Ministry of Climate and Environment
Republic of Poland

RES
Investment Process Handbook

Ministry of Climate and Environment
Republic of Poland

The Handbook was commissioned by the Polish Ministry of Climate and Environment.

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TERMS AND ABBREVIATIONS

Terms and abbreviations	Definitions
BAT	Best available techniques – this means the best available techniques for preventing or minimising environmental emissions and impacts
BIP	Polish Public Information Bulletin
Environmental decision	The decision on project environmental conditions
ePUAP	Electronic Public Administration Service Platform
RES system	A renewable energy source system
KOWR	Polish National Agriculture Support Centre (Krajowy Ośrodek Wsparcia Rolnictwa)
KIP	Project Data Sheet
CAP	Polish Administrative Procedure Code of 14 June 1960 (Journal of Laws of 2023 item 775 as amended).
KRS	Polish National Court Register
kV	Unit of voltage – kilovolt
kW	Unit of power – kilowatt
Mg	Unit of mass – megagram
Local Spatial Development Plan	Local spatial development plan
MW	Unit of electrical and mechanical power – megawatt
DSO	Distribution system operator
PSZW	Permit for the erection or use of artificial islands, structures and equipment in Polish maritime areas
Environmental Law	Polish Environmental Protection Law of of 27 April 2001 (Journal of Laws of 2022 No. 25 item 2556 as amended)
PUUK	Permit to install and maintain cables within internal sea waters and the territorial sea
PZPPOM	The Maritime Spatial Plan of the Polish Internal Sea Waters, Territorial Sea and Exclusive Economic Zone, adopted pursuant to the Regulation of the Polish Council of Ministers of 14 April 2021 on the adoption of the Maritime Spatial Plan of the Polish Internal Sea Waters, Territorial Sea and Exclusive Economic Zone at a 1:200,000 scale (Journal of Laws item 935 as amended)
EIR	Regulation of the Polish Council of Ministers of 10 September 2019 on projects with a potentially significant environmental impact (Journal of Laws item 1839 as amended)
t	Unit of mass – tonne

TERMS AND ABBREVIATIONS

Terms and abbreviations	Definitions
MS Act	Polish Maritime Safety Act of 18 August 2011 (Journal of Laws of 2023 item 1666).
Roads Act	Polish Public Roads Act of 21 March 1985 (Journal of Laws of 2023 item 645 as amended).
PGM Act	Polish Geological and Mining Law of 9 June 2011 (Journal of Laws of 2023, item 633)
WPS Act	Polish Wind Power Station Act of 20 May 2016 (Journal of Laws of 2021 item 724 as amended)
Fertiliser Act	Polish Fertiliser and Fertilisation Act of 10 July 2007 (Journal of Laws of 2023 item 569 as amended)
MAMA Act	Polish Maritime Area and Maritime Administration Act of 21 March 1991 (Journal of Laws of 2023 item 960)
Waste Act	Polish Waste Act of 14 December 2012 (Journal of Laws of 2022 item 699 as amended)
Nature Act	Polish Nature Protection Act of 16 April 2004 (Journal of Laws of 2022 item 916 as amended)
EIA Act	Polish Act on Access to Information Concerning the Environment and Environmental Protection, Participation of the Public in Environmental Protection and on Environmental Impact Assessments of 3 October 2008 (Journal of Laws of 2023 item 1094)
RES Act	Polish Renewable Energy Sources Act of 20 February 2015 (Journal of Laws of 2023 item 1436 as amended)
Construction Law	Polish Construction Law of 7 July 1994 (Journal of Laws of 2023 item 682 as amended)
Energy Law	Polish Energy Law of 10 April 1997 (Journal of Laws of 2022 item 1385 as amended)
OWF Act	Polish Act on Promotion of Electricity Generation in Offshore Wind Farms of 17 December 2020 (Journal of Laws of 2023 item 1385 amended)
Water Law	Polish Water Law of 20 July 2017 (Journal of Laws of 2022 item 2625 as amended)
UDT	Polish Office of Technical Inspection (Urząd Dozoru Technicznego)
URE	Polish Energy Regulatory Office (Urząd Regulacji Energetyki)
UUUK	Approval for installation and maintenance of cables in the Exclusive Economic Zone
SP&M Act	Polish Spatial Planning and Management Act of 27 March 2003 (Journal of Laws of 2023 item 977)
PLN	Polish monetary unit – PLN

Foreword

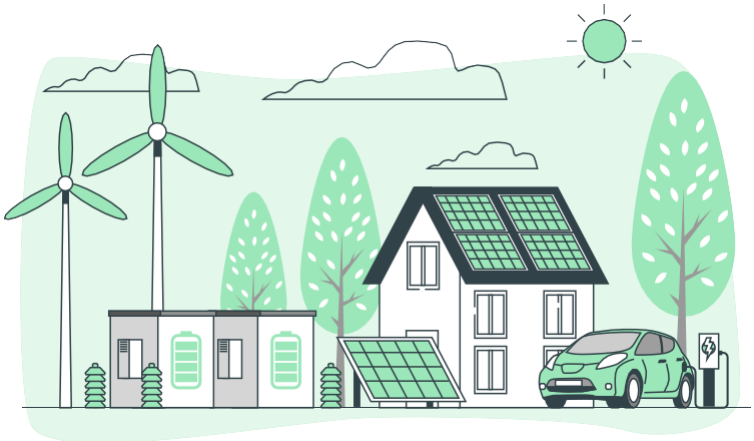
The main objective of this Handbook is to educate its readers about the investment processes for renewable energy sources (RES) and to present the related administrative procedures. The Handbook is designed as a tool to support the activity of the National Contact Point for renewable energy sources appointed by the Polish Ministry of Climate and Environment and provide meaningful information to anyone interested in investing in the RES.

The intention of the authors of the Handbook was to make it highly informative and to refrain from giving advice or from evaluating the existing regulations. The primary purpose was to ensure easy access to knowledge as well transparent and concise content for the readers. In this spirit, the layout of the Handbook offers a comprehensive overview, technology by technology, of the regulations governing the investment processes for the most important systems producing energy from renewable sources, also for small-scale heat pumps, energy storage systems, as well as highlighting information on micro-installations, prosumer settlement systems and an auction support system.

Please note that the procedures we describe represent simplified and model development processes for RES projects. Under no circumstances should they be treated as comprehensive. Additional decisions, permits, authorisations or approvals may be required in certain cases.

Nonetheless, every chapter provides the most important information on relevant procedures, such as: the requirements to be met before the start of the process, the information on how to handle a particular matter along with the related time limits, the authorities competent for specific issues and the costs and duration of particular processes.

Our hope is that this Handbook will facilitate the RES system development processes for the investors and promote and grow the "green" energy in Poland.



01. PHOTOVOLTAICS

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01. PHOTOVOLTAICS

1.1. TECHNOLOGY DESCRIPTION

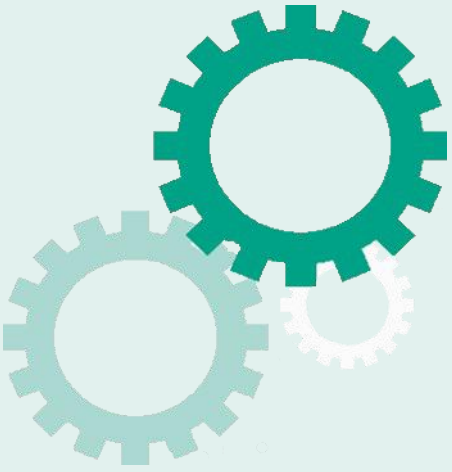
Photovoltaics is one of the most popular and cheapest technologies for producing energy from renewable sources.

Photovoltaic systems are usually installed on the ground, on rooftops, on building walls or on the water, or any other surface enabling efficient solar energy collection for electricity generation. They are becoming increasingly wide-spread as they are used both by individual energy recipients (prosumers), small and medium enterprises and by large energy companies – investors developing large-scale power plants.

The total installed capacity of photovoltaic power plants in 2025 exceeded 22 GW.[1] A characteristic trait of the Polish energy system is a multitude of photovoltaic micro-systems (with a capacity up to 50 kW). Their total capacity is approx. 12,3 GW.[2] However, photovoltaic power plants of several hundred MW are also gaining popularity. In 2023, installed capacity of photovoltaic systems, ahead of Spain and after Germany.[3]

The technology of energy production from photovoltaics involves converting sunlight into electricity using semiconductor materials with photovoltaic effects.

A photovoltaic system produces energy using solar panels which generate electricity in the form of direct current. Afterwards, inverters are used to convert the current obtained from the system to alternating current, which may be fed to the electricity grid or used to cover the current energy demand of households, enterprises or other facilities connected to the photovoltaic system.



[1] *Agencja Rynku Energii S.A. Statistical electricity information. Monthly bulletin – April 2025, p. 19.*
[2] *Agencja Rynku Energii S.A. Statistical electricity information. Monthly bulletin – June, p. 24.*
[3] *Institute for Renewable Energy, Photovoltaics market in Poland, Warsaw 2023.*

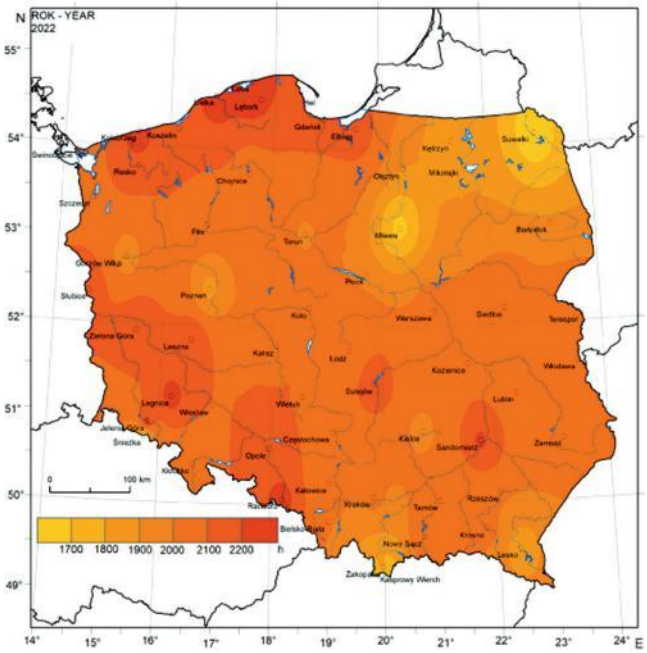
1.2. CHOOSING PROJECT LOCATION

Before the investment and construction process for a photovoltaic power plant is initiated, the potential location should be analysed. Finding an appropriate location for the power plant is the preliminary, necessary and essential prerequisite for successful completion of the subsequent administrative procedures. The most important factors to be considered at this stage include:

- site location and the natural conditions of the real property, which should be checked at the technical audit stage;
- the available connection power capacity at the planned grid connection point;
- any forms of nature conservation which may apply to the real property;
- legal title to the real property.

Natural conditions – sun exposure and other

The capacity achieved by a photovoltaic system depends on level of solar irradiance falling on the surface of the photovoltaic modules. Capacity variations depend not only on the climate conditions but also on the site where the modules are situated – the location. The choice of project location should be preceded by an analysis of solar irradiance maps. This should be followed by a technical audit of the real property in order to verify such factors, without limitation, as: ground stability, site inclination, shade on the property, air pollution or the presence of any other obstacles to construction works and subsequent operation.



A map of sunshine duration, representing the total number of hours of sunlight over a given period. source: IMGW-PIB Report: Poland's Climate 2022,| Instytut Meteorologii i Gospodarki Wodnej - Państwowy Instytut Badawczy

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Electricity grid connection capacity and access

In the process of planning the construction of a RES system to be connected to the power grid in a given location, it is essential to consider the level of available connection capacity, as it is a key factor determining the feasibility of such a connection. The absence of available capacity at the indicated location may result in the relevant power system operator issuing either a refusal to connect the installation or connection conditions that require additional investment in grid infrastructure.

This is why the value of the available connection capacity should be analysed for energy sources before the project is launched. The obligation to publish relevant information, which must be updated at least on a quarterly basis, is stipulated in Article 7(8l) of the Energy Law. Electricity companies that transmit or distribute electricity publish: the values of the total available connection capacity for sources; the planned changes to these values over the next 5 years following their publication; and the list of parties applying for source connection to an electricity grid of a rated voltage above 1 kV.[4] Due to the lack of real-time updates of the above-mentioned data, it is difficult for investors to verify the availability of free connection capacity.

[4] *The information is historical and the specified free connection capacity does not guarantee obtaining the expected connection conditions.*

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Proximity to nature conservation areas

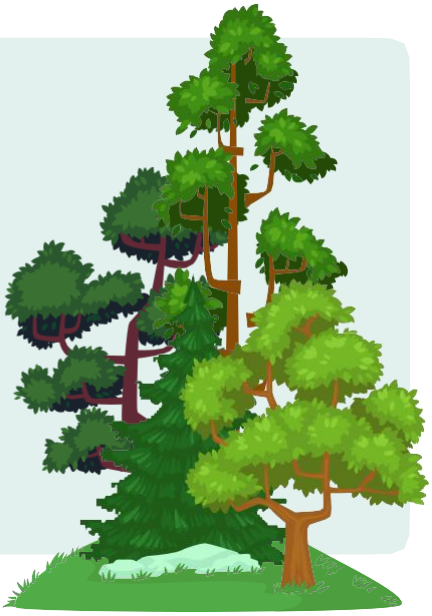
Before choosing the location for a future RES system, the investor must verify if the site is covered by any forms of nature conservation. If even a part of the planned project site is subject to nature conservation, the project may be qualified as having a potentially significant environmental impact, which entails the risk that the relevant authority may require an environmental impact report. For more details on this matter, go to section 1.3. of this chapter.

The following legal conservation forms qualify a photovoltaic system of 0.5 ha or bigger as a project with a potentially significant environmental impact:

- national parks,
- nature reserves,
- landscape parks,
- protected landscape areas,
- Natura 2000 sites,
- ecological sites,
- nature and landscape complexes.

The above restrictions also extend to the buffer zones of:

- national parks,
- nature reserves,
- landscape parks.



Legal title to the real property

The key matter preceding the commencement of administrative processes is to secure the title to the real property where the RES system is to be located. To hold a title means to have the right to use the property. Hence, the first step to be taken by an investor planning a project is to audit the legal status of the land especially to review the title register for the property.

The title that guarantees the fullest protection of the investor's interests is land ownership.

Furthermore, RES system projects often rely on lease contracts between the investor as the lessee and the property owner as the lessor. A major element of the contract is the lessor's commitment to allow the lessee to use and derive benefits from the property and the lessee's commitment to pay the agreed fee. This type of contract is used because Polish legislation does not provide for any other specifically named contract which would effectively secure the title to a real property. The agreement should provide for a sufficient term to enable construction, operation, and above all the reinstatement of the land to its original state.

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Pursuant to the Polish Civil Code, a lease contract may be either open-ended or fixed-term. From the point of view of the investor, open-ended contracts are highly risky because this kind of legal relationship could be terminated at any time with either contractual or statutory notice periods. It makes much more sense to sign a fixed-term contract for up to thirty years.

The law does not require a lease contract to have any specific form in order to be deemed valid. An ordinary written form of the contract may be recognised as sufficient to secure the title to a real property. However, an investor may find themselves at a major disadvantage if the real property is sold by the owner to a third party because if this happens, the buyer of the real property acquires the right to terminate the lease. An investor may seek protection against this risk by using a special contract form, i.e. written form with certified date (Polish: 'data pewna'). Moreover, for the investor to be able to use this protection, the contract must be a fixed-term contract and the real property must be handed over to the lessee. Another solution to reduce the risk is to disclose the rights of the lessee in the title register kept for the real property; this requires signing a written contract with signatures certified by a notary public.

A major aspect which an investor should pay attention to in the lease contract is the ownership of the photovoltaic system built on the leased land. In accord ance with the Polish Civil Code, structures erected on a real property share its legal status, which entails the risk that the ownership of the system installed on the real property will pass to the landowner. To minimise the risk, the lease contract should include a clear, unconditional provision that the photovoltaic system elements brought by the lessee are not a part of the real property but have been positioned there for temporary use and are owned exclusively by the lessee.

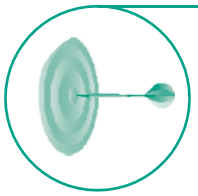
Securing the connection route

It should be emphasised that in addition to securing the title to the land property where the photovoltaic power plant is to be located, the investor must secure the title to the electricity link connecting the photovoltaic system with the grid connection point. For more details on this matter, go to section 1.5.1. of this chapter.

