

Legislative initiatives for 1-15 April 2021 impacting RES producers

The Verkhovna Rada of Ukraine

Adopted laws

15 April 2021, there was adopted the Law “On Amendments to Certain Legislative Acts of Ukraine on certification of the transmission system operator”. Draft Law was registered with No. 3364-1-д.

The Law, in particular, provides for the following:

- introduction of norms and rules to ensure certification of the electricity transmission system operator NPC Ukrenergo in accordance with the requirements of European legislation;
- improvement of the procedures for allocation of transmission capacity of cross-border intersections for export-import of electricity between Ukraine and EU countries;
- imposition of obligation on energy generating companies that are in communal ownership to sell electricity under bilateral contracts exclusively through auctions;
- prolongation for 2021 of the term of the powers of the NEURC to limit the import of electricity from countries that are not parties to the Energy Community (from the Russian Federation and the Republic of Belarus).

The Law also introduces a new term “battery energy storage system”. At the same time, the Law defines neither the legal status of such installations in the market, nor peculiarities of their installation and operation in the market.

Registered draft laws

On 15 April 2021, there was registered a draft Resolution No. 5382 on appealing to the Cabinet of Ministers of Ukraine to take urgent measures to reduce the price of electricity for household consumers who permanently live in the 30-kilometer zone of nuclear power plants

On 12 April 2021, there was registered a draft Resolution with No. 5355 on measures aimed at social protection of the population in connection with the increase of prices (tariffs) for housing and communal services: natural gas and electricity

These draft resolutions provide for submission to the Cabinet of Ministers a proposal to set preferential tariffs for electricity supplied to the population, which: a) lives in houses equipped with heating appliances, off-gas buildings, dormitories; b) for large, foster families and family-type orphanages; c) for residents of settlements located in the 30-kilometer zone of the NPP; d) set of a separate tariff for electricity supplied to the population for the volume up to 100 kWh per month.

Adoption of this resolution and its implementation by the Cabinet of Ministers of Ukraine will condition the necessity of adjustment of special responsibilities assigned to SE NNEGC Energoatom and SE Guaranteed Buyer in accordance with the Resolution of the Cabinet of Ministers of Ukraine No. 483 dated 05 June 2019 and increase the financial burden on these



entities. This, in turn, may affect the performance of special obligations by the Guaranteed Buyer concerning RES share increase.

On 14 April 2021, there was registered the draft Law with No. 5379 on Amendments to Certain Legislative Acts of Ukraine in order promote the development of areas affected by radioactive contamination as a result of the Chernobyl disaster.

In particular, the draft Law provides for the following:

- 1) authorization of regional state administrations to make decisions on the possibility of using land plots located in the zone of guaranteed voluntary resettlement which belong to radioactively contaminated land;
- 2) lifting the ban on the construction of new, expansion of existing enterprises not directly related to the provision of radioecological, social protection of the population as well as the conditions of its life and work in the area of guaranteed voluntary resettlement.

The draft Law aims to promote the development of the territories affected by radionuclide contamination as a result of Chernobyl catastrophe. Its adoption will simplify implementation of projects in the exclusion zone, but only to a certain extent. The procedure for allocation and transfer of land plots remains complicated concerning use of land plots for project implementation in these territories by a separate decision of the Cabinet of Ministers of Ukraine.

On 01 April 2021, there was registered the draft Law with No. 5322 on Amendments to Certain Legislative Acts of Ukraine on the prevention of misuse in wholesale energy markets.

Draft Law is aimed at implementation into the Ukrainian legislation of the Regulation (EU) No 1227/2011 dated 25 October 2011 on integrity and transparency of the wholesale energy market. The draft provides for amendments to a number of laws in the energy sector, as well as to the laws "On the National Energy and Utilities Regulatory Commission", "On Capital Markets and Organized Commodity Markets".

Draft law, in particular, provides for the following:

- introduction of new terms, such as "wholesale energy market", "wholesale energy product", "manipulation in the wholesale energy market", "insider information";
- ban on manipulation or attempted manipulation in wholesale energy markets;
- restrictions on insider information processing;
- imposition of responsibility on wholesale energy market participants and their officials for market manipulation, misuse of inside information;
- specification of powers and procedure for cooperation with the regulatory authorities of other countries on monitoring of trading activities in the wholesale energy markets in order to detect and prevent of abuse of markets, etc.;

The Cabinet of Ministers of Ukraine

Made decisions

During 01-15 April 2021, the Cabinet of Ministers of Ukraine made no decisions impacting activities of RES producers.

The National Energy and Utilities Regulatory Commission

On 01 April 2021, the NEURC adopted resolutions No. 567, No. 566, No. 565. These resolutions approved the agreements concluded by the Ministry of Finance of Ukraine and PrJSC NPC Ukrenergo on measures to ensure the fulfilment of obligations under the Agreements No. 13010-05/277, No. 13010-05/275, No. 13010-05/273 dated 31 December 2020 on repayment of debts of the private joint-stock company National Power Company Ukrenergo to the state for fulfilment of guarantee obligations. The Chairman of the NEURC is authorized to sign these agreements on behalf of the Regulator.

According to the tripartite agreements, the NEURC is a party to the approved agreements as a body that will cover the costs of repaying the liabilities of NPC Ukrenergo under the loan agreements with JSC Oschadbank, JSC Ukreximbank, JSB Ukgasbank in respect to attraction of funds under the state guarantees in the total amount of UAH 10.25 billion to be used to repay debt obligations for the PSO within electricity market operation.

Draft regulatory decisions published for discussion

On 02 April 2021, the NEURC published for hearings the draft resolution of the NEURC “On Amendments to the Procedure for licensing of types of economic activities the 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

European-Ukrainian Energy Agency submitted comments and proposals to the said instrument.