

WILL THERE BE AN INTERVENTION ON THE GREEN CERTIFICATES MARKET?

THERE ARE SOME FIRST SIGNS, BUT THE MPs' DRAFT AMENDMENT TO THE RES ACT DAMPENS THE INVESTORS' ENTHUSIASM

On 12 July 2017, at the time when the consultations on the proposed comprehensive amendment to the Act on Renewable Energy Sources (the "RES Act") are on-going, the Polish Sejm received a draft of a "minor" amendment to that RES Act. The amendments proposed in that draft relate only to the level of the unit substitute fee by linking it to the prices of green certificates.

Currently, the unit substitute fee, which the entities obliged to achieve the "RES target" may pay if they are unsuccessful in purchasing and presenting for redemption the relevant number of the property rights arising from the certificates of origin (green certificates), is PLN 300.03 per MWh. Although it has not increased since 2014¹, this value differs significantly from the market prices of green certificates and, considering the still growing level of oversupply of the certificates on the market, has long ceased to be a point of reference in formulating their prices².

In accordance with the amendments proposed in the minor draft amendment, the unit substitute fee will no longer have a fixed value, and its current level will be calculated on the basis of average prices of green certificates published by Towarowa Gielda Energii S.A.³. The levels are to be calculated separately for the Green and Blue Certificates. In each case, the value of the unit substitute fee is to amount to 125% of the annual weighted average price of the green certificates, not more however than PLN 300.03 per MWh.

The official purpose of the proposed amendment is predominantly to make the market for green certificates ("GC") more flexible, and also to reduce the oversupply of GC on that market. In practice, this probably means preventing a jump in the prices of green certificates should the oversupply of certificates on that market be absorbed.

According to the authors of the draft, the amendments will protect both the RES energy producers and energy end users and should not have a negative impact on the functioning of the support system based on the certificates of origin; in particular, the rule prohibiting payment of a substitute fee if the market price of the certificates of origin is lower than the unit substitute fee would still apply. In practice, however, it can be anticipated that the proposed amendments will significantly lengthen the period during which the certificate prices may recover to the levels from many years ago. This is because the proposed method of calculating the substitute fee will shape the maximum prices that the RES energy producers obtain in return for the property rights sold on the free market. In the event of a rapid increase of the prices of the green certificates, the entities on which the obligation arising from Art. 52 sec.1 of the RES Act is imposed will be able to fulfil that obligation by paying the substitute fee, instead of obtaining the certificates of origin and presenting them for redemption.

At the same time, the new regulations may also have a significant impact on those – now very few – long-term agreements for the purchase of green certificates (CPA), which in their pricing formulas referred to the level of the substitute fee.

¹ Originally subject to annual indexation at the inflation rate; since the entry of the RES Act into force, the amount of the substitute fee has been frozen at the 2014 level.

² For example, in June this year, the weighted average price of the property rights is PLN 31.56.

³ One should refer predominantly to the annual weighted average price of the property rights (green certificates) arising from the certificates of origin, published at the beginning of January each year, taking into account all the trading sessions from the previous calendar year.

It is stated in the substantiation of the draft amendment (in the Regulation Impact Assessment) that the current oversupply of GC, estimated at approximately 20 TWh, is sufficiently high to warrant the additional intervention measures by the legislators in order to reduce it. According to the assumptions, the volume of energy sold will be increasing from 2016 by 1.5% p.a. These statements can be interpreted as a promise of an intervention on the green certificates market (e.g. by increasing the threshold for the obligation to redeem the certificates in 2018 and in subsequent years). However, the form of the proposed amendments may dampen the enthusiasm of investors, who were counting on a quick return of prices to the levels of PLN 100/MWh or higher.

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