

PWEA's position paper on suspension of Joint Implementation (JI) projects approval

Poland's ratification of the Kyoto Protocol allows for using flexibility mechanisms to acquire greenhouse gas emission reductions, in particular carbon dioxide. It also creates the possibility to use these mechanisms, in particular the Joint Implementation mechanism, to support renewable projects. Production of electric energy in renewable energy sources is clean, "zero – emission" generation source, therefore its use allows for avoiding greenhouse gas and dust emissions. In other words, energy generated in renewable energy sources, by displacing energy supplied to the grid from conventional generation sources, contributes to reducing greenhouse gas (GHG) and other pollutants' emissions by the Polish power system. The amount of avoided emissions is calculated in the process of project development and approval as Joint Implementation projects. After the projects are approved by the Ministry of the Environment (after acquiring Letter of Endorsement) greenhouse gas Emission Reduction Units may be sold by the project hosts to carbon funds dealing with purchasing these units on behalf of governments of states obligated to reduce CO₂ emissions during the 2008 – 2012 period, or private entities interested in acquiring the units for their own use. The Emission Reduction Units denote the number of CO₂ tonnes saved (non – emitted) by the power system.

So far only seven projects were officially endorsed in Poland. The process related to development of project documentation is laborious and costly. The investor is obligated to prepare many documents (a preliminary project description, the so – called Project Idea Note; the Project Design Document; Business plan; Environmental Impact Assessment; opinion of the commune; etc.) and to acquire a Validation Report from an independent verifying entity. Ministry of the Environment is responsible for endorsing the projects, who first issues Letters of Approval – preliminarily accepting projects as Joint Implementation projects, followed by Letters of Endorsement, constituting Poland's commitment to transfer an appropriate number of Emission Reduction Units on the account of party purchasing these units.

Approximately since November 2005 Ministry of the Environment unofficially suspended issuing Letters of Approval and Letters of Endorsement without presenting any motivation or official announcement concerning the suspension of Joint Implementation in Poland. Since then Letter of Endorsement was issued to a single project – a Polish – Danish project for the use of waste dump gas in Warmińsko – Mazurskie Province (Letter of Endorsement of 31.03.2006). The remaining investors, despite having met all obligations, do not receive endorsement of their projects. The Ministry apart from unofficial telephone information does not provide binding information concerning time for project endorsement; it seems that the projects will not be endorsed before coming into force of the new act introducing new regulations concerning JI projects endorsement procedure.

The Association considers this situation to be unacceptable! Similarly to maintenance of status quo till the time when the new law is enacted and comes into force, that is for the time of minimum 3 – 4 months...

The Association is intervening insofar as the issue for a number of months. Among others, we have dispatched notices to Ministry of the Environment, Ministry of Economy, Chairmen of Sejm Committees (including Chairman of Enterprise Development Committee, Chairman of the Environment Protection, Natural Resources and Forestry Committee, Chairman of the European Union Affairs Committee), alas with no result. In reply to PWEA notices and MP's interventions the Ministry of the Environment answers laconically that the works on the new act are in progress (at first on the amendment of the *Act of 22nd December 2004 on trade in emission allowances for atmospheric greenhouse gas and other substances (Journal of Law No. 281, Items 2783 and 2784)*, and currently on the draft of a new *Act on the use of assigned amount units, emission reduction units and certified emission reduction units, management of absorption units, determination of emission ceilings, national inventories, development of emission forecasts and on trade in emission allowances for atmospheric greenhouse gas and other substances*).

In PWEA's opinion commencement of works on the amendment of the Act on trade in emission allowances, and later on the new Act, is not a premise for suspending projects approval, moreover, without informing the investors about this fact. For it is commonly accepted that until adoption of new provisions of the law previous rules are in force. Moreover, waiting for the adoption of the new Act, the contents of which are currently consulted, is for many investors an unacceptable solution. Extensiveness of the Act and problems with development of its contents indicate that the legislation process may last for a number of months. This means that as a consequence there may be a situation when construction of many projects will conclude before new act entering into force, and the Ministry of the Environment would refuse to endorse the Project for formal reasons.