1.3. DECISION ON ENVIRONMENTAL CONDITIONS

In most cases, the first step in the investment and construction process for a photovoltaic plant is the decision on environmental conditions of the project (environmental decision).[5]

Purpose of the decision



The basic purpose of an environmental decision is to assess the impact of the planned project on the environment and to determine the conditions to be met by the investor in order to minimise the negative consequences for nature and human health.

In the environmental decision, the authority defines i.a. the environmental protection requirements and the conditions to be met by the investor at project implementation and operation stages. So, the purpose of the decision is to balance the needs for economic growth and the protection of the environment and human health.

When is the decision required?

The requirement to obtain an environmental decision for a photovoltaic power plant depends primarily on:

- the surface area of the planned photovoltaic power plant;
- the location of the planned photovoltaic power plant.

Photovoltaic power plants planned by the investor as systems up to 2 ha or 0,5ha of surface area, together with their associatd infrastructure, located within areas covered by forms of nature protection or within buffer zones of such protected areas as defined in the Nature Act, where the surface area is determined based on the pouter outline of panel units, are treated as projects with no (even potential) environmental impact and as such are exempt from the requirement to obtain an environmental decision. **The installation of photovoltaic systems located on the roofs and facades of buildings is also exempt from the requirement to obtain an environmental decision, regardless of the surface area they occupy.**[6]

[5] *Article 71(1) of the EIA Act*

[6] *§ 3(1)(54a) of the Regulation of the Polish Council of Ministers of 10 September 2019 on projects with a potentially significant environmental impact (Journal of Laws item 1839 as amended).*

The investor may then skip the step of applying for an environmental decision and move right to the process of obtaining the location permit.

However, if the area of photovoltaic power plants, including the associated infrastructure, exceeds 2 hectares or 0.5 hectares in the aforementioned designated areas, such projects are classified as those potentially having a significant impact on the environment and are therefore subject to the requirement of obtaining an environmental decision.

Elements of an application for the decision

The environmental decision issue process is initiated at the request of the investor. Since photovoltaic power plants above 2 ha, as well as those exceeding 0.5 ha in areas designated under forms of nature protection, are classified as projects having a potentially significant environmental impact, the application should:

- specify the applicant filing the application and their address;
- include a request for an environmental decision for a specific project.

The investor should attach the following to the application:

- a project data sheet (KIP) for a project that involves building a photovoltaic power plant or an environmental impact report in the case of project location within landscape parks or protected landscape areas;
- a copy of a cadastral map certified by a competent authority, either as a hard copy or digital, which covers the planned project site and the area on which the project, in the variant proposed by the applicant, will have an impact. This impact area is understood as:
  a) the planned project implementation site and the area up to 100 m form the boundaries of that site;
  b) the plots on which the environmental quality standards would be breached as a result of the implementation, operation or use of the project,
  or
  c) the plots within the range of a significant project impact which may result in restrictions on the currently intended development of the real property;
- a map, in paper and electronic form, at a sufficient scale to guarantee the legibility of the presented data, outlining the site where the project is expected to be implemented and outlining the expected project area within 100 m from the boundaries of the site;

- extract and excerpt from the Local Spatial Development Plan, if it is required, or an annotation that there is no Local Spatial Development Plan (if the competent authority to take the decision is the Regional Director for Environmental Protection);
- an extract from the register of land or any other paper or digital document issued by the authority keeping the register of land and buildings which makes it possible to establish the parties to the procedure and which specifies at least the reference number of the plot and, if disclosed, the title register number for the plot, the first and last name or the business name and the address of the registered party – for the expected project site and for the project impact area (it is not required to be attached if the number of pages in the environmental decision issuance proceedings exceeds 10);
- proof of stamp duty payment;
- for applications filed by authorised representatives – the authorisation and the receipt for the stamp duty for the authorisation.

Even if the investor files a KIP, the authority may still require the investor to carry out an environmental impact assessment in the course of the procedure, which entails the requirement for the investor to prepare an environmental impact report. The report requires an investor to conduct in-depth research of the environmental conditions of project implementation.

USEFUL NOTE

The process

Once the application is filed, the authority reviews it to establish if the photovoltaic power plant project can be implemented in accordance with the regulations of the environmental protection law and it formulates the necessary opinions/requirements in this respect.

During the procedure, the authority may obligate the party to prepare an environmental impact report; if this happens, the authority should define the scope of the report to be filed by the applicant. If a project is located within landscape parks or protected areas, the applicant may submit a request to define the scope of the report independently.

According to the EIA Act, the report must include the information necessary to evaluate the following environmental impact criteria:

- impact of the project on the environment and the population, including human health and living conditions, physical property, historical monuments, landscape, including cultural landscape, interaction between them, access to mineral deposits;

- risk of major failures, natural disasters and construction accidents;
- the options and ways of preventing and reducing negative environmental impacts;
- the required scope of monitoring.

Furthermore, a project environmental impact report should:

- describe the planned project, especially by presenting:
  a) a description of the whole project and the site use conditions at the implementation and operation or use stages, also addressing areas at a special risk of flood within the meaning of Article 16(34) of the Water Law;
  b) the main characteristics of the production processes;
  c) the expected types and quantities of emissions, including waste, arising from the project implementation and operation or use stages;
  d) information on the biological diversity, utilisation of natural resources, including soil, water and earth surface;
  e) information on the demand for and consumption of energy;
  f) information on demolition works for projects having a potentially significant environmental impact;
  g) a risk – assessed based on scientific knowledge – of major failures, natural disasters and construction accidents, taking into consideration the substances used and the technologies applied, including the risk related to climate change;
- describe the elements of the natural environment covered by the expected environmental impact of the planned project, including:
  a) elements of the environment covered by conservation under the Nature Act and the wildlife corridors within the meaning of this Act;
  b) the hydromorphological, physicochemical, biological and chemical properties of waters;
- present the results of a biological inventory, if any, which means a set of field studies undertaken to describe the elements of the natural environment, along with a description of the methodology; the biological inventory results along with methodology description are attached to the report;

- present other data underlying the description of natural environment elements;
- describe any historical monuments under conservation pursuant to monument conservation and care regulations which may be situated in the vicinity of or within the impact range of the project;
- describe the landscape where the project is to be located;
- present the information on ties to other projects, especially on cumulative impacts of any continuing, completed or planned projects which have an environmental decision and which are located within the planned site of the project in question and within the project impact range or which have impacts within the project impact range;
- describe the consequences expected for the environment if the project is abandoned; the description must include the available environmental information and scientific knowledge;
- describe the variants taking into account the special characteristics of the project or its impact, including an indication of the selected implementation variant, a reasonable alternative variant and a reasonable variant most beneficial to the environment (the reasonable environmentally preferred variant may be identical to the selected implementation variant or the reasonable alternative variant);
- describe the expected impact of the analysed variants on the environment (also in the case of a serious industrial accident, natural disaster or construction accident), on the climate (including greenhouse gas emissions and impacts important from the perspective of adapting to climate changes), as well as the possible cross-border environmental impact;
- compare the impacts of the analysed variants on:
  a) people, plants, animals, fungi, natural habitats, water and air;
  b) the earth surface (taking into account soil mass movements) and the landscape;
  c) physical property;
  d) historical monuments and cultural landscape covered by the existing documentation, especially entered in the register of historical monuments;
  e) the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites;
  f) the elements listed in Article 68(2)(2)(b) of the EIA Act, if they have been included in the environmental impact assessment report or if they are required by the competent authority;
  g) mutual interactions between the elements listed in items (a) through (f) above;

- justify the variant proposed by the applicant, taking into account the information regarding the determination of the expected environmental impact of the analysed variants and the comparison of their impacts mentioned above;
- describe the forecasting methods used by the applicant and the expected significant environmental impacts of the planned project, including direct, indirect, secondary, cumulative, short-, medium- and long-term, permanent and temporary environmental impacts from:
  a) the existence of the project,
  b) the utilisation of natural resources,
  c) emissions;
- describe the anticipated actions to avoid, prevent, limit or offset any negative environmental impacts, especially impacts on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites, along with the assessment of their effectiveness at the stages of project implementation, operation, use or shutdown;
- address the environmental objectives arising from strategic documents important from the perspective of project implementation;
- present the issues in a graphic version;
- include a cartographic presentation of the issues at a scale as required by the subject matter and level of detail of the issues analysed in the report for comprehensive presentation of the completed environmental impact analyses;
- analyse the possible social conflicts related to the planned project;
- present the proposed monitoring of project environmental impacts at the project implementation and operation or use stages, especially the impact on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and on the continuity of the wildlife corridors that connect those sites, and present the information on the results of other monitoring which may be relevant for establishing the responsibilities in this respect;
- specify any difficulties resulting from technological shortcomings or gaps in the state of the art which were encountered during report preparation works;
- summarise the information included in the report using non-specialist language by addressing every element of the report;
- specify the report date, the first name, last name and signature of the author or, if the report was prepared by a team of authors, specify the first name, last name and signature of the team leader and the first names, last names and signatures of the team members;

- contain, as an appendix to the report, a statement of the author or, if the report was prepared by a team of authors, a statement of the team leader, on compliance with the requirements laid down in Article 74a(2) of the EIA Act;
- provide the sources of the information underlying the report.

Subsequently, the report is analysed by the authority in terms of the criteria established for the applicant and is consulted with competent institutions. Then the authority may issue the environmental decision.

It should be noted that, pursuant to Article 63 (5-6) of the EIA Act, the authority responsible for issuing the environmental decision shall suspend the proceedings for the period necessary to prepare the environmental impact report. The investor is granted a maximum of 3 years to submit the report. If the report is not submitted within this timeframe, the request for initiating the proceedings shall be deemed withdrawn.

Please note that the authority may also issue a decision stating there is no need for producing an environmental impact report and it may proceed to issue the environmental decision.

A refusal to issue the environmental decision is not discretionary as the authority may only refuse to grant the approval in specific, statutory cases, i.e. if:

- the location of the photovoltaic power plant is incompatible with the Local Spatial Development Plan, if any;
- a cooperating authority refuses to approve the implementation conditions for the RES project;
- the environmental impact assessment for the project suggests that the project cannot be implemented in the variant proposed by the applicant and the applicant rejects the project variant suggested by the authority;
- the environmental impact assessment for the project suggests that the project may have a significant negative impact on a Natura 2000 site unless the conditions specified in Article 34 of the Nature Act apply;
- the environmental impact assessment for the project suggests that the project adversely affects the possibility of attaining the environmental objectives referred to in Article 56, Article 57, Article 59 and Article 61 of the Water Law.

01. PHOTOVOLTAICS

Duration of the process

The completion of the proceedings in the form of issuing an environmental decision (for instance in relation to a photovoltaic installation) should, in accordance with administrative procedure take place within one month. However, in practice this timeframe is rarely met, as it does not reflect the complexity and specific nature of the proceedings, which in most cases extend over several months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals, opinions or public participation in the proceedings or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the decision

The authority competent for issuing the decision is in the principle the commune (Polish: gmina) authority, i.e. either the commune administrator (Polish: wójt) or the mayor. In the process, the competent authority seeks the opinions of the cooperating authorities, i.e. the Regional Director for Environmental Protection (RDOŚ), authorities of the Polish State Sanitary Inspectorate (Państwowa Inspekcja Sanitarna) (in accordance with the division specified in Article 78 of the EIA Act), the authority competent for the assessments required under the water legislation and the head of the Maritime Office – only for offshore projects. Where EIA is required, the competent Regional Director for Environmental Protection has a decisive influence on the conduct and outcome of the proceedings.

Decision validity period

An environmental decision can be used at subsequent stages of the investment process for 6 years after it becomes final and binding. However, the validity of the decision can be extended to 10 years if, before the expiry of the 6 years, the environmental decision applicant or the entity to whom the decision was transferred receives a statement from the issuing authority of the original environmental decision that the project implementation conditions defined in the environmental decision remain valid.

What is the fee for the decision?

The stamp duty for an environmental decision is PLN 205 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

01. PHOTOVOLTAICS

How to appeal?

After receiving the decision, the applicant has 14 days to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze). Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be submitted online?

The application for an environmental decision can be submitted online via ePUAP, however, certain attachments to the application must be provided in hard copy.

1.4. PLANNING

As part of the subsection on spatial planning, the legal foundations enabling the siting of photovoltaic power plants will be discussed. In the Polish legal environment, the most important role is played by Local Spatial Development Plan and in areas not covered by these plans, during the transitional period following the entry into force of the spatial planning reform (Act of 7 July 2023 amending the SP&M Act and certain other acts – Journal of Laws 2023, item 1688, subsequently amended by the Act of 4 April 2025 amending the SP&M Act and certain other acts – Journal of Laws 2025, item 527) – decisions on building conditions. An additional solution introduced by the reform is Integrated Investment Plans, which are discussed later in the chapter.

1.4.1. Local Spatial Development Plan

Local Spatial Development Plan is the fundamental planning document used to determine the location of photovoltaic power plants. Therefore, when initiating the investment and construction process, it is necessary to verify whether the investment area is covered by a Local Spatial Development Plan.

If there is no Local Spatial Development Plan for the given area, it is necessary to obtain a Decision on Land Development Conditions. Only compliance with the investment with the provisions of the Local Spatial Development Plan or with the Decision on Land Development Conditions determines the possibility of implementing the investment in a given location. This stage precedes the issuance of a construction permit.

Rules of locating photovoltaic power plants based on the Local Spatial Development Plan

According to the currently binding version of the SP&M Act, if the investment area is covered by a Local Spatial Development Plan adopted on the basis of a general plan, then the location of a photovoltaic power plant is permissible exclusively under the provisions of the Local Spatial Development Plan, in the following cases:

- photovoltaic power plants located on agricultural land of classes I–III and forest land;
- photovoltaic power plants located on class IV agricultural land with an installed capacity exceeding 150 kW or used for business activity in the field of electricity generation;
- photovoltaic power plants with an installed capacity exceeding 1000 kW, regardless of the type of land. (In the case of photovoltaic power plants with a lower capacity, except those located on the types of land mentioned above, the investment and construction process

may be carried out on the basis of a Decision on Land Development Conditions, even if there is no binding Local Spatial Development Plan for the area or if the land use designation does not explicitly allow for the construction of a photovoltaic installation)[7].

An important change also concerns the construction of photovoltaic power plants on rooftops. A Local Spatial Development Plan that allows for the location of buildings will also permit the installation of photovoltaic power plants mounted on buildings, regardless of their capacity and even if the land is designated for purposes other than industrial use — unless the provisions of the Local Spatial Development Plan explicitly prohibit such installations.

The location of renewable energy sources (RES) under Local Spatial Development Plans adopted during the transitional period (i.e., not based on a general plan) requires that the local plan explicitly includes provisions for the location of RES installations. An exception to this rule applies to installations mounted on the rooftops of existing buildings.

Rules for Locating Photovoltaic Power Plants Based on Local Spatial Development Plans Adopted Between October 30, 2021, and September 24, 2023. [8]

According to the version of the SP&M Act in force during that period, if the investment area is covered by a Local Spatial Development Plan, the admissibility of locating photovoltaic power plants is as follows:

- Photovoltaic power plants with a capacity exceeding 500 kW may only be located in areas explicitly designated for such development in the municipality's Study of Local Determinants and Directions in Spatial Development. In practice, this means that if the Local Spatial Development Plan does not provide for the area to be used for photovoltaic systems, the building authority may refuse to issue a construction permit.
- Photovoltaic power plants with a capacity not exceeding 1000 kW, located on agricultural land classified as classes V, VI, VIz or on wasteland, may be established even in areas not explicitly designated for photovoltaic development in the municipality's spatial development study—regardless of the content of the Local Spatial Development Plan.
- Photovoltaic installations other than ground-mounted systems (including, for example, rooftop installations) may also be located in areas not explicitly designated for photovoltaic development in the municipality's spatial development study—again, regardless of the Local Spatial Development Plan provisions.

Proceedings initiated and not concluded before September 24, 2023, are subject to the previous provisions of the SP&M Act, including Article 10(2a).

In the case of Local Spatial Development Plans adopted before October 30, 2021, the rules for locating photovoltaic power plants differ as follows:

- If the Local Spatial Development Plan was adopted after September 25, 2010, the location of a photovoltaic power plant with a capacity exceeding 100 kW is permitted only if the plan explicitly provides for the installation of such a facility.
- For Local Spatial Development Plans adopted before September 25, 2010, the location of photovoltaic power plants is also permitted on properties that are not explicitly designated for the construction of renewable energy installations, regardless of their capacity.

[7] *Article 10(2a) of the SP&M Act*
[8] *Information notice of the President of the URE no. 8/2023*

01. PHOTOVOLTAICS

Please note that interpretation of the SP&M Act, especially in terms of Local Spatial Development Plans established before 30 October 2021, is approached by the judicature inconsistently and as such it requires a case-by-case legal assessment to account for the specificities of a particular Local Spatial Development Plan.

