



Quick Guide to the Polish Auction System for Renewables



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Introduction

Dear Readers,

photovoltaics continues to be a leader in clean energy production in Poland. The last year has confirmed its unwavering position as a key component in meeting national and EU climate targets. The increase in installed photovoltaic capacity is a response to the growing need for clean and sustainable energy.

In November 2023 RES auctions took place, including for PV projects. In both baskets (up to 1 MW and above 1 MW) PV installations maintained their lead over wind power in terms of installed capacity. It was mainly due to the '10H' distance rule in force in the onshore wind sector at the time, the consequence of which was a lack of new projects. Despite the liberalisation of the rule by the legislator, an investment gap of several years has already emerged.

The deficit of RES energy in the Polish electricity system caused by the neglect of wind energy development in Poland is being systematically filled in by small and large-scale photovoltaic projects. Rising energy prices have opened the opportunity for new business models, other than RES auctions. Notably, the popularity of solutions like long-term power purchase agreements (cPPAs), self-consumption, hybrid installations or co-located solar and storage installations is growing. These constitute a new opportunity for the PV sector providing direct economic benefits to the consumers.

One of the priorities of the actual National Recovery Plan is to use the potential of renewable energy sources for the economy. The objectives established by Poland therein are to increase the share of renewable energy in gross final energy consumption and to reduce the exposure to air pollution from particulate matter. Further development of solar energy fits in perfectly with these intentions.

We have a pleasure to present with this guide on the auction system for renewables as a compendium of knowledge prepared by the Polish Photovoltaics Association and its member – DWF Poland.

We hope that you find the guide useful.



Ewa Magiera President of the Board Polish Photovoltaics Association



dr Karol Lasocki Partner DWF

The condition of solar energy in Poland

Solar energy already constitutes a more and more significant segment of the Polish RES mix, and its role in the coming years will inevitably increase. Experiences of the neighbouring countries, with similar climatic conditions to Poland, are encouraging.

Full use of the PV potential is essential for the transformation of the energy system towards a low-emission economy. The development of the solar industry is also the cornerstone of a European Green deal. It drives sustainable and local growth, innovation, and supports the competitiveness of EU SME's and businesses with clean and affordable electricity. By 2030, the solar sector could generate at least 500,000 jobs in Europe only.

Currently in Poland most PV projects under construction are in the power range above 1 MW. Current legislative changes continue to prevent the development of onshore wind technology. As a result, due to the long investment process compared to PV, even taking into account the fact that the legislator has liberalised the distance restrictions, for the next few years, the onshore wind share in auctions for the basket above 1 MW will be greatly limited. It is tempting to conclude that during the next two years the largest solar installations will be competing with large wind farms, on an equal terms.

It is worth noting that the solar energy has no problems with social acceptance so far. A European Social Survey (ESS) on "European Attitudes toward Climate Change and Energy" found that solar power is the most popular energy source in Europe, with a stunning average of 85% support amongst EU citizens. A survey conducted by the "Indicator"



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Marketing Research Centre shows that solar energy has the greatest support among various renewable energy technologies. The respondents chose this energy source as their preferred source in all aspects: economic, ecological and social. Solar power plants are also the installations that are most welcome in residential neighbourhoods.

Moreover, solar energy is currently the fastest growing RES market, measured with newly added capacity, both in Europe and especially in Poland, which has been one of the leaders, especially in recent years.

17.08 GW

The total installed PV capacity at the end of December 2023

According to the information provided by Energy Market Agency (ARE) at the end of January 2024, the total capacity of photovoltaic in Poland was 17.08 GW, while a year ago, it was 12.5 GW – thus, the PV installed capacity increased by almost 4.5 GW within a year. Key government document in strategic planning in the field of Polish energy policy put also an accent on the development of solar industry. The Energy Policy of Poland until 2040 (PEP 2040), adopted by the government in February 2021, assumes the share of renewable energy in final energy consumption at about 23% in 2030. The increase of solar energy's share in energy mix will have a key role in achieving this goal in electricity. However, it must be noted how much the current PEP 2040 assumptions underestimated the PV development potential according to the document, we were supposed to obtain the installed photovoltaic capacity of approx. 5-7 GW as late as in 2030. Similarly, according to the projections presented in the National Energy and Climate Plan for 2021–2030 (NECP), an increase in the achievable capacity of PV installations is expected to increase to approx. 7.3 GW in 2030 and approx. 16 GW in 2040 (page 94).

