation not later than on the 5th day after the Emergency Period) and will be controlled by the TSO.

[Register of Capacity Market] TSO will establish and operate the Register of Capacity Market which will constitute an electronic platform for collecting, processing and exchange of the data and will enable the participants of Capacity Market to make statements of will. The Register of Capacity Market will enjoy a presumption of conformity of the entry with factual status and the date of registration of a given statement will be deemed as a date of such statement. The Register of Capacity Market will be created in stages, whereas the first stage enabling to conduct the general certification shall be completed no later than 28 February 2018.

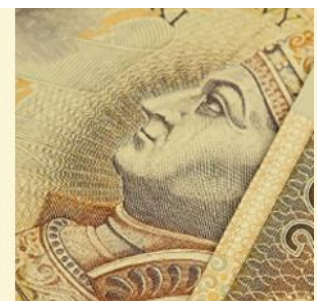
[Control of investments in New and Modernized CMUs as well as foreign CMUs] New CMUs will be required to present – before joining the auction – a financial collateral for an amount proportional to the declared available capacity (subject to the exemption from this obligation applicable to the entities having financial rating at the level specified in the Regulation of the Minister of Energy). The collaterals will be released provided that the Capacity Provider proves:

- (i) 10% of the total planned investment expenditures were actually incurred and the investment agreements covering 20% of the total planned investment expenditures were entered into – such evidence to be provided **within 12 months from the end of main auction**; and
- (ii) ability to demonstrate at least one-hour generation at the level of at least 95 % of Capacity Obligation established on the basis of corrective availability co-efficient – such evidence to be provided **before the commencement of the Delivery Period**.

In case the conditions set in points (i) or (ii) above are not met:

- (a) in case of the New CMU – the Capacity Agreement will be terminated, it being specified that if the default refers to condition mentioned in point (ii) above, termination occurs if such condition is not met by the end of the third Delivery Period (year);
- (b) in case of the Modernized CMU – the validity period of the Capacity Agreement will be reduced to 1 year without reduction of the Capacity Obligation (which will force purchases at the secondary market); the Modernized CMU will also not be able to obtain the certificate in the following two certification procedures preceding the main auctions.

The financial collateral will be also collected from the participants of preliminary auctions



[Control of the ability of PDSRU to reduce capacity demand] PDSRU are obligated to obtain – not later than 1 month before the year of delivery – a so-called demand-side reduction test certificate (hereinafter, the “**DSR Test Certificate**”) confirming their ability to reduce power consumption. Issuance of the DSR Test Certificate will require provision (reduction) of capacity during the test on the level of at least 80%, or – in case the Capacity Provider requests so – on the level of 50% (in the latter case the available capacity is reduced and TSO avails of the proportional part of the collateral). If a DSR Test Certificate has not been obtained before the certification stage, PDSRU are obligated to present a collateral, which will be released after the auction provided that PDSRU receives a DSR Test Certificate not later than 1 month before Delivery Period.

[Performance of Capacity Obligation] Capacity Obligation will be performed during Delivery Periods (as regards obligation to guarantee readiness to supply power to the system) and the Emergency Periods (as regards supplying power to the system) whereas Emergency Periods shall be defined as the hours set forth in the secondary legislation (according to the draft of the implementing acts – these will be demand peak hours, i.e. any full hour from 7:00 am until 10:00 pm on working days) during which the planned reserves of the available capacity being at disposal of the TSO (Transmission System Operator) in excess of the planned demand of the Polish grid are determined within the daily planning process to be lower than the required level of the available capacity reserves – provided that the TSO announces on the occurrence of Emergency Period at least 8 hour in advance.

The Capacity Obligation for a given time period may be subject to the so-called Justified Corrections (reduction) in case the Capacity may not be provided due to: (i) grid limitations resulting from transmission instructions issued by the operator or by the operator of distribution system, (ii) force majeure which makes performance of at least 40% of the Capacity Obligation impossible. Capacity Provider incurs the risk of failure to perform the Capacity Obligation due to other reasons, such as: failure, lack of demand for heat (in case of CHP units), fuel shortages, other technological issues.