In PWEA's opinion actions of the Minister for the Environment are violating basic rules of law and order as well as authorities' obligation to act pursuant to provisions of the law, which guarantee subjects' equality towards the law and impose the obligation to immediately issue decisions concerning the matters applied for consideration. In states of law and order there is also a rule that the law cannot be retroactive, what means that the decision concerning endorsement of projects, for which the procedure have already been initiated should be made on the basis of hitherto binding rules. Moreover, in the draft of the new *Act on the use of assigned amount units, emission reduction units and certified emission reduction units, management of absorption units, determination of emission ceilings, national inventories, development of emission forecasts and on trade in emission allowances for atmospheric greenhouse gas and other substances* in Article 127, that is in transitory regulations, it is directly indicated that previously binding regulations shall be applied to matters instituted before the day of this act coming into force. Therefore it is incomprehensible why the Minister for the Environment does not take action on the basis of the regulations now being in force, in particular when after coming into force of the new act he still would be obligated to make a decision concerning issuing Letters of Approval or Letters of Endorsement for submitted projects on the basis of legal rules hitherto in force.

Poland is a party to the United Nations Framework Convention on Climate Change; our country also ratified the Kyoto Protocol, which entered into force in February 2005. Moreover, Poland is also bound by international bilateral agreements allowing for realization of Joint Implementation projects (including for instance the Memorandum of Understanding with the Kingdom of Denmark, the agreement with the Prototype Carbon Fund, etc.), which authorize Minister for the Economy to issue Letters of Endorsement and to transfer Emission Reduction Units generated by JI projects. Additionally Poland already approved seven Joint Implementation projects, stating that Poland meets the requirements necessary to participate in projects realized under Article 6 of the Kyoto Protocol, in accordance with the Marrakech Accords.

Lack of information concerning further possibilities for realization of JI projects in Poland, binding procedures, including the time for acquisition of Letters of Approval and Letters of Endorsement, causes significant uneasiness among investors interested in realization of wind farm construction projects, intending to use the JI mechanism as a support scheme for these projects. They do not know how and in what mode they may submit their projects or what is going on with the projects already being in advanced endorsement phase, de fact waiting only for issuance of Letters of Endorsement. Unpredictability of duration of Joint Implementation project approval procedure causes difficulties with incorporating the procedure in the investment process.

The issue is of key importance for investors interested in realization of wind power projects in Poland. Endorsing projects as JI projects allows for acquiring additional revenues from the sale of Emission Reduction Units, what given very limited access to other sources for financing wind farm construction projects (the only currently available form of subsidy is acquisition of preferential loan or subsidy to interest from the National Fund for Environment Protection and Water Management or a subsidy from the Sectoral Operational Programme "Increase in the Competitiveness of Enterprises") is of key importance for development of these investments in Poland.

PWEA would like to emphasize that the necessity to develop the use of energy from renewable sources stems not only from Poland's commitments written in the Accession Treaty (7,5% of gross domestic consumption of electric energy from renewable sources in year 2010), but also from the Directive 2001/77/EC of the European Parliament and of the Council on the promotion of the electricity produced from renewable energy sources in the international electricity market. Moreover, development of "green energy" use is an important element of energy security of the state, climate change countermeasuring policy and sustainable development. In case of Poland substituting the use of conventional energy by renewable energy is of high importance given the perspective of coming into force of the *Directive 2001/81/EC of the European Parliament and of the Council on national emission ceilings for certain atmospheric pollutants* and future limitations in production of conventional energy stemming from the Directive 2001/80/EC (Directive of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants).

In PWEA's opinion Joint Implementation is not only another attractive scheme for supporting investments in renewable energy sources, but also for energy efficiency improvement projects or projects aiming at switching to more ecologic energy carriers, as well as other projects reducing atmospheric carbon dioxide emissions. Apart from ecological effects in the form of GHG emission reduction Poland as a Host Country for JI projects achieves additional benefits in the form of transfer of latest technologies. Moreover, our country may retain part of Emission Reduction Units generated by JI projects on its own account. Simultaneously, the use of JI does not burden the state budget, for the means for the purchase of Emission Reduction Units come from foreign sources.

PWEA is deeply concerned with actions of Ministry of Environment in the extent of JI, especially with statements of high rank officials, who state that approval of the projects had been suspended due to awaiting for decision of the European Commission concerning *double calculation*. We are also appalled by statements which imply that JI in Poland cannot develop because a stake of rights would have to be "drawn" of National Allocation Plan for Allowances, that were issued only as units of emission reduction! In our opinion, actions concerning climate protection consist precisely in this...

PWEA appeals for:

- a. un - suspension of Joint Implementation projects endorsement as soon as possible,
- b. acceleration of works on the new act regulating issues concerning JI, emissions trade and transposition of the so called Joint Directive to the Polish legal framework (Directive 2004/101/EC amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms; in accordance with the Directive the Member States should have transposed the Directive by 13.11.2005),
- c. determining a clear position by the Polish Government concerning the possibilities for using Joint Implementation Mechanism in Poland in years 2008 – 2012 and after the Kyoto period!