Amendment of a Local Spatial Development Plan

If the project site is covered by a Local Spatial Development Plan which does not permit the planned RES system, or there is no zoning plan in place and the investment can only be carried out based on such plan, the investor has the right to apply for amendment or adoption of the Local Spatial Development Plan.

An application for amendment of a Local Spatial Development Plan must be filed to the commune administrator (Polish: wójt) or to the mayor or to the city president and must be recorded in the register of applications for the establishment or amendment of Local Spatial Development Plans. The authority then evaluates whether the application is consistent with the currently applicable general plan and examines the justification provided.

The municipal general plan is a new planning instrument that must be adopted for the entire municipality (excluding restricted areas). It holds the status of local law and is intended to eventually replace the Study of Local Determinants and Directions in Spatial Development.The provisions of the general plan will be binding both for Local Spatial Development Plans and for zoning conditions.

If an application to amend or adopt a Local Spatial Development Plan is not consistent with the general plan, the investor must first request a change to the general plan. Only after that can they apply for the amendment or adoption of the Local Spatial Development Plan. If the local authority supports the application, it may submit it to the municipal council, which then adopts a resolution to begin the process of preparing the Local Spatial Development Plan.

Pursuant to Article 58 of the amendment to the SP&M Act, until municipalities adopt general plans (no later than June 30, 2026, the deadline resulting from the amendment to the SP&M Act, by which municipalities are obliged to adopt general plans), the inclusion of RES in the adopted Local Spatial Development Plan does not have to be consistent with the Study.

An application to amend a Local Spatial Development Plan is merely a proposal. The law does not specify any procedures or deadlines for its consideration. **There is no right to appeal the decision regarding the application.** Therefore, it should be noted that the process of amending or adopting a Local Spatial Development Plan may be lengthy and does not guarantee the success of the venture.

A facilitation related to the installation of RES, introduced by the amendment to the SP&M Act, **is the possibility of adopting or amending local spatial development plans through a simplified procedure** (Article 27b(1)(1) of the Act). This procedure may be applied if the adoption/amendment of the local plan concerns exclusively the location of RES systems other than wind farms. The simplified procedure allows for the omission of certain obligations and the shortening of deadlines for selected actions.

It is worth noting that the amendment to the SP&M Act also introduces a special form of Local Spatial Development Plan that may be used by investors in cases where no local plan exists or where the existing plan would require amendment — **the Integrated Investment Plan (ZPI)**. ZPI will be adopted by the municipal council upon the investor's request submitted via the mayor,

town mayor, or city president. ZPI is intended to cover the area of the main investment (e.g. RES or residential development) as well as a complementary investment (e.g. a public road, public green space, or public utility facilities). Once the ZPI comes into force, it will invalidate any existing local plans or parts of such plans that apply to the area covered by the ZPI.

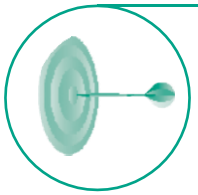
Importantly, if the ZPI concerns exclusively the location of RES installations other than wind power plants and does not pertain to the conditions specifically defined in Article 27b (2) of the SP&M Act, the procedure for adopting the ZPI will be simplified (Article 2b (1)(1) of the SP&M Act).

Further details regarding the procedure for adopting a ZPI, as well as the simplified procedure for adopting a Local Spatial Development Plan for certain RES installations (Article 27b(1)(1) of the SP&M Act), can be found on the **NCP-RES** website.

Confirmation of project compliance with the Local Spatial Development Plan

An investor may obtain a certificate confirming that the planned project complies with the Local Spatial Development Plan.

The purpose of the confirmation



The purpose of the confirmation is to verify if the planned project will comply with the Local Spatial Development Plan.

When is the confirmation required?

Obtaining the confirmation is not mandatory; this is just to confirm that the planned project complies with the Local Spatial Development Plan.

USEFUL NOTE

The local community of the commune also contributes to the final structure of the Local Spatial Development Plan through public consultations carried out in the process of drafting the final text of the Local Spatial Development Plan.

Comments from the community may actually influence the location of particular sites on the plan including sites intended for the construction of photovoltaic power plants

Elements of a confirmation application

An application for a certificate confirming project compliance should also include:

- proof of payment of the stamp duty for the application;
- authorisation, if the application is submitted by an authorised representative;
- proof of payment of the stamp duty for the authorisation if the application is submitted by an authorised representative

01. PHOTOVOLTAICS

The process

Project compliance with the Local Spatial Development Plan is confirmed by a certificate issued by the locally competent commune administrator, mayor or city president upon the investor's request.

Obtaining the certificate is not mandatory and its content is not binding upon the construction authorities at the stage of applying for the construction permit.

Duration of the process

Up to 7 days following the filing of the application.

Authority competent for the confirmation

The commune administrator or mayor having jurisdiction over the project site.

Confirmation validity period

The certificate is open-ended, but it expires if the Local Spatial Development Plan is amended.

What is the fee for the certificate?

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

An applicant who was denied a certificate has 7 days to appeal to the Local Appeal Body.

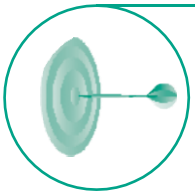
Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

1.4.2. Decision on Land Development Conditions

Decision on Land Development Conditions, in the transitional period after the entry into force of the spatial planning reform (valid until June 30, 2026 or until the municipality adopts the general plan), is still the most frequently traded document on the basis of which photovoltaic power plants are located. On sites that are not covered by a Local Spatial Development Plan, the Decision on Land Development Conditions is the basis for locating a project and a prerequisite for applying for a construction permit.[9]

Purpose of a Decision on Land Development Conditions



The main purpose of a Decision on Land Development Conditions is to establish the construction and land development conditions related to a photovoltaic power plant which are necessary to integrate the investment with the local spatial development.

When is a Decision on Land Development Conditions required?

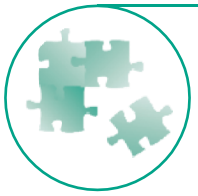
In a typical course of the investment and construction process, a Decision on Land Development Conditions is usually obtained after the investor receives the environmental decision (if required) but before the application for grid connection conditions is filed. It is obtained only if the project site is not covered by a Local Spatial Development Plan.

No Decision on Land Development Conditions can be obtained for a photovoltaic power plant if the real property consists of class I to III agricultural land (in such a case, a Local Spatial Development Plan must be established and the minister in charge of rural development must grant permission to use the real property for non-farming purposes).

[9] *Article 59(1) of the SP&M Act*

01. PHOTOVOLTAICS

Elements of a Decision on Land Development Conditions application



The process of issuing a Decision on Land Development Conditions is initiated by an application of the investor. The application shall:

- specify the person filing the application and their address;
- contain the request for a Decision on Land Development Conditions for a specific project.

Furthermore, the investor should attach the following:

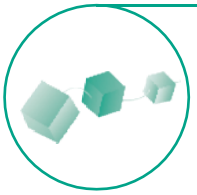
- a base map or, if there is none, a cadastral map from the national survey and cartographic resource for the site to which the application pertains and for the project impact area, at a 1:500 or 1:1000 scale, either in an electronic format – in the applicable National Spatial Reference System – or as a hard copy;
- outline of the boundaries of the site covered by the application;
- investment characteristics, including:
  a) the demand for water and energy; the wastewater discharge or treatment methods; other technical infrastructure needs and, where necessary, waste neutralisation methods;
  b) the planned land development and a description of building structures and land development, including the intended purpose and dimensions of the proposed building structures and the land surface to be transformed, presented in the form of text and visual materials;
  c) the characteristic technical parameters of the project and the data characterising the environmental impact of the project;
- a copy of the environmental decision;
- proof of stamp duty payment;
- authorisation, if the application is submitted by an authorised representative.

Anyone can apply for a Decision on Land Development Conditions, regardless of their title to the property.

Importantly, more than one decision can be issued, provided that they are issued for different applicants.

01. PHOTOVOLTAICS

The process



Once the application for a Decision on Land Development Conditions is filed, the authority analyses the actual condition and legal status of the site where the project is to be implemented and it sends inquiries to the cooperating authorities about site development and construction conditions which arise from separate regulations.

For a Decision on Land Development Conditions to be issued, the following conditions must be met:

- the existing or planned service infrastructure on the site is sufficient for the construction project;
- the site does not require a permission to change the designated purpose of agricultural and forest land to non-agricultural and non-forestry purposes or it is covered by a permission obtained during the establishment of Local Spatial Development Plans which expired based on Article 67 of the SP&M Act referred to in Article 88(1) of the SP&M Act;
- the decision complies with other regulations;
- the construction project is not situated within:
  a) an area covered by the restriction referred to in Article 22(2)(1) of the STG Act introduced by a decision establishing the location of a strategic transmission system project, the decision as specified in Article 5(1) of the same Act;
  b) the control zone established on both sides of a gas pipeline;
  c) the security zone established on both sides of a pipeline.

It must be noted that with regard to an RES system, the legislator has waived the "good neighbours" principle, which used to entail the obligation to demonstrate that a project would follow the existing building pattern. The requirement to secure access to a public road was also waived.

A construction permit must be preceded by a Decision on Land Development Conditions.

Duration of the process

Up to 90 days from the date of submission of the application

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

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Authority competent for the Decision on Land Development Conditions

The authority competent for issuing the decision is the commune (Polish: gmina) authority, i.e. either the commune administrator (Polish: wójt) or the mayor. There is an exception that applies to Decision on Land Development Conditionss regarding restricted areas. For such areas, the Decision on Land Development Conditions is issued by the competent voivode (Polish: wojewoda).

Decision on Land Development Conditions validity period

A Decision on Land Development Conditions during the transitional period (after the amendment to the SP&M Act comes into force, that is no later than by the end of 2025 or until the municipality adopts a general plan) shall remain valid indefinitely.

What is the fee for the Decision on Land Development Conditions?

The stamp duty for a Decision on Land Development Conditions is PLN 598 (unless the application is filed by the owner of the real property, an organisation pursuing an activity of public interest, a budgetary unit or a local government unit – in such a case, the application is exempt from the fee) and it is required at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving a decision issued by a commune administrator or mayor, the applicant has within 14 days from the date the decision is delivered, including delivery by public notice, to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze).

After receiving a decision issued by the voivode, the applicant has within 14 days from the date the decision is delivered, including delivery by public notice, to appeal against the decision to the Minister of Development and Technology.

Subsequently, it is possible to lodge a complaint with the Voivodeship Administrative Court and the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

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Legislative changes resulting from the amendment to the SP&M Act

The Act of 7 July 2023 amending the Spatial Planning and Management Act and Some Other Acts (as subsequently amended by the Act of 4 April 2025 amending the Spatial Planning and Management Act and some other acts) introduces the following changes:

- the validity period of a Decision on Land Development Conditions is limited to five years – for permissions issued from 1 January 2026 (any permissions issued before that are open-ended);
- to require compliance of the Decision on Land Development Conditions with the general plan of the commune (the view prevailing until now was that a Decision on Land Development Conditions does not have to be consistent with the Study of Local Determinants and Directions in Spatial Development as the requirement applies only to Local Spatial Development Plans).

It is important to note that, starting from the adoption of the general plans or from July 1, 2026, the possibility of locating RES installations based on Decision on Land Development Conditions will be significantly restricted

1.5. CONNECTION TO THE ELECTRICITY GRID

Securing a connection to the electricity grid is the stage of the investment and construction process which either precedes the construction permit acquisition stage or is carried out in parallel with it. It applies to a vast majority of photovoltaic power plants, with the exception of off-grid systems, i.e. ones that function outside the national electricity system. In the current legal environment, connection to the grid is a prerequisite for the sale and supply of electricity from photovoltaic power plants to the recipients as well as for the use of installations intended solely for self-consumption (e.g. a production facility connected to the grid).

Ensuring a grid connection is an investment and construction process stage consisting of the following steps:

- the investor obtains the grid connection conditions;
- the connection agreement is signed;
- the electricity distribution agreement is signed.

1.5.1. Electricity grid connection conditions

The grid connection conditions are a document issued by the distribution system operator or the transmission system operator to define the technical details of connecting a photovoltaic power plant and they obligate the operator to sign a project grid connection agreement with the investor. The connection conditions "temporarily book the grid space" for a specific photovoltaic project.[10]

If the generator does not sign a connection agreement within 24 months, the connection conditions expire and they do not obligate the grid operator to sign the connection agreement.

Elements of an application for grid connection conditions

An application for grid connection conditions is submitted to the distribution system operator or to the transmission system operator that owns the grid to which the investor intends to connect the system.

The application typically consists of the following elements:

- details of the person filing the application and their address;
- a statement of the request, i.e., the issuance of grid connection conditions for a specific photovoltaic power plant project.

[10] *Article 7(3a) of the Energy Law*

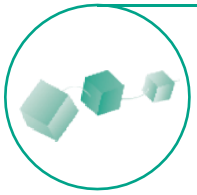
- the maximum annual capacity of the produced electricity and the quantity of electricity fed to the grid;
- the installed capacity, generation capacity, available capacity, apparent power of generators and the maximum capacity referred to in Article 2(16) of Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators;
- the range of the permissible changes to the loads of the generators or their groups;
- the number of the energy generation modules to be connected;
- the size of the planned demand for capacity and electricity to cover the generator's own needs;
- the degree of compensation of the reactive power linked to the receipt electric power for the electricity generator's internal needs;
- the degree of compensation of the reactive power linked to the feeding of the generated electricity to the grid;
- the number of photovoltaic panels and inverters of the photovoltaic power plant;
- the types of photovoltaic panels and inverters;
- the anticipated values of the electric parameters of the grid and the transformers forming a part of the photovoltaic power plant system and devices;
- the minimum import capacity to guarantee the safety of people and property based on Article 11(6) of the Energy Law if electricity supply and consumption restrictions are imposed;
- the technical information regarding the interferences caused by the devices, systems and grids of the applicant and the characteristics of the loads as required to determine the connection conditions for entities from connection groups I to IV.

The investor should also attach the following:

- an extract and excerpt from the Local Spatial Development Plan or, if there is none, the Decision on Land Development Conditions for the real property specified in the application;
- a document confirming the investor's title to use the real property where the photovoltaic power plant specified in the application is to be located;
- the development plan on a land survey and height map to show the positioning of the facility to be connected in relation to the existing grid;
- the technical design of the PV installation prepared by a qualified professional.

- certification confirming the technical parameters and the operational and maintenance characteristics of the devices, systems or grids to be connected, including the data sheets of the photovoltaic cells and DC/AC inverters and the NC RfG certificate for DC/AC inverters;
- a single-line electrical diagram of the devices, systems or grids to be connected along with their description.
- a declaration regarding the periodic inspection of the technical condition of the PV installation, in accordance with the requirements of the relevant Distribution System Operator;

The process



Once the investor files an application for grid connection conditions, the operator analyses the technical and economic possibilities of connecting the generating facility. Technical reasons are usually associated with the availability of connection capacity in the local grid – the operator checks if it is possible to safely supply power through the grid even in the case of extreme loads.

For photovoltaic power plants above 2 MW, the operator is required to request expert opinions regarding the impact on the electric power system.

In terms of economic criteria, the operator analyses if it has the funds to develop the grid to the extent required to connect the photovoltaic power plant.

Duration of the process

The grid connection conditions application processing time for photovoltaic power plants is:

- up to 120 days after the application filing date for applicants from connection group III or VI – where the facility is to be connected to a grid above 1 kV and has an energy source or energy storage;
- up to 150 days after the application filing date for applicants from connection group I or II;
- up to 45 days after the application by an entity seeking to connect a photovoltaic installation with a total installed capacity not exceeding 2 MW, installed on a building and equipped or not equipped with an energy storage system, to the electricity distribution network[11] ;

[11] *Article 7(8g) of the Energy Law*

Please note that if the operator refuses to issue the grid connection conditions, the Energy Law creates the terms and conditions for the relations between the operator and the investor.

If the operator refuses to connect the facility because of:

- lack of the technical conditions for the connection due to insufficient grid transmission capacity at the time proposed by the applicant, the energy company will set a planned timeframe and outline the conditions for the necessary grid development or upgrade, indicating when the connection can be made;
- lack of economic possibilities – the energy company may sign a grid connection agreement establishing a connection fee in an amount agreed with the grid connection applicant;
- lack of both technical and economic conditions – the grid sections to be used to connect the system owned by the grid connection applicant may be built and developed by the grid connection applicant in coordination with the energy company.

Grid connection conditions validity period

Grid connection conditions are valid for 2 years after their delivery date.

During the validity period, the grid connection conditions represent a conditional commitment of the electricity transmission or distribution company to enter into a connection agreement.

What is the fee for grid connection conditions?

Not later than 14 days after filing the application to the operator, the investor must pay the advance for the grid connection conditions, which is PLN 30 gross for every kW of the connection capacity requested by the investor (for networks with voltage level exceeding 1kV).

