



Obligation for energy companies to “contribute to the Fund” to finance the “price freeze” for households, SMEs, and selected public-social sector end-users in 2023

Current status of legislative work

The [bill on extraordinary measures to reduce electricity price levels and support certain end-users in 2023](#) (“**Bill**”) was adopted by the Parliament and will be referred to the President. The Bill establishes rules to “contribute to the Fund” to finance the “price freeze” for households, SMEs, and selected public-social sector end-users in 2023. The Bill aims to implement Article 6 of Council Regulation 2022/1854 concerning the mandatory cap on market revenues and the distribution of excess revenues to electricity end-users.

What issues does the Bill address?

The Bill proposes the introduction of maximal electricity prices of PLN 693/MWh for households and PLN 785/MWh for micro businesses, SMEs, and selected public-social sector end-users.

According to the Bill, companies that are engaged in electricity trading and are obliged to apply maximum prices will be entitled to compensation. To finance the compensation, the **legislator intends to impose an obligation on energy companies engaged in electricity generation or trading to “contribute the Price Difference Payment Fund” for the period from 1 December 2022 to 30 June 2023.**



Regardless of the above, the Bill provides a solution that allows, in the event of shortages in the market of ammonia water necessary for the proper operation of equipment to reduce nitrogen oxide emissions into the air, the temporary admission to operation of generating units, with a capacity of 50 MW or more, fuelled by hard coal.

Who will be obligated to contribute to the Fund?

Under the Bill's current wording, the obligation to contribute to the Fund will apply to:

- a) energy companies engaged in power trading, and
- b) generators of power in plants using:
 - wind energy,
 - solar energy,
 - geothermal energy,
 - hydropower,
 - biogas, agricultural biogas, biomass, and bioliquids (except biomethane),
 - waste,
 - brown coal,
 - hard coal,
 - liquid fuels, and
 - gaseous fuels.

Generators are to be exempted from the obligation to contribute when generating electricity in a generating unit:

- a) with a capacity of not more than 1 MW,
- b) which is a demonstration project;
- c) which is a renewable energy source installation for which the generator benefits from the following support systems: (i) a feed-in tariff or feed-in premium, regulated under Articles 70a-70f of the Renewable Energy Sources Act, (ii) the auction system, or (iii) settlements carried out between the energy cooperative and the obligated seller under Article 38c(3) of the Renewable Energy Sources Act;

however, the exemption in such case is limited only to electricity sold under the terms of these support systems (the remaining electricity generated and sold is the basis for calculating the contributions).



How is the contribution to be carried out?

Calculation rules

The contribution to the Fund is to be calculated for power purchase contracts¹ and within the framework of power sales in the balancing market. The write-off will be calculated based on three main components:

- the volume of electricity sold on a given day;
- the volume-weighted average market² price of electricity sold on that day, and
- the volume-weighted average cap price of electricity sold on that day.

The amount of the contributions to the Fund is calculated individually by the generator on the basis of the formula:

$$OF_d = W_d * (\overline{X_{CRd}} - \overline{X_{CLd}})$$

where:

- OF_d denotes the contribution to the Fund,
- W_d denotes the volume of electricity sold on a given day,
- $\overline{X_{CRd}}$ denotes the volume-weighted average market price of electricity sold on a given day by the obligated entity,
- $\overline{X_{CLd}}$ denotes the volume-weighted average cap price of electricity sold on a given day by the obligated entity.

¹ A power purchase contract as defined under the Bill is only a sales contract with a guarantee of physical delivery concluded: (i) in the wholesale electricity market between a generator and a trading company, or (ii) between a trading company or a generator and an end-user.

² The "market price" on the grounds of the Bill should be understood as the net electricity price established under: (i) a power purchase contract (whereby, in the case of a trading company, this price is determined under the sales contract under which the company sells electricity), or (ii) the electricity balancing market. Unlike under Council Regulation 2022/1854, the amount of the market price taken into account to settle the "write-off to the Fund" does not take into account settlements based on financial instruments (e.g. virtual cPPAs).

Price cap

The price cap to calculate the contribution to the Fund will be set (or calculated in accordance with formulas specified) in a regulation of the Council of Ministers³. The currently proposed formula for the regulation if generators introduce a variation of the price cap depending on the technology of electricity generation (in these cases, depending on the type of generation technology, the price cap will be determined either by: (i) the amount, or (ii) specified components, calculated based on a formula or by amount, while the Bill does not specify the amounts or rules to calculate the price cap). In turn, the price cap for trading companies will be calculated as the product of the price of purchasing electricity from the generator or other trading companies and a coefficient set by the Council of Ministers (the Bill does not include the inclusion of the cost of purchasing energy from the balancing market in the price-cap calculation formula).

Transfer rules

Entities will be required to transfer the sum of the contributions to the Fund, calculated for each day of a given month⁴, by the 5th day of the following month while it is assumed that the payment will apply only to the amounts for which payment was made in the month for which settlement is made.

If a contribution to the Fund has not been settled in full on time, the missing amount is included in the sum of the contributions to the Fund for the next calendar month in which the settlement occurs.

³ Such a solution may raise significant constitutional concerns regarding parliamentary control over the imposition of taxes / public tributes or the introduction of expropriation instruments.

⁴ The Bill stipulates that the negative difference between the market price and the price cap (loss) for a given day does not reduce the write-offs for days in which the difference is positive (there is excess income as defined under Council Regulation 2022/1854).

Reporting obligation

Obligated entities must submit to the Settlement Administrator by the 20th of each following month, a report on the fulfillment of the obligation to contribute to the Fund in a given month, prepared on an e-form. The report is to include, i.a.:

- the total volume of electricity sold, to four decimal places
- the sum of the Fund write-offs due for the month covered by the report,
- the sum of the matured write-offs to the Fund for which payment was made in the month covered by the report,
- data on power purchase contracts and in the sale of power in the balancing market, e.g.:
 - the volume of electricity sold,
 - the volume-weighted average market price of electricity sold,
 - the volume-weighted average price cap of the sold electricity price, and
 - the payment term.

Submitted reports are verified by the Settlement Administrator. In the case of formal omissions, calculation errors, or reasonable doubts, the Settlement Administrator may call on the obliged entity to remove the indicated irregularities.



What are the sanctions for breaching the obligation to contribute to the Fund?

If formal omissions, calculation errors, or reasonable doubts are not addressed, as well as in the case of negative verification, the Settlement Administrator will submit a request to the President of Energy Regulatory Office (ERO) to carry out an inspection.

If it is found during the inspection that the transferred contributions to the Fund have been:

- lowered - the obliged entity will transfer the missing amount of the write-off within 30 days (statutory interest for delay that is calculated from the date of receiving the decision of the President of ERO will be charged on the missing amount); or
- excessive - the ERO President will declare a reduction of the contribution to the Fund in the following month to the extent of the difference between the amount transferred and the amount of the write-off due, and if the excess relates to the last month under the obligation, the ERO President will declare a refund of the excess amount from the Fund account to the obligated entity.

Enforcement will be carried out based on the decision issued by the President of ERO in the above regard.

For breaching the obligation to contribute to the Fund, the obliged entity will be subject to a penalty of up to 15% of the income earned in the previous fiscal year.

For breaching the obligation to submit reports to the Settlement Administrator, the obligated entity will be subject to a penalty of up to 50% of the due amount of the write-down to the Fund for the given settlement month.

The Infrastructure and Energy Department team of our law firm are happy to provide support in conducting the above processes.



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