



**European-Ukrainian Energy Agency**

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**To:**

Ministry of Energy of Ukraine

**Herman Galushchenko**

Kyiv, Ukraine

Date: October 21, 2021

*Regarding the Draft Law prepared by the Ministry of Energy for the transition of RES producers to a new support system*

**Dear Herman Galushchenko,**

On behalf of the European-Ukrainian Energy Agency (EUEA), which unites well-known international and national Ukrainian investors with a total investment of over 3.5 billion Euros in the renewable energy sector of Ukraine in the construction of over 3 GW of power plants, which generate electricity from renewable sources, using the sun, wind and biomass, we express our sincere respect and address you with the following.

On August 26, 2021, the Ministry of Energy published for discussion the draft Law of Ukraine "On Amendments to Certain Laws of Ukraine on Stimulating the Production of Electricity from Alternative Energy Sources on a Market Basis" (Draft Law), which provided for the granting of the right to electricity producers who sell electricity at the "feed-in" tariff (RES producers), to leave the balancing group of the Guaranteed Buyer and freely sell electricity on the market with the possibility of receiving a surcharge in the form of the difference between the established "feed-in" tariff (or auction price) and market price (hereinafter - the Feed-in Premium support system).

As noted in the Explanatory Note, the Draft Law was developed to implement the provisions of the Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving Conditions for Supporting Electricity Production from Alternative Energy Sources" № 810-IX (hereinafter - Law № 810-IX). Law № 810-IX was adopted in order to implement the agreements reached between the Government and investors in the field of RES in accordance with the Memorandum of Understanding on the settlement of problematic issues in the field of renewable energy in Ukraine of June 10, 2020 (hereinafter - the Memorandum).

By letter dated September 23, 2021, EUEA submitted proposals to the Draft Law, in which, in particular, supported the approach adopted in the draft law of voluntary transition of RES producers to the new Feed-in Premium support system, as one that complies with the Memorandum and Law № 810-IX. Comments, proposals for the draft law were also submitted by individual market participants, industry associations and other stakeholders.

The Ministry of Energy processed the received proposals and on October 19, 2021 presented at the meeting the final version of the Draft Law. In preparing the final version of the Draft Law, the Ministry of Energy has radically changed the proposed principle of voluntary transition of RES producers to a new support system for the mandatory transition, starting for certain categories of RES producers in 2022. Representatives of the Ministry of Energy justified such changes by the need to take into account the relevant proposals to the Draft Law submitted by the Chairman of the Verkhovna Rada Committee on Energy and Housing and Communal Services. At the same time, the Ministry of Energy ignored the



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remarks and proposals of industry associations on the need to maintain the state guarantees established by current legislation for RES producers who will switch to the new support system.

EUEA has certain observations on certain provisions of the new version of the Draft Law presented by the Ministry of Energy at the meeting and asks to listen to the arguments of the association, namely.

**1. Voluntary transition of RES producers to a new Feed-in Premium support system**

**The essence of the question:** the final version of the Draft Law provides for the obligatory exit from the balancing group of the Guaranteed Buyer of business entities producing electricity at RES facilities (SPP, WPP) with a total installed capacity of 50 MW - until January 1, 2023; at RES facilities (SPP, WPP) with a total installed capacity of 10 MW - until January 1, 2024. For other business entities that generate electricity at RES facilities, the transition to the new support system is voluntary.

**Argumentation:** EUEA supported the approach proposed by the Ministry of Energy in the original Draft Law on voluntary withdrawal of RES producers from the balancing group of the Guaranteed Buyer, given that voluntariness will fully comply with state guarantees to RES producers in accordance with the Memorandum and Law № 810-IX.

**Thus, the Memorandum provides:**

«The state bodies of Ukraine will propose amendments to the Laws of Ukraine “On the Electricity Market”, “On Alternative Energy Sources”, and other normative legal acts, which will allow RES Producers to leave the balancing group of the Guaranteed Buyer and freely sell electricity on the market, become a party responsible for the balance sheet, form balancing groups or elect a party responsible for the balance sheet, which will provide forecast schedules of electricity production directly to PJSC “NPC “Ukrenergo”, without losing the right to receive compensation from the Guaranteed Buyer, calculated according to the appropriate methodology in the form of the difference between the established "feed-in" tariff or auction price and the market price, but not lower than the "day ahead" market price».

In order to implement the agreements reached in accordance with the Memorandum, **Law № 810-IX provides:**

"The Cabinet of Ministers of Ukraine within three months from the date of entry into force of this Law:

develop and submit to the Verkhovna Rada of Ukraine a Draft Law on granting the right to producers of electricity from alternative energy sources to leave the balancing group of the guaranteed buyer and freely sell electricity on the market with the possibility of compensation in the form of the difference between the set "feed-in" tariff or auction price and market price , which is not lower than the "day ahead" market price».

In addition, we draw your attention to the Decision of the National Security and Defense Council of Ukraine as of July 30, 2021 "On measures to neutralize threats in the energy sector", enacted by Decree of the President of Ukraine as of August 28, 2021 № 452/2021, which entrusted the Cabinet of Ministers of Ukraine:

*“...to submit according to the established procedure the following draft laws for review by the Verkhovna Rada of Ukraine:*



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a) *Before 31 October 2021:*

*On amendments to certain laws of Ukraine on incentives for electricity production from renewable energy sources and providing the **right** for electricity producers to leave the Guaranteed Buyer's balancing group and freely sell electricity at the market".*

The principle of mandatory withdrawal for certain categories of RES producers from the balancing group of the Guaranteed Buyer proposed by the Ministry of Energy in the final version of the Draft Law violates the above provisions of the Memorandum and does not comply with Law № 810-IX.