The advance must not be higher than PLN 3,000,000. If the operator refuses to issue the grid connection conditions, the advance is returned to the account of the investor. If the grid connection conditions are issued, the advance is credited against the connection fee.[12]

Once the connection agreement is signed, the investor is required to cover 50% of the total connection investment costs for renewable energy installations with a capacity of up to 5 MW, except for prosumer installations. For installations with a capacity greater than 5 MW, the investor must cover the full cost of the connection investment.

[12] *Please note that some operators follow a practice of collecting the advance for grid connection conditions only after they obtain a reasonable confirmation that it is possible to connect the generating facility.*

How to appeal?

An investor whose application for grid connection conditions has been rejected may file a complaint to the President of the URE based on Article 8 of the Energy Law. Decisions of the President of the Energy Regulatory Office may, in turn, be appealed to the Warsaw Regional Court – Competition and Consumers Protection Division, pursuant to Article 30(2) of the Energy Law.

Can the application be filed online?

Most operators allow the submission of an application for connection conditions electronically, using specially provided online application forms.

1.5.2. Connection agreement to electricity grid

The connection agreement serves as the ground for connecting a photovoltaic power plant to the electricity grid. It is a contract signed between the distribution system operator or the transmission system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the grid connection conditions.

In order to complete this task, both parties undertake to perform the works necessary to connect the generation source to the distribution network. Any requirements related to the reconstruction or replacement of network components shall be carried out in accordance with the provisions specified in the connection conditions.

The RES systems are privileged in terms of grid access. As long as there are technical and economic possibilities for that, the grid operator is obligated to sign a connection agreement first with an RES facility. Another sign of the legislator's preferential treatment of RES systems in terms of grid connection is the reduction of the connection fee for the RES sources to only a half of the actual connection costs incurred by the operator.

Deadline for the obligations under the connection agreement to power grid

For grid connection agreements regarding photovoltaic power plants, the time limit for the first supply of energy from the connected generation source should not be longer than 48 months. Failure to introduce electricity for the first time within the specified deadline may result in the termination of the connection agreement in accordance with the provisions of the Energy Law.

Securing the connection route

One of the most important elements of the connection agreement is identification of the grid connection point, i.e. the point where the electricity generated by the photovoltaic power plant will be fed to the distribution or transmission grid.

If the grid connection point is situated outside the investor's land (most cases), the investor is responsible for building a link between the photovoltaic power plant and the grid connection point. In such a case, it is necessary to secure the titles to the real properties situated on the route of the electric power link.

How the titles to the real properties situated along the cable route should be secured depends on whether the link is to run across plots consisting of a road (whether or not having the status of a public road) or across privately owned properties.

Private property

The most common way to secure the legal right to use a private property across which a cable route is expected to run is utility easement. This solution authorises the owner of transmission facilities – the photovoltaic system project investor who intends to build, or has already built, transmission facilities – to use a real property to the extent required to install, and to subsequently use, transmission facilities on the property. Utility easement is a limited real right effective with regard to each successive owner of the real property across which the transmission facilities are to run. It is established in a notary deed and it is disclosed in the title register. It can be either fee-based or free of charge in accordance with the provisions of the Civil Code.

Real property with a public road status

For properties with a public road status the title to use the property is governed by the Roads Act – especially by Article 39 and Article 40 of the Roads Act. Securing the legal right to use a real property with a public road status is a multistep process. The first step is to obtain a decision issued under Article 39(3) and Article 39(3a) of the Roads Act by the road administrator to authorise to location of building structures or facilities within the roadway which are not related to road management needs or road traffic needs.

This step is followed by a decision issued under Article 40(1) and Article 40(2) of the Roads Act, which permits occupying the roadway space in order to perform construction works and install technical infrastructure facilities within the roadway which are not related to road management needs or road traffic needs. The decision permitting the occupation of the roadway for the purpose of performing the works is issued for up to ten plus days and it authorises the holder to physically enter the property in order to perform construction works.

The decision which permits installing facilities within the roadway is issued for a period of a few to a few dozen years and it grants the holder a legal right to install the facilities. Importantly, there are fees charged for both the occupation of the roadway and the installation of technical infrastructure facilities in the roadway. In the former case, it is a one-off fee and in the latter case, it is an annual fee.

Road property without a public road status

In the case of internal commune roads without a public road status, there is no single systematised procedure for securing the cable routing. Usually, communes issue informal permits for this purpose, which do not have the status of administrative decisions, where they authorise the installation of the facilities – this is equivalent to a decision issued under Article 39(3) and Article 39(3a) of the Roads Act. Subsequently, they sign an agreement with the investor whereunder the real property is provided for use in return for an annual fee – this is equivalent to a decision issued under Article 40(1) and Article 40(2) of the Roads Act.

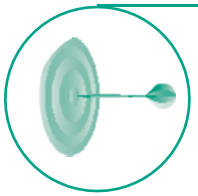
Another possibility of securing the right to the land property is the already mentioned utility easement.

The above-mentioned titles securing the cable routing are not the only available legal options. There are also lease agreements or unnamed contracts which are structured similarly to a lease agreement. Unfortunately the rights they grant to the real properties are not as lasting as the ones described above.

1.6. CONSTRUCTION PERMIT

Construction permit is the element of the investment process which is the starting point for the construction of a photovoltaic power plant. Without this permit, an investor cannot commence construction works or, subsequently, operate the plant.[13]

Purpose of the permit



A construction permit verifies if the planned project complies with the law and respects the interests of the parties whose rights it is not allowed to violate. From the investor's perspective, the main purpose of obtaining a construction permit is to start the construction works to build a photovoltaic power plant. A construction permit defines the rights and responsibilities of the investor related to project implementation.

Pursuant to Article 3(7) of the Construction Law, construction works are understood as alteration, assembly, renovation or demolition of a building structure.

USEFUL NOTE

When is the permit required?

Considering the typical course of the investment and construction process, the investor seeks the construction permit after first securing:

- the environmental decision (unless it is not required due to the size of the installation);
- the Decision on Land Development Conditions (unless a Local Spatial Development Plan applies);
- a decision permitting exclusion from agricultural production, in the case of properties including:
  a) agricultural land created from mineral or organic soils classified as classes I, II, III, IIIa, IIIb,
  b) agricultural land of classes IV, IVa, IVb, V, and VI created from organic soils,
  c) other agricultural land indicated by the Act on the Protection of Agricultural and Forest Land.
- the electricity grid connection conditions.[14]

In the case of photovoltaic power plants, a construction permit is required for all facility types, except for micro-systems up to 150 kW.

The electricity link that is the cable line connecting the photovoltaic power plant with the grid connection point is usually built based on pre-construction notification (Article 29 of the Construction Law), which replaces a construction permit in the case of simpler construction projects.

[13] *Article 28 of the Construction Law*

[14] *It can be processed concurrently with the construction permit.*

01. PHOTOVOLTAICS

Elements of the permit application

The mandatory elements of the construction permit application are specified in the Construction Law. They are:

- details of the person filing the application and their address;
- the request for a construction permit decision for a specific construction project (importantly, the construction law states that for a construction project covering more than one facility, a construction permit may, at the investor's request, pertain to selected facilities or to a complex of facilities able function on their own in accordance with their intended purpose).

Furthermore, the investor should attach the following:

- a plot or land development design and an architectural construction design – along with the opinions, approvals, permits and other documents as required under separate legal acts or copies of the same (in paper format – 3 copies or in an electronic format);
- a declaration on having the right to use the real property for construction purposes.
- for construction projects preceded by an environmental decision issued in a process requiring the participation of the public – a visual appendix specifying the anticipated project implementation site and the anticipated project impact area, provided that the submission of this appendix was required by the regulations in effect on the date of applying for the environmental decision, and especially the map referred to in Article 74(1)(3a) of the EIA Act;
- the Decision on Land Development Conditions, where required under the spatial planning and development laws;
- a proof of payment of the stamp duty for the construction permit application;
- for applications filed by authorised representatives – the authorisation and a proof of stamp duty payment.

The crucial appendix to the construction permit application is the construction design. Construction design requirements are laid down in the Construction Law. A construction design must include:

- a plot or land development design prepared on an up-to-date map for design purposes or on a copy thereof, presenting:
  a) the plot or land boundaries;
  b) the location, outline and arrangement of the existing and planned building structures, including the utilities on the plot and any building facilities located outside the building structure;

c) the sewage discharge or treatment method;
d) the traffic system and the arrangement of vegetation, with specification of the characteristic elements, dimensions, ordinates and mutual distances between objects – in relation to the existing and planned buildings in the neighbouring areas,
e) information about the project impact area;

- an architectural and construction design which covers:
  f) the spatial arrangement and the architectural form of the existing and planned building structures;
  g) the intended use of the building structures;
  h) the characteristic technical parameters of the building structures;
  i) a geotechnical opinion and the information on how the building structure is attached to the ground;
  j) the planned material-related and technical solutions which influence the surroundings, including the environment;
  k) ecology characteristics;

- a technical design including:
  l) the planned structural solutions of the facility along with the results of static strength calculations;
  m) the planned necessary technical and material-related solutions;
  n) as needed – the geology engineering report or the geotechnical conditions for laying the building foundations;
  o) other design records;

- opinions, approvals, permits and other documents referred to in Article 33(2)(1) of the Construction Law.

Furthermore, the following must be attached to the construction design:

- a statement that the design author has the qualifications to hold an independent technical function in the construction industry;
- a statement of the engineer that the design was prepared in accordance with the applicable laws and the construction principles.

For photovoltaic systems of an installed capacity above 6.5 kW, the design must be consulted with a fire safety expert in terms of compliance with the fire safety requirements.

01. PHOTOVOLTAICS

The process

Once the construction permit application is filed, the authorities make the preliminary determinations and give approvals or seek the opinions of other authorities.

Parties to the construction permit acquisition process: the investor, owners of the real properties (perpetual users of the real properties) or administrators of the real properties within the project impact range.

Duration of the process

A construction permit should be issued within 65 days following the submission of the application (Article 35(6) of the Construction Law). An exception applies to permits issued for photovoltaic installations mounted on a building, where the deadline is 30 days (Article 35(6)(3)(b) of the Building Law Act). If this deadline is not observed, the higher-level authority fines the architectural and construction authority with PLN 500 for every day of delay.

Authority competent for the permit

The authority in charge of issuing a construction permit is the county administrator. However, in specific cases defined in Article 82 of the Building Law Act, the competent first-instance authority is the voivode.

Permit validity period

The works under a construction permit must commence not later than 3 years following the date when the construction permit decision became final and binding. Any suspension of construction works must not be longer than 3 years. This means that if the construction works do not commence within 3 years after a final construction permit is obtained or if works are suspended for more than 3 years, the construction permit expires.

01. PHOTOVOLTAICS

What is the fee for the permit?

The stamp duty for a construction permit is PLN 155 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the local voivode through the county administrator who issued the challenged decision. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and to the Supreme Administrative Court.

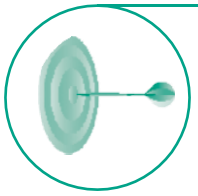
Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on e-Budownictwo.

1.7. NOTIFICATION ON COMPLETION OF CONSTRUCTION WORKS

Photovoltaic power plants are not recognised as facilities requiring an operational notification. As a result, the operation of a photovoltaic power plant can commence once the construction supervision authority is notified that the construction works are completed, provided that this authority does not object by way of a decision within 14 days of receiving the notification.[15]

Purpose of the notification



The purpose of this notification is to initiate the operation of the photovoltaic power plant upon completion of construction.

When is the notification required?

The notification should precede the commencement of electricity generation by the photovoltaic power plant. It should be submitted after the construction works are completed but before the electricity generation license, if required is obtained.

Elements of the notification

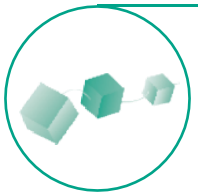
The notification on the completion of construction works should contain the following elements:

- details of the investor, including a correspondence address;
- identification of the construction supervision authority;
- identification of the construction permit decision underlying the implementation of the project;
- identification of the real property where the facility is located;
- original construction daily log or, if the log is digital, the number of the log;
- the technical design;
- a statement of the construction manager that the building structure complies with the construction design or the conditions of the construction permit and with the applicable laws and that the construction site has been brought to a proper condition and cleaned up; where appropriate the same applies to roads, streets, adjacent properties, buildings or premises;

[15] *Article 54(1) of the Construction Law*

- a statement that appropriate land management of adjacent areas has been secured wherever the operation of the facility depends on appropriate management of such areas;
- reports concluding the inspections and checks of the connections, systems and technical devices guaranteeing the use of the structure as intended; the reports must be prepared by individuals having construction qualifications in the required specialities;
- decision permitting the operation of a technical device (where required);
- surveyor documentation with results of the as-built site survey;
- confirmation, in accordance with separate regulations, of the acceptance of the completed connections;
- certificate of the commune administrator or mayor confirming compliance with the requirement to implement a supplementary project (where required);
- copies of the drawings forming a part of the approved design, including the changes made and, where appropriate, a supplementary description of the changes where the changes do not significantly deviate from the approved design;
- authorisation to represent the investor (if the application is submitted by an authorised representative) along with a proof of payment of the stamp duty for the authorisation.

The process



The authority reviews the application for formal matters and checks if the facility was built in accordance with the construction permit.

The authority may object to the notification on completion of construction works especially if the authority establishes that the building structure covered by the investor's notification was built in violation of the conditions defined in the construction permit and, as a consequence, an operational notification is required.

Before the 14-day time limit for the objection expires, the construction supervision authority may, ex officio, issue a statement that there are no grounds for an objection. With the statement, the authority waives the right to object and the investor may start to operate the facility covered by the notification.

Photovoltaic systems above 6.5 kW additionally require a notification to the State Fire Service bodies that the construction of a building structure is completed and the operation of the structure is planned to start. The bodies determine if the building structure has been erected in accordance with the construction design. If a body makes no determination within 14 days after receiving the notification, it is deemed to have no objections or reservations.

01. PHOTOVOLTAICS

Duration of the process

The operation of a photovoltaic power plant can start 14 days after the date of the notification If the authority does not raise an objection within this period, or within 14 days if the construction supervision authority issues a certificate stating that there are no grounds for raising an objection.

Authority competent for submitting the notification

The authority issuing the decision is the County Construction Supervision Inspectorate (Polish: Powiatowy Inspektorat Nadzoru Budowlanego).

What is the fee for the submission of the notification?

The notification is exempt from a stamp duty.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the local Provincial Construction Supervision Inspectorate (Wojewódzki Inspektorat Nadzoru Budowlanego). Appeals should be reviewed within 60 days of their delivery. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The notification can be submitted online to the public administration body having jurisdiction over the matter on the e-Budownictwo website.

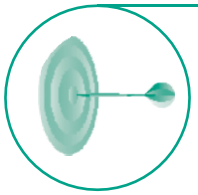
1.8. RES ELECTRICITY GENERATION LICENCE

A licence for generation of electricity from renewable energy sources is usually the last step preceding the commencement of electricity sale by a photovoltaic power plant.

The licence is not mandatory for the following systems:

- photovoltaic systems up to 50 kW which, as micro-systems, may commence the generation and sale of electricity based on prior notification to the distribution system operator or transmission system operator (see section 1.10 of this chapter);
- photovoltaic systems with a capacity greater than 50 kW and not exceeding 1 MW which, as small systems, are subject to simplified entry in the register of small RES systems (see 1.9).

Purpose of the licence



The purpose of the licence is for the government to authorise an activity in a branch of the economy that is particularly important from the perspective of public interest, i.e. the energy sector.[16] The licence decision defines the conditions and the duration of this activity.

When is the licence required?

A licence is obtained once the operation of a photovoltaic power plant starts and after the plant is connected to the electricity grid.

This makes it the last decision to be obtained in the investment and construction process for a photovoltaic power plant (with the exception of the cases described above).

Elements of the licence application

The list of the documents required with an application for a photovoltaic electricity generation licence is provided by the President of the URE, who initiates the procedure of reviewing the licence issue criteria defined in the Energy Law.

