

# Law for International Business

## Wind turbine investments: new rules for connecting wind farms to the power grid

Until 11th March 2010, when the amendment to the Energy Law of 8th January 2010 became effective, operators of power systems had no grounds to refuse to issue connection conditions if the technical and economic conditions for a connection to the grid and delivery were in place and the applicant met the formal requirements necessary to commence the procedure for establishing the connection conditions. This was the case even in a situation where the applicant was not in a position to deal with the financial consequences of the sought connection conditions. Throughout the two-year period of validity of connection conditions, when issuing other connection terms, grid operators had to reflect the assumptions of conditions already issued. Reserving connection capacity for entities that then failed to carry out the investments, resulted in blocking grid connection capacity. Consequently, if only part of the planned connections were realized in the given territory, an overlarge grid infrastructure was developed. In turn, a lack of distribution and transmission capacity in the power grid limited the development and connection of new entities, particularly those investing in renewable energy sources.

The Energy Law was amended in order to eliminate these unfavourable phenomena and enable effective use of available transmission capacity in the power grid.

The new provisions of the Energy Law require entities seeking to connect a power source to the grid to pay an advance against the connection fee (within seven days of filing the application for issuance of connection terms), to enclose with the application an excerpt and map from the local zoning plan, or if there is no zoning plan in place, a decision on conditions for construction and development of the site specified in the application (if required under land use regulations), and also require grid operators to publish information about the entities seeking connections and the grid connection capacities.

Advances against connection fees may be charged by electricity companies in an amount defined in the statute of PLN 30,000 per megawatt of planned connection capacity. The advance should not exceed the connection fee, and if it does the grid operator, which is to make the connection, is required to refund the difference with statutory interest from the date of payment. These regulations concerning advances are intended to protect investors from excessive fees while expediting the process of issuing connection conditions. However, the need to raise funds for the advance may present a significant barrier to the investor in carrying out the project.

The amended provisions of the Energy Law are proving particularly troublesome for companies that have already begun the investment process and filed applications for connection conditions, or have already received a decision on grid connection conditions.

Investors that held connection conditions at the time the amendment to the Energy Law went into effect (11th March 2010) were required to pay an advance by 10th May 2010 in an amount corresponding to the connection capacity awarded to them. Failure to pay the advance resulted in invalidation of the conditions issued.

Investors that had filed applications before the effective date of the Energy Law amendment but had not yet received connection conditions have 180 days to pay advances and submit a local zoning plan or decision on conditions for construction and development of the project site. The 180-day deadline may prove unrealistic for many companies because it may not be practically feasible to have a revision to the zoning plan adopted, or to conduct an environmental impact assessment, within 180 days. If a company fails to meet the statutory deadline for paying the advance and submitting the required documentation, the application for issuance of connection conditions will not be considered.

Under these circumstances, the changes in the connection procedure may result in a failure to implement a number of advanced wind farm projects, because the amendment did not take account of the duration of proceedings to obtain a local zoning plan or a decision on conditions for construction and development of the site.



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