

## Change in the President of the ERO's Interpretation of the PPA Reporting Requirement?

**On January 30, 2025, an announcement was published on the Energy Regulatory Office's website regarding the requirement to report on agreements for the sale of electricity from RES concluded under the PPA formula with non end-users. This is an abrupt turnaround in the interpretation of Article 5.11a of the Energy Law relative to the ERO President's** The article refers to the latest changes in the interpretation of the ERO President regarding the obligation of RES generators to report PPAs under Article 5(11a) of the Energy Law.

### **PREVIOUS INTERPRETATION IN INFORMATION NO. 58/2023, ACCORDING TO WHICH THE REQUIREMENT TO REPORT PPAS WAS TO APPLY ONLY TO SALES AGREEMENTS CONCLUDED WITH END USERS.**

An amendment to the Renewable Energy Sources Act of 2023<sup>1</sup> to the Energy Law<sup>2</sup> in Article 5, sec. 11a, in conjunction with sec. 2d, introduced a requirement, as of October 1, 2023, for RES power generators to report to the ERO President on agreements for the sale of electricity to customers, concluded under the Power Purchase Agreement (PPA) formula. In turn, the introduction of this requirement was related to the implementation of Article 15 sec. 8 of the RED II<sup>3</sup> Directive, which imposes reporting requirements on EU member states as part of the National Energy and Climate Plans (NECPs) they draw up. The data flowing from the standardized PPA reporting forms is intended to improve PERO's market monitoring and reporting on the achievement of NECP targets.

Due to numerous questions from RES entrepreneurs and reported discrepancies regarding the linguistic interpretation as well as the purpose of the regulation, the ERO President, on November 13, 2023, published *"Information No. 58/2023 on the reporting requirement of generators producing electricity from renewable energy sources referred to in Article 5 Section 11a of the Energy Law and Article 35 of the Law on Amendments to the Law on Renewable Energy Sources and Certain Other Laws"*<sup>4</sup>.

According to the previous interpretation of the President of the ERO, the reporting requirement referred to in Article 5, sec. 11a of the Energy Law covered all generators (as defined in Article 2, sec. 39 of the Law of February 20, 2015, on Renewable Energy Sources) that entered into agreements directly with **end users**, regardless of whether the transport of energy subject to the agreement was carried out via the power grid or a direct line.

Confirming the above position, as well as in order to improve the implementation of reporting requirements under the RED II Directive, **on January 17, 2025**, the Energy Regulatory Office website published information<sup>5</sup> regarding the introduction of a uniform form (URE PPA 01) for reporting on electricity sales agreements concluded under the PPA formula **with end users**, the requirement to use which has been imposed to RES electricity generators for almost two weeks now.

However, as can be seen from the just-published announcement dated **January 30, 2025**,<sup>6</sup> the ERO President's interpretation of the reporting requirement under Article 5 sec. 11a of the Energy Law has

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<sup>1</sup> The Law of August 17, 2023 on Amendments to the Law on Renewable Energy Sources and Certain Other Laws (Journal of Laws, item 1762, as amended).

<sup>2</sup> Act of April 10, 1997 - Energy Law (i.e. Journal of Laws of 2024, item 266, as amended).

<sup>3</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ. U. EU. L. of 2018. No. 328, p. 82 as amended).

<sup>4</sup> <https://www.ure.gov.pl/download/9/14142/InformacjaNr582023.pdf>

<sup>5</sup> <https://www.ure.gov.pl/pl/urząd/informacje-ogólne/aktualnosci/12397,OZE-jednolity-formularz-do-raportowania-umow-sprzedazy-energii-elektrycznej-zawa.html>

<sup>6</sup> <https://www.ure.gov.pl/pl/urząd/informacje-ogólne/aktualnosci/12440,OZE-raportowanie-umow-sprzedazy-energii-elektrycznej-zawartych-w-formule-PPA-z-o.html>

changed significantly, leaning toward the literal wording of the provision. According to the latest announcement, the requirement to report agreements for the sale of electricity from RES also includes agreements concluded **with users being non-end-users. This will mean, in principle, the requirement to report all PPAs entered into between generators with a PERO license to produce electricity from RES with all users, i.e., entities that have an agreement with an energy company to receive or consume energy.** However, in the case of a PPA to which the other party is not the end user, as of January 30, 2025, for new agreements or their annexes, the reporting requirement will only be able to be fulfilled on the ERO PPA 02 form. In other words, there is no new interpretation by the ERO President that would clearly change the interpretation of Article 5.11a of the Energy Law as contained in Information No. 58/2023, but there has been a communication from the ERO regarding the reporting of electricity sales agreements concluded under the PPA formula with users other than end-users, from which a conclusion can be drawn that the interpretation contained in Information No. 58/2023 has become obsolete.

