

## NEW DECISIONS OF THE BULGARIAN ENERGY REGULATOR – HIGHER ELECTRICITY PRICES FOR THE BUSINESS AND LOWER REVENUES FOR THE RENEWABLES

### INTRODUCTION

On 31 July 2015 the Bulgarian Energy and Water Regulatory Commission ("**EWRC**") adopted three decisions to have a significant effect across the electricity value chain in Bulgaria. On the production side, the generators of electricity from renewable sources ("**RES GenCos**") will be negatively affected by two of the decisions that introduce new annual production thresholds for purchase of electricity under the preferential prices (Feed-in tariffs or ("**FiT**")) and the increase of the access to the grid price. On the consumption side, the business consumers at the liberalised market will face a considerable increase of the mandatory contribution for the so-called "*price for obligations toward society*" while the households will enjoy a slight decrease of the end consumption tariffs at an average of 0,11%.

### BACKGROUND

In the last couple of years, the Bulgarian energy sector experienced a serious financial imbalance, which resulted in the worsening of the financial status of the incumbent public provider NEK EAD ("**NEK**"). This led to attempts by the EWRC and the Parliament to introduce different and in some cases stabilization measures. In the course of the discussions regarding the new electricity prices for the forthcoming price period 01 July 2015- 30 June 2016, it has been proposed that the so called "*price for obligations toward society*" is to be significantly increased for business clients on the free electricity market. The increase has led to an immediate negative reaction by the large industrial companies which triggered an extension of the current regulatory period by one month and an immediate review of the electricity prices along the electricity value chain by EWRC. In the meantime, in July 2015 the Bulgarian Parliament urgently adopted amendments to the Energy Act ("**EA**") and the Act on Energy from Renewable Sources ("**AERS**") aiming to provide more flexibility to the Regulator, to ensure additional revenues and potential economies for NEK. The amendments entered into force on 24 July 2015 and the EWRC had to proceed very quickly with the adoption of several immensely important decisions to that end.

### THE DECISIONS

- **Decision II-27/31.07.2015 setting the prices on the whole value chain in the Electricity sector ("Decision C-27")**

The regulated prices in the electricity sector value chain, effective as of 01 August 2015 until 30 June 2016, are set with Decision C-27. The Regulator decided to

slightly decrease the prices for end consumers (by ~ 0,11 %) and to improve the revenue stream of NEK to the detriment of the business and the wind and PV GenCos. The so called "*price for obligations toward society*", which is to be paid by each end consumer including business consumers on the free electricity market, will be increased from 18.93 BGN/MWh (approx. 9.66 EUR/MWh) to **37.90 BGN/MWh (approx. 19.33 EUR/MWh)**, i.e. an **increase of ~ 100%**. At the same time, Decision C-27 affects wind and PV producers by introducing higher mandatory "*access to the grid*" price, which has been increased from 2.45 BGN/MWh (approx. 1.25 EUR/MWh) to **7.14 BGN/MWh (approx. 3.65 EUR/MWh)**, i.e. an **increase of ~ 191 %**.

- **Decision CII-1/31.07.2015 setting the "Net specific generation of electricity" for RES GenCos ("Decision SP-1").**

Further to the amendments to the EA and AERS adopted in July 2015, the new definition of "*Net specific generation of electricity*" ("**NSGE**") has been introduced to substitute the informal price forming element named "*average annual duration of work*" ("**AADW**") of the renewable generation power plants which represents the "threshold" for mandatory purchase of the energy generated by RES GenCos. Further to the amendment and based on Decision SP-1, EWRC fulfilled its obligation per law and determined the NSGE levels for the respective RES GenCos. The new NSGE represents the "threshold" for the maximum amount of electricity produced by a RES GenCos, to be purchased under the respective preferential FiT. Also under the amended AERS the produced electricity exceeding the threshold should be sold at prices for surplus of the balancing market or at freely negotiated prices at the liberalized market.

With Decision SP-1, EWRC set the respective NSGE's for almost all of the currently applicable FiTs, i.e. for a total of 189 positions reflecting the types of renewable technologies and preferential prices set throughout the period of 2011-2015. These new thresholds are meant to apply for the rest of the mandatory purchase periods of existing RES GenCos. Thus, it concerns all RES producers and would have a major and long-lasting impact on their future revenues.