Whereas, the Charter for the Efficient Transformation of Poland's Power Distribution Networks signed in November 2022 by the President of the Energy Regulatory Office and the heads of the five largest distribution system operators in Poland, assumes that more than 20 GW of solar sources with a production potential of 21 TWh per year will need to be grid connected to the national power system (NPS) by 2030.

In March 2022, the government adopted the assumptions for updating PEP 2040, according to which by 2040 approximately half of electricity generation will come from renewable sources. However, finally, the update of this document by the

Diagram No. 1 | Development forecast for photovoltaic power according to PEP 2040 and NECP.



Source: IEO, Market of Photovoltaics in Poland 2019

previous government did not take place. It should be expected to be adopted by the new parliament, which – as the Ministry of Climate and Environment announces – is assumed to take place this year.

At the beginning of March 2024, Poland submitted a preliminary version of the NECP update to the European Commission. The working document declares an increase in the share of RES in gross final energy consumption to 29.8 % by 2030. According to the preliminary assumptions, onshore wind power plants (with an installed capacity of approximately 15.8 GW) and solar power plants (approx. 29.3 GW) will contribute most to the increase in electricity production from RES in the 2030 perspective. Subsequently, the proposed update of the NECP is to be submitted for public consultation and sectoral agreements, with approval planned for late Q2/early Q3 2024.

Integrated national energy and climate plans are becoming the primary tool for achieving the goals and objectives of the Energy Union. Member States energy and climate goals and contributions must be consistent with the Union's policy and lead to its objectives. Member States will also from 2023 and every two years thereafter report on the implementation of their integrated national energy and climate plan, which will cover all five dimensions of the Energy Union. The Commission is obliged to assess the above studies in terms of their adequacy and ability to achieve the collective goals and assumptions of the Energy Union and to report on possible discrepancies. Since 15 March 2023, and every two years thereafter, Member States must report to the European Commission on their progress in implementing their national energy and climate plans.

The Ministry of Climate and Environment has prepared and submitted to the European Commission the first integrated energy and climate progress report for 2020-2021. The document was adopted by the European Union Affairs Committee at its meeting on 18 August 2023. Recommendations will be made on the basis of the reports.

Green energy development and grid investments are inevitable, and photovoltaics will play a very important role in the accelerated energy transition.

Due to the technological gap of several years regarding the increase of wind potential, the only area of the renewable energy sector where such rapid and large increases of green power in the NPS could occur is solar PV. The structure of the PV sector in Poland is currently undergoing quite a significant change. The microinstallation segment seems to have reached a level where it is already facing a slowdown in the growth of new capacities - the change of the prosumer support system from net-metering to net-billing has contributed to this. At the same time, due to the constant increase in energy prices for end users, promising prospects are opening up in Poland for the direct sale of market energy from RES in the form of corporate power purchase agreements (PPAs). Business customers buying energy directly from RES generators (on the basis of a long-term PPA) have a chance to reduce and stabilise energy costs. It is worth noting that in the case of PV technologies, production profiles are often in line with consumer profiles. There is also a growing number of industrial energy consumers who - due to consumer preferences, products consumer preferences, products and corporate policies - cannot use electricity from the Polish energy mix with too low share of renewable energy and have to buy more renewable energy directly from producers.

In the current market reality, the prospect of auction support remains a significant incentive to invest in new large-scale PV capacity, as it offers a low cost of raising capital and ensures the bankability of projects, making it possible to ensure their appropriate scale.

Well visible, long-term planning of appropriately increased volumes is the effective method to stimulate the development of large projects. Their implementation will increase energy security, while mitigating the steady increase in end users' electricity prices observed since 2018. It should also be remembered that from this point of view, we need as many large volumes of green energy as possible, regardless of technology. Auctions should therefore allow full capacity development and complementarity between large-scale wind and solar projects.

Auctions in 2023

In 2023, one round of auctions covering the photovoltaic and wind installations were held.

The last auction for the photovoltaic and wind installations up to 1 MW was held on 21 November 2023, while the auction for installations above 1 MW was held on 22 November 2023. The auction was carried out on the basis of the Regulation of the Council of Ministers of 27 September 2022 regarding the maximum volumes and values of electricity from renewable energy sources that might be auctioned in particular consecutive calendar years of 2022–2027 (Journal of Laws of 2022, item 2085).

11.25 TWh of energy worth PLN 3.825 billion has been allocated for auctions in 2023 for photovoltaic and

wind installations up to 1 MW. These values remain the same as for the 2022 auction, while for the 2021 auctions it was a total of approximately 17.4 TWh of energy with a value of approx. PLN 7.8 billion.

