Poland: New support scheme for renewable energy sources

Poland’s Ministry of Economy ("ME") has stated that the support scheme for renewable energy sources ("RES") in the country will be completely changed and has presented the general rules of a new support scheme. The proposition put forward by the ME will affect not only future investments, but also the existing ones.

On 17 September 2013, the ME presented its long-awaited update regarding the country’s support scheme for RES. After consultations, the proposed solutions will become part of a subsequent (fifth) version of a draft of act on renewable energy sources (the "Bill"), which will be a subject of works by the Polish government.

The Bill is meant to transpose the provisions of the Directive 2009/28/EC on renewable energy into Polish legislation. The Bill is also part of a package of new energy legislation (the "Energy Package") comprising a new gas law, a new energy law, and the act with implementing provisions regarding all of the above-mentioned energy acts.

Changes to the support scheme

Contrary to the provisions of previous drafts, the proposed support scheme will not be based on green certificates, but rather on an auction system. This approach takes it cues from the RES support systems of such countries as the Netherlands and Italy. The subject of any individual auction will be the amount of energy that will be generated in a specific form of renewable energy source ("RES-E") over a period of 15 years, starting with the day of the commencement of production. In the auction’s announcement, the President of Energy Regulatory Office ("PERO") will indicate the required amount of energy, separately for each year, during this period of 15 years. The production of RES-E should start within 4 years from the day on which the auction’s winner is announced. The winner will be chosen on the basis of a procedure consisting of two phases: prequalification and the auction itself. The ME plans for there to be a large number of auctions, especially in the first years of the new system.

The prequalification phase

The purpose of this phase is to guarantee that the participating entities would be able to start the implementation of the project immediately after winning the auction. The following criteria should be met in order to pass the prequalification phase:

(i) compliance with a local development plan (other spatial documents of a commune),
(ii) holding the conditions for connection to the grid,
(iii) holding an environmental permit,
(iv) ensuring the financial capacities to implement the project and providing a business plan,
(v) providing a step plan for the project,
(vi) documents should be valid for at least 6 months from the date of filling a motion.
The more specific criteria are to be published in separate secondary legislation issued on the basis of the Bill. In order to ensure the project’s implementation, some additional requirements may be introduced (e.g. obligation to pay a deposit, prohibitions for those entities that failed to implement previous projects, etc.).

Prequalification proceedings will be conducted by the PERO and shall not last more than 3 months. Any entity which failed to pass this phase will have a right to file a protest, which the Minister of Economy will resolve within 60 days. If its protest is not accepted by the Minister of Economy, the given entity will be entitled to appeal to an administrative court. The structure of the prequalification phase underscores that investors are well advised to use qualified financial and legal support in order to pass it.

The auctions

Those entities which pass the prequalification phase will receive certificates valid for 12 months allowing them to take part in the auctions. One month before the first auction of each year, the Minister of Economy will publish the reference (maximum) price, which will be amended once a year and will be set out separately for each kind of RES technology. There will be also separate auctions for RES installations with installed capacities ranging from 40kW to 1MW and for those installations that are larger than 1MW. The ME has stated that reference prices will be set out at a level ensuring that about 80% of the projects will be profitable. Installations using biomass with total installed capacity exceeding 50MW and multi-fuel installations will be excluded from the auction-based system.

Participants of the auction will offer their bids, which shall not exceed the reference price indicated by the Minister of Economy. The bidder proposing the lowest price will win the auction. Criteria other than price (e.g. stability) might also influence the selection of the winner. The price proposed for RES-E during the auction will remain unchanged for a period of 15 years and the winner will be obliged to sell the declared amount of RES-E for that price even if the market price turns out to be higher.

According to the proposed support scheme, a new state-owned entity -- Sprzedawca Energii Odnawialnej S.A. (“SEO S.A.”). SEO S.A. will be formed to buy energy from the winners of the auctions and sell it on the Polish Power Exchange. If the market price of energy is higher than the price set out during the auction, the difference will be covered by a special RES Fee, which the grid operator will collect from the consumers and pay to SEO S.A. The amount of any RES Fee will be calculated by the Minister of Economy to keep SEO S.A.’s balance near zero in a long-time perspective.

Support for micro installations

Under the proposed support scheme, there will be an obligation to buy any surplus of energy produced in micro installations with an installed capacity of up to 40kW for 80% of the market price through a period of 15 years. Furthermore, there will be no licensing/concession requirements for those micro generators that will not also have to run business activity. Additionally, the ME wants to create investment and educational programmes supporting micro installations and make the interconnection to the grid easier; however, no relevant details have been revealed so far.

Provisions for existing installations

The RES-E producers will have 2 years from the day when the Bill comes into force to choose if they want to continue using the current support scheme or move to the auction-based system, which is dedicated only for them. However, the current
support scheme is also going to be changed slightly and will only be maintained until the end of 2021. The substitution fee will be “frozen” at the level of 2013, i.e. PLN 297.4 (ca. EUR 75) per 1 MWh. Moreover, this fee may be paid only when it amounts to more than 75% of the price of green certificates. RES-E producers choosing to remain in the current support scheme will be obliged to trade a certain part of green certificates (the specific amount has yet to be determined) on the Polish Power Exchange. The above-mentioned solutions are aimed at improving the situation on Poland’s RES market, because the price for green certificates was very unstable in 2013 (it varied from ca. PLN 100 to ca. PLN 200 per 1MWh).

Furthermore, hydro power plants with total installed capacity exceeding 1MW will be excluded from the amended version of the current support scheme and multi-fuel installations will receive green certificates only up to the average amount of energy produced in the two year period 2011-2012 and those certificates will be indexed by a reduced coefficient 0.5 per 1MWh (currently, the coefficient is 1 per 1MWh).

Summary

The proposed solutions will bring about a radical change in the support scheme for RES in Poland. Although the RES industry is concerned about the scope of changes, it is currently difficult to accurately evaluate the ME’s proposition, as the presented rules are mostly of a general nature. However, there is no doubt that the ME wants to decrease the level of state support for RES. It is estimated that the cost of the current support system would amount to PLN 8,902m in 2020, whereas the cost of new support scheme would amount to PLN 4,261m at same period in time. Information regarding differences between reference prices for particular RES technologies will be of the significant importance in assessing if the support scheme is effective.

Moreover, legal and financial advice may be useful not only for new energy generators, but also for the existing ones. This is because the owners of the currently operating installations will be obliged to decide whether to use the amended version of the support scheme or move to the auction-based system.