Regulatory changes on the energy market in Poland. Amendment to the Energy Law Act.

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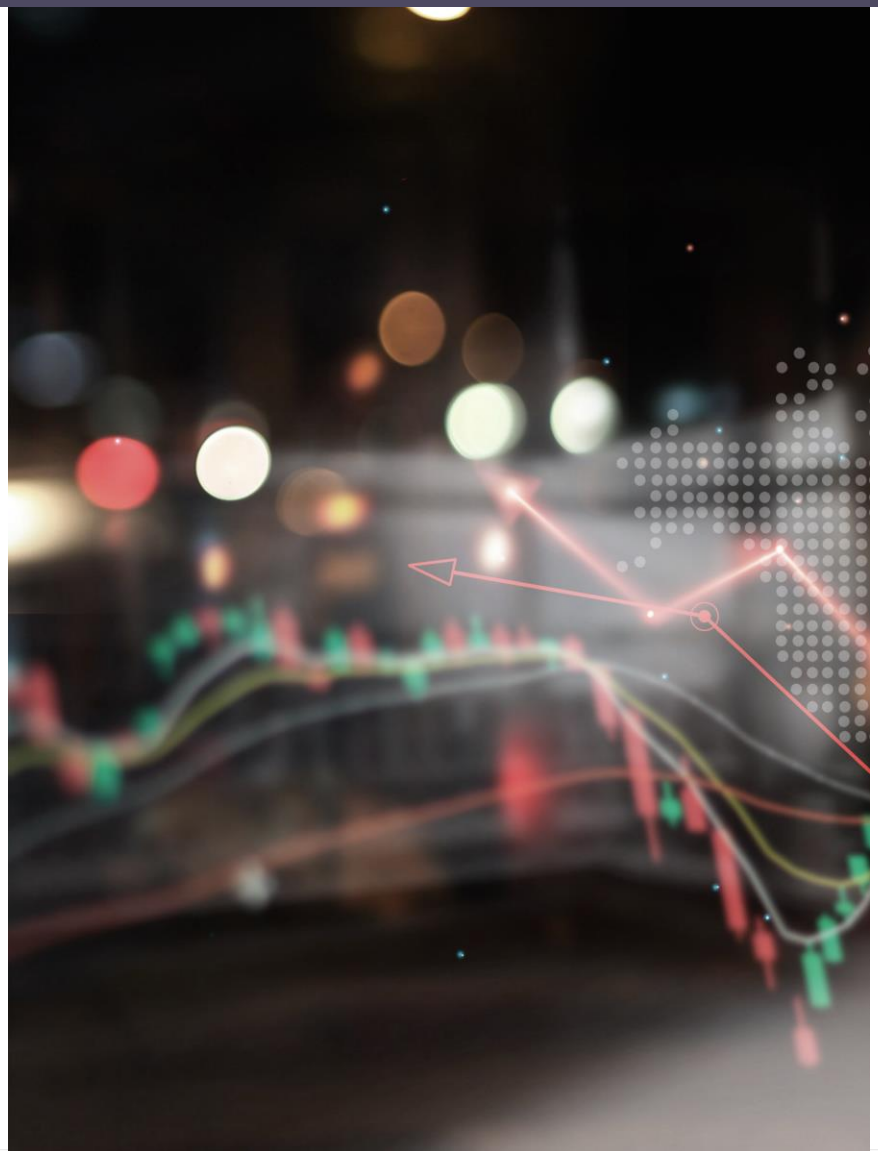
Below we present a summary of the most important recent changes in the Act of 10 April 1997 – the Energy Law (Pol. Ustawa z dnia 10 kwietnia 1997 r. - Prawo energetyczne), which have been introduced by the Act of 28 July 2023 amending the Energy Law and certain other laws (the "**Amendment**"). Most provisions of the Amendment came into force on 7 September 2023.

Table of contents



Direct line

The new definition of direct line

The Amendment introduced a change to the definition of a direct line and broadened its scope as well as implemented more comprehensive regulation for use of direct lines.

The amended definition of direct line shall capture power lines delivering energy from generating units that do not operate in an island mode. The new definition of the direct line, in conjunction with the new provisions of Articles 7a and 7aa of the Energy Law, will i.a.: (a) impose a new charge on the entities supplied with a direct line in order to secure additional financing of the distribution network and to allow (b) allow to feed into the grid, under certain conditions, the surplus energy delivered with use of a direct line from power generation units operated by entities other than the energy consumer.