Meanwhile, for the photovoltaic and wind installations above 1 MW, 21.75 TWh worth PLN 6.225 billion was allocated for sale. In the same basket for the 2022 auction, the volume of energy amounted to 11.25 TWh worth PLN 3.6 billion, while in the 2021 auction, the total volume of energy amounted to approx. 52.86 TWh worth approx. PLN 15.79 billion. According to the summary of auctions held in 2023,



Diagram No. 2 | 2023 Auctions. New Capacities in Polish Grid.



the President of the ERO estimates that these auctions will contribute nearly 618.5 MW of new generation capacity, including:

594 MW in photovoltaic installations (approximately 123 MW in installations with an installed capacity up to 1 MW and approx. 471 MW in installations with an installed capacity of more than 1 MW).

Due to the validity of the Act of 17 September 2021 amending the RES Act and certain other acts (Journal of Laws 2021, item 1873), with the approval of the European Commission the auction system has been extended until 30 June 2047. It means that auctions can be held until 31 December 2027.

This is excellent information for all RES generators. According to preliminary estimates, the extension of the auction system will enable the creation of approximately 9 GW of new capacity in renewable energy technologies. The maximum value of state support during the entire programme period may amount up to PLN 43.85 billion.

Table No. 1 | Auction budgets 2023 description for each RES technologyand comparison to year 2022

Technology	Cap.	2023 budget		2022 budget		Change	
		(TWh)	(PLN mld)	(TWh)	(PLN mld)	(%vol.)	(%vol.)
Wind & PV	< 1 MW	11.25	3.83	11.25	3.83	0%	0%
	> 1 MW	21.75	6.23	11.25	3.60	+93%	+73%
Non-agricultural biogas,	< 1 MW	1.11	0.61	1.11	0.61	0%	0%
treatment installations	> 1 MW	45.00	24.71	1.69	0.93	+2567%	+2565%
Agricultural biogas	< 1 MW	-	-	-	-	0%	0%
	> 1 MW	5.78	3.87	5.78	3.87	0%	0%
Hydropower, bioliquids,	< 1 MW	0.98	0.51	0.98	0.51	0%	0%
geothermal chergy	> 1 MW	2.04	1.04	2.04	1.04	0%	0%
Hybrid installations	< 1 MW	-	-	-	-	-	-
	> 1 MW	-	-	-	-	-	-
Total		87.9	40.78	34.087	14.38	+158%	+184%

Source: own study, pursuant to the Regulation of the Council of Ministers of 27 September 2022 regarding the maximum volumes and values of electricity from renewable energy sources that might be auctioned in particular consecutive calendar years of 2022-2027 (Journal of Laws of 2022, item 2085).

When will the next auctions take place?

At the date of publication of this guide, further rounds of auctions covering the photovoltaic and wind segments planned for 2024 have not yet been announced.

Pursuant to the Regulation of the Council of Ministers of 27 September 2022 regarding the maximum volumes and values of electricity from renewable energy sources that might be auctioned in particular consecutive calendar years of 2022–2027 (Journal of Laws of 2022, item 2085), in 2024, in possible auctions for installations up to 1 MW, the maximum amount of energy that can be sold is 11.25 TWh and its value is PLN 3.825 billion while in auctions for installations above 1 MW, the maximum amount of energy to be sold is 21.75 TWh and its value is PLN 6.225 billion.



How does a project qualify for participation in an auction?

Ready-to-build RES projects using onshore wind, solar energy and biogas, agricultural biogas, biomass, bioliquids, hydropower and geothermal energy to generate electricity, as well as a thermal waste treatment installations or dedicated multi-fuel combustion installations can participate in an auction, if they:

- · hold a certificate of admission to an auction, and
- pay a deposit of PLN 60 (ca. EUR 14) per 1 kW, or provide an equivalent bank guarantee.

Obtaining a certificate of admission to an auction is preceded by a pre-qualification procedure carried out by the President of the ERO. Investors need to evidence that they possess ready-to-build installations, i.e. that the following criteria are met:

- grid connection conditions or an agreement is in place,
- the project has a final and non-appealable building permit (valid for at least 6 months),
- · an installation scheme is provided,
- a schedule of works and expenditures for the completion of construction is presented.

Once the prequalification criteria are fulfilled, a certificate of admission to an auction is issued within 30 days from the date of submission of a complete application for that certificate by the President of the ERO. The certificate remains valid for 12 months from the date of issue.



How does winning an auction impact grid connection?

Grid connection conditions or a concluded grid connection agreement is required for participation in an auction. Grid connection conditions are valid for 2 years from the day of their service upon an applicant. In this period they constitute a binding obligation on the part of a grid operator to conclude a grid connection agreement.

