



**ZAKON O KORIŠĆENJU OBNOVLJIVIH IZVORA ENERGIJE**  
**LAW ON UTILIZATION OF RENEWABLE ENERGY SOURCES**

**JPM**

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# UVODNE NAPOMENE

Vlada Republike Srbije je 30. marta 2021. godine uputila predlog čitavog seta energetske zakona Narodnoj skupštini na usvajanje, na osnovu kojih predloga su i doneti zakoni u različitim energetske oblastima. Jedan od tih zakona jeste i potpuno novi Zakon o korišćenju obnovljivih energija (u daljem tekstu: „Zakon o OIE“).

Donošenjem ovog zakona upotreba obnovljivih izvora energije (u daljem tekstu: „OIE“) u proizvodnji energije je i zakonski prepoznata kao jedan od energetske prioriteta Republike Srbije, imajući u vidu da se proizvodnjom električne energije iz uglja ostavljaju nesagledive posledice po životnu sredinu kao i da dolazi do velike emisije štetnih gasova.

# FOREWORD

On 30 March 2021, Government of the Republic of Serbia, submitted set of energy laws to the National Assembly for adoption, on the basis of which proposals of laws in various energy areas are rendered on 20 April 2021. One of these laws is completely new - Law on Utilization of Renewable Energy Resources (hereinafter referred to as: "Law on RES").

By rendering of this law, utilization of renewable energy resources (hereinafter referred to as: "RES") in energy production is legally recognized as one of the energy priorities of the Republic of Serbia, especially having in mind that production of electric energy from coal leaves grave consequences to the environment, as well as induces enormous emission of harmful gases.

## ZAKON O KORIŠĆENJU OBNOVLJIVIH IZVORA ENERGIJE

Do sada, oblast upotrebe OIE je bila stidljivo regulisana u Zakonu o energetici ("Sl. glasnik RS", br. 145/2014 i 95/2018 - dr. zakon), tačnije u glavi V – obnovljivi izvori energije, čime nije moglo da se na sveobuhvatni način reguliše ovako bitna oblast, a što predstavlja i obavezu Republike Srbije imajući u vidu da je članica Energetske zajednice. Tek donošenjem zakona koji za predmet ima isključivo problematiku OIE, Republika Srbija pokazuje veću odlučnost ka stvaranju uslova za proizvodnju električne energije iz OIE u što većem obimu. Posebno treba imati u vidu da je Nacionalnim akcionim planom za korišćenje OIE planirano da do 2020. godine Republika Srbija dostigne učešće od 27% OIE u ukupnoj bruto finalnoj potrošnji energije Republike Srbije, a sada u 2021. godini je dostigla svega 20%.

Zakon o OIE utvrđuje ciljeve koje se teže postići, u koje spadaju, između ostalog, i:

1. smanjenje upotrebe fosilnih goriva i povećanje korišćenja OIE u cilju zaštite životne sredine,
2. dugoročno smanjenje zavisnosti od uvoza energenata, kao i
3. otvaranje novih radnih mesta i razvoj preduzetništva u oblasti OIE.

## LAW ON UTILIZATION OF RENEWABLE ENERGY SOURCES

Until now, utilization of RES was shyly regulated in the Energy Law (“Official gazette of the RS”, no. 145/2014 and 95/2018 – other law), precisely in its section V – renewable energy resources, by which section such significant area was not comprehensively regulated, and which regulation also represents an obligation of the Republic of Serbia, having in mind its membership in the Energy Community. After adoption of the law which, as a subject has exclusively RES, the Republic of Serbia shows more determination to create conditions for production of electric energy from RES as much as possible. It is worth noting that by National action plan for utilization of RES, it is planned that until 2020, Republic of Serbia achieves RES participation of 27% in the gross final consumption of energy in the Republic of Serbia. However, now, in 2021, it is achieved only 20%.

Law on RES sets out goals to achieve, which encompass, among others:

1. decrease of utilization of fossil fuels and increase of utilization of RES in order to protect environment,
2. long-term decrease of dependence on import of energy-generating products, as well as
3. creating new working spaces and development of entrepreneurship in RES sector.

Zakonom o OIE su određene i elektrane koje koriste OIE i to su hidroelektrane, elektrane na biomasu i biogas, elektrane na vetar, solarne elektrane, geotermalne elektrane, elektrane na biorazgradivi otpad, kao i elektrane na deponijski ili gas iz postrojenja za tretman komunalnih otpadnih voda.

Kako se Zakon o OIE donosi prvenstveno radi zaštite životne sredine, stoga je propisana posebna zabrana građenja hidroelektrane u zaštićenim područjima.

Takođe, propisano je da se udeo energije iz OIE u bruto finalnoj potrošnji energije i finalnoj potrošnji energije u saobraćaju, kao i udeo OIE u proizvodnji električne i toplotne energije utvrđuje Integriranim nacionalnim energetske i klimatskim planom.