Under the new regulation, a direct line is a power line connecting an isolated generating unit with an isolated customer for the purpose of direct supply of electricity to that customer as well as a power line connecting a generating unit with an energy undertaking, other than that generating electricity at that unit, conducting business activities related to electricity trading, for the purpose of direct supply of electricity to their own facilities, including equipment and installations, to entities that are its subordinate units, and to energy customers connected to the grid, facilities or installations of that unit. An isolated generating unit means “a generating unit in which case the entire generated electricity is subject to the direct delivery of electricity to the isolated customer”, while the isolated customer means “customer that is not connected to the grid or is connected to the grid in a manner that prevents the electricity generated at the isolated generating unit from being fed into the grid, or meets the conditions, technical requirements and obligations specified in article 7aa para 3 of the Energy Law”. In turn, the direct delivery of electricity means a delivery of electricity without using the grid or with use of the grid of the energy undertaking carrying out an activity in the scope of energy trading, other than the energy producer.

No need to obtain consent from the president of the energy regulatory office for the construction of a direct line

Under the previous legislation, the construction of a direct line required the approval of the Energy Regulatory Office ("**President of ERO**") prior to submitting an application for a building permit for such a direct line. The amended regulations replace this procedure with the obligation to obtain an entry in the list of direct lines maintained by the President of ERO. The entity intending to construct a direct line should present in the application the key information on the parameters of the direct line and attach an expert report on the impact of that line and the equipment connected to it on the national power system. The President of ERO may refuse registration, inter alia, if (a) the application contains defects or (b) the expert report has been prepared "carelessly" or by an unauthorised person, or also (c) the expert report indicates a negative impact of the direct line (or the equipment, installations or networks connected to it) on the grid.

The possibility to feed electricity into the grid

According to the Amendment, surplus energy delivered to the consumer via direct line may be fed into the power grid provided that it meets a number of prerequisites, including, among others, obtaining grid connection conditions and concluding an energy transmission/distribution service contract as well as an energy sales contract, meeting the technical requirements of grid-connected generating units under the network codes issued under Regulation 2019/943 and obtaining the relevant licenses (e.g., in the case of a photovoltaic plants with a total capacity exceeding 1 MW - a licence for electricity generation).

CUSTOMER STATUS	PROCEDURE FOR ENTRY INTO THE REGISTER OF DIRECT LINES
A customer not connected to the power grid	Entry into the list of direct lines according to a simplified procedure
A customer connected to the power grid without right to feed into the grid the surplus electricity supplied by a direct line	Entry into the list of direct lines according to a simplified procedure
A customer connected to the power grid with the right to feed into the grid the surplus electricity supplied by a direct line from a source with a capacity of up to 2 MW	Entry into the list of direct lines according to a simplified procedure The feeding of electricity into the grid requires, among other things, the conclusion of a grid connection agreement with the DSO regulating the terms and conditions for the feeding of electricity into the grid, and the obtaining of a relevant license in certain cases
A customer connected to the power grid with the right to feed into the grid the surplus electricity supplied by a direct line from a source with a capacity of over 2 MW	Entry into the list of direct lines according to a full procedure (requires, among other things, an expert report on the impact of the direct line or the equipment, installations or grids connected to it on the power system) The feeding of electricity into the grid requires the conclusion of a grid connection agreement with the DSO regulating the feeding of electricity into the grid, and the obtaining of a relevant license in certain cases

Charges related to the supply of electricity by direct line

Under the amended provisions, a customer connected to the grid and supplied with electricity by a direct line will be obliged to pay a so-called solidarity fee to finance the grid. The amount of the charges in question shall be determined by secondary legislation, but may not exceed the product of the amount of electricity supplied through the direct line and, respectively:

- half the amount of the variable component of the grid fee, and
- the quality fee rate.

In addition, customers connected to the direct line, which in turn are connected to the power grid, shall become payers of capacity fee payers if they receive electricity through the direct line.