A grid connection agreement specifies a period for implementation of a grid connection and contains a deadline for first delivery of electricity produced by a renewables installation. This deadline cannot exceed 4 years from the date of execution of a grid connection agreement. Non-delivery of electricity within the deadline constitutes statutory grounds for termination of a grid connection agreement by a distribution/transmission system operator.

The Polish RES Act, however, provides for a mechanism to extend the deadline for first delivery of electricity for projects which have won an auction. Grid operators are obliged to adjust the deadline in grid connection agreements for the winning projects to be in line with the deadlines from the auction (e.g. for PV – 33 months from the auction closure date). Annexes to grid connection agreements will then be concluded so that the agreements do not expire before the deadline for commissioning of a project.

What is the course of an auction and who wins?

The date of an auction is announced by the President of the ERO at least 30 days in advance before the auction.

A bidder – prospective producer submits a bid which includes the volume of electricity in MWh and the price in PLN per 1 MWh, at which the bidder agrees to sell electricity on the basis of a contract for difference. The support is awarded to the lowest bidders. The auction continues until the volume and value of electricity specified in an announcement of an auction is fully depleted or closing of the auction session. The auction is settled if no less than three valid bids meeting the requirements set out in the RES Act have been submitted. When several bidders offer the same lowest selling price, and the volume of electricity declared to be produced exceeds the volume referred to in the announcement of the auction, the order of submitted bids is decisive. Winning producers' offers may not jointly exceed 100% of the value of electricity specified in the announcement of the auction and 80% of the volume of electricity covered by all bids. This second cap is aimed at guaranteeing sufficiently competitive auctions.

Within 21 days from an auction closure date, the President of the ERO publicly announces, on its website, information about:

- the results of the auction (i.e. the producers who won the auction, the minimum and maximum price at which electricity was sold in the auction, as well as the total volume of electricity sold and its value), or
- invalidation of an auction, if that happens.

An auction may be invalidated only if all offers have been rejected (a bid shall be rejected, i.a, if the selling price specified in the bid exceeds the reference price) or if it could not be carried out for technical reasons. If the results of an auction have already been published, the auction is settled and final.

What is the period of support?



The period of support amounts to 15 years from the date of first sale of electricity after winning a given auction, however not later than until 30 June 2047, in accordance with the amendment of the RES Act adopted by the Act of 17 September 2021.

What is the mechanism of support?

Industrial-size installations (above 0.5 MW) that have won an auction, sell the produced electricity on the electricity market at the market price, to a chosen offtaker, after which they may apply for additional payments to reach their auction price. This is done by way of an application to cover the "negative balance". The monies are paid out by Zarządca Rozliczeń S.A., a state-owned corporation responsible for carrying out the settlements of the "negative balance". Under the Polish RES Act, the "negative balance" is the difference between the net value of the sale of electricity in a given month (as calculated on the basis of a commodities exchange index) and the value of that electricity determined on the basis of the price contained in a producer's offer that won an auction. Please also note that the latter is indexed annually to the inflation rate in Poland.

The volume of electricity subject to the settlement is determined on the basis of actual indications of measuring devices in a given month. A producer from an installation informs Zarządca Rozliczeń S.A., within 15 days after the end of the month, of:

- the volumes and prices of electricity sold in the previous month,
- data on the value of the electricity (prices published by the Polish Power Exchange – TGeBase index) and
- the producer submits an application to cover the negative balance.

In consequence, the "negative balance" is the difference between the value of produced electricity calculated on the basis of the TGeBase index and the value of such electricity established pursuant to the price from a respective auction bid of an individual producer. Zarządca Rozliczeń S.A. is obliged to verify an application for covering the "negative balance" within 30 days and pay the producer in question the relevant funds, as per the example below.



Please note that in the example the balance can also be positive, especially in case of a substantial increase of wholesale electricity prices. In such a scenario, the producer could be obliged to pay back the positive balance to Zarządca Rozliczeń S.A. Any positive balance is set off against any future negative balance on "as-we-go" monthly basis.

Any positive balance that is not fully settled by the end of a period of every full three calendar years shall be refunded to the Zarządca Rozliczeń S.A. by the generator of electricity in the RES installation, after the end of the full three calendar years, within 6 months of the end of the relevant period.



There is no obligation to sell electricity produced by RES installations through a commodities exchange.

What energy producing equipment can be installed?



An investor who won an auction is restricted in terms of generating devices that can be installed. The Polish RES Act stipulates that devices used for generating and processing electricity must be new, and produced within a certain period preceding the day of first production of electricity. This is detailed in the table below.

