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## REGULATION OF THE MINISTER OF ENERGY<sup>1</sup>

of 3<sup>rd</sup> September 2018

### on the financial collateral to be provided by the capacity providers and the pre-auctions' participants

Pursuant to Article 51 of the Capacity Market Act of 8th December 2017 (Journal of Laws of 2018, item 9), the following is hereby ordered:

**§ 1.** The Regulation lays down the detailed terms and conditions as well as the methods for the provision of financial collateral by capacity providers and pre-auctions' participants involving:

- 1) the amount of the financial collateral related to the amount of the capacity obligation to be contributed by the capacity provider;
- 2) the amount of financial collateral to be provided by the pre-auction participant;
- 3) the forms in which financial collateral may be provided;
- 4) the time limit for the establishment and return of the financial collateral;
- 5) the minimum rating level on which the exemption from the obligation to establish the financial collateral is based and the institutions entitled to provide it.

**§ 2. 1.** The capacity provider to whom the operator has issued a provisory certificate referred to in Article 26(1) of the Act of 8<sup>th</sup> December 2017 on the capacity market, hereinafter referred to as the "Act", shall provide financial collateral in the amount of PLN 43 for each kilowatt of capacity to be offered in a capacity auction by that provider.

2. Where a provisory certificate has been issued to an unproven demand-side response capacity market unit the amount of the collateral:

- 1) amounts to 50% of the amount of the collateral referred to in paragraph 1 - if the unproven demand-side response capacity market unit does not comprise a planned demand-side response unit;
- 2) amounts to 100% of the collateral referred to in paragraph 1 if the ratio of the total maximum capacity of the planned demand-side response units being part of an unproven demand-side response capacity market unit to the net maximum capacity of that capacity market unit is 0,75 or more;
- 3) shall be calculated according to the formula:

$$WZ = \left( \frac{2}{3} \cdot \frac{P_{PDU}}{P_{CMU}} + 0.5 \right) \cdot 100\%$$

where the individual symbols mean:

WZ - the amount of financial collateral expressed in [%] of the amount of financial collateral referred to in paragraph 1,

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<sup>1</sup> The Minister of Energy manages the department of government administration - energy, pursuant to § 1 (2) (1) of the Regulation of the Prime Minister of 13th December 2017 on the detailed scope of activities of the Minister of Energy (Journal of Laws, item 2314).

$P_{PDU}$  - total maximum capacity of planned demand-side response units forming part of a given unproven demand-side response capacity market unit, in [MW],

$P_{CMU}$  - net maximum capacity of a given unproven demand-side response capacity market unit, in [MW]

- if the ratio of the total maximum capacity of the planned demand-side response units forming part of an unproven demand-side response capacity market unit to the net maximum capacity of that capacity market unit is less than 0.75.

3. A pre-auction participant shall provide a collateral of PLN 43 for each kilowatt of capacity to be offered in the pre-auction by that participant.

§ 3. 1. The collateral referred to in § 2 (1) and (2), might take form of:

- 1) cash; in this case, the collateral shall be paid into an interest-bearing bank account held for the operator, or
- 2) an insurance or bank guarantee granted by a financial institution established in the territory of a Member State of the European Union or a Member State of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area, having a credit rating within the meaning of Article 3(1)(a) of the Regulation of European Parliament and European Council (EC) No 1060/2009 of 16<sup>th</sup> September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1, and its subsequent amendments), at least at the level of the rating category indicated in § 7(2) and meeting the requirements referred to in § 7(3);
- 3) a surety of the company:
  - a) from a capital group, which in relation to the entity to which such surety is granted is a dominant entrepreneur within the meaning of Article 4(3) of the Act of 16<sup>th</sup> February 2007 on Competition and Consumer Protection (Journal of Laws of 2018, items 798, 650, 1637 and 1669), and
  - b) holding a credit rating within the meaning of Article 3(1)(a) of the Regulation of European Parliament and European Council (EC) No 1060/2009 of 16<sup>th</sup> September 2009 on credit rating agencies of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, at least at the level of the rating category indicated in § 7(2) and meeting the requirements referred to in § 7(3), and
  - c) which attached to the surety agreement a statement, made in the form of a notarial deed, on submission to enforcement under Article 777 § 1 point 5 of the Act of 17<sup>th</sup> November 1964. - Code of Civil Procedure (Journal of Laws of 2018, item 1360, and its subsequent amendments<sup>2</sup>).

2. The collateral may be provided in several forms simultaneously so that it is for an aggregate amount not less than the value required.

3. A change in the form of the collateral or a change of the issuer of a collateral document established in a form other than in cash may be made, subject to the prior establishment of a collateral in a new form or the submission of a collateral document issued by another issuer.

