

# Capacity fee enters into force

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On 30 November 2020 the President of the Energy Regulatory Office announced the capacity fee rates for 2021. As of 1 January 2021, this fee will be added to electricity end users' bills for the first time. This article provides an overview of the capacity fee, the rates thereof and the purpose of its introduction, as well as the key principals of the capacity market.

## Capacity market

The Act of 8 December 2017 on the Capacity Market (*Journal of Laws* 2020.247, uniform text), which entered into force on 18 January 2018, launched the capacity market in Poland. As such, the existing single-product energy market became a dual-product market, where not only electricity but also capacity is traded. Pursuant to Article 1(2) of the act:

*[t]he aim of the Act is to ensure medium- and long-term security of electricity supply to end-users in a manner that is cost-effective, non-discriminatory, and compatible with sustainable development principles*

Moreover, as the President of the Energy Regulatory Office website states:

*[t]he need to prevent electricity shortages in the future was one of the reasons for preparing legislative solutions whose main objective is to create investment incentives for the construction of new and modernisation of existing generation units. These solutions are also aimed at activating energy consumption management and making electricity demand more flexible. A new regulatory solution - the capacity market - has been created to achieve these objectives. The introduction of the capacity market means a change in the architecture of the energy market from a single-product to dual-product market, where not only the electricity produced but also the net available capacity, i.e. readiness to supply energy to the grid, will be subject to buy-sell transactions.*

The act regulates, in detail, the functionality of the capacity market in Poland.

## Auctions and secondary market

Capacity market participants, or 'capacity market units' according to the wording of the act, may be generation units or demand reduction units. Thus, the act applies particularly to entities involved in electricity generation (mainly high-capacity generation units, such as conventional power plants). This is because the construction and operation of generation units from renewable energy sources is covered by the support system in Poland. Moreover, these units are usually low-capacity generators which produce energy from unstable sources. Therefore, they are usually unable to guarantee capacity, and it is precisely the guarantee of power delivery that is at stake in the introduced system.

In the capacity market, generating units (mainly conventional power plants) are remunerated for their 'readiness' to supply electricity at the appropriate amount for each megawatt (MW) of installed capacity and the installation prepared for operation. Therefore, there is no question of payment for the electricity actually supplied by these units. Instead, the remuneration occurs with respect to electricity sales.

Capacity sales are effected through auctions in an information and communication technology system. Before proceeding with the auction, the generating unit must undergo appropriate certification. The act distinguishes two types of certification:

- general – which is obligatory for all existing physical generation units with a gross available capacity of no less than 2MW (Article 11 of the act); and
- certification for the main auction and additional auctions – the owner of the physical unit or planned demand reduction unit submits an application for the establishment of a capacity market unit and its admission to the main auction, additional auctions, the secondary market or additional auctions for the same year of supply (Article 15 of the act).

On the basis of the application for certification, the operator will issue a certificate:

- confirming the establishment of a capacity market unit if the owner of the physical entity or an entity authorised thereby has submitted an application for its establishment; and
- allowing this capacity market unit to participate in individual auctions or the secondary market (Article 23 of the act).

Capacity auctions are conducted on the capacity market, in which capacity providers offer the capacity obligation (Article 29(1) of the act), together with their price. Additional auctions are conducted in the year preceding the year in which the delivery periods of each of these auctions fall, whereby additional auctions for all delivery periods take place at the same time (Article 29(4) of the act). The act provides detailed rules for conducting these auctions. After conducting the auctions, the operator will indicate the capacity market units for which the capacity agreements will be concluded as a result of the auctions (Article 36(2) of the act).

The act also allows for the conclusion of transactions by capacity market units within the secondary market. This means that these units trade, in a way, in their capacity obligation from the auctions which they win in favour of other capacity market units. Detailed rules are contained in Article 48 *et seq* of the act.

### **Capacity agreement**

Capacity agreements will be concluded with the winners of the auctions. In a capacity agreement, the capacity provider undertakes to perform the capacity obligation for a specified period by a specific capacity market unit according to the result of the capacity auction. Meanwhile, the operator undertakes to:

- verify the performance of the capacity obligation, accounting for documents which must be issued by the capacity supplier and are the basis for the payment of remuneration for the performance of the capacity obligation; and
- determine the amount of penalties due from the capacity supplier for non-performance of the capacity obligation.

