

INVESTORS BELIEVE IN SOLAR POWER IN POLAND. PV INSTALLATIONS ARE THE MAIN WINNER OF ONE MORE RES AUCTION.

Despite a general slow-down on the renewable energy market, the potential for the PV sector in Poland continues to grow. In 2013, the total installed capacity of PV installations in Poland did not exceed 2 MW. Now there is more than 100 MW, and according to information from the Polish transmission grid operator (PSE S.A.), the National Power System has room for 2 GW of installed capacity in solar power installations.

Investors in the electrical energy sector who plan to start up a PV installation may take advantage of the support system for RES installations. In the first auctions conducted in 2016 and 2017, support was guaranteed for a total of almost 300 MW of new PV projects

First RES auctions in 2017 finalized

PV - main winner of the next RES auction

The current support system for new renewable energy source installations ("RES") is based on the auction system introduced on 1 July 2016 by the Act on Renewable Energy Sources (the "Act on RES")¹.

In December 2016, a pilot auction for the sale of electrical energy from RES was conducted as a result of which primarily new photovoltaic ("PV") projects received support. As a result of the support granted, 51 new photovoltaic projects of up to 1MW of installed capacity each are to be implemented. From the date the auction closes, investors have 24 months to begin producing energy in the installations that won the auctions.

The first auctions in 2017 announced by the President of the Energy Regulatory Office (ERO) were held on 29 and 30 June. As was the case with the pilot auction, this year's auctions were addressed to a small group of RES installations with an installed power of less than 1 MW each, that is:

- to new RES installations belonging to the so-called "other" basket (basket 7), which includes, in particular: (i) PV installations, (ii) wind power, and (iii) certain hydropower stations. In that auction, up to 4,725,000 MWh of electrical energy worth up to PLN 2,182,908,687 could have been sold; and

Key issues

- First RES auctions in 2017 finalized
- PV - main winner of the next RES auction
- Terms of support for auction winners
- Development of the Polish PV market
- Investment process for PV installations
- What's next

¹ Act on Renewable Energy Sources of 20 February 2015 with further amendments

- to existing RES installations that are migrating to the auction system and meet the criterion of the level of use of installed power – above 3,504 MWh/MW/year and with emissivity no greater than 100kg/MWh (so-called basket 3), i.e. in particular to certain hydropower stations. In that auction, up to 1,484,764 MWh of electrical energy worth up to PLN 631,329,732 could have been sold.

On 4 July 2017 the President of the ERO published the results of the successfully finalized auctions². In the first auction (for basket 7), PV installations were once again the main winner. As a result of the auctions held, support for more than 350 new small RES projects (≤ 1 MW) was granted, and more than 40 existing small installations (≤ 1 MW) will move from the green certificates system to the auction support system³. PV projects dominate the group of RES installations that will enjoy support following the first auction. As a result of that auction, more than 99% of the electrical energy planned for that basket was sold. Investors from the basket to which the auction related offered prices in the range of 195 PLN/MWh to 398.87 PLN/MWh.

However, the second (migration) auction (for basket 3) was not a huge success. Fewer producers took part in it than had been predicted for migration. All the producers who submitted valid offers won the auction. In this auction the quantity of electrical energy sold represented approx. 21% of the planned value. Investors offered prices of between 290 PLN/MWh and 474 PLN/MWh.

Yet again among the winners of the RES auctions it is possible to identify Polish as well as foreign investors who succeeded to place winning bids for several up to dozens of PV installations.

Terms of support for auction winners

Under the auction system, support is to be granted to the winners of each auction, i.e. to bidders who make the lowest offers for the sale of energy (until the quantity or value of electrical energy specified in the auction notification has been used up), in the form of guarantees to buy energy at the auction price (for RES projects < 500 kW) or based on the quasi contract for difference model (for RES projects ≥ 500 kW).

In specific auctions, support is granted for up to 15 years (defined annually in secondary legislation). The period of support for winning RES installations is calculated from the date of the first production of electrical energy after the date the auction closes.

Development of the Polish PV market

According to the most recent data published by the ERO, the total installed power in PV installations is higher than 100 MW⁴. This primarily consists of medium-sized and large PV installations (i.e. installations with a power greater than 200kW), operated on the basis of concessions, as well as small installations and microinstallations for which only an entry in an appropriate register is required.

In Europe, Poland currently occupies 18th place in terms of the quantity of installed capacity in PV installations⁵. We are unlikely to become a leader in this race (Germany already has more than 41 GW of installed capacity in PV

Technological baskets

The auctions are conducted separately for 7 technological baskets:

- "Basket 1" - installations with a utilisation rate of total installed electricity production capacity, regardless of the source of origin, higher than 3,504 MWh/MW/year,
- "Basket 2" - installations utilising the biodegradable part of industrial and communal waste, of plant or animal origin, including waste from waste processing plants and waste from water and sewage treatment plants, in particular sewage sludge, pursuant to the regulations on waste as regards qualifying part of the energy recovered from the thermal treatment of waste,
- "Basket 3" - in which the emission of CO₂ is not higher than 100 kg/MWh, with a utilisation rate of total installed electricity production capacity higher than 3,504 MWh/MW/year,
- "Basket 4" - by the members of an energy cluster,
- "Basket 5" - by the members of an energy co-operative,
- "Basket 6" - utilising only agricultural biogas to produce electricity,
- "Basket 7" - other than mentioned above.

Pursuant to the draft act amending the Act on RES, on which the Ministry of Energy is working (see section What's next below), the division of the technological baskets is about to be changed.

