

UNLOCKING POLAND'S OFFSHORE POTENTIAL

THE POLISH RENEWABLE ENERGY MARKET HAS FACED MANY CHALLENGES WITHIN THE LAST FEW YEARS, FROM A VIBRANT INCREASE IN INSTALLED CAPACITY TO A NEAR HALT CAUSED BY LAGS IN TRANSITION TO A NEW REGULATORY FRAMEWORK. BY **MICHAL MOTYLEWSKI**, COUNSEL, **DENTONS**.

2018 brought many positive changes in this area. The Polish government secured a favourable state aid decision from the European Commission and amended the key framework regulation on renewable energy sources (RES). This paved the way for the first major auction organised by the Polish National Regulatory Authority – the President of the Energy Regulatory Office (ERO).

Nearly 600 on-shore based projects, most of them smaller sized PV installations, received approximately €3.28bn in 15-year contract-for-difference type benefits. Last but not least, the Minister of Energy presented the draft of the “Energy Policy of Poland 2040” highlighting the expected development of the Polish energy mix. This outlook is especially promising for offshore wind and photovoltaic markets.

Energy sources framework

Not surprisingly, the structure of laws and policies regulating the Polish energy market may seem complex. Currently, the 1997 Energy Law and the 2015 Act on Renewable Energy Sources (RES Act) form the backbone framework for Polish energy market.

The Energy law, correctly called the “constitution for energy”, regulates the key rules for shaping the energy policy of Poland, generation and supply of power, heat, natural gas and fuel, unbundling of network operators and competencies and operating principles of ERO.

Readers familiar with the EU internal energy market regulations will recognise how much the Energy Law aligns with this harmonised framework. The RES Act focuses on renewable energy sources and governs the system of incentives introduced to promote the development of those sources.

Most prominent authorities in Poland involved in managing the energy market are the Minister of Energy - representing government site and controlling a number of key energy utilities – and the President of ERO, the central administration body with a certain scope of independence, as required by the EU.

The Minister of Energy is responsible for managing the energy policy and the management of mineral deposits. It is also at this ministry where new regulations are drafted and put forward to the Parliament. Investors interested

in the offshore wind market will need to keep an eye open for the initiatives and information originating in the Ministry of Energy.

The President of ERO is responsible for day-to-day regulation in the energy sector as well as the promotion of competition. Competences of this authority cover many aspects important to project development and operational planning of RES projects, among others:

- 1 – Granting of power generation licences;
- 2 – Supervising grid access and settling disputes relating to determining connection conditions for new projects;
- 3 – Approving network development plans, outlining grid reinforcement and expansion projects required to facilitate increasing RES connections; and
- 4 – Managing the RES support schemes, including organising auctions, granting of benefits and supervising fulfilment of statutory conditions for making settlements under the CfD incentive scheme.

Offshore regulations

Offshore wind was endorsed by the Polish government in 2011, at a time when less than 3GW of offshore wind installations were installed in the EU, according to WindEurope data. The government found the permitting regulations covering maritime areas, the Offshore Law, inadequate for wind farm development.

The Offshore Law regulates activities in the territorial sea and in the exclusive economic zone, and applies to both the development and operations phase of a wind farm project.

The permitting procedures were adapted to reflect the requirements of an offshore wind project development schedule. Investors gained the first dedicated permitting framework and initiated development of several areas off the Baltic coast of Poland.

It was clear at that time that capital-intensive offshore projects would seek support from the state in order to facilitate long-term financing. Poland had a support scheme in place, based on tradable renewable certificates and a renewable portfolio standard gradually increasing towards 15% of gross final consumption of electricity by 2020.

However, the scheme proved prone to oversupply of certificates, with prices remaining

too volatile for the requirements and investment conditions of offshore installations.

Once the RES Act was adopted in 2015, a few additional instruments were introduced, including extended connection deadlines and listing offshore wind installations among those eligible to compete for support in the newly introduced auctions for CfD benefits.

This demonstrated that the government had a growing understanding of the complexities of the offshore wind development process. At the same time, the first rounds of auctions showed that while the scheme had proved to be suitable for onshore projects, the auction pool would be difficult to access by offshore wind investors.

Draft energy policy

The key document shaping the energy policies of the government is the Energy Policy of Poland (EPP). The Council of Ministers includes in the EPP the framework of policies and regulations regarding the whole energy market, including renewable energy sources. The last Energy Policy of Poland was adopted in 2009 with an outlook until 2030 (EPP 2030).

On November 28 2018 the Minister of Energy published the revised draft Energy Policy of Poland until 2040 (EPP 2040) that moved the goalposts significantly.

Until now, the most proliferated renewable energy source on the Polish market have been onshore wind installations – over 5.86GW of installed capacity representing more than 68% of all connected RES, according to ERO data. However, regulations limit greenfield development of new onshore wind projects. The draft EPP 2040 assumes that in future offshore wind installations and PVs will dominate the landscape of the RES market.

