

## Legislative initiatives for 15-31 March 2021 impacting RES producers

### The Verkhovna Rada of Ukraine

#### Effective Laws

On 28 March 2021, the Law of Ukraine No. 1293-IX “On Amendments to the Tax Code of Ukraine Concerning the Peculiarities of Taxation of Business Entities Implementing Investment Projects with Significant Investments in Ukraine” dated 02 March 2021 came into force. Information on Law No. 1293-IX was provided in Monitoring of legislative initiatives for 01-15 March 2021.

#### Adopted laws

During 15-31 March 2021, the Verkhovna Rada of Ukraine made no decisions impacting activities of RES producers.

#### Registered draft laws

On 24 March 2021, a draft law with No. 5208-1 was registered on introduction of amendments and alterations to the Law of Ukraine on the Electricity Market on measures to strengthen Ukraine's energy independence.

The draft law is an alternative to the draft of MP A. Gerus and other MPs (No. 5208 dated 05 March 2021) proposing:

- to lift the existing ban on the sale of electricity imported from the Republic of Belarus and the Russian Federation on DAM and IDM;
- to authorize the Regulator to limit the available capacity, which is allocated at daily and monthly auctions, and to cancel the results of annual auctions for interstate crossings with the Republic of Belarus and the Russian Federation;
- to allow technological flows with the mentioned countries for the period of transition of the UES of Ukraine to parallel work with zone of continental Europe.

On 24 March 2021, a draft law with No. 5208-2 was registered on introduction of amendments and alterations to some laws of Ukraine on measures to strengthen Ukraine's energy independence.

The draft law is an alternative to the draft of MP A. Gerus and other MPs (No. 5208 dated 05 March 2021) proposing:

- to impose the obligation of market participants to provide the NEURC with information on credit agreements concluded with economic entities of the Russian Federation and/or persons controlling, controlled by or under control with such economic entities. NEURC shall publish received information on its official website;
- to oblige the Ministry of Energy to notify the Cabinet of Ministers of Ukraine, the National Security and Defense Council, the Security Service of Ukraine, the National Energy and Utilities Regulatory Commission, the Antimonopoly Committee of Ukraine about decrease in the level of fuel reserves below the volumes approved in the prescribed manner for certain types of power plants within 24 hours from the moment

of occurrence of such decrease and to submit proposals on measures to be taken to increase the level of such reserve;

- to extend until 2021 the term of powers of the Regulator to limit the available capacity, which is allocated at daily and monthly auctions, and to cancel the results of annual auctions for interstate crossings with the Republic of Belarus and the Russian Federation;
- to impose an obligation to coordinate with the NEURC and the National Security and Defense Council of Ukraine the right of access to the capacity of interstate crossings with the aggressor state acquired as a result of daily and monthly auctions in 2021.

## The Cabinet of Ministers of Ukraine

### Made decisions

On 29 March 2021, the CMU Resolution No. 303 amended certain resolutions of the CMU regulating the activities of the bodies of state architectural and construction control and supervision, in particular:

- Procedure for acceptance for operation of constructed facilities (approved by CMU Resolution No. 461 dated 13 April 2011);
- Procedure for preparatory and construction works approved by CMU Resolution No. 466 dated 13 April 2011;
- Procedure for state architectural and construction control (approved by CMU resolution No. 553 dated 23 May 2011);
- CMU Resolution No. 554 dated 23 May 2011 “On some issues of professional certification of responsible executors of certain types of works (services) related to construction of architectural items”;
- list of licensing bodies approved by CMU Resolution No. 609 dated 05 August 2015;
- and other.

Among other things, these amendments:

identify cases/grounds for the state architectural and construction control body to carry out mandatory inspection of facilities that by class of consequences (responsibility) belong to facilities with medium (CC2) and significant (CC3) consequences when considering the issue of their acceptance into operation;

specify the procedure for appealing against the decisions of the state architectural and construction control bodies on the issuance or revocation of a construction permit, on registration or return without registration of the declaration of readiness of the facility for operation, on the refusal to issue a certificate;

define the procedure and scope of scheduled and unscheduled on-site inspections of urban development entities as well as grounds for unscheduled inspections;

appoint the State Inspectorate for Architecture and Urban Development as the licensing body dealing with facilities that by class of consequences (responsibility) belong to facilities with medium (CC2) and significant (CC3) consequences.

