

**Capacity market – new challenges for the energy sector** (from the volume editors)

Tomasz Dąbrowski, **Capacity market in Poland – purpose of implementation of the Act, EU and Polish conditions, key assumptions of the concept and the Act**

**Articles**

Igor Muszyński, **Capacity Market as a Tool Supporting the Construction of New Power Plants – Will it Work?**

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- I. Introduction
- II. Minimal value of capacity market revenues
- III. The time frame of capacity market revenues
- IV. Capacity agreements as a tool securing financing
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**Summary:** This article discusses selected legal issues of the Act on the Capacity Market, which are of importance to the evaluation of their impact on the terms and conditions of financing provided to new power generation capacities. These issues are analyzed in light of the market practice to date in the area of financing of new power generation projects and in the area of mitigating legal risks associated with this type of investments by way of legal concepts used in the documentation of the financing of such projects. The value of the revenue achieved from the capacity market service earned by capacity providers and the stability of these revenues are identified by the author as key issues here. The Author analyzes also the legal character of capacity agreements, legal effects of the execution of a capacity agreement in an electronic form in the course of a capacity auction or within the secondary market. He also comments on the legal effects brought by statutory concepts applicable to capacity agreements as well as their form onto the possibility to use a capacity agreement to secure the repayment of debt incurred in order to build new capacity market units. The author speaks in favour of being able to assign capacity obligation payments as collateral to secure debt of newly constructed capacity market units.

**Key words:** capacity market, the Act on the Capacity Market, capacity agreement, electronical form of the agreement, main auction, secondary capacity market, capacity market register, capacity obligation, capacity service payment, assignment for security of the receivables.

**JEL:** K23, K32, K33

Grzegorz Pizoń, **Capacity mechanisms – definition, classification and future of a two-commodity market in the European Union**

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- V. Conclusions

**Summary:** The purpose of this article is to attempt to define limitations of the concept of a capacity mechanism, to present a classification of mechanisms existing in different EU Member States, and to consider the future of two-commodity market in the light of current legislative developments. Additionally, the paper aims to verify a thesis on the possibility of providing services involving the availability of disposable capacity on terms unrelated to the provision of state aid.

**Key words:** capacity mechanisms; capacity market; state aid; Commission’s Winter Package.

**JEL:** K23, K32, K33

Michał Bałdowski, Marcin Kraśniewski, **The essence and legal aspects of the functioning of a secondary market for the capacity market**

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**Summary:** The capacity market is a system that supports the construction of new conventional power stations and reduces the negative impact of funding renewable energy sources in the energy sector. It constitutes an important element of the effective functioning of the capacity market mechanism, due to its compliance with the concept of safeguarding energy security by creating a support system for new investments in conventional energy, as adopted by the Polish legislator. The present paper is the first attempt to scientifically analyze the importance of the

secondary market for the Polish capacity market. It discusses the causes for the introduction of the secondary market as well as for the determination of its essence for the capacity market. The paper covers the two most important principles of the functioning of the secondary market as well as the two types of transactions entered into on this market (secondary trading and reallocation of volume). Discussed subsequently is the effectiveness of a transaction on the secondary market. The analysis of the functioning of the secondary market for the capacity market in the UK constitutes an important section of this article. Such an approach towards this topic seems fully justified since the Polish Act on the Capacity Market is based on British regulations, while the British secondary market itself has been functioning for several years now. The whole paper ends with conclusions.

**Key words:** capacity market; secondary market; energy security; energy; capacity; capacity obligation.

**JEL:** K23, K32, K33

Bartłomiej Pawlak, Marcin Ziarkowski, **Realization of a capacity obligation by power companies**

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**Summary:** According to the intention of the legislator, a capacity obligation, as defined in the Act on the Capacity Market of 8 December 2017 (Art. 2 point 23 of the Act), should be the main instrument of the capacity market used to ensure long-term energy security in Poland. The article presents an analysis of the content of the capacity obligation imposed on providers, which, in essence, may be defined as the provider's civil law obligation towards an operator comprising of two components: availability to provide capacity, which consists of maintaining physical units in satisfactory condition during the entire delivery period, and the provision of capacity to the system during a threat period.

