

# Poland and the price cap

While it was energy auctions in 2016 that kick-started Poland's solar sector, many developers have since moved outside the support scheme thanks to rising energy prices. Piotr Mrowlec, associate partner at Rödl & Partner, examines how the EU's new cap on renewable energy revenue will affect the attractiveness of large-scale clean energy projects in the nation.

The EU's emergency intervention to address high energy prices includes a cap on market revenue for low-marginal-cost electricity generators including solar projects. Alongside moves to reduce electricity consumption and gas use, and to protect households from soaring energy bills, the legislation sets a €180 (\$187)/MWh limit on revenue for "inframarginal" generators.

## €180/MWh

cap on revenue for solar generation suggested by the EU

Poland enacted a law at the end of October transposing the EU regulation and describing in detail the scope and form of the revenue cap. At the same time, a regulation of the EU's Council of Ministers, of Nov. 8, set out how the revenue cap will be calculated, by technology, and determined the €180 figure.

Warsaw has opted to apply the revenue cap to solar projects with a genera-

tion capacity of more than 1 MWp, thereby excluding the vast majority of Polish solar arrays. Of the projects bigger than 1 MWp, sites commissioned under national energy auctions, and which benefit from the associated guaranteed prices, are also excluded from the revenue cap.

The revenue limit set by Poland is linked to national renewable auction price caps. Projects set up outside the national subsidy scheme will have revenue capped at PLN 355 (\$78.15)/MWh, the current maximum auction bid price for arrays with a generation capacity of more than 1 MWp, as published by the Ministry of Climate and Environment.

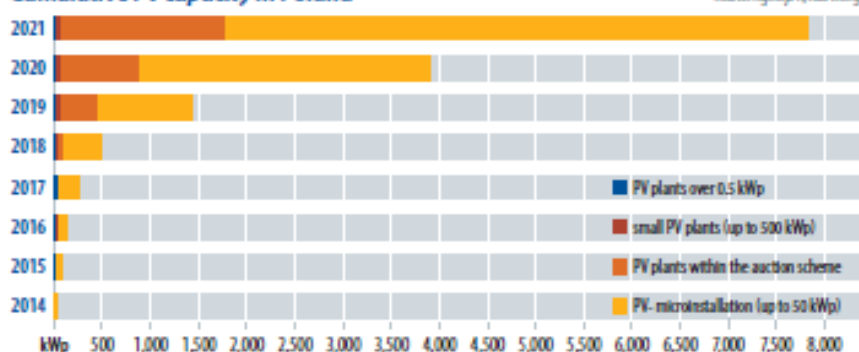
For projects operating as part of the auction incentive program but which sell some of their electricity on the open market, the revenue cap will be the price they tendered in the auction. That figure is annually adjusted in line with inflation, which is running at around 17% in Poland at the moment.

Any revenue above the cap – the difference between the volume-weighted average market price of electricity sold and volume-weighted average capped price of electricity sold – must be transferred by generators as a monthly "deduction" to a dedicated fund. The caps applied from Dec. 1, until the end of next year. Poland did not take the option offered by the EU of applying the cap to only 90% of inframarginal generator revenue – as Germany is expected to do.

Polish legislators secured the investment of clean energy generators who, in addition to the physical sale of electricity – either to end customers or a power trading company – concluded separate "financial PPAs" to secure prices at a level agreed with the other contracting party. Such deals are actually financial contracts-for-difference, rather than power purchase agreements (PPAs), as their name suggests. Financial PPAs stipulate any negative difference between the strike price agreed between the parties and the market price is paid to the electricity generator by the other party. Conversely, if the market price is higher than the strike price, the excess is paid by the generator to the counterparty.

Cumulative PV capacity in Poland

Source: Agencja Rynek Energi







*The Oborniki PV plant was developed by V-Ridlum and its parent company Greenvolt in Wielkopolska, western Poland, and consists of two 8 MW projects.*


There was a concern that the introduction of a cap would result in generators being doubly disadvantaged. On the one hand, they would have to make the appropriate deductions of the difference between the market price of energy and the cap and, in addition, based on their virtual PPAs, they would have to pay the difference between the strike price and the market price. In order to secure the situation of the generators who had negotiated financial PPAs, legislators decided that a certain amount of the cap would be increased by the average amount of the generator's claim against the other party to the virtual PPA.

### December auctions

Traditionally, renewable energy auctions take place in Poland at the end of the year. The energy generation capacity volumes offered for sale are not record-breaking but, assuming that the entire volume auctioned is realized, December's exercises will add a total of around 1.5 GW of power generation to the grid. As there are practically no ready-to-build wind projects on the market anymore, all the finan-

cial incentives made available through the auctions will be distributed among solar projects. Auctions for PV systems with a generation capacity of up to 1 MW will take place on Dec. 8, and procurement rounds for larger installations will be held the following day.

The Ministry of Climate and Environment this year significantly increased the reference prices for electricity generated by photovoltaics, compared to last year, in a reversal of the historic trend. The reference price for PV installations with a generation capacity of up to 1 MW is PLN 375/MWh, up from last year's PLN 340/MWh. As indicated above, the reference price for photovoltaic installations with a capacity above 1 MW is PLN 355/MWh, compared to PLN 320/MWh in 2021. The auction prices offered were much lower than the solar power reference prices.

The auction system still appears to be a robust approach to securing new solar generation capacity given the current high inflation rate in Poland and the expectation the rate of inflation will continue to be elevated in the next few years. 

Piotr Mrowiec

### About the author

*Piotr Mrowiec is an associate partner at Rödl & Partner. He is the head of the office in Gdansk, Poland, and the head of the renewables team. As a specialist in renewable energy sector regulations, he advises numerous clients and conducts legal due diligence for wind and PV projects. Mrowiec has been involved in studies for dozens of wind and solar projects, with a total capacity of several hundred megawatts.*