The list of the documents is available on:

https://www.ure.gov.pl/pl/biznes/jak-uzyskac-koncesje/energia-elektryczna/784,Odnawialne-zrodla-energii.html

[16] *Article 32(1) of the Energy Law*

In accordance with the current list, a basic licence application should include:

- details of the person filing the application and their address;
- a request for a licence to generate energy from renewable sources;
- an extract from the KRS register of companies obtained not earlier than 3 months before the submission of the application to the authority in charge of issuing the licence;
- a list of all the parties with a significant influence or control or co-control, within the meaning of Article 3(1)(34), Article 3(1)(35) and Article 3(1)(36)(a), 3(1)(36)(b), 3(1)(36)(e) and 3(1)(36)(f) of the Polish Accounting Act, over the applicant, along with the information which of the above relationships reflects the relationship between the entrepreneur and a given party and the information on what grounds the above parties are present on that list, plus a valid certificate of no criminal record from the National Criminal Register for such parties;
- a statement of the entrepreneur that not bankruptcy petition has been filed against it and that they are not in the process of liquidation;
- a statement of the entrepreneur that it has not been deleted from the register of regulated activities in the past 3 years as a result of a decision prohibiting the entrepreneur from engaging in an activity covered by the entry in the register because it:
  a) filed a false statement on the legal compliance of such activity;
  b) failed to remedy its breach of the legal requirements for such activity by the deadline set by the authority, or
  c) committed a gross breach of the legal requirements for such activity;
- a document confirming that the entrepreneur is registered as a VAT payer;
- a certificate of excise duty identification number, where applicable, issued by the head of the customs office;
- a statement of the entrepreneur confirming there are no reasons to suspend the procedure based on Article 33(3a) of the Energy Law whereunder the President of the URE suspends the procedure wherever the entrepreneur or the above-mentioned individuals are indicted for a crime or a tax crime related to their business activity;
- a statement of the entrepreneur that all the individuals hired to operate the systems, facilities and devices used in the performance of the licensed activity have the qualification certificates provided for by the Energy Law and the qualification certificates issued based on other regulations which authorise them to operate such systems, facilities and devices;

- information provided by the entrepreneur regarding the networks, equipment, and installations specified in the Regulation of the Minister of Climate and Environment of 1 July 2022 on the detailed rules for confirming the possession of qualifications by persons engaged in the operation of equipment, installations, and networks that will be used in the activity covered by the application, as well as the number of individuals employed in their operation, including the qualification certificate numbers;
- documents confirming the entrepreneur's legal title to the facilities and systems required for the licensed activity, for example a notary deed, a copy of the title register, an extract from the land register, the lease agreements, the loan for use agreements, purchase invoices for the equipment used to generate electricity;
- description of the parameters and the technical condition of the electricity generation equipment;
- documents confirming that the devices comprising the installation meet the requirement referred to in Article 32(1a) of the Energy Law;
- location-related decisions (a Decision on Land Development Conditions or an extract and excerpt from the Local Spatial Development Plan);
- the construction permit;
- documents containing the information that the construction process has ended and the operation of the facility commences (notification to the competent construction authority on the completion of the construction process submitted at least 14 days before the intended commencement of use). If the competent construction supervision authority does not object to the project a statement with relevant information about this should be attached to case files after the expiry of 14 days after the delivery of the above notification;
- decisions of the Polish Office of Technical Inspection (Urząd Dozoru Technicznego, UDT) approving the electricity generating devices for use;
- documents confirming the installed capacity of the power-generating facility;
- the documents issued by the electrical system operator to whose grid the RES facility is connected:
  a) the decision defining the technical conditions for connecting the system to the electricity grid (grid connection conditions) or the connection agreement,
  b) the report confirming the technical inspection of the power devices and their approval and acceptance for use;
  c) the report confirming the operation check of the measurement and settlement systems (known as the detailed technical service (OTS) order report)
- a power evacuation diagram highlighting the places where the quantity of the generated electricity is measured and outlining the separation of ownership of systems, devices and facilities between the entrepreneur and the electricity system operator and highlighting all the generation equipment;

- summary of the annual planned revenue and costs of the activity covered by the licence application for at least three full calendar years;
- financial statements for the last three years;
- other documents confirming that the entrepreneur has, or is able to secure, sufficient financing for proper performance of the licensed activity (e.g. bank guarantees, insurance guarantees, guarantee agreements, credit facility agreements, loan agreements etc.);
- valid certificates from the competent tax authority and customs authority, obtained not earlier than 3 months before their presentation to the licensing authority, confirming that the entrepreneur has no overdue payments towards the state budget;
- a valid certificate from the competent branch of the Polish Social Insurance Institution (ZUS), obtained not earlier than 3 months before its presentation to the licensing authority, confirming either that the entrepreneur has no overdue social security contribution payments or that it is not a registered contribution payer;
- a valid certificate from the bank that keeps the basic account of the entrepreneur which specifies the value of the transactions, the payment capacity, the creditworthiness of the entrepreneur and contains information about the credit facilities granted to the entrepreneur and the information on whether the account is free from any enforcement orders, obtained not earlier than 3 months before its presentation to the licensing authority.

The above list of documents is indicative only and it should be each time verified with the URE.

The process

Once the application is filed, the licensing authority verifies the documentation to determine if it meets the criteria specified in Article 33 of the Energy Law and it requests an opinion from the local province executive board.

Licence grant may be contingent on the posting of a bond to satisfy any third-party claims which may arise as a result of improper performance of the licensed activity, including environmental damage.

Importantly, after obtaining the permit, the generator must pay an annual licence fee, which is calculated based on the revenue of the RES system. The RES systems up to 5 MW are exempt from the fee.

Obtaining the licence also entails a periodic reporting requirement, usually to the President of the URE.

01. PHOTOVOLTAICS

Duration of the process

Electricity generation licensing, e.g. for a photovoltaic system, is a process that should be completed within a month. However, this is just a theory based on the administrative procedure and it does not account for the specificities of the licensing process, which usually takes a few months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent to issue the concession

The authority responsible for granting the concession is the President of the URE.

The concession application must be filed to the local URE branch having jurisdiction over the power plant or the applicant's registered office.

Concession validity period

The concession is granted for an indefinite term, not shorter than 10 years and not longer than 50 years, unless the entrepreneur requests a shorter term.

What is the fee for the licence?

The stamp duty for an energy generation licence is PLN 616 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the President of the URE. The cost of the appeal is PLN 1000.

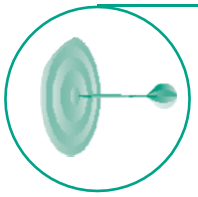
Can the application be filed online?

You can file the application online through the ePUAP service.

1.9. REGISTER OF SMALL RES ELECTRICITY GENERATORS

Entry in the register of small RES electricity generators replaces the licence decision for photovoltaic power plants of an installed capacity from 50 kW to 1 MW.[17]

Purpose of the entry



The purpose of the entry in the register of small RES electricity generators is to offer a simplified and expedited approval process for a business in the energy sector.

When is the entry required?

The entry in the register should be made after the photovoltaic power plant is built, accepted and connected to the grid.

Elements of an application for the entry

The template form for the investor is available on the URE website at:

https://bip.ure.gov.pl/bip/rejestry-i-bazy/wytworcy-energii-w-male/2138,Rejestr-wytworcow-energii-w-malej-instalacji.html

The application must be accompanied by:

- a statement of the generator that it is in no arrears with any taxes, levies and social security contributions;
- a statement of the generator that the data included in the application are correct and that the conditions referred to in Article 9(1) of the RES Act are met, with confirmed awareness for the criminal liability for submitting false statements;
- a receipt for a stamp duty for the entry;
- if the application is filed through an authorised representative, the authorisation must be attached along with a receipt for a stamp duty for the authorisation.

[17] *Article 7 of the RES Act*

01. PHOTOVOLTAICS

The process

The authority checks internally if the application is error free. If the authority does not find any errors, the generator is entered in the register and the authority issues a certificate of entry in the register.

Duration of the process

The President of the URE is obligated to enter an entrepreneur in the register of small RES electricity generators within 21 days after receiving the application. An exception applies to the entry of an energy producer operating a small photovoltaic installation mounted on a building, for which the President of the Energy Regulatory Office (URE) makes the entry within 14 days from the date of receipt of the application[18].

If the authority does not make the entry within the period referred to above, and 28 days have passed since the application was received, or 21 days in the case of an entry for an energy producer operating a small photovoltaic installation mounted on a building, the producer may commence operations. This does not apply if the authority has requested the producer to supplement the application for entry, no later than within 21 days, or 14 days in the case of an entry for an energy producer operating a small photovoltaic installation mounted on a building, from the date of receipt of the application. In such a case, the relevant period shall run from the date of receipt of the supplemented application.

Authority competent for making the entry

The competent authority for making an entry in the register the President of the URE.

The application must be filed to the local URE branch having jurisdiction over the applicant's registered office.

Entry validity period

The entry in the register has no expiry date.

[18] *Article 11a of the RES Act*

01. PHOTOVOLTAICS

What is the fee for making the entry?

The stamp duty for entry in the register is PLN 616 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the authority that issued the decision. The cost of the appeal is PLN 1000.

Can the application be filed online?

You can file the application online through the ePUAP service.

1.10. OTHER TYPES OF PHOTOVOLTAIC SYSTEMS

1.10.1. Micro-systems

Photovoltaic micro-systems are facilities of a total installed capacity up to 50 kW which are connected to an electricity grid of a rated voltage below 110 kV. They are usually used by prosumers – energy recipients who simultaneously consume and generate energy (mainly for their private needs). The term 'micro-system' encompasses both ground systems and rooftop systems.

The erection of micro-systems has been simplified and deformalised.

Location and title to land

Photovoltaic micro-systems usually serve the purpose of producing energy for private use. This is why they are usually located in a direct proximity to the buildings and other structures they power.

Environmental decision

Micro-systems are exempt from the requirement to obtain an environmental decision.

Planning

If the site where a micro-system is situated is covered by a Local Spatial Development Plan, micro-systems can be set up in any places where buildings are allowed. For sites with no Local Spatial Development Plan, a micro-system does not require a Decision on Land Development Conditions.

Grid connection

If the capacity of a micro-system is lower than or equal to the connection capacity of the structure on which the micro-system will be installed, a connection request must be filed to the operator within 30 days before the planned connection of the micro-system to the grid and the operator reviews the request.

If the micro-system connection capacity exceeds the connection capacity of the structure on which it is installed an application for grid connection conditions is required in accordance with section 1.5.1. of this chapter.

The following must be attached to a micro-system notification:

- a diagram of the electrical system presenting how the micro-system is to be connected;
- the technical parameters and the operational and maintenance characteristics of the devices, systems or grids to be connected, including the technical specifications / data sheets of the electricity generating devices and inverters;
- an equipment certificate meeting the NC RfG requirements, issued by an authorised certifying entity;
- authorisation(s) for the person(s) authorised by the applicant to act on the applicant's behalf;
- seller's electricity purchase agreement (in cases where the applicant intends to sell electricity to a seller of choice or to an obliged seller);
- a statement on holding the legal title to the real property where the project is to be implemented and to the micro-system specified in the request;
- statement of the installer confirming their qualifications and the legal and technical compliance of the connection;
- additional appendices of the applicant, especially related to circumstances which may affect safe functioning of the micro-system or the grid.

After reviewing the request, the operator connects the micro-system.

In practice, operators often provide an option to apply through an online form. Furthermore, it is a common practice for operators to provide the list of certified equipment which are allowed for the micro-systems to be connected, which is based on the list of the Polish Power Transmission and Distribution Association (PTPiREE).

Construction permit

Micro-systems are exempt from the obligation to obtain a construction permit and the construction notification requirement.

For photovoltaic devices with an installed electrical capacity greater than 6.5 kW, it is required to have the design of these devices reviewed by a fire safety expert for compliance with fire protection requirements.

In the case of photovoltaic installations with a capacity greater than 6.5 kW, it is also necessary to notify the State Fire Service authorities upon completion of the construction of the building and prior to commencing its use. The authorities will issue an opinion regarding the compliance of the completed building with the construction design. If the authority does not issue an opinion within 14 days from the date of receiving the notification, it is considered as no objection or comments being raised.

Licence

Micro-systems are exempt from the licensing requirement.

1.10.2. Small and large-scale rooftop photovoltaic systems

Rooftop photovoltaic power plants located for instance on rooftops of manufacturing plants, warehouses or shopping centres are an increasingly common type of PV systems.

Rooftop photovoltaics is no longer limited to micro-systems. Systems that are gaining popularity include small rooftop systems of a capacity above 50 kW up to 1 MW and, in the case of the largest rooftop spaces, also large photovoltaic power plants above 1 MW.

They usually supply power to the buildings on which they are installed, with excess non-consumed electricity sold to trading companies.

The investment and construction process for a rooftop photovoltaic power plant follows the basic rules presented for systems of this type.

Rooftop systems are exempt from the requirement to obtain an environmental decision. Moreover, in accordance with the SP&M Act, the location of other than free-standing photovoltaic power plants does not have to be included in the Study of Local Determinants and Directions in Spatial Development and, consequently, in the Local Spatial Development Plan. So in this case the investor does not have to apply for a location decision and may proceed to apply for a construction permit. Systems up to 150 kW are exempt from the requirement of obtaining a construction permit.

Please note that interpretations of the above regulations area inconsistent with regard to areas covered by Local Spatial Development Plans established before 30 October 2021.

1.10.3. Agrivoltaics

Agrivoltaics is an interesting solution for photovoltaic power plants in rural areas. Agrivoltaic systems are designed to permit farming activities on the sites where they are erected.

It must be added that they may take the form of systems with vertically installed modules (e.g. bifacial modules) serving as the fence for farm animals. Agrivoltaics often entails higher positioning of the panels to shade the field or cover greenhouse crops, which has positive effects on plant growth, especially during hot and dry summers.

Agrivoltaic systems also reduce evaporation and transpiration, whereas the semi-transparent modules supply enough solar radiation for plant growth while reducing excessive solar radiation. This way agrivoltaics may help increase the crops of some plants.

1.10.4. Floating photovoltaics

Floating photovoltaics is a relatively new technology, quickly gaining popularity worldwide. The main advantage of floating photovoltaics is essentially higher energy production efficiency when compared to onshore systems. The water cools down the photovoltaic modules for energy generation approximately 5-10% higher than on land.

Photovoltaic systems on the water are usually located on artificial or industrial reservoirs, in places without any nature values or community values.

The main difference in the investment process between onshore photovoltaic power plants and floating photovoltaics is the obligation to first obtain the permit under the water legislation before applying for a construction permit. For more on the process of obtaining a permit under the water legislation, go to section 6.5. of the Handbook.

Pursuant to Article 35(6)(3) of the Water Law, the use of waters for power generation purposes is a water service that can only be performed once the permit required under the water legislation is secured.

The authority responsible for issuing the permit is the director of the Regional Water Management Board (RZGW) of Polish Waters having jurisdiction over the project site.
The permit under the water legislation is issued as a decision for a fixed term up to 30 years, starting from the date when the decision becomes final and binding.

The stamp duty for a permit under the water legislation is PLN 330,07.

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application. The stamp duty for an authorisation is PLN 17.

1.10.5. Building integrated photovoltaics (BIPV)

The development potential of photovoltaics is also linked to the BIPV (Building Integrated Photovoltaics) systems. In this variant, the photovoltaic system is not an addition to or a superstructure of a building but its integral structural element.

This means that photovoltaic modules do not have to take the form of a black or graphite plate mounted on a roof or ground structure, but may instead be multicolored, light-transmitting modules that are directly built into and integrated with the building.

Continuous technological progress means that photovoltaic panels installed on vertical and horizontal surfaces can now generate electricity almost as efficiently as those positioned at an optimal angle to the sun. As with rooftop installations, building-integrated photovoltaic systems are exempt from the requirement to obtain an environmental decision, and their placement does not need to be explicitly defined in the Local Spatial Development Plan. Installations with a capacity of up to 150 kW are exempt from the requirement to obtain a construction permit. However, due to their specific characteristics, such modules must meet certain construction requirements.

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02. ONSHORE WIND ENERGY

2.1. TECHNOLOGY DESCRIPTION

Next to photovoltaics, onshore wind energy is Poland's most popular technology for electricity generation from renewable sources. It relies on wind turbines to transform the kinetic energy of the wind into the mechanical energy in the form of the rotation of the rotor. This energy is transmitted through the shaft and the gearbox to the generator, which subsequently transforms it into electricity.

Wind turbines are usually large-scale structures, usually more than 100 m tall. However, there are also small and micro-turbines, which can be expected to have a growing role in the Polish wind energy landscape in the future.

The total installed capacity of onshore wind farms is about 9,4 GW.[19] *This technology is still perceived as having the highest aggregate share in renewable electricity generation in Poland.*

2.2. CHOOSING PROJECT LOCATION

Before the investment and construction process for a wind farm is initiated, the potential location should be analysed. Finding an appropriate location for the power plant is the preliminary, necessary and essential prerequisite for successful completion of the subsequent administrative procedures. The most important factors to be considered at this stage include:

- the location of the property and the natural conditions of the real property, which should be checked at the technical audit stage;
- the available connection capacity in the grid;
- distance between the onshore wind farm and buildings or nature conservation sites;
- possibility of obtaining the required legal title to the property.