Kako bi se privukle investicije u ovaj sektor, Zakon o OIE predviđa više različitih podsticaja:

- Tržišnu premiju;
- Feed-in tarife;
- Preuzimanje balansne odgovornosti; i
- Prioritetan pristup prenosnom, odnosno distributivnom sistemu.

Posebno je naznačeno da za jednu istu elektranu povlašćeni proizvođač električne energije ne može da bude korisnik istovremeno i feed-in tarife i tržišne premije.

Law on RES sets out power plants which use RES, namely, hydropower plants, power plants on biomass and biogas, wind power plants, solar power plants, geothermal power plants, powerplants on biodegradable waste and power plants on landfill gas and gas from the utility for wastewater treatment.

As Law on RES is adopted primarily to protect environment, it is additionally strictly forbidden to construct hydropower plants in the protected areas.

Also, it is determined that participation of energy from the RES in gross final energy consumption and in final consumption of energy in traffic, as well as participation of production of electric energy and heat energy from the RES, is set out in Integrated national energy and climate plan.

In order to attract investment in this sector, Law on RES envisages various incentives:

- Market premium;
- Feed-in tariffs;
- Undertaking of balancing responsibility; and
- Right to priority access to transmission i.e., distribution system.

It is particularly marked that for the same power plant, privileged producer of electric energy cannot be simultaneously user of feed-in tariff and market premium.

## TRŽIŠNA PREMIJA

Tržišna premija predstavlja novi vid podsticaja za proizvođače iz OIE, imajući u vidu da je do sada postojao samo sistem feed-in tarifa. Podsticaj u vidu tržišne premije se ogleda u tome da će garantovani snabdevač plaćati tržišnu premiju (određenu u evrocentima po kWh) korisniku tržišne premije za svaki prodati kWh, kao dodatak pored cene na prodatu električnu energiju. Iznos same tržišne premije nije unapred određen već se određuje na aukcijama.

Aukcije za dodelu tržišne premije sprovodi Ministarstvo rudarstva i energetike (u daljem tekstu: „Ministarstvo“) tako što objavljuje javni poziv. Sama aukcija može da se odnosi na jednu ili više vrsta elektrana (solarna, hidro, vetro itd.). Takođe, u javnom pozivu se objavljuje i kvota ukupne snage kojoj će biti dodeljena tržišna premija, dok maksimalni iznos tržišne premije sa kojom može da se licitira određuje Agencija za energetiku.

Prilikom faze nadmetanja, učesnici određuju visinu tržišne premije kojom bi bili zadovoljni, a po okončanju aukcije pristigle ponude se rangiraju po kriterijumu koja ponuda je najniža u odnosu na maksimalni iznos tržišne premije i to od najniže ka višim, sve dok kvota ne bude popunjena.



## MARKETING PREMIUM

Market premium represents new form of incentives for producers from RES, taking into account that until now only system of feed-in tariffs existed. Incentives in the form of market premium means that guaranteed supplier shall pay market premium (determined in eurocent per kWh) to the user of market premium for every sold kWh, as additional amount to the price for the sold electric energy. The amount of the market premium is not determined a priori but on auctions.

Auctions for market premium are conducted by the Ministry of Mining and Energy (hereinafter referred to as: “Ministry”), by publishing public invitation. Auction may be related to one or more different power plants (solar, hydro, wind etc.). In the public invitation, the quota of the total power for which the market premium shall be granted is determined, while the maximum amount of market premium that may be bid is set out by the Energy Agency .

In the bidding phase, participants determine amount of market premium which satisfies them, and upon the conclusion of the auction, submitted bids are ranked by the criterion set from the lowest to the highest - comparing to the maximum amount of market premium, until the quota is filled.



Po okončanju aukcije, učesnici kojima je dodeljena tržišna premija dobijaju status privremenog povlašćenog proizvođača električne energije i dužni su u roku od 30 dana o dobijanja tog statusa da dostave Ministarstvu sredstvo obezbeđenja plaćanja u vidu novčanog depozita ili bankarske garancije. Po dostavljanju instrumenta obezbeđenja plaćanja, privremeni povlašćeni proizvođač električne energije ima:

1. pravo da zaključi ugovor o tržišnoj premiji sa garantovanim snabdevačem, i
2. obavezu da dostavi Ministarstvu građevinsku dozvolu i studiju o proceni uticaja na životnu sredinu u roku od dve godine. Ukoliko ovi dokumenti nisu dostavljeni u roku, Ministarstvo će oduzeti licu status privremenog povlašćenog proizvođača električne energije.

