

One year since the adoption of the Law on the Use of Renewable Energy Sources - the status of the legal framework

In April last year, the Law on the Use of Renewable Energy Sources ("**RES Law**") and the Law on Amendments to the Law on Energy ("**Energy Law**") were adopted and entered into force at the same time so as to regulate the matter of the use of renewable energy sources in a systemic way.

Until the adoption of the RES Law, the matter of using renewable energy sources was regulated by the Energy Law and relevant bylaws. The very fact that a separate law is now dedicated to this matter speaks of its importance and the determination of legislators to fully regulate the use of renewable energy sources by a separate legal framework, respecting and considering all the circumstances relevant to this area.

In accordance with the provisions of the RES Law, in the period from September 2021 to March 2022, rulebooks, decrees and decisions came into force which further regulate the relations of participants in the use of renewable energy sources.

Consumer - producer as a participant in the use of renewable energy sources

The consumer-producer is a new institute that is regulated by both the RES Law and the Energy Law. The RES Law defines the consumer - producer as "the final customer who has connected to the internal installations its own facility for the production of electricity from renewable energy sources, whereby the produced electricity is used to supply own consumption, and the surplus of produced electricity is delivered to the transmission system, i.e. closed distribution system ". Therefore, in accordance with the Energy Law, the consumer-producer concludes a contract on complete supply, i.e. a contract on the purchase of electricity with the supplier.

- The Government of the Republic of Serbia adopted the Decree on criteria, conditions, and manner of calculation of receivables and liabilities between consumers - producers and suppliers ("Official Gazette of RS", No. 83/2021), which entered into force on 04.09.2021.

The Decree on criteria, conditions and manner of calculating receivables and liabilities between consumers - producers and suppliers regulates issues related to the Criteria for calculating receivables and liabilities between consumers - producers and suppliers and conditions for acquiring consumer-producer status; Manner of acquiring the status of consumer - producer; Manner of acquiring the status of a consumer - producer who is not a household or a housing association and connection to the transmission system, i.e. part of the distribution system managed by the transmission system operator; Manner of acquiring the status of a consumer - producer who is not a household or housing association and connection to the distribution or closed distribution system of electricity; Manner of calculation of receivables and liabilities between consumers - producers and suppliers; Termination of consumer - producer status.

- The Ministry of Mining and Energy has adopted the Rulebook on the manner of keeping the register of consumers - producers connected to the transmission, distribution, i.e. closed distribution system and methodology for estimating electricity produced in the

production facility of the consumer - producer ("Official Gazette of RS", No. 33 / 2022) which entered into force on 19.03.2022.

The Rulebook regulates issues related to the Manner of keeping the register of k-p; Data entry; Annex 1 of the Rulebook comprises of the Methodology for the assessment of electricity produced in the production facility of the consumer-producer.

It seems that the application of the RES Law and the mentioned bylaws, in practice, has progressed the furthest in this segment, considering that publicly available information indicates that "Elektroprivreda Srbije" concluded the first contract with the commercial consumer-producer "Gruner Serbian" from Vlasotince on 30.03. 2022 and this is the first example when the consumer also becomes a producer of electricity from renewable sources. The next step is the connection of the power plant to the electricity system, which is required to be done by the distribution system operator, closed distribution system or the transmission system operator and the entry of the end consumer in the Register of consumers-producers, which thus acquires the status of a consumer-producer. More detailed information can be found at this link:

<http://www.eps.rs/lat/vesti/Stranice/kupac-proizvodjac.aspx>

Other participants in the use of renewable energy sources

- The Government of the Republic of Serbia adopted the Decree on the quota in the market premium system for wind power plants ("Official Gazette of RS", No. 107/2021), which entered into force on 20.11. 2021.

The quota for wind power plants with an approved capacity of 3 MW and more is for 400 MW. The quota is provided only for wind power plants of a certain capacity thus it is not clear what are the plans for other technologies, or whether quotas will be set for other technologies. The RES Law stipulates that "quotas represent the total approved power of power plants in MW or electricity in MWh for which market premiums or feed-in tariffs can be obtained.

Given that the decree provides for a quota in the market premium system for wind power plants, it is useful to note that the RES Law defines the market premium as "a type of operating state aid that is a supplement to the market price of electricity delivered to the market by market premium users and which is determined in eurocents per kWh in the auction procedure" and the feed-in tariff as "a type of operational state aid that is granted in the form of an incentive purchase price guaranteed per kWh for electricity delivered to the electricity system during the incentive period."