[19] *Agencja Rynku Energii S.A. Statistical electricity information. Monthly bulletin – November, p. 14.*

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Natural conditions – wind

The potential of electricity production from wind energy depends on the wind conditions, which differ between Poland's regions. For power generation from the wind, the most beneficial conditions can be found in the following regions of Poland:

- the central northernmost parts of the coast from Koszalin to Hel;
- the area of the Wolin Island;
- the Suwałki region;
- central Wielkopolska and Mazowsze;
- Beskid Śląski and Beskid Żywiecki;
- Bieszczady and Pogórze Dynowskie.[20]

The choice of project location should be preceded by an analysis of wind potential of the property. This should be followed by a technical audit of the real property in order to verify such factors, without limitation, as ground stability, site inclination or the presence of any other obstacles to construction works.

[20] *P. Gołasa (ed.), Podręcznik OZE Ekonomia, technika, prawo, samorząd, społeczeństwo (The RES Handbook. Economics, Technology, Law, Local Government, Society), Warsaw 2022, p. 78.*

Electricity grid connection capacity and access

When planning the construction of a renewable energy installation connected to the power grid in a selected location, it is necessary to consider the level of available connection capacity in that area, as it is a key factor determining the possibility of connecting the installation to the grid. The lack of available connection capacity at the indicated location may result in the relevant power system operator issuing a refusal to connect, or connection conditions indicating the need for additional investments in grid infrastructure.

This is why the potential of the available connection capacity should be analysed for planned energy sources before the project is launched. The obligation to publish relevant information, which must be updated at least on a quarterly basis, is stipulated in Article 7(8l) of Energy Law. Electricity companies that transmit or distribute electricity publish on their websites: the values of the total available connection capacity for sources; the planned changes to these values over the next 5 years following their publication; and the list of parties applying for source connection to an electricity grid of a rated voltage above 1 kV. Due to the lack of real-time updates of the aforementioned data, it is difficult for investors to verify the availability of free connection capacities.[21]

[21] *The information is historical and the specified free connection capacity does not guarantee obtaining the expected connection conditions.*

Distance between an onshore wind farm and buildings or nature conservation sites

One of the first steps of an investor searching for a location for a wind farm should be to review the location-related requirements of the law regarding wind farm projects.

The following should be considered in wind farm planning:

- the distance between the farm and a residential building or a building with a residential function (including plots for which a zoning decision has been issued for residential development, as well as plots designated for residential development in the Local Spatial Development Plan) must be equal to or above **ten times the total height of the wind farm**, unless the Local Spatial Development Plan specifies another distance expressed in meters, **but not below 700 m;**[22]
- the distance between the wind farm and a power grid of the highest voltages must be equal to or above three times the maximum diameter of the rotor including the blades or equal to or above twice the total maximum height of the wind farm, as specified in the Local Spatial Development Plan, whichever is higher.[23]

The investor should also verify if the area where the project is to be built is covered by nature conservation. Wind farms must not be erected within the boundaries of:

- national parks,
- nature reserves,
- landscape parks and
- Natura 2000 sites.

In the case of real properties adjacent to nature conservation sites, the investor is also required to observe the minimum distance:

- for national parks, the distance between the wind farm and the park boundary must be equal to or above ten times the total height of the wind farm;
- for nature reserves, the distance must not be shorter than 500 m from their boundaries.

Additionally, it is possible to locate a wind power plant on land classified as agricultural of classes I–III, provided that the planned property includes such land. However, in this case, it is necessary to adopt a Local Spatial Development Plan and obtain approval for the change of land use to non-agricultural purposes, issued by the minister responsible for rural development.

[22] *Article 4(1) of the WPS Act*
[23] *Article 4a(1) of the WPS Act*

Securing legal title to the property

A key stage in the investment process is securing the legal right to the property on which the RES system is to be located. To hold a title means to have the right to use the property. So the first step to be taken by an investor planning a project is to audit the legal status of the land especially to review the title register for the property.

The title that guarantees the fullest protection of the investor's interests is land ownership.

Furthermore, RES system projects often rely on lease contracts between the investor as the lessee and the property owner as the lessor. A major element of the contract is the lessor's commitment to allow the lessee to use and derive benefits from the property and the lessee's commitment to pay the agreed fee. This type of contract is used because Polish legislation does not provide for any other specifically named contract which would effectively secure the title to a real property. This agreement should also have an appropriate duration, allowing for the construction, operation, and, most importantly, the restoration of the site to its original condition.

Pursuant to the Polish Civil Code, a lease contract may be either open-ended or fixed-term. From the point of view of the investor, open-ended contracts are highly risky because this kind of legal relationship could be terminated at any time with either contractual or statutory notice periods. It makes much more sense to sign a fixed-term contract for up to thirty years.

The law does not require a lease contract to have any specific form in order to be deemed valid. An ordinary written form of the contract may be recognised as sufficient to secure the title to a real property. However, an investor may find themselves at a major disadvantage if the real property is sold by the owner to a third party because if this happens, the buyer of the real property acquires the right to terminate the lease. An investor may seek protection against this risk by using a special contract form, i.e. written form with certified date (Polish: 'data pewna'). Moreover, for the investor to be able to use this protection, the contract must be a fixed-term contract and the real property must be handed over to the lessee. Another solution to reduce the risk is to disclose the rights of the lessee in the title register kept for the real property; this requires signing a written contract with signatures certified by a notary public.

A major aspect which an investor should pay attention to in the lease contract is the ownership of the wind farm built on the leased land. In accordance with the Polish Civil Code, structures erected on a real property share its legal status, which entails the risk that the ownership of the system installed on the real property will pass to the land owner. To minimise the risk, the lease contract should include a clear, unconditional provision that the wind farm elements brought by the lessee are not a part of the real property but have been positioned there for temporary use and are owned exclusively by the lessee.

We must also add that the investor is required to secure the legal title to all the land covered by the project. Especially, titles must be secured to the land over which the wind farm rotor blades are suspended. In this case, the recommended form is a limited real right in the form of easement for the wind turbine owner.

2.3. PLANNING

The sub-chapter on planning presents the legal grounds for locating onshore wind farms.

According to the regulations currently in force, wind farms can only be located in places designated in the Local Spatial Development Plan, which is an act of local law established by the Commune Council.[24]

Given this solution, it has been impossible ever since 16 July 2016 to build wind farms based on a Decision on Land Development Conditions or a decision on location of a public utility project. As a result, in the case of wind farms, an environmental decision should be preceded by a planning verification.

If the Local Spatial Development Plan does not specify the area where a wind farm can be built, the plan must be amended, which requires following a specific procedure.

2.3.1. Local Spatial Development Plan

What is the purpose of the Local Spatial Development Plan?

The Local Spatial Development Plan defines the land use, functions, management principles, infrastructure service rules, and, where necessary, local conditions, principles, and standards for shaping development, as well as other specific requirements that require planning regulation for the areas covered by the plan.

A visual annex presenting the boundaries of the site to be covered by the draft plan forms an integral part of the resolution.

Local Spatial Development Plan is the only planning instrument to be relied on in the process of locating wind farms. This is why, before starting the investment and construction process, an investor must first verify whether the project site is covered by a Local Spatial Development Plan.[24] The investor must analyse the Plan because the construction process must comply with the conditions laid down in there.

[24] *Article 3 of the WPS Act*

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Rules of locating wind farms based on the Local Spatial Development Plan

The Polish law on wind farm projects defines the rules of locating onshore wind farms based on a Local Spatial Development Plan and defines the distance criteria. The anticipated distance criteria are defined in the WPS Act. Before choosing the location for a wind farm, the investor must also take into consideration the results of the mandatory strategic environmental impact assessment (the assessment analyses for instance the impact of noise emissions on the surroundings and on the health of the local community).

In establishing the location of wind farms in the Local Spatial Development Plan, the commune (Polish: gmina) should observe the following rules:

- **the investor must observe a minimum distance of at least 700 m between the wind farm and the nearest residential building or building with a residential function;**
- **the distance between the wind farm and a power grid of the highest voltages must be equal to or above three times the maximum diameter of the rotor including the blades or equal to or above twice the total maximum height of the wind farm Electrical elements as specified in the Local Spatial Development Plan, whichever is higher;**
- **the distance between the wind farm and a national park must be equal to or above ten times the total height of the wind farm;**
- **the distance between the wind farm and a nature reserve must be at least 500 m.**

No wind farms may be located within national parks, nature reserves, landscape parks and Natura 2000 sites.

USEFUL NOTE

The final shape of the Local Spatial Development Plan also depends on the community of the commune where the wind farm is to be built and the community of the neighbouring commune in the public consultation procedure which is a part of the process of developing the final text of the Local Spatial Development Plan.

Comments from the community may influence the location of particular sites on the plan including sites intended for the construction of wind farms.

Amendment/adoption of a Local Spatial Development Plan

If the project site is covered by a Local Spatial Development Plan which does not permit the planned RES system or if the area does not have an adopted Local Spatial Development Plan and the investment can only be located on the basis of such a plan, the investor has the right to apply for its amendment.

An application for amendment/adoption of a Local Spatial Development Plan must be filed to the commune administrator (Polish: wójt), to the mayor or to the city president and must be recorded in the register of applications for the establishment or amendment of Local Spatial Development Plans. Afterwards, the authority verifies if the application is consistent with the general plan and analyses its grounds.

The general plan is a new planning instrument that must be adopted obligatorily for the entire municipality (excluding restricted areas), as a local law act. It is intended to ultimately replace the Study of Local Determinants and Directions in Spatial Development. The provisions contained in the general plan will be binding both for Local Spatial Development Plans and for Decision on Land Development Conditions.

If the application for the amendment of the Local Spatial Development Plan is inconsistent with the general plan, the investor must first apply for the amendment of the general plan and only then for the amendment/adoption of the Local Spatial Development Plan. If the authority accepts the application, it may refer it to the municipal council, which then adopts a resolution to initiate the preparation of the Local Spatial Development Plan.

Pursuant to Article 58 of the amendment to the SP&M Act, until municipalities adopt general plans (no later than 30 June 2026, as stipulated by the amendment), the inclusion of RES installations in a newly adopted Local Spatial Development Plan does not need to be consistent with the existing study.

In the justification attached to the draft resolution regarding the commencement of the preparation of a Local Spatial Development Plan that anticipates the location of a wind power plant, the following elements must be included in particular: the maximum total height of the wind turbine, the maximum rotor diameter including blades, and the maximum number of wind turbines to be specified in the plan.

A motion to adopt or amend a Local Spatial Development Plan constitutes merely a form of proposal. The applicable regulations do not provide for any specific procedures or deadlines for its consideration. Moreover, **no appeal may be lodged against the decision on such a motion**. Therefore, it should be borne in mind that the procedure for adopting or amending a Local Spatial Development Plan be lengthy and does not guarantee the success of the intended investment.

It is worth noting that the amendment to the SP&M Act introduces a special form of local plan that may be used by investors in the absence of a Local Spatial Development Plan or when the existing plan requires amendment — the **Integrated Investment Plan (ZPI)**. The ZPI is adopted by the municipal council upon the investor's request submitted via the mayor, town mayor, or city president. The ZPI is to cover the area of the main investment (e.g., renewable energy installation or residential development) as well as supplementary investments (e.g., public roads, public green areas, or public utility facilities). Upon entry into force, the ZPI will render the existing local plans or their relevant parts concerning the area covered by the ZPI null and void.

Importantly, in contrast to the situation described in section 1.4.1., ZPIs concerning the location of onshore wind power plants are not subject to the simplified procedure for ZPI adoption (Article 27b(1)(1) of the SP&M Act), excluding wind power plants with a capacity not exceeding 50 kW.

More details regarding the procedure for adopting a ZPI (Article 27b(1)(1) of the Act) and the procedure for adopting a Local Spatial Development Plan can be found on the website of the National Contact Point for Renewable Energy Sources **(NCP-RES)**.

Confirmation of project compliance with the Local Spatial Development Plan

An investor may obtain a certificate confirming that the planned project complies with the Local Spatial Development Plan.

Purpose of the confirmation

The purpose of the confirmation is to verify if the planned project will comply with the Local Spatial Development Plan.

When is the confirmation required?

Obtaining the confirmation is not mandatory; this is just to confirm that the planned project complies with the Local Spatial Development Plan.

The process

Project compliance with the Local Spatial Development Plan is confirmed by a certificate issued by the locally competent commune administrator or mayor upon the investor's request.

Obtaining the certificate is not mandatory and its content is not binding upon the construction authorities at the stage of applying for the construction permit.

Duration of the process

Up to 7 days following the filing of the application.

Authority competent for the confirmation

The commune administrator or mayor having jurisdiction over the project site.

Confirmation validity period

The certificate is open-ended but it expires if the Local Spatial Development Plan is amended.

What is the stamp duty for the certificate?

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

An applicant who was denied a certificate has 7 days to appeal to the Local Appeal Body.

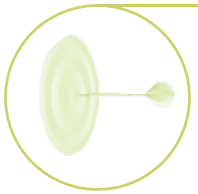
Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

2.4. DECISION ON ENVIRONMENTAL CONDITIONS

After verifying the compliance of the planned investment with the Local Spatial Development Plan, the investor should apply for a decision on environmental conditions of the project (environmental decision).[26]

Purpose of the decision



The basic purpose of an environmental decision is to assess the impact of the planned project on the environment and to determine the conditions to be met by the investor in order to minimise the negative consequences for nature and human health.

In the environmental decision, the authority i.a. defines the environmental protection requirements and the conditions to be met by the investor at project implementation and operation stages. So, the purpose of the decision is to balance the needs for economic growth and the protection of the environment and human health.

When is the decision required?

An environmental decision is required whenever the expected height of the wind farm is not lower than 30 m.[27]

Notwithstanding the height of the wind farm, the environmental decision requirement applies whenever the project is to be located in nature conservation sites as referred to in Article 6(1)(points 1–5, 8 and 9) of the Nature Act, except for systems intended exclusively to power road and railway signs, road or railway traffic control or monitoring devices, navigation signs, illumination structures, billboards and advertising boards.

Elements of an application for the decision

The process of issuing an environmental decision is initiated by an application of the investor. The application should:

- indication of the applicant submitting the application, along with their address;
- include a request for an environmental decision for a specific project.

[26] *Article 71 of the EIA Act*
[27] *§ 3(1)(6) of the Regulation of the Polish Council of Ministers of 10 September 2019 on projects with a potentially significant environmental impact (Journal of Laws item 1839 as amended)*

The investor should attach the following to the application:

- a project data sheet (KIP) for a project involving the construction of a wind power plant, classified as a project that may potentially have a significant impact on the environment (with a total nominal capacity below 100 MW). In cases where an environmental impact assessment is required pursuant to Article 59(1)(2) of the EIA Act – an environmental impact report shall be submitted.
- an environmental impact report for wind power plants classified as projects that may always have a significant impact on the environment (with a total nominal capacity of not less than 100 MW); however, instead of the report, the investor may submit KIP together with an application for determining the scope of the report (pursuant to Article 69 of the EIA Act).
- a copy of a cadastral map certified by a competent authority, either as a hard copy or digital, which covers the planned project site and the area on which the project, in the variant proposed by the applicant, will have an impact. This impact area is understood as:
  a) the planned project implementation site and the area up to 100 m from from the boundaries of that site;
  b) the plots on which the environmental quality standards would be breached as a result of the implementation, operation or use of the project or
  c) the plots within the range of a significant project impact which may result in restrictions on the currently intended development of the real property;
- a map, in paper and electronic form, at a sufficient scale to guarantee the legibility of the presented data, outlining the site where the project is expected to be implemented and outlining the expected project impact area within 100 m from the boundaries of the site;
- an extract and excerpt from the Local Spatial Development Plan;
- an extract from the register of land or any other paper or digital document issued by the authority keeping the register of land and buildings which makes it possible to establish the parties to the procedure and which specifies at least the reference number of the plot and, if disclosed, the title register number for the plot, the first and last name or the business name and the address of the registered party – for the expected project site and for the project impact area (not required to be attached if the number of parties to the environmental decision-making procedure exceeds 10);
- proof of stamp duty payment;
- for applications filed by authorised representatives – the authorisation and the proof of payment of the stamp duty for the authorisation.

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USEFUL NOTE

In the application for the issuance of an environmental decision for a wind power plant with a capacity of not less than 100 MW, the investor shall submit an environmental impact report or, instead of the report, an environmental impact information sheet together with an application for determining the scope of the report (Article 69(1) of the EIA Act). Furthermore, determining the scope of the report is mandatory if the project may have a transboundary impact on the environment (Article 69(2) of the EIA Act).

In the remaining cases, the report is prepared only if the authority imposes this requirement on the investor.

The process

Once the application is filed, the authority reviews it to establish if the wind farm project can be implemented in accordance with the regulations of environmental protection law and it formulates the necessary requirements in this respect.

