

LEGAL ALERT



SOŁTYSIŃSKI
KAWECKI
SZLĘZAK



STATUTORY PRICE REGULATION AT THE ELECTRICITY MARKET

On 28 December 2018 Sejm (lower chamber of the Polish Parliament) adopted the Act amending the Act on the Excise Duty and selected other acts ("Act"), which aims at temporary stabilization of electricity costs being incurred by final customers, in particular by implementing the following instruments:

- imposing temporary restrictions on traders as regards setting of electricity prices;
- temporary „freezing” of transmission and distribution tariffs applied by electricity grid operators;
- decrease in excise duty on electricity and in the rates of transitional fee incurred by final customers of electricity.

The Act has entered into force with the effect from 1 January 2019.

INSTRUMENTS REDUCING COSTS OF OBTAINING ELECTRICITY

MECHANISM
LOWERING THE
PRICE OF
ELECTRICITY /
ELECTRICITY
SUPPLY SERVICE

THE WAY OF THE MECHANISM'S OPERATION

METHOD OF
COMPENSATION FOR
LOST REVENUES OF
ENERGY COMPANY

RESTRICTIONS
CONCERNING
SETTING OF
ELECTRICITY
PRICES

- Obligation to maintain in the tariff or in the price list (Pol. *cennik*) applicable in the year 2019 prices and rates of fees for the sale of electricity at the level not higher than the prices and rates which were specified in the seller's tariff / price list applicable on **30 June 2018** ("**Maximum Price**").

If the tariff for 2019 has been approved before the date of entry into force of the Act and such tariff does not meet the foregoing requirements - the obligation to request the President of the Energy Regulatory Office for approval of the amended tariff.

- In the case of sale contracts or comprehensive agreements (Pol. *umowa kompleksowa*) concluded after 30 June 2018:
 - concluded with the current customer, where the price or the fee rate for electricity is higher than in the previous contract;
 - concluded with a given final customer for the first time, where the price or the fee rate for the electricity is higher than the Maximum Price;

Payment by the Settlement Operator (company called *Zarządca Rozliczeń S.A.*) - at the seller's request - the amount of the difference between the revenue from the sale of energy for the Maximum Price and the revenue from the sale of the same amount of energy at the price corresponding to the weighted average price of electricity at the wholesale market.*

An application for the payment of the difference should be submitted at the latest on 20 January 2020, whereas the energy volume covered by the