Obligations of entities holding a legal title to the direct line

The entity holding a legal title to the direct line shall be responsible for:

- operation and maintenance of the direct line;
- continuity of supplies and adequate quality parameters of electricity supplied by the direct line;
- provision of information, including metering and other technical data, to guarantee the safe and efficient operation and development of the network of the power system operator in whose area of operation the direct line is built, at the request of this operator or the President of ERO;
- installation and proper operation of a metering and billing system that makes it possible to determine the amount of electricity supplied through the direct line, to enable the power system operator to read the metering data from the metering and billing system, to make settlements and control the proper operation of this system;
- updating the information entered into the direct line register before making any changes to the direct line or decommissioning thereof.

Non-market-based redispatching generation from renewable energy sources

Rules for requesting the redispatching by tsos and dso

Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity ("**Regulation 2019/943**") regulates basic rules for non-market-based curtailments of generation from renewable energy sources as well as changes of the electricity storage facilities operation mode at the request of power system operators. The Amendment implements the European regulatory framework into the Polish legal system.

The Article 13 of the Regulation 2019/943 confirms the power of the transmission system operator (TSO) and distribution system operators (DSOs) to curtail generation from power plants and change the operation mode of energy storage (a change in the power offtaken or fed into the grid), under the non-market-based redispatching, in cases where, among other things:

- no market-based alternative is available;
- all available market-based resources have been used;
- the number of available power generating, energy storage or demand response facilities is too low to ensure effective competition in the area where suitable facilities for the provision of the service are located;
- the current grid situation leads to congestion in such a regular and predictable way that market-based redispatching would lead to regular strategic bidding which would increase the level of internal congestion and the Member State concerned either has adopted an action plan to address this congestion or ensures that minimum available capacity for cross-zonal trade.

The non-market-based reduction in generation from wind farms and photovoltaic power plants is deemed as a last resort instrument. According to the justification of the draft Amendment, prior to application of the non-market-based redispatching of the wind farms and photovoltaic power plants, the TSO shall take the remedial measures listed below (according to the order below):

- blocking the import capacity on a day-ahead and intra-day basis;
- market-based redispatching within the balancing market;
- forcing pumping operation at hydro-pumped storage power plants;
- making the export capacity available on an intra-day basis;
- decreasing generation from CHP plants within the so-called "GWS" service;
- energy export in the form of operative emergency assistance.

The abovementioned curtailments shall only be implemented in order to balance the supply of electricity with the demand for electricity or to ensure the safety of the operation of the power grid. The TSO shall be entitled to make the request directly to the generator connected to the transmission system or - in coordination with the relevant DSO - to the generator connected to the distribution system.

The Amendment, assumes that the TSO will make requests to producers, with the aim of balancing the supply of electricity with the demand for this energy, starting with units with an installed capacity greater than 400 kW and after exhausting all the possibilities in this group - with respect to units with an installed capacity between 200 and 400 kW (given that the TSO will be authorised to impose curtailments with respect to the units with an installed capacity of at least 50 kW). When selecting the units in relation to which the aforementioned limitations will apply, the TSO should take into account the need to minimize the expected cost of the non-market redispatching, understood as the sum of financial compensation for non-market based redispatching (units that are not entitled to financial compensation will be subject to non-market redispatching with priority over units entitled to such compensation), as well as to minimize the scope of curtailments from wind farms and photovoltaic power plants.

When applying the non-market redispatching, the DSO should act to minimize the scope of curtailments of wind or solar energy.

The Amendment grants the DSO the authority to curtail the micro-installations with an installed capacity of over 10 kW and connected to the system of that operator in the event that the electricity generation in that micro-installations poses a threat to the security of operation of that grid, or to balance electricity supply with demand for electricity in the event of a request from the electric power transmission system operator.

Financial compensation

The operator of the installation covered by the redispatching mechanism shall be entitled to obtain financial compensation paid out by the system operator requesting the redispatching. According to the Amendment, the amount of financial compensation shall be calculated and paid on the basis of a contract concluded between the power system operator issuing the instruction and the electricity producer or owner of the electricity storage facility, such contract to determine the amount of the compensation. According to Regulation 2019/943, the compensation in question shall be at least equal to the higher of the following elements (or their total amount, if the application of only one of the higher amounts would result in unjustifiably low or high compensation, i.e.:

- additional operating cost caused by the redispatching, such as additional fuel costs in the case of upward redispatching, or backup heat provision in the case of downward redispatching of power-generating facilities using high-efficiency cogeneration;

- net revenues from the sale of electricity on the day-ahead market that the power-generating, energy storage or demand response facility would have generated without the redispatching request; where financial support is granted to power-generating, energy storage or demand response facilities based on the electricity volume generated or consumed, financial support that would have been received without the redispatching request shall be deemed to be part of the net revenues.