Upon the auction, participants to whom market premium is granted, acquire status of temporary privileged producer of electric energy and they are obliged to, within deadline of 30 day as of acquiring such status, deliver to the Ministry the payment security instrument in a form of either deposit or bank guarantee. Upon delivering of payment security instrument, temporary privileged producer of electric energy has:

1. right to execute agreement on market premium with guaranteed supplier, and
2. obligation to deliver to the Ministry construction permit and study on assessment of impact on environment within two years. If these documents are not delivered to the Ministry within deadline, Ministry will deprive such entity of status of temporary privileged producer of electric energy.

Da bi privremeni povlašćeni proizvođač električne energije postao povlašćeni proizvođač električne energije neophodno je da, između ostalog, izgradi elektranu za koju je dobio tržišnu premiju, dobije upotrebnu dozvolu, dobije licencu za obavljanje energetske delatnosti proizvodnje električne energije, priključi elektranu na prenosni, odnosno distributivni sistem.

Podsticajni period za tržišnu premiju je 15 godina, računa se od prve isplate tržišne premije (pri čemu se tržišna premija isplaćuje na mesečnom nivou).

Korisnik tržišne premije ima pravo i da prenese balansnu odgovornost na garantovanog snabdevača u zakonom određenoj meri. Međutim, trajanje ovog prava nije vezano za podsticajni period već do uspostavljanja likvidnog organizovanog unutar dnevnog tržišta električne energije.

Na kraju, korisnik tržišne premije ima pravo da prioritetan pristup prenosnom, odnosno distributivnom sistemu. Operator prenosnog, odnosno distributivnog sistema ima pravo da odbije pristup jedino ako bi došlo do ugrožavanja rada sistema. Međutim ovo pravo prvenstva nije rezervisano samo za korisnike tržišne premije već za sve proizvođače električne energije iz OIE, bez obzira da li su u sistemu podsticaja ili ne.

In order that the temporary privileged producer of electric energy becomes privileged producer of electric energy, it is necessary to, inter alia, construct power plant for which market premium is granted, acquire usage permit, acquire license for conducting energy activity of production of electric energy, connect power plant to the transmission i.e., distribution system.

Incentive period for market premium is 15 years, starting from the first payment of market premium (whereby it is paid on monthly basis).

User of market premium has the right to transfer its balancing responsibility to the guaranteed supplier, up to the law determined limit. However, duration of this right is not related to the incentives period, but until establishment of liquid period, organized within day market of electric energy.

Last but not least, user of market premium has priority right to access transmission i.e., distribution system. Operator of transmission i.e., distribution system is entitled to deny such right only in case the system will be jeopardized. However, this right is not reserved only for user of market premium but for all producers of electric energy from RES, regardless of being in incentives system or not.

## FEED-IN TARIFE

Druga vrsta podsticaja za proizvodnju električne energije iz OIE jesu feed-in tarife koje su i do sada postojale u našem zakonodavstvu. Zakon o energetici je propisivao osnov za uvođenje feed-in tarifa, dok je Vlada uredbama određivala uslove za sticanje statusa povlašćenog proizvođača električne energije, kao i sam sistem podsticaja za povlašćene proizvođače električne energije.

Prema Zakonu o OIE lice koje ima pravo na feed-in tarifu zapravo ima zagantovani otkup električne energije koju je proizveo iz OIE po unapred utvrđenoj ceni. Velika razlika u odnosu na tržišnu premiju, osim što je feed-in tarifa zapravo otkupna cena električne energije dok je tržišna premija samo dodatak na cenu koja se ostvari na tržištu, jeste što se feed-in tarife mogu dobiti samo za demonstracione projekte (projekat koji koristi inovativnu tehnologiju) i mala postrojenja (elektrana odobrene snage manje od 500 kW, odnosno elektrana na vetar odobrene snage manje od 3 MW), dok se tržišna premija može dobiti za sve ostale elektrane bez obzira na odobrenu snagu (osim za hidroelektranu čija snaga ne sme da prelazi 30 MW).

Prema dosadašnjem zakonodavstvu, Vlada je uredbama određivala tačan iznos feed-in tarife koja se plaćala po kWh. Međutim, Zakon o OIE ne predviđa više ovakvu mogućnost, već će lica koja žele da uđu u ovaj sistem podsticaja učestvovati na aukcijama gde će davati ponude za visinu feed-in tarife.

Razlika postoji u balansnoj odgovornosti, tačnije garantovani snabdevač preuzima balansnu odgovornost od korisnika tržišne premije do zakonom određene mere tj. ukoliko postoji veći debalans onda će tu razliku korisnik tržišne premije biti dužan da plati. Ovakvo ograničenje ne postoji kod feed-in tarife. Takođe, kod korisnika feed-in tarife, balansna odgovornost je prenetna na garantovanog snabdevača tokom celog podsticajnog perioda, dok kod korisnika tržišne premije je samo do uspostavljanja likvidnog tržišta električne energije.