Table No. 2

Category of renewable installation	Equipment not older than
Onshore wind	33 months
Photovoltaics	33 months
Offshore wind	72 months
Biomass	42 months

What are the responsibilities of an investor who won an auction?

The first obligation imposed on an investor is to produce electricity for the first time, while already holding a generation concession, within certain deadlines from the auction closure date. Failure to timely meet this obligation results in an exclusion from the auction system and loss of the deposit. This is detailed in the table below.

Table No. 3

Category of renewable installation	Deadline to produce electricity with a concession in place
Onshore wind	33 months from the auction closure date
Photovoltaics	33 months from the auction closure date
Offshore wind	7 years from the auction closure date
Biomass	42 months from the auction closure date



The second obligation is to produce the volume of electricity declared in the offer. However, there is an option of one update of the offer following the auction, with respect to, in particular, the planned date of commencement of the period of use of the support system and the volume of electricity planned for sale in subsequent calendar years (the total volume will however need to remain constant). The volume is settled after the expiry of each 3 full calendar years in which support was granted, and after the lapse of the entire period of support. If an installation fails to produce at least 85% of the volume specified in a winning offer in a relevant settlement period, the producer is subject to a fine. The fine is calculated as 50% of the product of the auction price and the difference between the electricity that was supposed to have been produced, pursuant to the auction offer and the energy actually produced. The financial penalty will not apply if the required volume of electricity was not produced as a result of:

- · application of the generally binding law;
- · the need to ensure security of the grid;
- a power system failure;
- force majeure, e.g., natural disasters, war, acts of terrorism, riots;
- the technical failure of an installation

 violent, unpredictable and independent
 of the producer, damage or destruction of
 an installation or destruction of buildings
 or facilities essential for its operation.

The impact of COVID-19 pandemic legislation on the responsibilities of electricity producers within the auction system

Due to the global outbreak of COVID-19 pandemic and subsequent introduction of the state of epidemic in Poland, Polish government adopted a set of legislation aimed at casting off the emerging economic crisis, including the Act of 31 March 2020 on the amendment of the Act on specific measures to prevent, combat and eradicate COVID-19, other transmissible diseases and their associated emergencies.

Also known as Anti-Crisis Shield 1.0, the Act introduced amendments to the RES Act of 20 February 2015. The amendment enabled the RES energy producers benefiting from the auction support system, in the event of specific circumstances caused by the state of epidemic (or the state of epidemic emergency), to apply to the President of the ERO for an extension (by a maximum of 18 months) of the deadline to sell electricity generated in the RES installation for the first time within the auction system



and for an extension of the permissible "age" of equipment included in the RES installations.

Due to the cancellation of the state of epidemic emergency on the basis of the Regulation of the Minister of Health of 14 June 2023 on the cancellation of the state of epidemic emergency in the territory of the Republic of Poland (Journal of Laws of 2023, item 1118), as of 1 July 2023, it is no longer possible to obtain such an extension.

Before cancelling the state of epidemic emergency, the President of the ERO, at the request of a producer, was able to issue a decision to extend the indicated deadlines in case of delays in the implementation of investments in the new RES installations involving a delay:

- in the delivery of equipment that is part of the RES installation;
- in the supply of elements necessary for the construction of the RES installation;
- in the construction of the RES installation and connections to the power grid;
- in carrying out the technical acceptance or start-up of the RES installation;
- in obtaining a concession or entry in the registers specified in the RES Act, caused by the state of epidemic (or the state of epidemic emergency).

In the request, the producer provided, among others, a statement of supplier (or of the producer) confirming that a delay in the delivery of equipment or the start-up of the RES installation was due to the above mentioned circumstances.

All the RES installations that have won the auctions and which have not yet met the deadline for starting the production/sale of electricity in the auction system were able to exercise the right to extend the spoken periods. The right to change the deadline for the first sale of energy and the right to extend the deadlines due to the COVID-19 pandemic were non-competitive with each other. That means that the producer was able to exercise both these rights together. In order to fully meet the needs of RES electricity producers, the possibility of extending the above described deadlines was harmonized with respective right concerning the grid connection agreements.

The Anti-Crisis Shield 2.0, i.e. the Act of 16 April 2020 on specific support instruments in relation to the spread of the SARS-CoV-2 virus introduced a regulation, on the basis of which power companies were obliged to adjust in the grid connection agreements the date of the first delivery of electricity from the RES installations to the grid, taking into account the extension of the deadline granted by the President of ERO under the Anti-Crisis Shield 1.0, within 30 days of the day on which the producer informed them of winning the auction.