Capacity Obligation will be settled under the conditions specified in the implementing acts and regulation of the Capacity Market prepared by TSO and approved by the President of ERO, wherein the settlements will be based on the Corrected Capacity Obligation (“**CCO**”) and the Performed Corrected Capacity Obligation (“**PCCO**”), where:

- (a) the value of CCO for a given CMU will be calculated based on:
 - (i) the scope of the Capacity Obligation of a given CMU,
 - (ii) the planned demand in the system during the Emergency Period and planned generation in units not covered by the Capacity Obligation,
 - (iii) the sum of the Capacity Obligation of all CMUs reduced by Justified Corrections of all CMUs;



- (b) the value of PCCO for a given CMU will be:
- (i) available capacity of the Centrally Dispatched Power Plant (“CDPP”) at disposal of TSO within the balancing market procedures;
 - (ii) the amount of the net power generated by Non-Centrally Dispatched Power Plant (“non-CDPP”);
 - (iii) capacity notified under a reduction offer by CMU DSR active on the balancing market;
 - (iv) actual volume of reduction of CMU DSR which did not offer a reduction on balancing market,
- in every case increased by Justified Corrections.

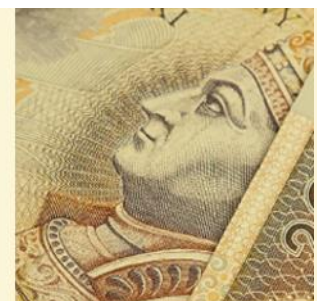
The remuneration for complying with the Capacity Obligation is payable monthly and – as regards New and Modernized CMU – is reduced by the amount of investment state aid received by respective CMU prior to the supply year (proportional reduction throughout the entire period). In the case of multi-fuel combustion plants and hybrid systems, the amount of the remunerated Capacity Obligation is also reduced by the generation covered with the certificates of origin actually issued for that installation.

As regards the CMUs comprising of interconnectors, the remuneration for complying with the Capacity Obligation is to be divided equally between the Capacity Provider and the operator of the respective transmission system.

If the PCCO (after the allowed relocation of the PCCO) is lower than CCO calculated for a given CMU in a given Emergency Period, the Capacity Provider will be obligated to pay a financial penalty, corresponding to the scope of the Capacity Obligation which was not fulfilled and the rate of penalty determined in the Regulation of the Minister of Energy. The amount of penalties may not exceed: (i) in a single year – the product of an auction highest closing price for a respective delivery year and double Capacity Obligation of given CMU, (ii) within a month – 1/5 of a yearly limit.

In case CMUs comprised of interconnectors will fail to perform CCO, the penalty is to be calculated either for the Capacity Provider or for the Polish TSO - depending on which of these entities have not made adequate cross-border exchange capacity at the interconnection available.

If PCCO (after the allowed relocation of the PCCO) is higher than CCO calculated for a given CMU in a given Emergency Period, then the Capacity Provider will be entitled to a premium, which shall: (i) correspond to a contribution of a given CCMU to cover the missing volume to fully perform all CCOs, (ii) be financed from redistributing financial penalties for given Emergency Period by entities whose PCCO was lower than CCO (profit sharing). CMUs certified for a respective Delivery Period, which has not entered into Capacity Agreement, but had been supplying power during Emergency Period, will be also entitled to a premium. The specific methods of determining and ascertaining PCCO and the method of redistributing penalties for premium payments will be defined in the Regulation of the Minister of Energy.