An overview of the ranges of the thresholds average decrease between AADW and new NSGE for the wind, photovoltaic, hydro, and some biomass GenCos as per the SP-1 Decision is provided in the table below.

Type of RES GenCo	AADW annual hours	NSGE annual hours	% decrease range
<b>Wind power plants working up to 2250 p.a.</b>	2000-2500	1907-2325	4,65-15,24
<b>Photovoltaic power plants with installed capacity above 200 kW</b>	1200- 1460	1188-1406	2,84-5,00
<b>Hydro power plants with installed capacity between 200 kW 10 MW low water pressure, free flow, and derivation HPPs</b>	3800-4000	3724- 3960	1,00-2,00
<b>Power plants working with indirect utilisation of biomass from flora and animal substances with installed capacity of 1,5 MW– 5 MW</b>	5999-6000	6510-7000	7,00

▪ **Decision TE-025/31.07.2015 setting the availability quotas ("Decision TE-025)**

The EWRC also adopted the generation availability "quota" levels for the GenCos purchased by NEK as public provider and applicable for the period 01 August 2015 - 30 June 2016. These availability quotas are the quantities of electricity which producers shall ensure to NEK for its mandatory purchase to cover the regulated market needs (i.e. end-suppliers, suppliers of last resort and distribution grids operators for the technological losses). In this respect, the approach of EWRC has changed as it did not set availability quotas for RES GenCos – similarly to the 2014 approach that triggered numerous appeals from RES GenCos against Decision TE-023/2014 of SEWRC but reconfirmed NEK's obligation to purchase the generation up to the forecasts and the NSGEs.

All three decisions are subject to appeal before the Administrative Court of Sofia-city by 14.08.2015. However, appeals will not stop the execution of the decisions as they are subject to preliminary execution.

#### COMMENTS

The new set of decisions adopted by EWRC demonstrates the policy of the newly elected (in April 2015) EWRC commissioners to continue the policy of the previous commission to keep at all costs the prices for end consumers as low as possible. This, however, inevitably resulted in the current serious increase of the prices for business consumers and impact on electricity producers. At the same time, aiming to reduce the burden for

NEK, EWRC also has continued its policy, dating back to 2012, to invent a wide variety of means to indirectly decrease the FiTs of Res GenCos, thus impacting their revenues.

- According to a number of NGOs, national syndicates, and different industrial associations and organizations, the **increase of the "price for obligations toward society"** for business clients set under the Decision C-27 in combination with the recently adopted 5% mandatory instalment from the revenues to be made by all GenCos to the national fund "*Security of the energy system*" will lead to an inevitable increase of the end products costs and hampering the competitiveness of the Bulgarian business.

However, EWRC argues this measure to be fair, as now end households consumers on the regulated market and the business consumers on the liberalized market will pay the same "*price for obligations toward society*", i.e. they will equally share the burden of NEK to purchase electricity from renewables, cogeneration, and the long-term PPAs, the formants of this price. This measure is also claimed to be necessary in view of the long continuing electricity market liberalization process. Last but not least, EWRC refers to the forthcoming adoption of a new Ordinance for reduction of the burden from the costs resulting from the RES electricity purchase, the purpose of which is to partially mitigate the effects of this increase for the major industrial consumers with the highest percentage of energy consumption.

Even if some of the arguments sound logical, they raise additional questions whether EWRC's previous decisions were adequate considering the principles of the Bulgarian Energy Act that require fair allocation of the costs for mandatory purchase of RES electricity among all electricity consumers and the prohibition of cross subsidising between the different value chain stakeholders. It is worth mentioning that the electricity export will still be exempted from paying the "*price for obligations towards society*" which will contribute the cheap Bulgarian electricity to be used for creating domestic GDB and products in competitive to Bulgaria markets. Hence, the negative effect by Decision C-27 would probably affect the heavy energy consumption industry as a significant contributor to the increase of Bulgarian exports.