The regulations require that the report includes information enabling the assessment of the following environmental impact criteria:

- the impact of the project on the environment and the population, including human health and living conditions, material assets, cultural heritage, landscape (including cultural landscape), interactions between these elements, and access to mineral deposits;
- risk of major failures, natural disasters and construction accidents;
- the options and ways of preventing and reducing negative environmental impacts;
- the required scope of monitoring.

Furthermore, a project environmental impact report should:

- describe the planned project, especially by presenting:
  a) a description of the whole project and the site use conditions at the implementation and operation or use stages, also addressing areas at a special risk of flood within the meaning of Article 16(34) of the Water Law;
  b) the main characteristics of the production processes;
  c) the expected types and quantities of emissions, including waste, arising from the project implementation and operation or use stages;

d) information on the biological diversity, utilisation of natural resources, including soil, water and earth surface;
e) information on the demand for and consumption of energy;
f) information on demolition works for projects having a potentially significant environmental impact;
g) a risk – assessed based on scientific knowledge – of major failures, natural disasters and construction accidents, taking into consideration the substances used and the technologies applied, including the risk related to climate change;

- describe the elements of the natural environment covered by the expected environmental impact of the planned project, including:
  a) elements of the environment covered by conservation under the Nature Act and the wildlife corridors within the meaning of this Act;
  b) the hydromorphological, physicochemical, biological and chemical properties of waters;
- present the results of the environmental inventory, presented in both descriptive and cartographic form, if conducted, together with a description of the methodology, constituting an annex to the report;
- present other data underlying the description of natural environment elements;
- describe any historical monuments under conservation pursuant to monument conservation and care regulations which may be situated in the vicinity of or within the impact range of the project;
- describe the landscape where the project is to be located;
- present the information on ties to other projects, especially on cumulative impacts of any continuing, completed or planned projects which have an environmental decision and which are located within the planned site of the project in question and within the project impact range or which have impacts within the project impact range;
- describe the consequences expected for the environment if the project is abandoned; the description must include the available environmental information and scientific knowledge;
- present a description of the project variants, taking into account its specific characteristics or environmental impacts, including an indication of the variant selected for implementation, a reasonable alternative variant, and a reasonable variant most beneficial to the environment (the reasonable variant most beneficial to the environment may be identical to the selected implementation variant or to the reasonable alternative variant);

- describe the expected impact of the analysed variants on the environment (also in the case of a serious industrial accident, natural disaster or construction accident), on the climate (including greenhouse gas emissions and impacts important from the perspective of adapting to climate changes), as well as the possible cross-border environmental impact;
- compare the impacts of the analysed variants on:
  a) people, plants, animals, fungi, natural habitats, water and air;
  b) the earth surface (taking into account soil mass movements) and the landscape;
  c) physical property;
  d) historical monuments and cultural landscape covered by the existing documentation especially entered in the register of historical monuments;
  e) the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites;
  f) elements referred to in Article 68(2)(2)(b) of the EIA Act, if they have been included in the environmental impact report or if they are required by the competent authority;
  g) mutual interactions between the elements listed in items (a) through (f) above;
- justify the variant proposed by the applicant, taking into account the information regarding the determination of the expected environmental impact of the analysed variants and the comparison of their impacts mentioned above;
- describe the forecasting methods used by the applicant and the expected significant environmental impacts of the planned project, including direct, indirect, secondary, cumulative, short-, medium- and long-term, permanent and temporary environmental impacts from:
  a) the existence of the project;
  b) the utilisation of natural resources;
  c) emissions;
- describe the anticipated actions to avoid, prevent, limit or offset any negative environmental impacts, especially impacts on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites, along with the assessment of their effectiveness at the stages of project implementation, operation, use or shutdown;
- address the environmental objectives arising from strategic documents important from the perspective of project implementation;
- present the issues in a graphic version;

- include a cartographic presentation of the issues at a scale as required by the subject matter and level of detail of the issues analysed in the report for comprehensive presentation of the completed environmental impact analyses;
- analyse the possible social conflicts related to the planned project;
- present the proposed monitoring of project environmental impacts at the project implementation and operation or use stages, especially the impact on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and on the continuity of the wildlife corridors that connect those sites, and present the information on the results of other monitoring which may be relevant for establishing the responsibilities in this respect;
- specify any difficulties resulting from technological shortcomings or gaps in the state of the art which were encountered during report preparation works;
- summarise the information included in the report using non-specialist language by addressing every element of the report;
- specify the report date, the first name, last name and signature of the author or, if the report was prepared by a team of authors, specify the first name, last name and signature of the team leader and the first names, last names and signatures of the team members;
- contain, as an appendix to the report, a statement of the author or, if the report was prepared by a team of authors - by the team leader, confirming compliance with the requirements laid down in Article 74a(2) of the EIA Act;
- provide the sources of the information underlying the report.

Subsequently, the report is analysed by the authority in terms of the criteria established for the applicant and is consulted with competent institutions. If the report is approved, the authority may issue the environmental decision.

It should be noted that, pursuant to Article 63(5–6) of the EIA Act, the authority responsible for issuing the environmental decision shall suspend the proceedings for the duration of the preparation of the report, which the investor must complete within no more than three years. Upon expiry of this period, the request to initiate the proceedings is deemed to have been withdrawn.

Please note that the authority may also issue a decision stating there is no need for producing an environmental impact report and it may proceed to issue the environmental decision.

A refusal to issue the environmental decision is not discretionary as the authority may only refuse to grant the approval for the implementation of a project in specific, statutory cases, i.e. if:

- the location of the wind power plant is incompatible with the Local Spatial Development Plan, if any;

- a cooperating authority refuses to approve the implementation conditions for the RES project;
- the environmental impact assessment for the project suggests that the project cannot be implemented in the variant proposed by the applicant and the applicant rejects the project variant suggested by the authority;
- the environmental impact assessment for the project suggests that the project may have a significant negative impact on a Natura 2000 site;
- the environmental impact assessment for the project suggests that the project adversely affects the possibility of attaining the environmental objectives referred to in Article 56, Article 57, Article 59 and Article 61 of the Water Law.

It is also possible to issue a new or amend the current environmental decision for the purpose of a procedure for amendment of a final and binding construction permit issued under the regulations which were in force before 16 July 2016 or a procedure for amendment of construction permits issued in processes which were initiated but did not end by that time, even if the installed capacity increased, but on condition that this will not increase the environmental impact of the wind farm. The purpose of the solution is to erect turbines with a greater capacity but using a more advanced technology.

Duration of the process

Finalizing the case by issuing an environmental decision, for example for an onshore wind installation, should be completed within one month. However, this is only a theoretical timeframe resulting from administrative procedure, which does not take into account the specific nature of the proceedings, which typically last several months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals, opinions, public participation in the proceedings or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the decision

The authority competent for the decision is the Regional Director for Environmental Protection (RDOŚ) having jurisdiction over the project site.

Decision validity period

An environmental decision remains valid and binding until it is removed from legal circulation and may be used at subsequent stages of the investment process. However, within six years from the date on which the decision became final, or within ten years if the deadline has been extended (provided that the party who submitted the application for the environmental decision or the entity to which the decision was transferred received, before the expiry of the six-year period, confirmation from the authority that issued the decision in the first instance that the conditions for implementing the project specified in the decision remain valid), it is possible to submit an application for a follow-up decision.

What is the fee for the decision?

The stamp duty for an environmental decision is PLN 205 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

An appeal against the decision may be lodged within 14 days from the date of its delivery, including delivery by public notice, to the General Director for Environmental Protection. Subsequently, a complaint may be filed with the Voivodeship Administrative Court, and thereafter with the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP. However, some of the annexes to the application must be submitted in paper form.

2.5. CONNECTION TO THE ELECTRICITY GRID

Ensuring connection to the power grid is a stage in the investment and construction process that precedes obtaining a construction permit or is carried out concurrently with it. Grid connection enables the delivery of electricity generated by a wind power plant. An exception to this are so-called "off-grid" installations, which operate independently of the national power system. Under the current legal framework, grid connection is a prerequisite for the supply and sale of electricity from wind power plants, as well as for the operation of installations used exclusively for own needs (e.g., a production facility connected to the grid).

Ensuring a grid connection is an investment and construction process stage consisting of the following steps:

- the investor obtains the grid connection conditions;
- the connection agreement is signed;
- the electricity distribution agreement is signed.

2.5.1. Electricity grid connection conditions

The grid connection conditions are a document issued by the distribution system operator or the transmission system operator to define the technical details of connecting a wind farm and they obligate the operator to sign a project-grid connection agreement with the investor. The connection conditions "temporarily book the grid space" for a specific project.[29]

If the generator does not sign a connection agreement within 24 months, the connection conditions expire and they do not obligate the grid operator to sign the connection agreement.

Elements of an application for grid connection conditions

An application for grid connection conditions is submitted to the distribution system operator or to the transmission system operator that owns the grid to which the investor intends to connect the system.

[28] *Article 7 of the Energy Law*

[29] *Article 7(3a) of the Energy Law*

The application must specify:

- the person filing the application and their address;
- the request for grid connection conditions for a specific wind farm project;
- the maximum annual capacity of the produced electricity and the quantity of electricity fed to the grid;
- the installed capacity, generation capacity, available capacity, apparent power of generators and the maximum capacity referred to in Article 2(16) of Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators;
- the range of the permissible changes to the loads of the generators or their groups;
- the number of the energy generation modules to be connected;
- the size of the planned demand for capacity and electricity to cover the generator's own needs;
- the degree of compensation of the reactive power linked to the receipt of active electric power for the electricity generator's internal needs;
- the degree of compensation of the reactive power linked to the feeding of the generated electricity to the grid;
- the number of wind farm turbines;
- the types of turbines;
- the anticipated values of the electric parameters of the grid and the transformers forming a part of the plant system and devices;
- the minimum import capacity to guarantee the safety of people and property based on Article 11(6) of the Energy Law if electricity supply and consumption restrictions are imposed;
- the technical information regarding the interferences caused by the devices, systems and grids of the applicant and the characteristics of the loads as required to determine the connection conditions for entities from connection groups I to IV.

The investor should also attach the following:

- an extract and excerpt from the Local Spatial Development Plan;
- a document confirming the investor's title to use the real property where the wind farm specified in the application is to be located;
- the development plan on a land survey and height map to show the positioning of the facility to be connected in relation to the existing grid;
- certification confirming the technical parameters, operational characteristics, and performance specifications of the connected devices, installations, or networks;
- a single-line electrical diagram of the devices, systems or grids to be connected along with their description.

The process

Once the investor files an application for grid connection conditions, the operator of the electricity grid analyses the technical and economic possibilities of connecting the generating facility. Technical reasons are usually associated with the availability of connection capacity in the local grid at the point of connection – the operator checks if it is possible to safely supply power through the grid even in the case of extreme loads.

For wind farms above 2 MW, the operator is required to request expert opinions regarding the impact on the electric power system.

In terms of economic criteria, the operator analyses if it has the funds to develop the grid to the extent required to connect the wind power plant.

Duration of the process

The grid connection conditions application processing time for wind farms is:

- up to 120 days after the application filing date for applicants from connection group III or VI – where the facility is to be connected to a grid above 1 kV and has an energy source or energy storage;
- up to 150 days after the application filing date for applicants from connection group I or II.[30]

[30] *Article 7(8g) of the Energy Law*

Please note that if the operator refuses to issue the grid connection conditions, the Energy Law creates the terms and conditions for the relations between the operator and the investor. If the operator refuses to connect the facility because of:

- lack of the technical conditions for the connection arising from lack of the required grid transmission capacity at the time proposed by the entity applying for the connection of a RES system – the energy company shall define the planned time limit for and the conditions of the necessary grid development or modernisation and specify when the connection will be made;
- lack of economic possibilities – the energy company may sign a grid connection agreement establishing a connection fee in an amount agreed with the grid connection applicant;
- lack of both technical and economic conditions – the grid sections to be used to connect the system owned by the grid connection applicant may be built and developed by the grid connection applicant in coordination with the energy company.

Grid connection conditions validity period

Grid connection conditions are valid for 2 years after their delivery date.

During the validity period, the grid connection conditions represent a conditional commitment of the electricity transmission or distribution company to enter into a connection agreement.

What is the fee for grid connection conditions?

Not later than 14 days after filing the application to the operator, the investor must pay the advance for the grid connection conditions, which is PLN 30 gross for every kW of the connection capacity requested by the investor (applicable to networks with a voltage exceeding 1 kV).

The advance must not be higher than PLN 3,000,000. If the operator refuses to issue the grid connection conditions, the advance is returned to the account of the investor. If the grid connection conditions are issued, the advance is credited against the connection fee.[31]

Following the conclusion of the grid connection agreement, the connection costs borne by the investor, in the case of RES systems with an installed electric capacity not exceeding 5 MW, amount to 50% of the total expenditures for the implementation of the connection (excluding prosumer installations). For installations with a capacity exceeding 5 MW, the investor is required to cover 100% of the connection implementation costs.

[31] *Please note that some operators collect the advance payment for grid connection conditions only after reasonably confirming the feasibility of connecting the generating facility.*

How to appeal?

An investor whose application for grid connection conditions has been rejected may file a complaint to the President of the URE based on Article 8 of the Energy Law. Decisions of the President of the URE can be challenged before the Warsaw Regional Court's Competition and Consumer Protection Court.

Can the application be filed online?

Grid operators decide how and in what form an application must be submitted. This information is usually posted on websites so it is advisable to first verify if the application can be filed online.

2.5.2. Grid connection agreement

The connection agreement serves as the ground for connecting a wind farm to the electricity grid. It is a contract signed between the distribution system operator or the transmission system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the grid connection conditions.

In order to complete this task, both parties undertake to perform works to connect the generation source to the distribution system. Any necessary reconstruction or replacement of grid components is carried out in accordance with the provisions specified in the grid connection conditions.

The RES systems are privileged in terms of grid access. As long as there are technical and economic possibilities for that, the grid operator is obligated to sign a connection agreement first with an RES system.

Deadline for the obligations under the grid connection agreement

For grid connection agreements regarding wind farms, the time limit for the first supply of energy from the connected generation source should not be longer than 48 months. Failure to commence energy delivery within this timeframe may result in termination of the connection agreement, in accordance with the provisions of the Energy Law.

Securing the connection route

One of the most important elements of the connection agreement is identification of the grid connection point i.e. the point where the electricity generated by the wind farm will be fed to the distribution or transmission grid.

If the grid connection point is situated outside the investor's land (most cases), the investor is responsible for building a link between the wind farm and the grid connection point. In such a case, it is necessary to secure the titles to the real properties situated on the route of the electric power link.

How the titles to the real properties situated along the cable route should be secured depends on whether the link is to run across plots consisting of a road (whether or not having the status of a public road) or across privately owned properties.

Private property

The most common way to secure the legal right to use a private property across which a cable route is expected to run is utility easement. This solution authorises the owner of transmission facilities – the wind farm project investor who intends to build, or has already built, transmission facilities – to use a real property to the extent required to install, and to subsequently use, transmission facilities on the property. Utility easement is a limited real right effective with regard to each successive owner of the real properties across which the transmission facilities are to run. It is established in a notary deed and it is disclosed in the title register. It can be either fee-based or free of charge, in accordance with the provisions of the Civil Code Act.

Real property with a public road status

For properties with a public road status, the title to use the property is governed by the Roads Act – especially by Article 39 and Article 40 of the Roads Act. Securing the legal right to use a real property with a public road status is a multistep process. The first step is to obtain a decision issued under Article 39(3) and Article 39(3a) of the Roads Act by the road administrator to authorise to location of building structures or facilities within the roadway which are not related to road management needs or road traffic needs.

This step is followed by a decision issued under Article 40(1) and Article 40(2) of the Roads Act, which permits occupying the roadway space in order to perform construction works and install technical infrastructure facilities within the roadway which are not related to road management needs or road traffic needs. The decision permitting the occupation of the roadway for the purpose of performing the works is issued for up to ten plus days and it authorises the holder to physically enter the property in order to perform construction works.

The decision which permits installing facilities within the roadway is issued for a period of a few to a few dozen years and it grants the holder a legal right to install the facilities. Importantly, there are fees charged for both the occupation of the roadway and the installation of technical infrastructure facilities in the roadway. In the former case, it is a one-off fee, while in the latter case it is an annual fee.

Road property without a public road status

In the case of internal commune roads without a public road status, there is no single systematised procedure for securing the cable routing. Usually, communes issue informal permits for this purpose, which do not have the status of administrative decisions, where they authorise the installation of the facilities – this is equivalent to a decision issued under Article 39(3) and Article 39(3a) of the Roads Act. Subsequently, they sign an agreement with the investor whereunder the real property is provided for use in return for an annual fee – this is equivalent to a decision issued under Article 40(1) and Article 40(2) of the Roads Act.

Another possibility of securing the right to the land property is the already mentioned utility easement.