**Proposition:** return to the original version of the Draft Law in the part concerning the voluntary leaving of RES producers the balancing group of the Guaranteed Buyer and the transition to a new Feed-in Premium support system.

2. **Compensation for the implementation of TSO commands to reduce the load on RES producers, who are moving to a new support system Feed-in Premium,**

**The essence of the question:** at present, RES producers who sell electricity at a "feed-in" tariff are included in the balancing group of the Guaranteed Buyer and are not participants in the balancing market. According to Article 68 of the Law of Ukraine "On the Electricity Market" the transmission system operator (TSO) has the right, outside the balancing market, to provide load reduction commands to such producers. The RES producer provides the TSO with a load reduction service and receives payment for the executed commands in the form of compensation under the "feed-in" tariff for electricity, which is not released as a result of the execution of such commands.

The draft Law provides for the preservation of the existing mechanism of compensation for the execution of instructions of the transmission system operator to reduce the load only in relation to RES producers, which will be part of the balancing group of the Guaranteed Buyer.

Manufacturers of RES, which will come from the balancing group of the Guaranteed Buyer, must operate in the market on equal terms with other market participants. Therefore, RES producers will be required to participate in the balancing market and to carry out the instructions of the transmission system operator on a general basis, which have significant differences from the procedure already established for RES producers. It should be noted that the Regulator from time to time changes the requirements and / or restrictions on transactions in the balancing market (minimum volume of orders, minimum / maximum price caps, pricing in the balancing market), which affect the performance of balancing market participants. The unpredictability of the regulatory environment does not allow us to be sure that the implementation of TSO commands in the balancing market for RES producers will not worsen the regulation of their activities in the market compared to current conditions.

**Argumentation:** The new regulation for RES producers actually worsens the conditions of their work in the market compared to those currently established, which, in our opinion, is a violation of the state's obligations under the Memorandum and Law № 810-IX.

**Thus, the Memorandum provides:**

«The state bodies of Ukraine guarantee that the rights and obligations of the parties defined by the Agreements will be subject to the legislation of Ukraine in force on the date of entry into force of the Law on Agreements (subject to other changes made to the implementation of this Memorandum). The Law on Agreements will provide for relevant amendments to the Law of Ukraine "On the Foreign Investment Regime" and the Law of Ukraine "On Alternative Energy



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Sources” to regulate the above issues. Thus, RES producers will have the right to sue for changes in legislation that have occurred since the entry into force of the Law on Arrangements (except to other amendments made to legislation to implement this Memorandum), which adversely affect the economic condition of the parties to such Agreements. "

In order to implement the agreements reached in accordance with the Memorandum, Law № 810-IX provides:

«The state guarantees that for business entities to which the "feed-in" tariff is set or will be set in accordance with part three of this article, the legislation of Ukraine will be applied throughout the term of the "feed-in" tariff, which is in force on the day of entry into force of the Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving the Conditions of Support for Electricity Production from Alternative Energy Sources", except to legislation that reduces or abolishes taxes or fees, weakens the regulation of economic activity, simplifies the procedures of state supervision (control) in the field of economic activity, mitigates liability or otherwise improves the position of business entities, which should apply from the date of entry into force of such legislation. "

**Proposition:** We propose to specify in the Draft law that the current system of compensation at the "feed-in" tariff for electricity not released as a result of the execution of TSO commands at the level of the established "feed-in" tariff should be maintained for RES producers. An alternative may also be considered, according to which market rules should provide for the pricing of services of RES producers in the balancing market in a way that will provide compensation for electricity not released as a result of the execution of TSO commands at the level of the established "feed-in" tariff.

**3. Some issues of determining the cost of settling imbalances of producers with RES, switching to the support system Feed-in Premium**

**The essence of the question:** Paragraph 11 of Section XVII of the Final and Transitional Provisions of the Law of Ukraine “On the Electricity Market” stipulates that until December 31, 2029, the reimbursement by an economic entity that produces electricity at electricity facilities using alternative sources and is part of the balancing group of the Guaranteed Buyer, the value of its imbalance to the Guaranteed Buyer is carried out in case of deviation of the actual hourly volumes of electricity supply of such entity from its hourly schedule of electricity supply (tolerance margin):

For WPP - more than 10%;

For SPP - more than 5%.

It should be noted that **for RES producers who switch to the new support system Feed-in Premium, the Draft Law does not provide the application of tolerance margin.**

**Argumentation:** The absence of tolerance margin in the Draft Law for RES producers switching to the new Feed-in Premium support system actually worsens the conditions of their activity compared to the current regulation of producers' activity at the "green" tariff, which, in our opinion, is a violation of obligations under the Memorandum and Law № 810-IX (the relevant provisions of the Memorandum and Law № 810-IX are given above).



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**Proposal:** We propose to define in the Draft Law that for RES producers **a current mechanism should be maintained** regarding permissible deviations of actual production volumes from the forecast ones, within which RES producers are not responsible for such deviations (**tolerance margin**).

*It should also be noted that the electricity market in Ukraine today is opaque, inefficient and extremely affected by the Regulator and the Government. Thus, instead of forcing RES producers to participate in this market, which under current conditions will lead to additional losses for them (compared to the current system of electricity sales), we consider a more effective approach to focus on improving the market environment. A transparent and predictable market will best encourage RES producers to participate in it and switch to the Feed-in premium system (provided that all other essential elements of the «green» tariff system currently applied to RES producers are not changed - compensation for electricity production restrictions, tolerance margin, etc.).*

Sincerely,

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