

To Fund "Electricity system security"

PROPOSAL

from

Bulgarian Photovoltaic Association, EIK 175801326

Regarding: Model of contract for compensation with premia with producer under the Renewable Energy Act

Ladies and gentlemen,

In connection with the published for discussion project on template of a contract for compensation with the premia with producer under the Renewable Energy Act (the "**project**"), we would like to bring to your attention our proposals¹ and motives.

1. We propose in section „Definitions“:

1.1. Definition „Force majeure“ should be read as follow:

"means an unforeseeable or unavoidable event or combination of events of extraordinary nature arising after the conclusion of the Agreement consisting in total or partial non-performance or delay in the performance of the obligations under this Agreement by the party concerned, provided that such default or delay is not could be prevented, overcome or eliminated by the affected Party with due diligence, including but not limited to, sabotage, war, uprising, rebellion, embargo, sanction, boycott, civil and an agonizing, terrorist act. ~~"or other social excitement, expropriation, nationalization or any other act of the Competent Authority with the same effect, a collapse in the banking system, a collapse in the information system of the Independent Bulgarian Energy Exchange, the ESO system or the EWRC system;~~

1.2. To add a definition for "*cost-effective document*".

Motivation on proposal 1.2.: The same is among the conditions for payment of the Premia under Art.6 of the project and it should be clear what it should represent. Our

¹ The texts in *italic* are the proposed amendments. The text that is strikethrough ~~example~~, we propose to be drop out.

understanding is that this document should prove the energy sold under Art. 100, para. 4 and para. 6 of the Energy Act and the balancing market, but its type should be specified.

2. We propose in the section "Conditions for payment of the premia", point 6, letter "c", to obtain the following revision:

"The producer shall not have obligations to the Fund on the date of payment of the premia, *which is being established officially by the Fund*".

Grounds: The information is known to the Fund and it should be clear that the producers does not have to prove this fact. In this aspect is our proposal, in paragraph 5 of this project, Fund will notify timely the producer of possible obligations to the Fund due to inconsistencies in their reporting.

3. We propose a new paragraph 9 with the following content:

"In case the Energy object is the provision of Art. 31, para. 11 of the Renewable Energy Act the producer submit one application ".

Grounds: In our point of view, it is important that all hypotheses in the Renewable Energy Act are defined as a procedure and in the contract for compensation with premia, in order to make it clear for the Producer, regarding requirements, to which it follows to answer for the payment of a Premia.

4. We propose that point 11 should read as follows:

"The application and the documents shall be submitted electronically through of the Fund platform's. On submitting of the Application, the same is signed with a ~~qualified~~ electronic signature of the Producer. In the case that the Application is not signed with a valid ~~qualified~~ electronic signature ~~issued to the authorized~~ *from* person/persons, which is entitled to represent the Producer, the same is not considered to be duly submitted, as for the Fund does not arise obligation for his consideration. The application and documents are deemed to have been received upon receipt of a successful submission, automatically generated by the electronic platform *on the day of submission. The producer may also submit the Application and the documents on paper circulation. "*

Grounds: In many cases, these applications will be submitted by a proxy who does not use the qualified electronic signature of the Producer and impose the qualified signature as mandatory will create objective difficulties for the Producer. Also, in the case of a technical impossibility of extraordinary nature (eg. collapse in electronic platform of the Fund), there should be at least one more possible under the contract informational channel, under which the Producer can accomplish his right to submit the Application, respectively to receive his premia.

5. We suggest that point 12 should read as follows:

"After receiving of the Application and the documents, the Fund shall verify the completeness of the submitted documents as well as verification of the data and circumstances requested by the Producer regarding the amount of electricity produced by the Energy object. If the inspection reveals incompleteness, inconsistency (*including producer's obligations to the Fund*) or the need for additional information, the Fund shall notify the Producer *within 3 days of receipt of the Application and documents* by sending a notification to the Producer by e-mail to the Producer's address, referred to in point 26 '.

Grounds: Very often, there are minor discrepancies in reporting the producer's payment obligations to the Fund and he may not know about them at all, but this may obstruct receive a Premia. In the point of view of the short period of time for requesting and paying the Premia, should be also provided a period, in which Fund should be notify the Producer of possible discrepancies.

6. We propose in point 13, letter „b“ should read as follows:

"The amount of electricity produced by the Energy object for which the Producer has entered into transactions under Art. 100, para. 4 and / or para. 6 of the Energy Act *and* on the Balancing market".

Grounds: Under the proposed point 13, our understanding is that, in the case of letter „b“, the Premia will be paid up to the amount of the lesser quantity between the produced quantity of the Energy object for which the Application was submitted and the sum of the quantities, for which the Producer has entered into transactions under Art. 100, para 4 and / or para. 6 and the Balancing market.

7. We propose in point 14 the following sentence to be added:

"In the case that the Producer has failed to submit the necessary documents within the time limit under point 10 and / or incompleteness, inconsistencies and / or the need for additional information has been established, he may file the Application and documents for Premia in the next month, such as proving to the Fund, with the necessary documents, the fulfillment of the conditions under point 6".

Grounds: It is good to be explicitly written and the procedure for payment of the premia and in such cases, with view of the short reaction time.