Na kraju, podsticajni period za feed-in tarife je u odnosu na dosadašnje važeće rešenje povećan za tri godine tako da prema Zakonu o OIE iznosi petnaest godina.

## FEED-IN TARIFFS

Second kind of incentives for production of electric energy from RES are feed-in tariffs, which already exist in our legislation. Energy law represented the basis for feed-in tariffs, while the Government determined conditions for acquiring status of privileged producer of electric energy by regulations, as well as the system of incentives for privileged producers of electric energy.

Pursuant to the Law on RES, person entitled to feed-in tariff has guaranteed selling of produced electric energy from RES at a priori determined price. Major difference to the market premium, apart from the fact that feed-in tariff represents selling price of electric energy while market premium is addition to the price acquired on the market, is that feed-in tariffs may be granted only for demonstrative projects (projects using innovative technology) and small power plants (power plant with power less than 500 kW, i.e., wind power plant with power less than 3 MW), while market premium may be granted for all other power plants regardless of their power (save for hydropower plant with power up to 30 MW).

Pursuant to the previous legislative, Government set out exact amount of feed-in tariff payable per kWh, by regulations. However, Law on RES does not envisage such possibility, but persons who wish to be part of such incentive system have to participate on auctions and in their bids they will determine amount of feed-in tariff.

Difference exists in balance responsibility, precisely, guaranteed supplier undertakes balance responsibility from the user of market premium up to the law determined limit i.e., if imbalance is higher, user of market premium is obliged to pay it. Such limitation does not exist with feed-in tariff. Additionally, balance responsibility of user of feed-in tariff is undertaken by guaranteed supplier during the whole incentive period, while with user of market premium balance, responsibility is undertaken by guaranteed supplier only until establishment of liquid market of electric energy.

Last but not least, incentive period for feed-in tariff is, compared to the previous solution, extended for three years, so pursuant to the Law on RES, it is fifteen years.

## OSTALE ODREDBE ZAKONA O OIE

Od ostalih odredbi Zakona o OIE treba spomenuti da proizvođači električne energije iz OIE imaju pravo da prodaju takvu električnu energiju krajnjim kupcima, jedini uslov jeste da imaju licencu za snabdevanje električnom energijom.

Proizvođač električne energije iz OIE ima pravo, uz ispunjenje uslova određenim zakonom, i na garanciju porekla. Garancija porekla predstavlja zapravo potvrdu da je određena količina električne energije dobijena iz OIE, i nju izdaje na zahtev proizvođača operator prenosnog sistema koji je dužan i da vodi registar izdatih garancija porekla.

Jedna od novina jeste i uvođenje instituta kupac-proizvođač, koji predstavlja zapravo krajnjeg kupca koji proizvodi električnu energiju iz OIE za sopstvenu potrošnju, a ukoliko sve ne potroši može da skladišti tako proizvedenu električnu energiju kao i da je isporuči u prenosni odnosno distributivni sistem. Kupac-proizvođač nema pravo na podsticajne mere niti na garanciju porekla.

Pored proizvodnje električne energije iz OIE, Zakon o OIE propisuje mogućnost proizvodnje i toplotne energije iz OIE. Jedinice lokalne samouprave su jedine ovlašćene da propisuju mere podsticaja, uslove i postupak za sticanje prava na podsticajne mere.



## OTHER PROVISIONS OF LAW ON RES

Other noteworthy provision of Law on RES is that producers of electric energy from RES are entitled to sell such electric energy to the final costumers, provided that they have license for supply of electric energy.

Producer of electric energy from RES is entitled to, provided that conditions determined by the law are fulfilled, guarantee of origin. Guarantee of origin represents confirmation that certain quantity of electric energy is produced from RES, and it is issued upon the request of producer by the operator of transmission system, who is obliged to keep record of issued guarantee of origin.

One of the novelties is introduction of costumer-producer institute, who actually represents the final costumer who produces electric energy from RES for his personal needs, and if he does not use it all, he may storage such produced electric energy as well as deliver it to the transmission i.e., distribution system. Costumer-producer does not have rights on incentive measures, nor on the guarantee of origin.

Apart from the production of electric energy from RES, Law on RES envisages possibility of production of heat energy from the RES. Units of local self-government are exclusively authorized to prescribe incentive measures, conditions and procedure for acquiring of right on incentive measures.

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Jelena is a Senior Partner at JPM and a member of the Corporate/M&A and Banking and Finance department and Head of Mining and Energy department.

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Nikola is a Partner at JPM specialising in complex corporate, tax, M&A and energy law matters.

Nikola joined the firm in 2006. His practice concentrates on corporate, tax, M&A, banking & insurance and energy law advisory work.

He graduated from the Faculty of Law at the University of Belgrade in 2005. Nikola is well recognised by his special expertise in various industries and consistently provides clients with sound and commercially-minded legal advice.

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