The financial compensation shall be calculated and paid by the operator of the grid to which the unit or the energy storage facility are connected, or by the power system operator who transmits the request. The financial compensation shall be settled under either the transmission service agreement or the electricity distribution service agreement.

Exclusion of the obligation to pay financial compensation

According to the Amendment, the connection agreement related to a generating unit or an energy storage facility shall contain – in addition to other elements required by the law – the provisions authorizing the system operator to limit the guaranteed connection capacity or impose operational curtailments resulting in the absence of guarantees of reliable electricity supply, to balance the supply of electricity with the demand for electricity or ensure the security of operation of the power grid.

In cases where the agreement for connection of a generating unit or energy storage facility contains provisions resulting in the absence of guarantees of reliable electricity supply, the financial compensation referred to above shall not apply. The above means that any modification or conclusion of a connection agreement after the date of entry into force of the above regulations, shall entail the need to make arrangements with the grid operator with regard to provisions on the reliability of electricity supply.

Res auction won

The regulations in question also affect RES auction winners. The amended regulations provide that in the event that a request made by the power system operator prevents a producer from fulfilling its obligation to sell electricity for the first time under an auction system within a specific period of time, calculated from the date of closing the auction, the producer – in order not to lose the support – should start selling no later than on the first day after the curtailment request is revoked. In addition, for the purpose of settlement of the obligation to sell minimum volumes committed under the auction system, it is assumed that the total amount of electricity not produced during the periods covered by the curtailments referred to above is not higher than the amount of electricity that the relevant power system operator has designated as reduced.

Pursuant to the Amendment, the Transmission Network Code (TNC) shall specify the detailed rules for non-market redispatching and financial compensation related thereto with respect to wind or solar units or energy storage facilities, as well as the criteria and rules for determining which power system operator is considered to be a requesting entity obligated to pay compensation in the event of making requests and settlements for non-execution of the requests .

Regulatory sandbox

The Amendment provides for the possibility of applying to the President of ERO for temporary derogations from the application of the regulations specified in the proposal, in order to implement a project aimed at implementing innovative technologies, services, products, system user cooperation models, process or ICT solutions for the benefit of energy transformation, smart grids and infrastructures, the development of local balancing and the increase of efficiency in the use of existing energy infrastructure. Derogation may be granted to the extent necessary for implementation of the underlying project.

Pursuant to the Amendment, the President of ERO may grant derogations from regulatory obligations concerning, among other things:

- conditions for obtaining and conducting licensed activities, including a license for the production of fuels or energy or trading in fuels or energy;
- obligation to submit the grid code (pol. Instrukcja Ruchu i Eksploatacji Sieci Przesyłowej) for approval of the President of the ERO;
- obligation to agree with the President of ERO on a draft development plan for meeting current and future demand for gaseous fuels or energy;
- obligation to submit a tariff for approval to the President of ERO (unless the applicant is a distribution system operator).

The derogation referred to above may be granted if the following conditions are met jointly:

- the project will contribute to the achievement of the objectives of the national energy policy;
- the applicant proves the expected benefits of the project for the operation of the electricity system, the users of these systems, or other environmental, economic or social benefits;
- the applicant will demonstrate existing regulatory barriers that make it impossible to implement the project without obtaining the derogation in question.

To confirm that the prerequisites for obtaining an exemption for the requested obligation are met, the President of ERO may require the applicant to submit an expert report confirming that the above criteria have been met. The President of ERO may grant the exemption referred to above for a period of no more than three years, with the possibility of extending it once for up to three years.

Rights of the president of the energy regulatory office to conduct licensed activities

The Amendment specifies that the issuance, modification and revocation of a license shall be subject to additional pre-requisite related to warranty of proper performance of the licensed activity. According to the above, the President of ERO, by way of a decision, may refuse to grant a license to an applicant who does not warrant proper performance of the licensed activity. The President of ERO shall be also entitled to verify the facts stated in the application for a license or its amendment to determine whether the entrepreneur meets the conditions for conducting the licensed business activity and whether it warrants proper performance of the licensed activity. An analysis of the wording of the justification to the draft Amendment indicates that the prerequisite discussed above refers, in particular, to the situation of a final conviction for crimes related to business activity.