8. We propose a new point 15, with the following editing:

"If there is a difference between the quantities of item 13, b. a) and b. (b) equal to the accumulated residues under Article 8 of Decree RD-16-1117 of 14 October 2011 on the terms and conditions for the issue, transfer, cancellation and recognition of guarantees of origin of energy from renewable sources and in accordance with reflected in the Register of Guarantees of Origin

held in the SEDA, the Fund pays the premia on the amount of electricity, according to the guarantees of origin issued. "

Grounds: The problem with residues (the difference between energy produced and the quantity for which guarantees are issued) is monthly and it is the legal requirement (Article 34 and following from the Renewable Energy Act) guarantee of origin to be issued for a standard quantity of 1 MW of renewable energy, produced during a calendar month. As proposed, the text does not reflect this specificity of issuing guarantees, which is normative. With the proposed text we aim to remove this omission.

9. We propose in point 16, deleting the words „*for reasons for which it is responsible*“ and to read as follows:

"If all the conditions of item 6 were fulfilled by the Producer by the 20th of month, but the Fund ~~for reasons for which it is responsible~~, not to pay the premia under this contract by the end of that month, Fund owes to the Producer compensation in the amount of the statutory default interest ".

Grounds: The obligation to pay to the Fund derives from the law and does not imply the existence of reasons for which he does not answer. The formula is too general and unclear (even if it is considered to be Force Majeure, it follows the reference to it).

10. We propose that point 19 should read as follows:

"The producer is required to provide all the information and to assist to the for proper determination of the due Premia, if necessary, ~~including at the request of the Fund to authorize it to obtain the necessary information for the calculation of the Premia by third parties ("Independent Bulgarian Energy Exchange", ESO, etc.)~~".

Grounds: The wording for authorization from the Producer is too wide, and given the fact that, the Fund can collect the necessary information on its own due to its legal competence to pay (and previously to calculate / verify the premia calculated by the Producer), the outlined text appears to be unreasonable .

11. We propose paragraph 21 to read as follows:

"The Fund is required to carry out timely verification of the Application as well as the documents submitted by the Producer and to notify it of any incompleteness, discrepancy or need for additional information, ~~in the context of the verification under point 120.~~ *Within 3 days of submission of the Application and the documents* ".

Grounds: The short deadline for the submission of the Application under point 10 and the

documents (given fact, that some of them not available before that) until the payment of the Premia also imposes a short period of time, in which the Producer to be informed (respectively corrected) any incompleteness and inconsistencies

12. We propose that point 34 should read as follows:

"This Agreement is terminated automatically:

- a) when the legal basis for payment of the Premia from the Fund has been dropped in favor of the Producer as a result of a legislative amendment ~~or an act of a Competent authority~~;
- b) with the failure of the Producer of the electricity from RES and/or the entry into force of a decision of the EWRC to revoke the Producer's license *[to be removed if there is no license]*;
- c) in case that for the Producer if a decision is taken for termination through liquidation, a ruling is enacted and enforced decision to open insolvency proceedings. ", ~~or a deletion from the Commercial Register~~".

Grounds:

Under letter "a": In mind of the definition in the project extremely wide scope of Competent authority, automatic termination due to an act of the latter is absolutely unjustified and poses a serious risk of implementing the legally enforceable right of the Producer to receive a Premia.

Under letter "c": Despite the permitting regime established by the Law on Energy for the amendment of the license for succession, we believe that part of the text of the letter "c" should be dropped, bc. the only cases in which it will not be detected and held liquidation proceedings are the hypotheses of a merger of the Producer/s. Here it will be available universal succession and a party to this contract will by law be the universal legal successor, and the merging companies will be respectively deleted from the Commercial register. In order to avoid any doubt as to the validity of the contracts and the need to make the corresponding benefits to the successors, we propose that this part of the text be dropped.

13. We propose that point 37 be dropped.

Grounds: The possibility of suspending the performance of the contract due to an act of the Competent Authority is unjustified due to the reasons given in the reasoning under the previous point. Moreover, the Fund is obliged under the law to pay the Premia and not any subsequent change in legislation ("the basis and / or the mechanism for paying the Premium" is too wide a wording) automatically results in suspension of the contract unilaterally for the Fund. The Fund does not have an obligation to pay the premia for the adaptation of the contract is a clause that could be considered null and void due to a conflict with the law. The Energy Act states only under what conditions the Fund owes a premia.

14. We propose paragraph 38 to read as follows:

"Until the establishment of the functionality / module of the EUSF electronic platform for the

submission of the Application and the documents, the Manufacturer shall sign them with ~~qualified~~ electronic signature and sends them in pdf format via e-mail to the address of the Fund referred to in paragraph 26 above. In case that the Application and / or the documents are not signed with ~~qualified~~ electronic signature, ~~released on~~ *from* an authorized person / persons who is entitled to represent the Producer, the same is not considered to be duly submitted and there is no obligation for the Fund to consider it. The application and the documents shall be deemed to have been received by the Fund after due confirmation of receipt by the Fund with specific confirmation *on the day of submission*, sent by e-mail to the address of the Manufacturer referred to in point 26. *The producer may also submit the Application and the documents in paper form* ".

Grounds: Please see the reasons under point 4 of this proposal

15. We suggest that point 40 be dropped.

Grounds: Entry/substitution under a similar contract, as well as the assignment of premia receivable are legally settled and their explicit arrangement in the contract is not required. The Fund's consent to pledging the claims for Premia is not supported by current legislation, unjustifiably restricts the right of the Producer to dispose of his property and contrasts sharply with established business practice such receivables should be pledged as collateral under credit agreements with financial institutions. As a result, the need for the provision is unjustified or creates unjustified restrictions for the Producer. In addition, this would create an unnecessary administrative burden and for the Fund, which will be overwhelmed by such requests.

08.06.2018 r.
Sofia

Kind Regards,

Meglana Rusenova,
Chairperson of the board of BPVA
mrussenova@gmail.com