According to EPP 2040, development of renewable energy sources will remain among the key directions of energy market development. The Polish government intends to focus on the development of photovoltaic, especially as a short-term remedy to the insufficient progress towards 2020 obligations.

Offshore wind farms are expected to start operations by 2025–2027 with a more dynamic development predicted after 2035. By 2040 the government envisages as much as 10GW of offshore wind farms being in operation and it is a view generally supported by transmission network operator Polskie Sieci Elektroenergetyczne SA (TSO).

However, while the regulations applying to photovoltaics are quite transparent, the legal framework for offshore wind installations is still under development. Moreover, if the government wants to remain true to its declarations included in the EPP 2040, it must hurry. First offshore wind installations should be added to the energy mix after 2025, helping the government to deliver on its pledge to reach 21% of RES contribution in the final energy consumption by 2030.

Key players in the Baltic sea

Government estimates included in the EPP 2040 are well grounded in the current state of development of offshore wind projects. Based on the updated Offshore Law, several players have initiated development and secured the essential permit, the Offshore Location Licence (OLL). The OLL delimits the area of development and is precedent to securing connection conditions and initiating works on other material permits.

According to the official press releases, Equinor and Polenergia, PGE (Polska Grupa Energetyczna), PKN Orlen and other prominent companies are actively working on developing their offshore wind projects based on OLLs granted by Polish Maritime Authorities. Key Polish players expressed interest in partnering with experienced developers from other EU jurisdictions to accelerate and enhance the developments with best practices from other markets.

In its presentation held on February 20 2019 in the session of the Parliamentary Group for Offshore Wind Energy (the Parliamentary Group), the TSO confirmed that 13 sites were covered by OLLs and the TSO itself issued grid connection conditions for offshore wind projects covering 7.1GW of capacity. Details are included in Figure 1.

Offshore wind installations

Following implementation of the new auction support scheme, stakeholders fairly early identified shortcomings in the current auction when developing and financing an offshore wind project. Nevertheless, the offshore movement gained momentum.

On November 22 2017 the Parliamentary Group commenced operations, holding presentations regarding the development of offshore energy in Poland. The chairperson of the group participated in offshore study visits organised in some European jurisdictions. Formally, it is a focus group within Parliament without any specific legislative function. However, it assembles key MPs interested in promoting this part of the industry.

In 2018 the group coordinated the study on the potential of the Polish economy and businesses to supply components and provide services for the offshore wind industry.

It documented the involvement of a large number of Polish businesses in the supply chain of the ongoing offshore projects in other European jurisdictions. There is, therefore, a great business and political interest in creating opportunities for the growth of this segment of the economy.

The political interest and the clear business case in taking advantage of Polish maritime assets led the government to consider developing a dedicated legal framework aimed at supporting the development of offshore wind farms. In a number of public comments, representatives of the Ministry of Energy hinted at ongoing analytical work and cross-border consultations in that matter.

Recently, the Deputy Minister of Energy told the press that the exact shape of the regulation is still the subject of internal debate. The Ministry of Energy is currently taking suggestions regarding offshore wind and looks forward to summarising this feedback by the end of April 2019.

Polish decision-makers have been actively exchanging experience with their counterparts and with businesses, including the UK and Denmark. It is apparent that the two key areas of focus are the shape of the support scheme and the handling of the connection process.

With respect to potential incentives, the government remains enigmatic. While distributing benefits through a competitive auction process remains an option, stakeholders are hopeful the government would consider precedent cases of individual support measures developed in other jurisdictions, especially Belgium and Germany, which were reacted to positively by the European Commission.

A contract for difference (CfD) type of premium is usually discussed and it is not yet set whether the term of support would be limited to 15 years, like under the current auction scheme, or whether the government would be prepared to extend it.

In respect to the connection regime, we believe the government may consider a framework like the UK's Offshore Transmission Owner (OFTO) or socialising the connection cost through the tariff of the TSO, not unlike the measures discussed in Sweden.

The final choice of the framework may depend on the level of incentives the government would be willing to offer as part of the state aid scheme, where less intense CfD support could be linked to more beneficial network access conditions. The draft law dedicated to offshore projects is expected in the second half of 2019.

In parallel, Polish maritime authorities will issue work on adopting a comprehensive spatial development plan for the Polish maritime areas. The plan would allow access to further areas within the exclusive economic zone, however until the plan is adopted, we expect no new OLL permits to be issued.

The schedule suggests that work on the plan should finish by October 2019. The third international consultation meeting was scheduled in March 2019 and the fourth international consultation meeting – the final conference – should take place in May this year.

Summary

Precise regulations regarding offshore wind are being worked on and there is a clear political momentum driving progress towards including offshore wind in the Polish energy mix. The government has shown that it has mapped the key challenges correctly and stakeholders are gradually getting involved in facilitating the framework required to open new possibilities for investors interested in this intensively growing part of the energy market. Poland remains one of the key markets to follow. ■

FIGURE 1 - THE SCHEMES

