

Legislative initiatives for 01-15 November 2020 impacting RES producers

The Verkhovna Rada of Ukraine

Voted acts of the VRU

On 04 November 2020, in the first reading, there was adopted the Law “On Amendments to the Law of Ukraine “On the State Budget of Ukraine for 2020” (**draft Law No. 4119**). The Law, in particular, authorizes the CMU to make decisions in 2020 on the provision of state guarantees to PrJSC NPC “Ukrenergo” (for fulfilment of debt obligations in the amount of UAH 8.9 billion).

According to the explanatory note to the draft Law, this norm is aimed at “settlement of payments for green energy”. However, the draft Law does not specify the intended use of funds raised by NPC “Ukrenergo” specifically for debt repayment to RES producers.

Now the draft Law is prepared for second reading. The VRU provided for accelerated preparation of the draft Law (the deadline for submissions for the second reading was reduced from 14 to 7 days).

Registered legislative initiatives

Registration No. 4101-d dated 11 November 2020 - draft Law on Amendments to the Tax Code of Ukraine and some other legislative acts of Ukraine to ensure the balance of budget revenues. The draft contains, among other provisions, the following amendments to the Tax Code that may have impact on RES producers, namely:

- RES producers are temporarily allowed to defer from 01 January 2021 to 01 January 2025 the payment of corporate income tax (in terms of electricity that has not been paid for). The tax liability of the income tax of RES producer for the quarterly reporting period will be calculated as follows: multiplying the calculated income tax for respective quarterly period by the coefficient of payment for the electricity sold at FiT in such period. Taxpayers shall keep separate records of accrued income tax for the quarterly reporting period and the balance of tax liability for income tax to be collected during the periods of receipt of payment for electricity at FiT;
- lifting of moratorium on documentary (except for documentary audits of taxpayers with income up to UAH 20 million for the previous calendar year) and site audits;
- renewal of deadlines for taxpayers' complaints handling, provision of individual tax consultations, sending requests for information by controlling bodies;
- rate increase of environmental tax (in particular, the rate of tax on carbon dioxide emissions (CO₂) will be increased by 3 times gradually until 01 January 2025) and rates of rent for special water use (in particular, the rate of rent for water use for hydropower facilities will be increased by 12%).

Registration No. 4346 and No. 4347 dated 09 November 2020 - draft Law on Amendments to the Tax Code of Ukraine on revision of the environmental tax rates and the draft Law on Amendments to the Budget Code of Ukraine on establishment of the state decarbonisation fund.

Draft laws are interrelated. According to the draft laws, from 01 January 2021, the rate of tax on carbon dioxide emissions will increase (from UAH 10 to UAH 30 per 1 ton of emissions) and 50% of this tax will be allocated to the State Decarbonization Fund (established as part of a special fund of the State Budget).

Indicated amount of the fund has been estimated (about UAH 1.35 billion). The purpose of the fund is to co-finance (make cheaper) the cost of projects (measures) reducing carbon dioxide emissions. CMU shall decide on the procedure for allocations in Decarbonisation Fund.

The draft Law does not provide the list of projects (measures) leading to the reduction of carbon dioxide emissions that will be financed by the decarbonisation fund. According to the Ministry of Energy¹, there are seven areas with energy efficiency, environmental and social effects:

- Projects on eco-modernization of generating enterprises;
- Modernization of heating networks, water supply systems, street lighting;
- Cheaper projects for household waste utilization (recycling);
- Electric buses for public transport;
- Incentives for use of private electric cars by the population;
- Projects to replace traditional fuels in the budget sphere;
- Incentives for production and use of bioethanol, biogas.

However, this list is not exhaustive and may be supplemented.

National Energy and Utilities Regulatory Commission

Made decisions

At the meeting on 11 November 2020, the NEURC adopted a resolution “On Amendments to the Market Rules”. Resolution comes into force from the date of its publication on the NEURC website.

By this decision, the NEURC introduces a mechanism to reimburse to RES producers the cost of electricity not delivered as a result of execution of the TSO’s command on load reduction. The proposed curtailment compensation mechanism is temporary and will be in effect until 01 January 2021².

This mechanism provides for curtailment compensation to the RES producers under the agreement on electricity imbalances settlement concluded by the TSO with all RES producers within their market entering. The NEURC approved the Methodology for calculation of the volume of electricity not delivered by the RES producers; it will be the separate Annex to the Market Rules. This Methodology will also be applied to the volume of electricity not delivered in 2019 within calculation of curtailment compensation for 2019 by the RES producers.

Issue of compensation to RES producers (for the period from 01 January 2020 to the effective date of NEURC decision on approval of the temporary mechanism) remains unresolved.

Draft statutory instruments published for their further discussion

On 04 November 2020, the NEURC published a draft amendment to the Procedure for setting, revision and termination of the FiT for electricity, approved by the NEURC resolution No. 1817 dated 30 August 2019. The changes are conditioned by the need to bring the current Procedure for setting, revision and termination of the FiT in line with the requirements of the Law of Ukraine No. 810-IX dated 21 July 2020.

¹ http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245486157&cat_id=35109

² The NEURC shall introduce a permanent compensation mechanism in accordance with the Law of Ukraine No. 810-IX dated 21 July 2020 starting from 01 January 2021. It provides for the provision by RES producers of curtailment service to the TSO outside the balancing market, under the agreement between the TSO and RES producers.



The draft clarifies the requirements for market participants eligible for FiT, the list of documents to be submitted for FiT approval. Special attention should be paid to some provisions of the draft. Specifically, if a pre-PPA was concluded for construction project in accordance with Part 4 of Article 71 of the Law on Electricity Market, the technical parameters of the RES facility for which the applicant submits documents (for FiT approval) shall not differ from the technical characteristics of such RES facility specified in the documents provided to the GB for pre-PPA conclusion (installed capacity, configuration and cadastral number of the land).

Draft is published on the NEURC website: <http://www.nerc.gov.ua/?news=10726>. Comments and proposals from market participants are accepted on or before 16 November 2020.