As regards the CMUs comprising of interconnectors, compliance with Capacity Obligation is to be examined collectively based on comparison of the total capacity flow from a given zone with the sum of CCOs to be performed by all interconnectors located within given zone. However, as regards to foreign physical units, CCO is considered to be performed if: (a) the total capacity flow from a given zone is equal to or greater than the sum of CCOs of all CMUs in a given zone, or (b) CMUs have physically delivered the capacity to the neighboring operator's grid (or have reduced intake) in the amount corresponding to CCO, or (c) CMU have offered on the capacity market or on the balancing market a supply/reduction of capacity intake in the amount corresponding to CCO.

[Budget] The Ministry of Energy estimated in the Solutions that the yearly budget of the Capacity Market will amount to 3 billion PLN, while the Act itself does not specify the total budget. On the basis of the assumptions adopted in the regulatory impact assessment, it can be initially assumed that support within the capacity market will amount to approx. 113 thousand PLN/MW/year. The funds for the

budget of the Capacity Market will be gathered from fees payable by final customers, power generators selling the energy to final customers as well as companies distributing electricity and connected to the grid of other DSO (so-called *capacity fees*), such capacity fees being taken into account in tariffs for transmission and distribution of electricity. The rates of capacity fee will be determined and published yearly by the President of ERO, provided that:

- (a) the household customers without possibility to determine the hourly electricity consumption will pay a lump-sum fee for an electricity meter, depending on the power consumption, while
- (b) other final customers will be charged a variable rate, calculated on the basis of the electricity consumed in peak demand hours.

The President of ERO is expected to establish and announce by 30 September 2019 the rates of capacity fee for the period from 1 October 2020 until 31 December 2021.

AMENDMENTS FOR ENERGY RECEIVERS

- obligation to pay capacity fee;
- possibility to participate in demand side response units if controlled energy intake is used.

Amendments in other Acts

In addition to specifying the rules for the functioning of the capacity market in Poland, the Act also introduces significant amendments to the applicable provisions of law:

[Increase of exchange obligation] According to the Act, the level of the exchange obligation indicated in the Energy Law will be increased from 15 to 30% of the generated electricity. The increase of the obligation will apply only to electricity generated from 1 January 2018.



[Change in concession fees amount] The Act increases the minimum and maximum amount of the concession fee for all types of licensed activities indicated in the Energy Law, while exempting from the concession fees the activity of generating electricity in RES installation with a capacity not exceeding 5 MW. The minimum fee amount will be increased from the current PLN 200 to the level of PLN 1,000, and the maximum amount of concession fee will be increased from PLN 1,000,000 to PLN 2,500,000.

The Act also introduces a delegation to issue a new regulation specifying detailed rules for determining the amount of concession fees.

Entering into force and anticipated effects

It should be noted that a significant part of important regulations regarding the functioning of the capacity market will be specified in the secondary legislation to be issued under the Act (e.g. parameters of each auction) and in documents and information published by the TSO and the President of ERO (e.g. rules of capacity market, rates of the capacity fee).

Moreover, performance of the Capacity Agreements as well as collection of capacity fee shall be dependent on the European Commission's consent for implementing new aid system to the energy market. Nevertheless, it seems that such consent will be obtained since the amendments introduced to the draft Act at the stage of parliamentary works were basically to incorporate Commission's demands submitted to the original draft Act.

Despite the declared technological neutrality of the Capacity Market and low achievable capacity allowing to participate in the auction (2MW) the Act will in practice not constitute a significant support for installations with an unstable generation characteristics (CHP units dependent on demand for heat, RES installations based on wind or sun which do not cooperate with energy storages). As regards the aforementioned installations, participation in the Capacity Market will be in particular impeded by the following barriers: (i) prohibition of double support (provided some exceptions), (ii) correction of achievable capacity by a corrective availability coefficient which in case of different energy technologies aggregation (including stable, such as biogas sources, and less stable, such as wind) will be depended on a coefficient relevant to the aggregated technology with the lowest load factor, (iii) system of fines for failure to perform the Capacity Obligation due to i.a. technological reasons.

On the other hand, the Capacity Market should result in relative decrease of the electricity price as part of fixed expenditures of generation units will be transferred to final customers via capacity fee.



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