Capacity agreements also involve a third party – the capacity market settlement administrator, which undertakes to pay remuneration for the performance of the capacity obligation. The function of the capacity market settlement administrator is performed by Zarządca Rozliczeń SA, a company established based on the Termination of Long-Term Power Purchase Agreements Act of June 29 2007 (*Journal of Laws* 2019.1874, uniform text).

### **Capacity fee**

The functioning of the capacity market requires financial outlays, primarily on remuneration for the capacity market units under the concluded capacity agreements. The funds for the capacity market are obtained mainly through a capacity fee which entered into force in real terms on 1 January 2021.

Pursuant to Article 69(1) of the act:

*The Operator shall collect a fee for the payment of remuneration for the performance of the capacity obligations, corresponding to the costs of the purchased capacity obligation and the justified costs of the settlements referred to in Article 77(4), hereinafter referred to as 'the capacity fee'.*

Operators will collect the capacity fee from:

- end users which are directly connected to the transmission network;
- the electricity distribution system operator (the capacity fee payer);
- energy enterprises which are engaged in business activity within the scope of the transmission or distribution of electricity which are not the capacity fee payer and are directly connected to the transmission network; and
- electricity-generating energy enterprises which are directly connected to the transmission network.

The electricity distribution system operator (capacity fee payer) will collect the capacity fee from:

- end users;
- electricity-generating energy enterprises; and
- energy enterprises which are engaged in business activity within the scope of the transmission or distribution of electricity but are not the capacity fee payer.

These are the most important categories of entity from which the capacity fee will be collected.

The capacity fee rates will be set separately – in relation to end users collecting electricity in a household – as a monthly rate, depending on annual electricity consumption, payable per point of consumption. This is understood to be the point in the electricity network where the electricity consumption is measured by the metering and billing system, as specified in:

- a contract for the provision of electricity distribution services;
- a contract for the sale of electricity; or
- a complex contract.

End users other than households will pay the rate applicable to the volume of electricity drawn from the grid during select hours of the day, expressed in Zloty per kilowatt hour of electricity (Article 70(1) of the act).

In practice, this means that as of 1 January 2021 each end user will pay a capacity fee as part of their electricity bill, which results from the Regulation of the Minister of Climate and Environment of 9 November 2020 regarding the collection of the capacity fee and the determination of daily hours of peak demand for power in the system (OJ 2020.2009). The capacity fee will be collected as part of the remuneration for the distribution service. On 30 November 2020 the President of the Energy Regulatory Office announced the capacity fee rates for 2021.

According to its website:

*[w]hen calculating the amount of the capacity fee for particular groups of customers for 2021, the regulator - as assumed by the legislator - takes the results of the main auction and additional auctions for 2021 into account, i.e. the value of the capacity contracts concluded under the auction for 2021 and the costs of Zarządca Rozliczeń S.A.*

*In the case of households, it will be a monthly rate depending on annual electricity consumption, payable per point of consumption. The level of the capacity fee will be:*

- *for consumption below 500 kWh of electricity - PLN 1.87;*
- *for consumption between 500 kWh to 1200 kWh of electricity - PLN 4.48;*
- *for consumption between 1200 kWh and 2800 kWh of electricity - PLN 7.47;*
- *for consumption exceeding 2800 kWh of electricity - PLN 10.46*

*For other groups of consumers, next year the fee will depend on the amount of electricity taken from the grid during selected hours during the day (on working days from 7:00 to 21:59) and will amount to PLN 0.0762 /kWh.*

Hence, each end user from the household group will pay at least PLN1.87 per month more, which is not high.

This is different for end users which are companies. For these end users, the capacity fee will be much higher as it is calculated based on the amount of electricity drawn from the grid during select hours of the day. Thus, the larger the company and, consequently, the higher the energy consumption, the higher the fee. Therefore, in practice, the capacity fee will place the highest burden on energy-intensive industries, where electricity consumption is highest. Although discounts were planned for these companies, they were not introduced.

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