- **The increase of the access to the grid price** is one of the preferred methods by EWRC to reduce the revenues of RES GenCos and to increase the income of the Bulgarian TSO – the Electricity System Operator EAD ("**ESO**"). The first attempt to introduce this measure against RES GenCos was the introduction of the temporary access to the grid prices in 2012 with the notorious Decision C-33/2012 of SEWRC. This decision was subsequently repealed by the Bulgarian Supreme Administrative Court. The repealing did not discourage the Regulator and a year later it set a new much lower but still with questionable argumentation access to the grid price, this time only to wind and PV RES GenCos (Decision C-6/2014). This decision is also currently appealed in pending court cases before SAC.

Decision C-27 is once again setting the controversial access to the grid price only to wind and PV GenCos. It should be noted that EWRC tries to justify the substantial increase of 191% of the access to the grid price with the argument that this would allow ESO to recover amounts for previous periods (between September 2012 and April 2015, e.g. the costs under Decision C-33 that SAC has repealed) trying to circumvent the binding power of the SAC decision.

Setting of the access to the grid price is still highly disputable as the right for compensation of losses resulting from previous periods is strictly limited to certain cases where repealed decisions are not amongst those. Last but not least, the adoption of such access price only for wind and PV generators could be qualified discriminatory treatment. It could also potentially be used as a vehicle for unlawful double-recovery of ESO's already covered costs for access by the end consumers of the electricity transmission network.

- **The setting of the "Net specific generation of electricity"** is a new notion appearing for the first time in the Bill for Amendment and supplementation of the EA adopted by the Parliament in July 2015.

The preliminary analysis of the adopted NSGE shows that the effect for most RES GenCos will be rather negative. Initially, when the AERS was adopted in 2011 and until 01 January 2014 the public provider (NEK) and the end suppliers had to purchase **all** the electricity produced by RES GenCos at the respective FiT. With the amendments to the AERS, entered into force on 01.01.2014, the quantities of electricity to be purchased under the respective FiT were limited to the AADWs as set by EWRC when adopting the respective FiT. The AADW was a figure expressed in hours, during which it was expected the respective power plants to work at full load. NEK tried to impose a different interpretation of this notion, but the EWRC intervened and issued an opinion dated 11 May 2015 confirming the correctness of the levels under the respective AADWs.

However, two months later the Decision SP-1 does not provide any rational explanations or arguments as to the calculation methodology of the new threshold levels of NSGE used by EWRC. Thus, it still remains unclear whether the repealed AADWs were wrongfully set in the previous SEWRC's decision and what are the new or changed parameters justifying the introduced new thresholds.

As an example, a wind power plant, which FiT was set in 2011 by EWRC Decision C-18/20.06.2011, was expected to work 2050h at full capacity. With the new NSGE, the electricity of this power plant would be purchased at the relevant FiT only up to 1907 hours of working at full capacity.

In addition, compared to the AADW, the new NSGE levels are increasing for some biomass GenCos (e.g. with FiTs set under decisions in 2011, 2013 and 2014) which benefit an increase between 5 to 8,5 % which raises additional questions

A concerning circumstance is that Decision SP-1 was initially published on EWRC's website on Friday, 28 July 2015 and on Monday, 03 August 2015 the decision was uploaded on the website once again. A closer look at the decision reveals some deviations, e.g. the NSGE for some PV GenCos were amended as to increase the NSGE and reduce the impact where no explanation has been provided for that change whatsoever.

The new NSGE levels will be applied not only for this pricing period (i.e. until June 2016) but for the whole duration of the long term mandatory power purchase agreements.

It is now evident from the reduced threshold for mandatory purchase of RES generation that the introduction of the new notion is yet another tool used by the EWRC to reduce the NEK's burden from RES electricity FiTs.

- **The setting of the availability quotas for NEK** by Decision TE-025, EWRC is "window dressing" its intention to indirectly introduce limitation to the mandatory burden of NEK to off-take generation by certain GenCos which exceeds the demand side of the end suppliers' households clients at the regulated market. This approach enables NEK to speculatively interpret its purchasing and balancing obligations as it has done on several occasions in 2014 and the first half of 2015 referring to Decision TE-023/2014.

The adopted decisions seem to continue the tendency for a case-by-case driven solutions of EWRC that rather create new issues than providing long term balanced solutions for the entire electricity value chain and its stakeholders.

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