The impact of the so-called windfall profits tax on the auction system

In response to the energy crisis, as of 4 November 2022, the Act of 27 October 2022, on Emergency Measures to Curb Electricity Prices and Support Certain Consumers in 2023 and 2024, entered into force (Journal of Laws 2022, item 2243, as amended). The Act has been amended several times.

The act required electricity generators using i.a. wind energy and solar energy for generation, as well as electricity trading companies, to pay a so-called "price cap settlement" to the Fund.

The obligation to pay a price cap settlement to the Fund was exercised for the period from 1 December 2022 to 31 December 2023. Finally, the government didn't decide to extend it over this date.

The Price Difference Payment Fund is a state special purpose fund administered by the minister responsible for energy and managed by the Settlement Administrator (pl: Zarządca Rozliczeń).

The contribution to the Fund was the amount of financial resources that were to be transferred by a RES electricity generator and an electricity trading company. Initially, the amount of the contribution to the Fund was the product of the volume of electricity sales and the positive difference of the volumeweighted average market price of electricity sold and the volume-weighted average price limit of electricity sold on a given day.

Subsequently, RES generators were obliged to include in the price cap settlement to the Fund also 97% of revenues from the sale of guarantees of origin, financial instruments and other monetary settlements depending on the volume or value of energy sold. This catalogue thus included, i.a. revenues from so-called virtual power purchase agreements (vPPAs), while the costs of these instruments could not be included.

The price limit for electricity generators and trading companies was determined by the Regulation of the Council of Ministers of November 8, 2022 on the method of calculating the price limit (Journal of Laws 2022, item.2284). The limits were:

- for electricity generated in installations not covered by the auction system, reference prices, determined by the minister responsible for the climate, in force on the date of calculating the contribution to the Fund, increased by an investment and fixed cost allowance of PLN 50/MWh, i.e.:
 - 425 PLN/MWh for PV installations up to 1 MW;
 - 405 PLN/MWh for PV installations above 1 MW;
- for volumes of electricity generated in installations covered by the auction system, but sold outside the auction, the limit was the price indicated in the auction bid (indexed by CPI).



Despite the termination of the obligations to pay a price cap settlement to the Fund at the end of 2023, it is worth remembering that RES generators in 2024 and 2025 remain liable to report and pay a price cap settlement to the Fund for those amounts due for which the generators received payment after 31 December 2023. In addition, in 2025, generators should submit a declaration that they have fulfilled their obligations to provide a price cap settlement to the Fund, together with the relevant settlement report.

How is the financing of the auction system secured?

Funds in the auction system are required for the payment of the "negative balance" and the functioning of the entity covering the balance Zarządca Rozliczeń S.A. They are secured via a renewables fee. The renewables fee is collected by distribution system operators ("DSO"). DSOs collect the renewables fee predominantly from final off-takers interconnected directly to their grid, i.e. mainly households. Therefore, financing of the auction system is not influenced by the government budget. The rules for calculating the renewables fee by DSOs are set forth in the respective statute. DSOs calculate it as a product of the renewables fee rate and the sum of electricity consumed. The renewables fee rate is published in the bulletin of the President of the ERO until 30 November of each calendar year.



What is the risk of the state evading its responsibilities following an auction?

Although no written agreement is entered into between Zarządca Rozliczeń S.A. and the auction winner, the legal relationship between such a producer and the Polish state takes the form of a binding obligation, by statutory law. The elements of this obligation are construed on the basis of the Polish RES Act and documents published by the President of the ERO – published auction results. In consequence, if Zarządca Rozliczeń S.A. fails to pay a due amount of money, a producer can enforce its rights in a common court. A producer can also be protected by bilateral investment treaties or the Energy Charter Treaty, providing for investment arbitration outside Poland, provided that the investment is adequately structured in advance. It's worth mentioning, that this arrangement is deemed sufficient to bank financing on a non-recourse basis (project finance).



Is it possible to transfer the rights and obligations acquired at an auction?

Under the Polish RES Act, it is admissible to either acquire a project which won an auction or acquire shares in a company holding such a project. In the former case, it is necessary to apply to the President of the ERO for consent. Granting of such consent is dependent on a statement by a buyer, which should include a declaration by the buyer that electricity will be produced purely from renewables, in the installation related to the auction and that the buyer accepts the rights and obligations of a RES producer.



Summary of the selected 2023 auctions

The last auctions for wind and solar projects took place in November 21 and 22, 2023. All auctions were for new installations. Among the seven auctions carried out, only two were settled. Among the seven auctions held, only two were successful. Of the winning bids (200), more than 98 % were PV installations (197), the rest being wind installations (3).