4. A change in the form of collateral shall be made with continuity of collateral and without reduction of its amount.

5. The period of validity of the collateral may be extended by establishing new collateral or rolling-over the existing collateral not later than 14 calendar days before the expiry date of the existing collateral

6. The period of validity of the collateral referred to in Section. 1 (2) and (3), lodged:

- 1) prior to the start of the capacity auction, it may not be shorter than 30 calendar days from the date of the end of the capacity auction;
- 2) after the end of the capacity auction, it may not be shorter than 30 calendar days from the day of lodging the collateral.

7. The capacity provider shall submit the surety agreement signed by the company referred to in Section 1 (3) to the operator within a time limit allowing the operator to meet the deadline referred to in §5 (1). The operator shall sign the agreement or refuse to sign the agreement together with the reason for not signing it, not later than within 7 calendar days from the date of delivery of the agreement to the operator.

8. The collateral referred to in § 2 (3) shall be established exclusively in cash and shall be paid into an interest-bearing bank account maintained for the operator.

§ 4. 1. The collateral referred to in § 2 (1) and (2) shall be held accordingly, until the circumstances referred to in Article 54 of the Act occur, and in the case of a new generating capacity market unit for which a capacity agreement has been concluded for one delivery year, until the documents referred to in Article 52 (2) (1) of the Act are presented.

2. The collateral referred to in § 2 (3) shall be held accordingly, until the circumstances referred to in Article 50 (3) and (4) of the Act occur.

§ 5. 1. The capacity provider shall lodge the collateral for the benefit of the operator not later than 10 calendar days before the start of the capacity auction. The date of lodging the collateral shall be deemed to be:

- 1) the date of crediting the operator's bank account in the case referred to in § 3 (1) (1);
- 2) the date of delivery of the originals of the documents referred to in § 3 (1) (2) to the address of the operator's headquarters;

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<sup>2</sup> Amendments to the consolidated text of the aforementioned Act have been announced in w OJ L of 2018, NO. 1467, 1499, 1544, 1629, 1637 and 1693.

3) the date of conclusion of the surety agreement between the company referred to in § 3 (1) (3) and the operator.

2. A participant of the pre-auction shall be obliged to lodge the collateral not later than 3 calendar days before the pre-auction begins. The date of lodging the collateral shall be the date on which the operator's bank account is credited.

3. The capacity provider exempted from the obligation to provide the collateral pursuant to Article 50(2) of the Act shall provide the collateral within 30 calendar days from the date of publication of a new credit rating in the event that a long-term credit rating with the lowest rating category among the most recently assigned to that entity by the credit rating agencies referred to in § 7(1) or sustained rating categories falls below the rating category referred to in § 7(2).

4. Paragraph 3 shall apply accordingly where the long-term credit rating with the lowest rating category of the most recently issued to:

- 1) an institution referred to in § 3 (1) (2), or
- 2) a company referred to in § 3 (1) (3)

- by the credit rating agencies referred to in § 7(1) or the sustained rating categories shall fall below the level of the rating category referred to in § 7(2).

**§ 6. 1.** The operator shall return the collateral provided by:

- 1) a capacity provider other than the one specified in point 2 - within 7 calendar days from the day of occurrence of the event referred to in Article 54 of the Act;
- 2) a capacity provider who, in relation to a new generating capacity market unit, has concluded a capacity agreement for one delivery year - within 7 calendar days from the date of submission of the documents referred to in Article 52 (2) (1) of the Act;
- 3) participant of the pre-auction - within 7 calendar days from the day of occurrence of the event referred to in Article 50 (3) or (4) of the Act.

2. The Operator, together with the return of the collateral provided in cash, shall return to the entity lodging the collateral, the interest on the amount of the collateral provided in an amount equal to 70% of the reference rate announced by the National Bank of Poland.

**§ 7. 1.** Institutions whose credit rating exempts a capacity provider from the obligation to provide the collateral are the following credit rating agencies:

- 1) Fitch;
- 2) Moody's;
- 3) Standard & Poor's.

2. A minimum level of rating category that exempts the capacity provider from the obligation to provide the collateral for the institution indicated in paragraph 1:

- 1) (1) - is BBB-;
- 2) (2) - is Baa3;
- 3) (3) - is BBB-.

3. The credit rating referred to in paragraph 1 shall be up-to-date. A long-term credit rating with the lowest rating category of the most recently assigned to the entity by the credit rating agencies referred to in paragraph 1 or sustained rating categories shall be considered to be an up-to-date credit rating. A credit rating shall be considered as up to date only if the credit rating agency referred to in paragraph 1 has assigned or sustained the rating category not earlier than within the preceding 18 calendar months.

**§ 8.** This Regulation shall enter into force on the day following that of its publication.

Minister of Energy: *K. Tchórzewski*