**Key words:** capacity obligation; capacity auctions; capacity market; energy security; power companies.

**JEL:** K20, K23, K32

Paweł Ura, **The participation of foreign electricity generators in the Polish capacity market**

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- III. The legislative process of the Polish Act on the Capacity Market and the participation of foreign capacity
- IV. Foreign electricity generators in the auction system
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**Summary:** The article provides an analysis of legal provisions relating to the participation of foreign electricity generators in the Polish capacity mechanism. The work discusses both the European context of the requirement to introduce cross-border participation and the legislative process of the Polish Act on the Capacity Market in this regard. The presentation of the regulation of the participation of foreign electricity generators is structurally divided into two parts. First, the paper analyzes the auction system with particular emphasis on preliminary auctions. Presented next is the issue of the specificity of a performance of a capacity obligation by a foreign electricity generator.

**Key words:** capacity market, foreign generators, preliminary auctions, auction system, capacity obligation.

**JEL:** K20, K23, K32

Jędrzej Maśnicki, **The protection of legitimate expectations and the adjustment of capacity mechanisms to the Regulation on the internal market for electricity**

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- III. Decision of the European Commission accepting the Polish capacity mechanism
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- V. Obligation to adjust existing capacity mechanisms to future EU legislation
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**Summary:** The aim of this paper is to analyse arguments for the application of the principle of protection of legitimate expectations to the first power contracts concluded before the entry into force of the forthcoming Regulation on the internal market for electricity. The following arguments may be set out to grant such protection. The protection of legitimate expectations is one of the general principles of EU law, thus it is applicable to the activities of EU institutions or Member States implementing EU law. The decision of the European Commission accepting the Polish capacity mechanism (SA. 46100) is a source of justified expectations that the first power auctions will be concluded in accordance with the currently binding rules. This decision is the source of assurances given by the EU institution, issued according to the appropriate procedure, and raising legitimate expectations on the side of potential beneficiaries of the Polish capacity mechanism. Key players involved in the decision-making process concerning the regulation on the internal market for electricity should, therefore, reflect the protection of legitimate expectations. That is

so especially under the provisions related to transitional arrangements that ensure protection of multiannual contracts concluded before the Regulation enters into force, and an adequate derogation period for other existing power installations and contracts concluded after the entry into force of the Regulation.

**Key words:** capacity market; capacity mechanisms; regulation; state aid; legitimate expectations; acquired rights.

**JEL:** K23, K32, K33

## LEGISLATION AND CASE LAW REVIEW

Jakub Faszczka, **License as an instrument of accomplishing energy policy in the light of the Supreme Court judgment of 21 April 2016, III SK 28/15**

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- I. License as an instrument of accomplishing energy policy
- II. Key facts in the case III SK 28/15
- III. Selected license terms in the light of the case III SK28/15
- IV. Summary

**Summary:** In this case comment, the author, in the light of the Supreme Court judgement signature III SK 28/15, aims to present a license as an instrument for the accomplishment of State energy policy. Presented first is the answer to the following question – what impact does the state energy policy have on the President of ERO. Second, the author briefly reviews the most important conclusions of the judgment of the Supreme Court (III SK 28/15). This review is connected with the analysis of selected conditions of relevant gas market licenses, required by Polish energy law. Ultimately, the author attempts to assess the necessity of the existence of such conditions in practice.

**Key words:** license; President of the Energy Regulatory Office; III SK 28/15; energy policy.

**JEL:** K20; K23; K32

## BOOK REVIEWS

Mirosław Pawełczyk (ed.), *Współczesne problemy bezpieczeństwa energetycznego – sektor gazowy i energetyczny* [Contemporary problems of energy security – the gas and energy sector], Wydawnictwo Ius Publicum, Warszawa 2018, ss. 560 (review by Michał Domagała)

## REPORTS

Report on the Conference „Bezpieczeństwo, regulacja i konkurencja na rynku energetycznym” [„Safety, regulation and competition on the energy market”], Łódź, 26.04.2018 (Mateusz Czuba, Wojciech Modzelewski, Michał Pytkowski)

## Contents, Summaries and Key Words