

SUBSTITUTE FEES ACCORDING TO NEW RULES – THE SEJM ADOPTED A MINOR AMENDMENT TO THE RES ACT.

The amendment is now awaiting the Senate's approval (or changes)

On 20 July 2017, the Sejm adopted - in a record time - a "minor" amendment to the Act on Renewable Energy Sources (the "RES Act"), which is to change the principle of calculation of the so-called unit substitute fee. The amendment had not been consulted with any representatives of the RES sector or the banks, notwithstanding the pending parallel consultations encompassing a comprehensive amendment to the RES Act.

The Act adopted by the Sejm changes the rules for determining the level of the unit substitute fee. Until now, the fee had been fixed and amounted to PLN 300.03 per MWh. The adopted changes make the fee dependent on the market prices of the green certificates (the "GC"). The fee is to amount to 125% of the annual weighted average price of the economic rights arising from the certificates of origin, not more however than PLN 300.03 per MWh. In effect, taking into account the current GC prices, the levels of the unit substitute fee will drop significantly over the next few years and will be very slow to rise, if at all.

During the work on the bill in the Sejm, the deputies rejected all the amendments proposed by the opposition parties, relating to, among other things, the introduction of a minimum value of the substitute fee (the amendments suggested introducing a minimum fee value of between PLN 130 and 250/MWh). The Act adopted by the Sejm will be sent to the Senate straightaway. If no amendments are made there either, the Act may be submitted to the Polish President for signature as early as on 28 July 2017. Therefore, in accordance with the 30-day *vacatio legis* period provided for in the bill, the regulations would enter into force from September 2017, which means that the substitute fee calculated according to the new rules would apply already for the purposes of settlement of the obligation to purchase the GC for 2017.

The authors of the bill reasoned that the new regulations would reduce the oversupply of GC on the market although the market participants are of a different opinion. The change of the formula for calculating the substitute fee would not, in itself, result in a reduction of oversupply; on the contrary – in the event of an increase of the weighted average prices of GC on the market, the demand for them may decrease, since the obliged entities will be fulfilling their obligation by paying the (lower) substitute fee, instead of purchasing the certificates.

The demand for GC could increase if the RES obligation for 2018 (and for subsequent years) were set at a level higher than in the current year (15.6%). Pursuant to the RES Act, this obligation amounts to 19.35%, although the Minister of Energy may, by way of an ordinance, by 31 August each year, change the level of this obligation for the subsequent calendar years. If the Minister refrained from reducing the obligation level or reduced it only minimally, it would help reduce the oversupply of GC. However, in light of the amendments in question, it is no longer possible to count on any significant increase in GC prices.

The amendment may also have a material effect on the terms of performance of long-term agreements for the sale of GC, particularly those where the pricing formulas are directly linked to the level of the substitute fee. It cannot be ruled out that this was the main purpose of the changes made.

The issue of notification of the amendments to the European Commission remains open: the terms of setting the level of the substitute fee constitute material elements of the GC-based RES support system, and any change to the system requires notification and checking of compliance with the EC State aid rules.

CONTACT

Agnieszka Janicka
Partner

T +48 22 627 11 77
E agnieszka.janicka
@cliffordchance.com

Paweł Puacz
Counsel

T +48 22 627 11 77
E pawel.puacz
@cliffordchance.com

Beata Zys
Senior Associate

T +48 22 627 11 77
E beata.zys
@cliffordchance.com

Weronika Miszewska
Junior Associate

T +48 22 627 11 77
E weronika.miszewska
@cliffordchance.com

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www.cliffordchance.com

Norway House, ul. Lwowska 19, 00-660
Warsaw, Poland

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