The volume of electricity in the auction for photovoltaic and wind installations with capacity up to 1 MW was set at 11.25 TWh with a value of PLN 3.825 billion. The reference price in this basket for wind installations was 378 PLN/MWh, while for photovoltaic installations – 414 PLN/MWh. PV projects dominated the so-called "small basket" for wind and photovoltaic projects up to 1 MW. 80 producers joined the auction, placing a total of 163 bids, and all the bids were submitted by PV producers only.

As a result of the auction, 11% of the energy volume was sold within 133 bids submitted by 56 producers, with the total value of over PLN 413 million (which constitutes 11% of the total value of energy allocated for sale).

The minimum price at which energy was sold was 284.95 PLN/MWh (for comparison, back in December



2022 the minimum price at which energy was sold was 244.77 PLN/MWh). On the other hand, the maximum price at which energy was sold in this auction was 355 PLN/MWh (for comparison, in December 2022 it was 327.73 PLN/MWh).

As a result of the auction, more than 1.2 TWh of energy have been contracted, and therefore PV installations with a total installed electrical capacity of approx. 123 MW may be built.

The winners included i.a. RWE Renewables Poland sp. z o.o., Pro Vento Capital FIZ AN, Doral Energy Poland sp. z o.o., Projekt Solartechnik S.A., Sun Contracting Poland sp. z o.o.

In the auction for wind and photovoltaic projects with a capacity above 1 MW the possible amount of energy to be sold in this basket was 21.75 TWh and its value was PLN 6.225 billion. The maximum price (i.e. reference price), which could be placed in the offer for wind installations with capacity above 1 MW, amounted to 324 PLN/MWh, and for PV installations – 389 PLN/MWh. The auction was joined by 63 producers, who submitted 85 bids in total.

As a result of the auction slightly over 4.7 TWh of energy of total value exceeding PLN 1.5 billion (25% of the value of energy for sale) was sold.

As a result of the auction, photovoltaic installations with the capacity of approx. 471 MW and onshore wind farms with the capacity of approx. 24.5 MW may be created. Minimum price at which the photovoltaic energy was sold in this auction basket was 272.91 PLN/MWh, while the maximum price was 349.69 PLN/MWh.

The winners included i.a. Polenergia S.A., RWE Renewables Poland sp. z o.o., EDP Renewables Polska sp. z o.o., PL-Sun sp. z o.o., Eurowind Energy A/S, Projekt Solartechnik S.A., Lion Energy Group II sp. z o.o. czy Pro Vento Capital FIZ AN.

Diagram No. 3 | 2023 auction. New Capacities.



Reference prices (maximum bid prices) for different categories of renewables for 2023

Below are the reference prices resulting from the Regulation of the Minister of Climate and Environment of November 8, 2023 on the reference price of electricity from renewable energy sources, the periods applicable to producers that won the auctions and the reference volumes of electricity sales (Journal of Laws, item 2240). At the time of publication of the guide, the reference prices for the 2024 auctions have not yet been announced.

Table No. 4

No.	Type of renewables installations	Reference price (PLN/MWh)
1.	Installations with a capacity below 0.5 MW usin agricultural biogas	ng only 872
2.	Installations with a capacity below 0.5 MW usin agricultural biogas in high-efficiency cogeneration	ng only 1025 tion
3.	Installations with a capacity below 0.5 MW usin biogas obtained from landfills	ng only 812
4.	Installations with a capacity below 0.5 MW using only biogas obtained from landfills in high-efficiency cogeneration	915
5.	Installations with a capacity below 0.5 MW usin biogas obtained from sewage treatment plant	ng only 572 s
6.	Installations with a capacity below 0.5 MW usin biogas obtained from sewage treatment plant high-efficiency cogeneration	ng only s in 714
7.	Installations with a capacity below 0.5 MW usin only biogas other than obtained from agricultu biogas, landfills or sewage treatment plants	ng ural 632
8.	Installations with a capacity below 0.5 MW usin only biogas other than obtained from agricultu biogas, landfills or sewage treatment plants in high-efficiency cogeneration	ng ural 723
9.	Installations with a capacity below 0.5 MW using only hydropower	853
10.	Installations with a capacity not below 0.5 MW not exceeding 1 MW using only agricultural bio	and 793