- The Energy Agency of the Republic of Serbia, in accordance with its legal authorizations, adopted on 25.11. 2021 a Decision which stipulates that the maximum purchase price for wind power plants with an approved power of more than 3 MW is € 5,568 c / kWh.

Considering that the Decree on the quota in the market premium system for wind power plants prescribes quotas for wind power plants, the Energy Agency of the Republic of Serbia has

determined the stated maximum purchase price for wind power plants. That will be the maximum starting price for bidding at auctions, more precisely, the bidders will probably submit bids that are lower than this amount.

Publicly available information indicates that the maximum price determined in this way does not meet the needs of wind power plant investors. More detailed information can be found at this link:

<https://www.politika.rs/sr/clanak/493776/Nova-otkupna-cena-za-struju-iz-vetra-nije-po-volji-investitora>

- The Government of the Republic of Serbia adopted the Decree on market premium and feed-in tariff ("Official Gazette of RS", No. 112/2021), which entered into force on 04.12.2021.

The Decree on market premium and feed-in tariff regulates in more detail the issues related to Power Plants which are subject to market premiums and feed-in tariffs; Market premiums, Feed-in tariffs and reference market prices; Auction procedure; Obligations of the authorized contracting party; Status of preliminary power producers of electrical energy; The status of a privileged power producer of electrical energy as well as the models of bank guarantees that are provided in the auction procedure and for acquiring the status of a privileged power producer of electrical energy .

The RES Law defines incentive measures as "instruments or mechanisms supporting the production of energy from renewable energy sources."

The Decree on market premium and feed-in tariff stipulates those incentives will be granted through the market premium system - for power plants with a capacity of more than 500 kW or wind power plants with a capacity of more than 3 MW, and through feed-in tariffs - for power plants with a capacity less than 500 kW and wind power plants with a capacity of less than 3 MW.

Incentives are realized through the process of auctions that will be conducted by the Ministry of Mining and Energy.

The Decree foresees a two-way premium meaning that it is paid in the amount of the difference between the price achieved at the auctions and the reference market price for the delivered electricity. The reference price is determined in accordance with the price realized on the market for the day ahead on the SEEPEX power exchange.

The premium is paid to the owners of power plants selected at auctions only if the price realized at the auction is higher than the reference price, and the amount depends on the difference between these two prices. In the situation, when the reference price is higher than the price realized at the auction, the power plant owner is obliged to pay the difference between the realized price and the reference price to the authorized contracting party.

So far, no auctions have taken place.

- The Government of the Republic of Serbia adopted the Decree on the model contract on market premium ("Official Gazette of RS", No. 112/2021), which entered into force on 04.12. 2021.

The Decree on the model premium market contract regulates in more detail the issues related to the model premium market contract containing data on the contracting parties; rights and obligations of the contracting parties; subject of the contract; amount and data on market premium; information on possible payments to the authorized contracting party if the reference market price exceeds a predetermined amount; type and capacity of power plant; incentive period and deadline for concluding the contract; reasons for termination of the contract; manner of resolving disputes as well as other elements determined by this decree. The decree also regulates Annex 1 to the Model contract on market premium for electricity, which is the Direct Agreement, and Annex 2, which is the Formula for calculating the fee for termination of the contract on market premium.

The incentive period lasts 15 years from the date of the first payment of the market premium or negative premium. As no auctions have taken place so far, no market premium agreements have been concluded so far.

- The Government of the Republic of Serbia adopted the Decree on the amount of special fees for incentives for privileged power producers in 2022 ("Official Gazette of RS", No. 10/2022), which entered into force on 29.01. 2022.

This decree determines the amount of the special incentive fee in 2022, which is expressed in dinars / kWh and amounts to 0.437 dinars / kWh. According to the RES Law: "all end customers of electricity are obliged to pay a fee for incentives to privileged producers in accordance with this law, except in cases specified by this law." It remains to be seen how the collection of fees for the settlement of market premiums and feed-in tariffs will be regulated under the current legal framework.

Finalization of the legal framework

The RES Law stipulates that additional secondary legislation will regulate issues related to balancing responsibilities; intraday market; biofuels or renewable energy sources in transport and other issues that are relevant to the application of certain parts of the RES Law in practice.

The secondary legislation required for the comprehensive application of the RES Law in practice has not been completed and publicly available data indicate differences in the approach to the application of existing RES Law solutions between the Ministry of Mining and Energy and the Elektroprivreda Srbije, Elektromreža Srbije and the Serbian Energy Agency. More detailed information can be found at this link:

https://www.rtv.rs/sr_lat/drustvo/eps-ems-i-aers-od-ministarstva-traze-promenu-statusa-za-oie_1304476.html