In principle, the two forms only slightly differ from each other. The only difference between the URE PPA 01 form and the URE PPA 02 form is the indication of the end user and the user (non-end user), respectively. However, it is important to keep in mind the different starting points of the forms. For new PPAs or their annexes, the forms will apply:

Form URE PPA 01 - for PPAs entered into (or annexes thereto) with end users as of January 17, 2025;

Form URE PPA 02 - for PPAs entered into (or annexes thereto) with non-end users as of January 30, 2025;

Pursuant to Article 5(11a) of the Energy Law, the requirement to report the PPA is incumbent on the RES power generator, which should fulfil it within the statutory period of one month from the conclusion of the PPA using the aforementioned forms. Importantly, these forms are currently the only forms in force, and generators are obliged to use them. Reporting on a different form will require a corresponding adjustment. In turn, failure to submit the report within one month of the conclusion of a new PPA or an annex to such an agreement results in exposure to a fine (Article 56 sec. 1, item 51a of the Energy Law). What else should RES power generators keep in mind?

## **WHO IS COVERED?**

According to the explanatory notes published with the form on the ERO website, the reporting requirement extends to companies engaged in the production of energy from RES, **that are parties to an agreement with a user (end-user or non-end-user)** for the sale of generated electricity, not to a company acting for or on behalf of a company that is a party to the agreement.

## **BY WHAT DATE SHOULD THE FORM BE SUBMITTED, AND HOW SHOULD IT BE SUBMITTED?**

As a general rule, the form should be sent electronically within a month of entering into a PPA or an annex to such an agreement (in accordance with Article 5 sec. 11a of the Energy Law) in Excel and PDF format following the instructions available on the ERO's website.

If you send the form by traditional postal order, be sure to indicate the appropriate organizational unit of the ERO, which is the Market Monitoring Department.

## **HOW TO COMPLETE THE DATA IN THE FORM?**

The form, provided in an editable Excel file format, contains 20 fields to be completed, and how to complete each field is described step by step in detail in the explanatory notes attached next to the form. Firstly, covered manufacturers should remember that:

- Sales prices should be stated in net terms;
- In case the agreement only contains a formula for calculating the price depending on variable factors, such as stock market indices, the price field should be left blank, and the price formula should be indicated and described in the “Notes” column;
- In the case of concluding more than one agreement with one contractor, each agreement should be described in a separate line of the form,
- The contracted volume of electricity in the agreement should be specified in the form for the entire term of the PPA and stated in MWh.

## **PPA MARKET**

Finally, it is worth pointing out that, according to Pexapark’s forecast, the European PPA market is entering a “golden era”<sup>7</sup>. Interest in PPAs is also growing steadily in Poland. According to RECAI’s 2023 ranking, Poland has moved up to 7th place in terms of attractiveness of the PPA<sup>8</sup>market, up from 10th place in 2022. In turn, as can be read in the Pexapark Renewables Market Outlook 2025, Poland increased the number of concluded PPAs in 2024 relative to 2023 by 43%<sup>9</sup>. According to Pexapark’s projections for the coming year, the number of PPAs by smaller companies, for shorter terms than the previously prevailing 10-15 year agreements and for smaller energy volumes<sup>10</sup>is expected to increase above all.

As the market develops, will a standardized PPA contract template emerge in Poland, following the example of Germany? Time will tell. It is worth pointing out that less than a year ago, in February 2024, the German Energy Agency (DENA) published a standardized PPA template developed by the German Electricity Trading Association (EFET) together with leading law firms, taking into account German law and the specifics of electricity trading, modeled on a supply contract. Germany has seen a record increase in new PPAs concluded in 2024, albeit for smaller volumes than the current leader, Spain, indicating a new trend in the direct contract formula.

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<sup>7</sup> <https://pexapark.com/european-ppa-market/>

<sup>8</sup> <https://www.ey.com/content/dam/ey-unified-site/ey-com/en-sg/insights/energy-resources/documents/ey-gl-recai-63-report-06-2024.pdf>

<sup>9</sup> <https://pexapark.com/pexapark-renewables-market-outlook-2025/>, p. 36.

<sup>10</sup> Ibid, p. 53