

LEGAL ISSUES

LAWYERS
SPEAK

The future of RES hangs on the new law, so Cleantech surveyed six prominent lawyers to gather their opinions on the topics and tone of the forthcoming renewable energy law.

COMPILED BY WOJCIECH KOSC

SINCE SO MUCH HANGS on the forthcoming renewable energy law, Cleantech asked a group of five prominent Warsaw lawyers to answer two important questions.

QUESTION 1: Is there a risk that the generous support planned by the government for the solar PV in Poland will distort the market as in the Czech Republic or Germany?

QUESTION 2: If the renewable energy law isn't passed for another 12 months, how will the delay affect the renewable energy sector?



DOMINIK STRZAŁKOWSKI
SSW

Q1 @MarketDistortions:

Even though these planned economical incentives for PV development are very generous, I don't envisage that it will in-

fluence the energy market the way we observed in Czech Republic or Germany. In other words, I believe in a boom for PV installations in Poland but the extent of these activities should not result in such a significant percentage of PV installations in the green energy mix that could influence prices to end users.

The new planned Polish system is different than in the Czech Republic or Germany. It's true that these new commercial PVs will receive more green certificates than other technologies, but they're still going to function in the general green certificates system and will compete with other renewables. Secondly, PVs will meet the same problems with interconnection to the grid as other renewables, therefore development of big, commercial PV projects may be locally frozen.

Q2 @LegislativeDelays:

I am not optimistic. I presume that the structure of the renewables' market may transform with consolidation.

Instead of having a diversified market of small and medium projects, which is economically reasonable, it seems that the market will be divided between big energy producers interested in renewables' development mostly to gain green certificates for the purpose of their redemption, but only to fulfill own obligations.

Other developers will probably either freeze their projects or decrease speed of their development (if they have the financial means to cease operation) or sell it to the bigger players. ■



MACIEJ WESOŁOWSKI
DLA PIPER

Q1 @MarketDistortions:

The risk is not high. The Czech state support system was based on some incorrect assumptions that led to a solar boom in 2010-11 and triggered fears of a dramatic rise in electricity prices.

Firstly, the Czech state implemented a generous fixed feed-in tariff system, awarded to all PV installations. Secondly, due to a sharp decrease in the cost of solar panels, they greatly overestimated the time needed for making a return on PV investments and guaranteed that the initial feed-in tariff would apply for 20 years.

As a result, the solar business became very lucrative and expensive for end users who paid the final bill for subsidizing solar energy. Furthermore, the system did not include price controls.

The Polish green certificates scheme proposed in the draft law on renewables

“The structure of the renewables' market may transform as we will observe progressive consolidation, instead of having a diversified market of small and medium projects”

Dominik Strzałkowski

mitigates this risk as market demand for certificates acts as a ceiling for public support for renewables. The demand is controlled by the ministry of economy that indicates the obligatory level of purchasing the certificates and may - if needed - adjust it. On the other hand, the feed-in tariff seems to be a reasonable way of supporting distributed generation in small renewable installations. ■



KAROL LASOCKI
KL GATES

Q1 @MarketDistortions:

It looks like such risk has been considered by legislators. The most generous support for all solar installations is planned for 2013 and 2014. Afterwards it's going to be significantly lower.

What's more, medium-size installations, with the capacity of 1 to 10MW, would receive considerably lower value

of green certificates than those up to 1 MW (2.45 and 2.75 coefficient, respectively). Industrial-size solar farms - above 10 MW - will not be supported at all under the proposed new system.

There are a few practical considerations, too. Free interconnection capacity for generators is scarce and fees for exclusion of high quality land from agricultural production are high in Poland. With this taken into account, one can hardly expect uncontrolled growth and hundreds or thousands of MW of PV.

Q2 @LegislativeDelays:

This has been affecting the market for some time already. There are practically no new market entrants and hardly any investments in the form of project finance in the wind sector. People want certainty and currently no one knows how long the current system will last. The status quo is most profitable for co-firing of biomass.

Technologies that are supposed to receive more green certificates, in line with the currently available draft law, are in a difficult situation. For example: if someone builds 1 MW PV under the current law, they would receive 1 green certificate per 1 MWh. Under the new law, it would be 2.85 green certificate per 1 MWh for 15 years. If the RES law enters into force in 2014, companies that built PV in 2013 would be stuck with 1 certificate per 1 MWh for the next 15 years, while their competitors would receive 2.85 certificate per 1 MWh. In effect, almost no one is building PV. Everyone is waiting for the promised higher support. ■



MACIEJ JOZWIAK
EVERSHEDS

Q1 @MarketDistortions:

The amendment of regulations concerning the support for photovoltaic energy may contribute to the development of this sector in Poland. Any such incentives should be implemented cautiously, however, with constant monitoring of the potential effects that they may cause.