The President of ERO shall be authorized to modify the terms of the license already issued, in particular in the event that they need to be adjusted to the current state of the law or to prevent practices that harm the interests of customers or threaten the development of competition.

The Amendment clarifies rules on the basis of which the President of ERO shall order an energy undertaking to continue its licensed activities for a period of no more than 2 years if the public interest requires so. The above also includes companies in bankruptcy (it applies to situations where the license will expire after the declaration of bankruptcy and before the completion of bankruptcy proceedings). In the case of the sale of an energy enterprise, including the enterprise in bankruptcy, the purchaser of this enterprise shall be obliged to implement the decision of the President of ERO imposing an obligation to continue the licensed activities. If the activities conducted on the conditions referred to above result in a loss, the energy undertaking shall be entitled to cover the losses from the State Treasury in an amount limited to the reasonable costs of the activities specified in the license, incurred during the period covered by the decision.

Changes in the calculation of the so-called "contribution to the fund"

The Amendment introduces changes in the Act on Emergency Measures Aimed at Limiting Electricity Prices and Supporting Certain Consumers in 2023[1] (the "**Act**"), which sets forth the rules for collecting the so-called "Contribution to the Fund" from the entities referred to in Article 21 of the Law (the "**Obligated Entities**").

The amendments significantly modify the method of calculating the contribution to the Fund with regard to revenues from the sale of guarantees of origin, revenues from contracts related to the sale of electricity involving financial instruments within the meaning of Article 2 section 1 of the act on trading in financial instruments[2] of July 29, 2005, and other revenues resulting from additional monetary settlements that depend on the value or volume of electricity sold (including PPAs).

Calculation of constribution to fund – operators of generating units

Under the new rules, the contribution to Fund payable by the operators of the generating units shall be calculated according to the following formula:

$$OF_d = \mathrm{W_d} * (\overline{X_{CRd}} - \overline{X_{CLd}}) + [0{,}97] * (D_{Gd} + D_{IFd} + D_{IRd})$$

where:

OF_d – denotes the contribution to the Fund on a given day

$\mathrm{W_d}$ – 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

D_{Gd} – denotes the revenues from sales of guarantees of origin within the meaning of the Act on renewable energy sources on a given day by the obligated entity

D_{IFd} – denotes the revenues from sales of electricity covering financial instruments within the meaning of Article 2(1) of the Act of 29 July 2005 on Trading in Financial Instruments on a given day for the obliged entity

D_{IRd} – denotes the revenues from additional monetary settlements depending on the value or quantity of electricity sold, on a given day, for the obliged entity

In the event that the volume-weighted average market price of electricity sold on a given day for an obliged entity is less than the volume-weighted average limit of the price of electricity sold on a given day for an obliged entity ($\overline{X_{CRd}} < \overline{X_{CLd}}$) the contribution to the Fund is calculated according to the following formula

$$OF_d = [0{,}97] * (D_{Gd} + D_{IFd} + D_{IRd}) \overline{X_{CRd}} < \overline{X_{CLd}}$$

[1] Act of 27 October 2022 on emergency measures aimed at limiting the level of electricity prices and support for certain consumers in 2023 (Journal of Laws, item 2243, as amended).

[2] Act of 29 July 2005 on trading in financial instruments (i.e. Journal of Laws 2023, item 646 as amended).

Calculation of constribution to fund - entities referred to in art. 23 ust. 2b of the act (industrial consumers)

Under the new rules, the contribution to Fund payable by the industrial consumers shall be calculated according to the following formula:

$$OF_d = Max\,(\mathrm{W_d} - 0{,}3 * \mathrm{W_z}; 0) * (\overline{X_{CRd}} - \overline{X_{CLd}}) + \\ + [0{,}97] * (D_{Gd} + D_{IFd} + D_{IRd})$$

where:

OF_d – denotes the contribution to the Fund for the given period referred to in paragraph 2a of the Act

$\mathrm{W_d}$ – denotes the volume of electricity sold during the given period referred to in Article 23 paragraph 2a of the Act

W_z – denotes the volume of electricity purchased for a given period referred to in Article 23 paragraph 2a of the Act