In addition, according to the resolution, the State Architectural and Construction Control Inspectorate (the “SACI”) continues to exercise its powers and functions until the completion of measures on establishment of the State Inspectorate for Architecture and Urban Development.

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This provision should have a positive impact on the situation with current slowdown of SACI activity.

On 24 March 2021, Resolution No. 238 amended the Regulation on imposition of special obligations for public service in the electricity market on the market participants in the process of functioning of the electricity market, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 483 dated 05 June 2019.

In addition, paragraph 9 of the Regulation is excluded. This item defines the formula for calculating the cost of electricity of NNEGC Energoatom and PrJSC Ukrhydroenergo, the coverage of which should be provided by companies when selling electricity in all commercial market segments (DAM, IDM, balancing market, bilateral contract market and ancillary services market) after the sale of part of electricity to the Guaranteed Buyer to perform public service obligations (concerning household consumers).

## The National Energy and Utilities Regulatory Commission

### Made decisions

During 15-31 March 2021, the NEURC made no regulatory decisions impacting activities of RES producers.

### Draft regulatory decisions published for discussion

On 31 March 2020, the NEURC approved for hearings the draft resolution of the NEURC “On Amendments to the Procedure for licensing of types of economic activities, state regulation of which is carried out by the National Energy & Utilities Regulatory Commission”.

It is proposed to supplement the procedure with a new ground for revocation of the license - a gross violation of licensing conditions and/or legislation in the fields of energy and utilities. In this regard, the term “gross violation” is defined and other provisions of the Procedure are regulated (concerning drafting of statements on gross violation of the licensee).

Special attention should be paid to the definition of “gross violation” proposed in the draft. Thus, a gross violation is defined as “violation by the licensee of license conditions and/or legislation in the fields of energy and utilities, which indicates neglect of their requirements by the licensee, as well as the possibility of negative consequences for the state, legal entities or individuals”.

Proposed wording will allow the NEURC to apply the revocation of the license as a sanction for violations in the electricity market, based not on the facts (occurrence of negative consequences and assessment of impact of such consequences), but on the assessment of the possibility (i.e., probability) of negative consequences for the state, legal entities or individuals.

Draft is published on the NEURC website:

[http://www.nerc.gov.ua/data/filearch/Proekty/2021/pr\\_73/pr\\_73-2021.zip](http://www.nerc.gov.ua/data/filearch/Proekty/2021/pr_73/pr_73-2021.zip)

Comments and proposals from market participants are accepted on or before 20 April 2021.

On March 31, 2021, the NEURC published for discussion a draft resolution of the NEURC “On amendments to the Procedure for conducting an open discussion of draft decisions of the NEURC”.

The proposed changes regulate the procedural issues of holding open discussions of draft acts of the NEURC in online format.

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Draft is published on the NEURC website:

[http://www.nerc.gov.ua/data/filearch/Proekty/2021/pr\\_71/pr\\_71-2021.zip](http://www.nerc.gov.ua/data/filearch/Proekty/2021/pr_71/pr_71-2021.zip)

Comments and proposals from market participants and their associations are accepted on or before 11 April.

On 29 March 2021, the NEURC published for discussion a draft resolution “On approval of the Methodology for setting cap prices on the day-ahead market, intraday market and balancing market and amending certain resolutions of the NEURC”.

Draft Resolution defines the following:

- procedure for determining significant market price fluctuations on the day-ahead (the “DAM”), intraday market (the “IDM”), and balancing market (the “BM”);
- cap pricing procedure (defining temporary minimum and/or maximum price limits) on DAM, IDM, and BM;
- cap prices (temporary minimum and/or maximum price limits) on DAM, IDM, and BM.

Implementation of this draft resolution may affect the results of trade activities of the Guaranteed Buyer (whose balancing group includes RES producers selling electricity at FiT).

Draft is published on the NEURC website:

[http://www.nerc.gov.ua/data/filearch/Proekty/2021/pr\\_69/pr\\_69-2021.zip](http://www.nerc.gov.ua/data/filearch/Proekty/2021/pr_69/pr_69-2021.zip)

Comments and proposals from market participants are accepted on or before 16 April 2021.