Some European countries have already gone through a “photovoltaic boom,” with varying results. Spain would be a good example, as the aggressive support policy led to distortion of the market. Similar effects, although not as strong, are visible in Germany and the Czech Republic. If the support for PV in Poland is carried out with due consideration, we may expect the market to develop smoothly with no breakdowns.

“The Polish green certificates scheme proposed in the draft law mitigates risk as market demand for certificates acts as a ceiling for public support for renewables”

Maciej Wesołowski

Q2 @LegislativeDelays:

The process of amending the RES regulations has been underway for a very long time. Considering that the draft regulation is already public and there's still a lot of controversy, in particular on the part of business, undue extension of the legislative process will not be neutral.

One of the risks is that any investor planning to execute a project relies on the stability and certainty of the law. Consequently, this could impact investors' decision-making process. The longer the uncertainty over the legal situation, the more harm it can do. ■



ARKADIUSZ KRASNODEBSKI
SALANS

Q1 @MarketDistortions:

With 92 percent of energy generation based on coal, Poland needs expensive and time consuming effort to boost efficiency at coal-fired power plants, develop gas and, possibly, nuclear power. Renewables should complement that effort.

I am quite confident that we will see a boom in solar in Poland, if the new law on renewables retains the draft proposals that we have seen recently. PV may prove cheaper and easier than wind, let alone biomass or hydropower projects.

The market may be disturbed, of course, but that will depend on the number of PV projects, especially the bigger ones. Their development will be limited, however, by the ability of TSO and DSOs to interconnect them.

Q2 @LegislativeDelays:

The effects will be multiple and negative. Even now the financial institutions are openly less inclined to finance new renewable energy projects. They prefer to wait and see how the final support system will look. If financing is provided, financing institutions impose various triggers in their favor to secure their interests in case the regulatory framework in Poland develops in an unfavorable way.

Moreover, current regulations don't guarantee long term stability, as virtu-

ally no one knows how long they will be in effect. There are many more examples, almost none of them in favor of the renewables' sector.

Therefore, efforts are needed by all interested parties to put pressure on the legislators, so we don't need to answer the same questions again in January 2014. ■

EDITOR'S NOTE:

These interviews were compiled in January 2013. At the time, the current draft law of the renewable energy law had been made public, and was pending approval by the council of ministers. The following are the main assumptions:

ASSUMPTION 1:

The government's support for renewable energy is planned as a feed-in-tariff for solar installations up to 100 kW and a green certificate with a price floor for all other forms of renewable energy.

ASSUMPTION 2:

Renewable energy will be given un-equal support, based on a correction co-efficient given in the table in INDICATORS on p. 14.

As of the publication of Cleantech vol. 3 the law has not passed. ■

ROOFTOP SOLAR

BRIGHT TOPS

Most sources of renewable energy aren't fit for cities. Solar PV is one exception. If the new law passes, Warsaw could see a boom in the installation of solar PV.

BY PABLO CASTELLANOS

MOST PEOPLE DON'T think about the potential of their roofs. This is about to change.

If the new law on renewables is passed photovoltaic (PV) installations will receive the most generous RES subsidy (see Indicators, p. 14).

Recently, the city of Warsaw was introduced to solar PV. A small project - visible along Armii Ludowej - was completed by the Deutsche Energie Agentur and the PV laboratory of the Warsaw Institute of Technology. Although it's not rooftop, it is a project in the city limits that serves as a good example.

Designed by MP-Tec, a German developer with offices in Poland, two PV installations were set on the premises of the Faculty of Civil Engineering at the Warsaw Institute of Technology.

One of the solar PV installations is stationary; the other is "self-tracking" - enhancing power production by following the sun. The solar PV project was co-financed by the German Federal Ministry of Economics and Technology (BMWi).

Adam de Sola Pool, CEO of Environmental Investment Partners, says projects like the MP-Tec demonstration facility are only the beginning.

"I expect a boom. I know that hundreds of megawatts of PV power are being planned," Mr. de Sola Pool said.

"Warsaw has a lot of roofs. If you could make a plug & play solution so

that you don't have to engineer each roof, you could have a very easy development opportunity," Mr. de Sola Pool added.

With the proposed support, a payback time of five to six years can be expected, with a twelve percent return on investment over a twenty-five year horizon.

According to Leszek Drogosz, the director of the infrastructure department at the Warsaw city hall is getting ready for the PV boom as well.

"We are participating in a program called *Cities on Power* and planning to have a special map of roofs in Warsaw showing the best places for solar powered installations. The map will provide information such as irradiance and eco-

nomic output," said Mr. Drogosz.

According to SSW, a law firm, the period of subsidy available for PV installations is limited by the renewable energy draft law to 15 years from the date of the PV installation.

Additionally, support for installations with a capacity of up to 100 KW - those eligible for the fixed feed in tariff - will be cancelled by end of 2027. Although the subsidies are promising, the solar PV potential of Warsaw is not for sure, as the law hasn't passed.

"I wish the government would be clear about the law. The longer there is uncertainty the more difficult it is to hold on," said Mr. de Sola Pool. ■