$\overline{X_{CRd}}$ – denotes the volume-weighted average market price of electricity sold during the given period referred to in Article 23 paragraph 2a of the Act

$\overline{X_{CLd}}$ – denotes the volume-weighted average cap price of electricity sold during the given period referred to in Article 23 paragraph 2a of the Act

D_{Gd} – denotes the revenues from sales of guarantees of origin within the meaning of the Act on renewable energy sources[3] for a given period referred to in Article 23 paragraph 2a of the Act

D_{IFd} – denotes the revenues from sales of electricity covering financial instruments within the meaning of Article 2(1) of the Act of 29 July 2005 on Trading in Financial Instruments for a given period referred to in Article 23 paragraph 2a of the Act

D_{IRd} – denotes the revenues from additional monetary settlements depending on the value or quantity of electricity sold for a given period referred to in Article 23 paragraph 2a of the Act

In the event that the volume-weighted average market price of electricity sold on a given day for an Obliged entity is less than the volume-weighted average limit of the price of electricity sold on a given day for an Obliged entity ($\overline{X_{CRd}} < \overline{X_{CLd}}$) the contribution to the Fund is calculated according to the following formula:

$$OF_d = [0{,}97] * (D_{Gd} + D_{IFd} + D_{IRd})$$

[3] Act of 20 February 2015 on renewable energy sources (i.e. Journal of Laws of 2023, item 1436, as amended).

Final customer at the electricity market

Technical switching process within 24 hours

The Amendment introduces provisions to allow final customers, starting in 2026, to technically switch electricity seller within 24 hours. The duration of the switching process is to be counted from the moment the new seller informs the Energy Market Information Operator (OIRE), through the Central System of the Energy Market Information, of the customer's contract with the new seller.

Comparison engine for offers to sell electricity

Household electricity customers and micro-entrepreneurs within the meaning of Article 7 section 1 point 1 of the Law of March 6, 2018 – the Entrepreneurs'[4] Law-with an expected annual consumption of less than 100,000 kWh, are to be given access to a free tool for comparing offers to sell electricity. According to the Amendment, the comparison engine for offers is to include, among other things, information on all offers to sell electricity, including offers of contracts with dynamic electricity prices, existing on the electricity market in Poland, as well as offers of other services offered by electricity sellers. At the same time, to ensure that the information in the comparison engine for offers is up-to-date, energy sellers were obliged to provide the President of ERO with information on updated offers to sell electricity and other services provided by these sellers, both at the request of the President of ERO and each time, within 7 days before the update is introduced in their offer.

Contracts with dynamic pricing

On the basis of the amended regulations, the final customer shall be entitled to demand conclusion of an electricity sales contract or a comprehensive contract with pricing based on spot prices quoted at the electricity markets, in particular on the day-ahead and intra-day markets, at intervals at least equal to the imbalance settlement period within the meaning of Article 2 section 10 of Commission Regulation (EU) 2017/2195 of November 23, 2017 establishing a guideline on electricity balancing (Official Journal EU L 312, 28.11.2017, p. 6, as amended4).

Partnership trading in renewable energy (P2P)

Under the enacted amendments, prosumers and collective prosumers are to be given the opportunity to sell surplus energy generated from RES through renewable energy trading partnerships. Renewable energy trading partnership agreements are to be entered into and settled using a renewable energy trading partnership platform that enables, according to the Amendment, automated execution of transactions and payments either directly between the parties to such agreements or through a third party.

[4] Act of 6 March 2018. - Entrepreneurs' Law (Journal of Laws of 2023, item 221, as amended).

Citizen energy communities

In addition, the amendment provides for a new form of association of entities – the citizen energy community ("**OSE**") (pol. *Obywatelska społeczność energetyczna*). The purpose of the OSE is to provide environmental, economic or social benefits to its members, shareholders, associates or the local areas for which it operates. The OSE can be established in the form of cooperatives, housing cooperatives, housing communities, associations, excluding ordinary associations, partnerships, excluding professional partnerships and farmers' cooperatives. The object of the OSE can be generation, distribution, trading, aggregation, storage of electricity, implementation of projects aimed at improving energy efficiency, provision of electric vehicle charging services and provision of system or flexibility services. According to the Amendment, the area of operation of the OSE, will be limited to the operation of a single distribution system operator.

If you have any questions or doubts, please don't hesitate to contact us.

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