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Ukraine Stimulates Usage of Alternative Energy Sources With Revised Green Tariff Rules

Last September Ukraine's parliament adopted the first law in the country designed to stimulate use of alternative sources of energy through introduction of the so-called "green" tariff – a special tariff by which electricity generated from alternative sources must be purchased at the Wholesale Electricity Market (the Green Tariff). However, the law did not accomplish its goals, possibly because of its generality and ambiguity.

In response, on April 1, 2009 Ukraine's parliament fundamentally changed the rules on implementation of the Green Tariff by adopting the Law of Ukraine "On Amendment of the Law of Ukraine 'On Electrical Energy' Regarding Stimulation of Usage of Alternative Sources of Energy" No. 1220-VI (the Green Tariff Law), which went into effect on April 22, 2009.

The Green Tariff Law significantly changes the rules on implementation of the Green Tariff in Ukraine. The main change is that instead of the unified Green Tariff approach introduced in September 2008, the Green Tariff Law differentiates the Green Tariff depending on the source of alternative energy and the type and capacity of the generation facilities. To address the risk of devaluation of Ukraine's currency, the Green Tariff Law also introduces a fixed minimal Green Tariff nominated in euros pursuant to the official euro/UAH exchange rate as of January 1, 2009. In addition, the Green Tariff Law stimulates manufacturing and consumption of materials from Ukraine, as well as works and services required for construction of the generation facilities that use alternative sources of energy.

Green Tariff Amounts and Approval Procedure

The Green Tariff may be used by companies no later than January 1, 2030. According to the law implementing it, the Green Tariff is approved by the National Electricity

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Regulatory Commission of Ukraine (NERC) for: (a) each company, that uses alternative sources of energy for generation of electricity; (b) each type of alternative energy; and (c) each generation facility.

The basis for calculation of the Green Tariff is a retail tariff approved by NERC for consumers with the second class of voltage for January 2009 in the amount of 58.46 kopeks per kilowatt-hour (kWh) without VAT (the Basic Tariff). Applying various coefficients to the Basic Tariff, the Green Tariff Law differentiates the Green Tariff depending on the type of alternative source of energy and the type and capacity of generation facilities as specified in the table below.

Type of alternative source of energy	Capacity of a generation facility, kW	Basic Tariff, UAH kopeks per kWh, w/o VAT	Green Coefficient	Tariff coefficient used in peak hours (three-zone tariff classification)	Green Tariff, UAH kopeks per kWh, w/o VAT
Wind	< 600	58.46	1.2	N/A	70.2
	600-1,200	58.46	1.4	N/A	81.9
	>1,200	58.46	2.1	N/A	122.48
Biomass	Any	58.46	2.3	N/A	134.5
Sun	Installed on roofs of buildings and structures, > 100	58.46	4.6	1.8	484.1
	Installed on roofs (< 100) and facades (any capacity) of buildings and structures	58.46	4.4	1.8	463
Hydro	< 10,000	58.46	0.8	1.8	84.2

Surprisingly, the Green Tariff Law does not specify rules for calculation of the Green Tariff for electricity generated from other renewable sources treated by the law in Ukraine as alternative, such as geothermal sources, waves and ebbs, gas of sewage stations, biogases, coal methane and exhaust gases. We expect that Ukraine's parliament will adopt rules for calculation of the Green Tariff for electricity generated from "missed" sources of energy.

We also anticipate that in the near future NERC will cancel the current detailed procedure on approval of the Green Tariff adopted pursuant to the law of September 2008 and introduce a new one, complying with the Green Tariff Law.

The Green Tariff Law promotes the quick introduction of green technologies into Ukraine's energy sector. In particular, the Green Tariff Law specifies that the Green Coefficient for electricity generated by generation facilities that use alternative sources of energy and are constructed or substantially upgraded after 2014, 2019 and 2024 decreases 10, 20 and 30 percent respectively from its default rates indicated in the table above. Regarding "substantial upgrade," the Green Tariff Law specifies it as an increase in the initial value of the facilities' generation equipment of more than 50 percent.

Fixed Minimal Green Tariff

The Green Tariff Law sets a mechanism for protection of investors from devaluation of Ukraine's currency during construction and exploitation of generation facilities based on alternative sources of energy. In particular, the law specifies that in any event the Green Tariff approved by NERC for a particular company may not be less than a fixed minimal Green Tariff.

The minimal Green Tariff is nominated in euros and equal to the Green Tariff calculated using the Basic Tariff and coefficients valid as of January 1, 2009 and the official euro/UAH exchange rate set by the National Bank of Ukraine as of January 1, 2009 (1 euro = 1085.546 UAH).

Each time the NERC approves the Green Tariff for a company, it must make sure that the Green Tariff is not less than the Minimal Green Tariff converted into UAH pursuant to the official euro/UAH exchange rate set by the National Bank of Ukraine at the date of last approval of the Basic Tariff.

Stimulation of Manufacturing and Consumption of Materials, Works and Services From Ukraine-based Companies

Through the mechanisms of the Green Tariff, Ukraine's parliament stimulates consumption of materials, works and services from Ukraine during construction of generation facilities based on alternative sources of energy. The Green Tariff Law provides that a generation company has the right to charge its customers the Green Tariff only if, starting from January 1, 2012, the share of materials, works and services from Ukraine used for construction of a generation facility based on alternative sources of energy is not less than 30 percent of its total value, and starting from January 1, 2014 – not less than 50 percent.

The Green Tariff Law does not specify the procedure for calculating of the share of materials, works and services used from Ukraine in the construction of generation facilities based on alternative sources of energy. Instead, the Green Tariff Law requires NERC to develop such a procedure within three months after the law goes into effect.

The Green Tariff Law also stimulates domestic development and manufacturing of equipment and components used for generation of energy from alternative sources by fixing a retail tariff for electricity for registered manufacturers at the level of January 1, 2009.

State Guarantees in Case of a Change in the Law

By means of a separate provision of the Green Tariff Law, the state of Ukraine guarantees companies that generate electricity from alternative sources at the constructed generation facilities will have the right to follow the Green Tariff rules valid at the date the generation facilities were put into use, even in case of further

change to the Green Tariff rules. In such a case, however, the companies may decide to follow new Green Tariff rules.

The Green Tariff Law also introduces other changes into the Law of Ukraine "On Energy Industry" that are technical in nature and thus not described in this Alert. If you have questions about the Green Tariff Law or any of the provisions, please contact your principal Squire Sanders lawyer or one of the lawyers listed in this Alert.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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