	<p>– an obligation to amend such agreements by 1 April 2019 at the latest, with effect from 1 January 2019, by limiting the price of electricity to the level not higher than the Maximum Price.</p> <p>NOTE: As regards effective application of the Act, it will be an important (and challenging) issue to determine the relevant sale price in a situation where the individually negotiated price has significantly increased during the term of the contract based on valorization clauses or price algorithms and such price is still below the Maximum Price.</p> <ul style="list-style-type: none"> Administrative fine for failure to comply with any of the abovementioned obligations in the amount of up to 5% of revenue from the licensed activity in the previous tax year - imposed by the President of the Energy Regulatory Office. 	<p>application for compensation may be based on a forecast or actual results of metering and billing devices.</p> <p>By 30 September 2020, the applicant is obliged to submit an appropriate correction of the original application based on the data received from the DSO, under sanction of imposing an administrative fine.</p>															
<p>"FREEZING" OF TRANSMISSION AND DISTRIBUTION TARRIFS</p>	<ul style="list-style-type: none"> Obligation to maintain in the tariff (or in the price list) applicable in 2019 the prices and rates of fees for transmission and distribution services at the level not higher than the prices and rates which were specified in the company's tariff / price list applicable on 30 December 2018 (maximum price). <p>If the tariff for 2019 has been approved by the date of entry into force of the Act and such tariff does not meet the foregoing requirements - the obligation to apply to the President of the Energy Regulatory Office for approval of the amended tariff.</p> <ul style="list-style-type: none"> Administrative fine for non-compliance with the abovementioned obligation in the amount of up to 5% of revenues from the licensed activity in the previous tax year - imposed by the President of the Energy Regulatory Office. 	<p>The Act provides for the option for the DSO to submit to the Settlement Operator (Pol. <i>Zarządca Rozliczeń S.A.</i>) an application for compensation of the difference in the price of electricity, however the amount of compensation, which can be paid in favor of the DSO is not clear.*</p> <p>Indirectly also: Enabling the DSOs to make extended use of funds from the National Green Investment Scheme with respect to grid investments and energy storage (see comments below).</p>															
<p>DECREASE IN EXCISE DUTY</p>	<ul style="list-style-type: none"> Modified rate of excise duty on electricity from PLN 20 / MWh to PLN 5 / MWh starting from 1 January 2019. Obligation to take into account the decrease in the excise duty rate within price lists and/or tariffs specifying fees and rates for the sale of electricity applicable in 2019. 	<p>NOT APPLICABLE</p>															
<p>DECREASE IN TRANSITIONAL FEE RATES</p> <p>(i.e. the fee, which is aimed at covering the so-called stranded costs arising from the termination by PSE (TSO) of long-term contracts with power</p>	<ul style="list-style-type: none"> Decrease in transitional fee rates by 95% from 1 January 2019 with respect to certain groups of final customers: <table border="1" data-bbox="416 1733 1062 2080"> <thead> <tr> <th>Group of final customers:</th> <th>Previous rate:</th> <th>Rate after amendment:</th> </tr> </thead> <tbody> <tr> <td>Households < 500 kWh / year</td> <td>PLN 0.45 / month</td> <td>PLN 0.02 /month</td> </tr> <tr> <td>Households 500 – 1 200 kWh/year</td> <td>PLN 1.90 / month</td> <td>PLN 0.10 /month</td> </tr> <tr> <td>Households > 1 200 kWh / year</td> <td>PLN 6.00 / month</td> <td>PLN 0.33 /month</td> </tr> <tr> <td>Others connected to the low-voltage grid</td> <td>PLN 1.65 / kW of contractual</td> <td>PLN 0.08 / kW of contractual</td> </tr> </tbody> </table>	Group of final customers:	Previous rate:	Rate after amendment:	Households < 500 kWh / year	PLN 0.45 / month	PLN 0.02 /month	Households 500 – 1 200 kWh/year	PLN 1.90 / month	PLN 0.10 /month	Households > 1 200 kWh / year	PLN 6.00 / month	PLN 0.33 /month	Others connected to the low-voltage grid	PLN 1.65 / kW of contractual	PLN 0.08 / kW of contractual	<p>NOT APPLICABLE</p>
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generators)

	capacity	capacity
Others connected to the medium-voltage grid	PLN 4.10 / kW of contractual capacity	PLN 0.19 / kW of contractual capacity
Others connected to the high-voltage grid and > 400 kV grid	PLN 7.65 / kW of contractual capacity	PLN 0.20 / kW of contractual capacity
Energy-intensive companies	PLN 2.10 / kW of contractual capacity	PLN 0.06 / kW of contractual capacity
<ul style="list-style-type: none">• Obligation to take into account the decrease in the rates of the transitional fee in price lists and/or tariffs specifying fees and rates for transmission and distribution services applicable in 2019.		

* The detailed manner of calculating the difference between the Maximum Price and the weighted average price of electricity at the wholesale market will be specified in the regulation of the Council of the Ministers.

The mechanisms consisting in freezing of electricity prices, distribution and transmission fees, as well as the mechanism compensating electricity price differences are of a temporary nature and concern only the year 2019.

BUDGET AND FINANCING

[Fund for the Payment of Price Differences] The estimated cost of the mechanism compensating the differences in the price of electricity in 2019 amounts to ca. PLN 4 billion. The payments of the compensations (differences) will be made from the newly created special public fund called the Fund for Payment of Price Differences, whose authorising officer (Pol. *dysponent*) will be the Minister of the Energy, whereas the manager responsible for making payments – the company called Zarządca Rozliczeń S.A.

The Fund will be financed, in particular, from the resources obtained in result of completing auction of unused greenhouse gas emission allowances, which were allocated to the power generation plants. If the abovementioned funds prove insufficient, the Act provides for the possibility to use the funds collected at the account of the transitional fee and the renewable energy sources fee.

[The National Green Investment Scheme] According to the Act, the National Green Investment Scheme will be credited with additional PLN 1 billion from the resources obtained as a result of the auction of unused greenhouse gas emission allowances allocated to the power generation plants. These funds will be granted, in particular, to the investments carried out by the DSO, as well as other investments concerning renewable energy sources or high-efficiency cogeneration units, investments related to the adjustment of power generation plants to the BAT requirements and investments in energy storage.



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