² <https://www.ure.gov.pl/stanowiska/7098,Informacja-nr-412017.html> and <http://www.ure.gov.pl/stanowiska/7099,Informacja-nr-422017.html>

³ Under migration auctions, RES installations that commenced production of electricity before 1 July 2016 and thus enjoy the support system for RES based on the green certificates scheme are able to leave that system and transfer to the auction system (if they win auctions).

⁴ Report of the Energy Regulatory Office, Polish potential of RES in figures [Potencjał krajowy OZE w liczbach] (as at 31 March 2017)

⁵ Renewable capacity statistics 2017, International Renewable Energy Agency.

installations⁶), but it should be expected that in the near future the clear growth trend in Poland will continue in this sector.

In Poland in recent years the dynamics of the increase in installed power in PV installations alone is estimated at several hundred per cent. If only the projects that have already won the RES auctions are implemented, the quantity of installed capacity in PV installations will at least quadruple. At the same time, there is still room for new solar power projects. The Ministry of Energy has announced that by 2020 there are plans to obtain at least 1 GW of capacity in PV installations alone, although Polskie Sieci Elektroenergetyczne S.A. ("PSE", the Polish electricity transmission grid operator) points out that the quantity should be estimated at 2 GW. PSE's estimates result primarily from the need to ensure energy security. In 2015 PSE published a report according to which particularly in summer months when temperatures are high, demand for additional power significantly increased due to the burden placed on grids by air-conditioning, ventilation and other cooling systems. When temperatures are high, problems arise with the production of power from wind power plants and coal-fired plants, while at the same time the conditions for the production of energy from PV are ideal. The estimated 2 GW of power from PV installations would enable the deficits to be covered.

Therefore, it can be expected that in the next RES auctions volumes for PV projects will appear, which can also be seen from the increased activity of developers on this market.

Investment process for PV installations

The investment process for PV installations is substantially similar to the investment process for other RES installations. However, there are certain differences that make it easier and quicker for solar projects to reach the ready-to-built stage.

Above all, the density with which PV installations are placed makes the process of obtaining land for solar farms considerably easier – together with the transmission infrastructure, a project can often be located on only several plots.

Where the planning stage is concerned, it is not necessary to situate a PV installation solely based on a local master plan⁷. If there is no local master plan for a given area, it is possible to obtain a planning permit for a project, which considerably shortens the planning stage of the entire venture; planning permits are in most cases issued within several months.

Furthermore, unlike wind farm projects, there are no special restrictions on situating PV installations near residential areas or areas protected owing to the natural environment.

Where the process of obtaining an environmental decision for solar projects is concerned⁸, often a full environmental impact assessment (and hence an environmental impact report) is not required. Therefore, the entire procedure of obtaining an environmental decision is also shorter. As in most cases PV installations do not arouse any controversy among ecologists and are favourably viewed by local communities, the risk of appeals and court proceedings is also lower.

A material element of the investment process is obtaining grid interconnection conditions, which are issued by the local distribution system operator, and then concluding an interconnection agreement. The clear

⁶ Data published by Fraunhofer-Institut für Solare Energiesysteme ISE in a report on photovoltaics of 9 January 2017

⁷ which is a process that is not only time-consuming but also difficult to initiate because the investor has no legal capacity to finance such a planning procedure.

⁸ The requirement to obtain an environmental decision applies to PV projects located on areas no greater than 1 hectare because such projects are classified as ventures capable of potentially having a considerable impact on the environment pursuant to §3 sec.1 point 52) of the Ordinance of 9 November 2010 on Ventures Capable of Potentially Having a Considerable Impact on the Environment, for which an environmental decision is required).

majority of PV projects being developed in Poland are designed as installations of up to 1 MW of installed power, which are usually interconnected to 15kV medium-voltage grids, so the frequent phenomenon of a grid's lack of necessary power for connection of the energy source in the case of interconnection of sources to high- and highest-voltage grids does not in practice affect PV projects. It is also worth remembering that in the case of sources of energy of up to 5 MW, half the fee determined on the basis of the actual outlay made when effecting the interconnection is payable for interconnection to the grid.

What's next

The RES support system of which producers that won the first auction will be able to take advantage is generally considered to be stable, although several of its elements continue to arouse controversy among investors and financing institutions. In addition, banks that got their fingers burnt when financing wind farm projects are approaching the financing of new RES projects with a little more caution. This is forcing auction winners to seek new financing and risk-spreading solutions when implementing projects, while they do not have much time to build them. (Investors who won RES auctions have 24 months – counting from the announcement of the results of the auctions – to implement their PV projects and begin producing electrical energy.) The market is therefore seeing new structures and financial products appear that are supposed to enable delivery of projects for operation in due time or their further resale by developers at a profit after construction.

At the same time, the Ministry of Energy has published a draft act amending the Act on RES on which work will probably continue until the third quarter of this year. The amendments are related to the still-unfinished process of notifying the European Commission of the new terms of support. Until the amendments have been enacted and confirmed as being compliant with EU State aid rules, it is difficult to estimate the value of the Polish PV sector for the near future.

CONTACTS

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

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

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

© Clifford Chance 2017

Clifford Chance, Janicka, Krużewski,
Namotkiewicz i wspólnicy spółka
komandytowa

Abu Dhabi • Amsterdam • Bangkok •
Barcelona • Beijing • Brussels • Bucharest •
Casablanca • Dubai • Düsseldorf • Frankfurt •
Hong Kong • Istanbul • Jakarta* • London •
Luxembourg • Madrid • Milan • Moscow •
Munich • New York • Paris • Perth • Prague •
Rome • São Paulo • Seoul • Shanghai •
Singapore • Sydney • Tokyo • Warsaw •
Washington, D.C.

*Linda Widyati & Partners in association with
Clifford Chance.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.