No.	Type of renewables installations	Reference price (PLN/MWh)
11.	Installations with a capacity not below 0.5 MW not exceeding 1 MW using only agricultural bio high-efficiency cogeneration	' and ogas in 941
12.	Large Installations (above 1 MW) using only agricultural biogas	775
13.	Large Installations (above 1 MW) using only agricultural biogas in high-efficiency cogenera	tion 896
14.	Installations with a capacity not below 0.5 MW only biogas obtained from landfills	using 785
15.	Installations with a capacity not below 0.5 MW only biogas obtained from landfills in high-efficiency cogeneration	' using 895
16.	Installations with a capacity not below 0.5 MW using only biogas obtained from wastewater treatment plants	520
17.	Installations with a capacity not below 0.5 MW only biogas obtained from wastewater treatm plants in high-efficiency cogeneration	' using ent 663
18.	Installations with a capacity not below 0.5 MW only biogas other than obtained from agricult biogas landfills or sewage treatment plants	′ using ural 583
19.	Installations with a capacity not below 0.5 MW only biogas other than obtained from agricult biogas landfills or sewage treatment plants in high-efficiency cogeneration	' using ural 677

No.	Type of renewables installations	Reference price (PLN/MWh)	
20.	Dedicated biomass combustion installations of hybrid systems	r 594	
21.	Thermal waste treatment installations or dedi multi-fuel combustion installations	cated 474	
22.	Installations with a capacity not exceeding 50 a dedicated biomass combustion installation of systems, in high-efficiency cogeneration	MW in or hybrid 670	
23.	Installations with a capacity higher than 50 MN a dedicated biomass combustion installation of systems, in high-efficiency cogeneration	V in or hybrid 640	
24.	Installations using only bio-liquids	575	
25.	Installations with a capacity not exceeding 1 M only onshore wind energy	IW using 378	
26.	Large Installations (capacity higher than 1 MW only onshore wind energy) using 324	
27.	Installations with a capacity of not below 0.5 N not exceeding 1 MW using only hydropower	1W and 778	
28.	Large Installations using only hydropower	745	
29.	Installations using only geothermal energy	579	
30.	Installations with a capacity not exceeding 1 M only solar energy	IW using 414	
31.	Large Installations (capacity higher than 1 MW only solar energy) using 389	



The Polish Photovoltaic Association (PPA) is a newly established non-governmental organization aiming to support the development of large-scale solar energy in Poland as a clean energy source. The Association works to increase political and social awareness in the field of photovoltaics, and also supports the creation of an appropriate regulatory environment for this dynamically developing sector in Poland.

Main areas of the PPA activity are:

- · Support of the development of large-scale photovoltaic projects
- Participation in consultations of various energy regulations, direct cooperation with public energy entities and taking action to implement new legal regulations fostering the development of PV in Poland
- · Promotion of solar energy and knowledge about this technology
- · Increasing social and political awareness about solar energy
- Creation of opportunities to share experiences, establish new business relationships, joint substantive work as well as workshops and seminars

Polish Photovoltaics Association is a member of the SolarPower Europe.

https://en.stowarzyszeniepv.pl



DWF in Poland currently consists of over 160 professionals. As a team, we have been providing legal services in Poland since 1991.

Our lawyers have extensive experience in providing comprehensive legal services for private companies, international corporations and state-owned entities. Our achievements are widely recognized by our clients, peers and market participants as well as leading international rankings.

The Warsaw office key practices include renewable energy, environment, mergers and acquisitions, project finance, real estate, construction and infrastructure, capital markets, banking, finance and restructuring, intellectual property, dispute resolution, tax and employment, as well as public procurement.

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Our lawyers are regularly recommended by independent international rankings, such as Chambers Global, Chambers Europe, Legal 500, IFLR1000 as well as WTR100 and Managing IP. Our lawyers actively participate as speakers at key sector conferences, seminars and workshops on, inter alia, environmental, energy, construction, litigation and arbitration law issues.

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Our Warsaw Office has a distinctive, full-size, comprehensive practice devoted entirely to renewable energy. It is one of the most recognized RES practices on the Polish market, and a one-stop-shop for clients active in renewables.

We assist in all legal matters related to the RES sector, including investments (development, permitting and licences, grid connections, transactions, environmental issues, M&A), day-to-day operations, as well as disputes. We have been involved in acquisitions and development of a vast number of solar and wind projects, both onshore and offshore. The team is also renowned for advice in regulatory and legislative matters.

We assist sector chambers and organizations, as well as individual clients, in solving complex regulatory matters and building their position on sectoral issues. For example, we support clients in a number of energy regulatory disputes before the President of the ERO and courts. We assist the Polish Photovoltaics Association and the Polish Wind Energy Association, strengthening the organizations' efforts with respect to issues concerning the support scheme for renewables in Poland and the EU. We are also involved in works of the Offshore Taskforce of the Polish Wind Energy Association in which we help to work out proposals for the regulatory environment for offshore wind.





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