The above-mentioned titles securing the cable routing are not the only available legal options. There are also lease agreements or unnamed contracts which are structured similarly to a lease agreement. Unfortunately the rights they grant to the real properties are not as lasting as the ones described above.

2.6. REPORTING AND MARKING A WIND FARM AS AN AVIATION OBSTACLE

Due to their height, wind farms can act as aviation obstacles within the meaning of the Polish Aviation Law.[32] The following wind turbines can be considered as aviation obstacles under that law:

- wind turbines above the height determined by the specific obstacle limitation surfaces mentioned in the Regulation of the Minister of Infrastructure of 12 January 2021 on aviation obstacles, obstacle limitation surfaces and hazardous devices;
- wind turbines higher than 100 m above the level of the terrain surrounding the site or above water, situated in Poland or in the Polish Exclusive Economic Zone.
- wind turbines which were recognised by the President of the Polish Civil Aviation Authority, the Minister of National Defence or the minister competent for internal affairs as aviation obstacles because they pose a potential threat to aircraft traffic.

If the wind farm meets at least one of the above criteria, the party that is the owner, perpetual user of or holder of real rights to the real property, whoever actually holds the real property where the aviation obstacle is located, is required to mark it as a wind farm according to the rules described in the Polish Aviation Law and the regulations thereto. Afterwards, they must report the facility to the President of the Polish Civil Aviation Authority, the Minister of Defence and the minister competent for internal affairs.

[32] *Article 87[1] of the Polish Aviation Law of 3 July 2002 (Journal of Laws of 2022 item 1235 amended)*

2.7. CONSTRUCTION PERMIT

Construction permit is the element of the investment process which is the starting point for the construction works related to the development of a wind farm. Without this permit, an investor cannot commence construction works or, subsequently, operate the plant. [33]

Purpose of the permit

A construction permit verifies if the planned project complies with the law and respects the interests of the parties whose rights it is not allowed to violate. From the investor's perspective, the main purpose of obtaining a construction permit is to start the construction works to build the wind farm. A construction permit defines the rights and responsibilities of the investor related to project implementation.

Pursuant to Article 3(7) of the Construction Law, construction works are also understood as alteration, assembly, renovation or demolition of a building structure.

USEFUL NOTE

When is the permit required?

Considering the typical course of the investment and construction process, the investor seeks the construction permit after first receiving:

- verification of the feasibility of developing a wind power plant based on the Local Spatial Development Plan;
- the environmental decision (where applicable);
- a decision permitting the exclusion of land from agricultural production, in the case of properties including:
  a) agricultural land formed from mineral and organic soils classified as classes I, II, III, IIIa, IIIb;
  b) agricultural land of classes IV, IVa, IVb, V, and VI formed from organic soils;
  c) other agricultural land indicated by the Act on the Protection of Agricultural and Forest Land
- the electricity grid connection conditions.[34]

The electricity link that is the cable line connecting the wind power plant with the grid connection point is usually built based on pre-construction notification (Article 29 of the Construction Law), which replaces a construction permit in the case of simpler construction projects.

[33] *Article 28 of the Construction Law*

[34] *It can be processed concurrently with the construction permit.*

Elements of an application for the permit

The mandatory elements of the construction permit application are specified in the Construction Law. They are:

- details of the person filing the application and their address;
- the request for a construction permit decision for a specific construction project (importantly, the construction law states that for a construction project covering more than one facility, a construction permit may, at the investor's request, pertain to selected facilities or to a complex of facilities able function on their own in accordance with their intended purpose).

Furthermore, the investor should attach the following:

- a plot or land development design and an architectural construction design – along with the opinions, approvals, permits and other documents as required under separate legal acts or copies of the same (in paper format – 3 copies or in an electronic format);
- a declaration on having the right to use the real property for construction purposes.
- for construction projects preceded by an environmental decision issued in a process requiring the participation of the public – a visual appendix specifying the anticipated project implementation site and the anticipated project impact area, provided that the submission of this appendix was required by the regulations in effect on the date of applying for the environmental decision, and especially the map referred to in Article 74(1)(3a) of the EIA Act;
- a proof of payment of the stamp duty for the construction permit application;
- for applications filed by authorised representatives – the authorisation and a proof of stamp duty payment;

The crucial appendix to the construction permit application is the construction design. Construction design requirements are laid down in the Construction Law. A construction design must include:

- a plot or land development design prepared on an up-to-date map for design purposes or on a copy thereof, presenting:
  a) the plot or land boundaries;
  b) the location, outline and arrangement of the existing and planned building structures, including the utilities on the plot and any building facilities located outside the building structure;
  c) the sewage discharge or treatment method;

d) the traffic system and the arrangement of vegetation, with specification of the characteristic elements, dimensions, ordinates and mutual distances between objects – in relation to the existing and planned buildings in the neighbouring areas,
e) information about the project impact area;

- an architectural and construction design which covers:
  a) the spatial arrangement and the architectural form of the existing and planned building structures;
  b) the intended use of the building structures;
  c) the characteristic technical parameters of the building structures;
  d) a geotechnical opinion and the information on how the building structure is attached to the ground;
  e) the planned material-related and technical solutions which influence the surroundings, including the environment;
  f) ecology characteristics;

- a technical design including:
  a) the planned structural solutions of the facility along with the results of static strength calculations;
  b) the planned necessary technical and material-related solutions;
  c) as needed – the geology engineering report or the geotechnical conditions for laying the building foundations;
  d) other design records;

- opinions, approvals, permits and other documents referred to in Article 33(2)(1) of the Construction Law.

Furthermore, the following must be attached to the construction design:

- a statement that the design author has the qualifications to hold an independent technical function in the construction industry;
- a statement of the engineer that the design was prepared in accordance with the applicable laws and the construction principles.

02. ONSHORE WIND ENERGY

The process

Once the construction permit application is filed, the authorities make the preliminary determinations and give approvals or seek the opinions of other authorities.

Parties to the construction permit acquisition process: the investor, owners of the real properties (perpetual users of the real properties) or administrators of the real properties within the project impact range.

Duration of the process

A construction permit should be issued within 65 days following the submission of the application (Article 35(6)(1) of the Construction Law).

Authority competent for the permit

The authority in charge of issuing a construction permit for a wind farm is the voivode (Polish: wojewoda).

Permit validity period

The construction permit is issued for a period of three years from the date it becomes final. If construction is not commenced within this period, or if it is suspended for more than three years, the permit expires.

What is the fee for the permit?

The stamp duty for a construction permit is PLN 155 and it must be paid at the submission of the application.

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application. The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days to appeal against the decision to the Chief Construction Supervision Authority (Główny Urząd Nadzoru Budowlanego) through the voivode who issued the challenged decision.

Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on e-Budownictwo.

2.8. OPERATIONAL NOTIFICATION

Following the completion of the construction of a wind power installation, a permit for use must be obtained prior to commencing operation[35]. This decision confirms the legal possibility of using the facility in accordance with its intended purpose.

Additionally, in parallel with submitting the application for the permit for use, and in accordance with Article 76(4) of the EIA Act, the investor is required to notify the voivodeship environmental protection inspector at least 30 days prior to the planned commissioning date of the installation and the planned completion of its start-up phase.

Purpose of the notification

The basic purpose of the decision is to verify if the erected wind farm has been completed in accordance with the basic design and if it is fit for use. This entails a mandatory inspection of the project after the end of the construction process.

When is the notification required?

An operational notification is required after the construction works covered by the construction permit are completed but before the operation of the wind farm starts.

An operational notification is still required even if the investor intends to commence the operation of only a part of the project covered by the construction permit.

Elements of an application for the notification

An application shall include:

- details of the investor, including a correspondence address;
- identification of the construction supervision authority;
- identification of the construction permit decision underlying the implementation of the project;
- identification of the real property where the facility is located.

[35] *Article 55 of the Construction Law*

Furthermore, the investor should attach the following:

- original construction daily log or, if the log is digital, the number of the log referred to in Article 47h(2) of the Construction Law;
- the technical design;
- a statement of the construction manager that the building structure complies with the construction design or the conditions of the construction permit and with the applicable laws and that the construction site has been brought to a proper condition and cleaned up;
- a statement that appropriate land management of adjacent areas has been secured wherever the operation of the facility depends on appropriate management of such areas;
- reports concluding the inspections and checks of: the connections, systems and technical devices guaranteeing the use of the structure as intended; the reports must be prepared by individuals having construction qualifications in the required specialities;
- the decision authorising the operation of a technical device, referred to in Article 14 of the Act on Technical Inspection of 21 December 2000 (Journal of Laws 2024 item 1194 as amended);
- surveyor documentation with results of the as-built site survey;
- confirmation, in accordance with separate regulations, of the acceptance of the completed connections;
- certificate of the commune administrator or mayor confirming compliance with the requirement to implement a supplementary project (where required);
- copies of the drawings forming a part of the approved design, including the changes made and, where appropriate, a supplementary description of the changes where the changes do not significantly deviate from the approved design;
- receipt for a stamp duty for the permit;
- for the authorisation.

An operational notification is not just an official permission for the investor to use a building but it also defines the conditions of using the building at its operation stage.

The process

An investor who should obtain an operational notification for a facility is required to report the completion of the wind farm construction process and the intention to commence the operation of farm to the construction authority and, as required by specific legislation, to the local:

- the State Sanitary Inspectorate (Państwowa Inspekcja Sanitarna) and
- the State Fire Service (Państwowa Straż Pożarna).

The authorities determine if the building structure has been erected in accordance with the construction design. They should issue opinions within 14 days of receiving the notification and if they fail to do so, they are deemed to have no objections.

Once the application is filed, the construction supervision authority is required to inspect the construction site compliance with the determinants and conditions specified in the prior construction permit and conformity with the construction design. The inspection precedes the grant of an operational notification.

The construction supervision authority conducts a mandatory inspection before the expiry of 21 days following the delivery of the notice. The authority notifies the investor about the mandatory inspection within 7 days following the delivery of the notice. Importantly, the investor is required to participate in the mandatory inspection at the set time.

The inspection includes checking:

- the compliance of the building structure with the plot or land development design;
- the compliance of the building structure with the architectural and building design and the technical design in terms of:
  a) the characteristic technical parameters as regards the footprint area, height, length, width;
  b) the workmanship of the visible load-bearing elements of the building structural system;
  c) the workmanship of construction works;
  d) the workmanship of the systems ensuring the use of the building structure as intended;
- compliance with the conditions specified in Article 55(1b) of the Construction Law if the operation of the building structure is to commence before the completion of all construction works;
- the construction products particularly important for structural safety and fire safety;
- if the construction permit provides for an obligation to demolish any existing building structures not expected to be used any more or any temporary building structures – compliance with this obligation, provided that the time limit for the demolition specified in the permit has expired;
- if the construction site has been cleaned up.

After the mandatory inspection, the construction authority prepares a report in three copies. One copy is delivered to the investor promptly after the inspection, the second one is delivered to a higher-level authority and the third one is retained by the construction supervision authority.

If the inspection result is positive, the authority issues an operational notification for the wind farm. In the wind farm operational notification, the construction supervision authority may determine the conditions of using the plant or may make the operation of the plant contingent upon the completion of specific construction works within a specified time limit.

02. ONSHORE WIND ENERGY

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the notification

An operational notification for a wind farm is issued by the Provincial Construction Supervision Inspector (Wojewódzki Inspektor Nadzoru Budowlanego).

Notification validity period

The notification is open-ended.

What is the fee for the notification?

The stamp duty for an operational notification is PLN 38.75 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

An appeal against the decision must be submitted within 14 days from the date of its delivery, including delivery by public notice, to the Chief Construction Supervision Authority (Główny Urząd Nadzoru Budowlanego) through the authority that issued the challenged decision. Subsequent remedies available to the investor include a right to complain to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The notification can be submitted online to the public administration body having jurisdiction over the matter on the e-Budownictwo website.

2.9. SAFE OPERATION OF WIND FARMS

To improve the safety of wind farm operation in Poland, the investor is required, throughout the whole wind farm operation stage, to safely use all the technical elements of the wind farm, which includes their proper maintenance. The activities are handled by specialised commercial maintenance companies whose actions are monitored and verified by the Polish Office of Technical Inspection (UDT).

The register of certified maintenance companies is kept by the President of the UDT and it is generally accessible on the UDT website, allowing every concerned party, including investors, to verify which businesses have the status of certified maintenance companies and for how long. This guarantees choosing an appropriate contractor.

An investor who fails to comply with the obligation risks a fine of at least PLN 10,000 but not higher than 5% of the revenue. The fine is imposed by the President of the URE.

The fine must be paid not later than 14 days after the decision of the President of the URE imposing the fine becomes final and binding. The fine is paid to the account of the URE.

2.10. RES ELECTRICITY GENERATION LICENCE

A licence for generation of electricity from renewable energy sources is usually the last step preceding the commencement of electricity sale by a wind farm.[36]

The licence is not mandatory for the following systems:

- wind farms up to 50 kW which, as micro-systems, may commence the generation and sale of electricity based on prior notification to the distribution system operator or transmission system operator (see section 2.11.1. of this chapter);
- wind farms from 50 kW to 1 MW which, as small systems, are subject to simplified entry in the register of small RES systems (see 2.11.2. of this chapter).

Purpose of the licence

The purpose of a licence is for the government to authorise an activity in a branch of the economy that is particularly important from the perspective of public interest, i.e. the energy sector. The licence decision defines the conditions and the duration of this activity.

When is the licence required?

A concession decision must be obtained prior to commencing business activity in the field of electricity generation from renewable energy sources. It is therefore the final decision issued in the investment and construction process of a wind power plant (except for the cases described above).

Elements of the licence application

The list of the documents required with an application for a wind farm electricity generation licence is provided by the President of the URE, who initiates the procedure of reviewing the licence issue criteria defined in the Energy Law.

The list of the documents is available on:

https://www.ure.gov.pl/pl/biznes/jak-uzyskac-koncesje/energia-elektryczna/784,Odnawialne-zrodla-energii.html

[36] *Article 32 of the Energy Law*

In accordance with the current list, a basic licence application should include:

- details of the person filing the application and their address;
- a request for a licence to generate energy from renewable sources;
- an extract from the KRS register of companies obtained not earlier than 3 months before the submission of the application to the authority in charge of issuing the licence;
- a list of all the parties with a significant influence or control or co-control, within the meaning of Article 3(1)(34), Article 3(1)(35) and Article 3(1)(36)(a), 3(1)(36)(b), 3(1)(36)(e) and 3(1)(36)(f) of the Polish Accounting Act, over the applicant, along with the information which of the above relationships reflects the relationship between the entrepreneur and a given party and the information on what grounds the above parties are present on that list, plus a valid certificate of no criminal record from the National Criminal Register for such parties;
- a statement by the entrepreneur confirming that no bankruptcy petition has been filed against them and that they are not in liquidation;
- a statement of the entrepreneur that it has not been deleted from the register of regulated activities in the past 3 years as a result of a decision prohibiting the entrepreneur from engaging in an activity covered by the entry in the register because it:
  a) filed a false statement on the legal compliance of such activity;
  b) failed failed to remedy its breach of the legal requirements for such activity by the deadline set by the authority or
  c) committed a gross breach of the legal requirements for such activity;
- a document confirming that the entrepreneur is registered as a VAT payer;
- a certificate of excise duty identification number, where applicable, issued by the head of the tax office;
- a statement of the entrepreneur confirming there are no reasons to suspend the procedure based on Article 33(3a) of the Energy Law whereunder the President of the URE suspends the procedure wherever the entrepreneur or the above-mentioned individuals are indicted for a crime or a tax crime related to their business activity;
- a statement of the entrepreneur that all the individuals hired to operate the systems, facilities and devices used in the performance of the licensed activity have the qualification certificates provided for by the Energy Law and the qualification certificates issued based on other regulations which authorise them to operate such systems, facilities and devices;

- information provided by the entrepreneur regarding the networks, equipment, and installations specified in the Regulation of the Minister of Climate and Environment of 1 July 2022 on the detailed rules for confirming the possession of qualifications by persons engaged in the operation of equipment, installations, and networks that will be used in the activity covered by the application, as well as the number of individuals employed in their operation, including the qualification certificate numbers;
- documents confirming the entrepreneur's legal title to the facilities and systems required for the licensed activity, for example a notary deed, a copy of the title register, an extract from the land register, the lease agreements, the loan for use agreements, purchase invoices for the equipment used to generate electricity;
- description of the parameters and the technical condition of the electricity generation equipment;
- documents confirming that the devices comprising the installation meet the requirement referred to in Article 32(1a) of the Energy Law;
- an extract and excerpt from the Local Spatial Development Plan;
- the construction permit;
- documents containing the information that the construction process has ended and the operation of the facility commences (operational notification);
- decisions of the Polish Office of Technical Inspection (UDT) approving the electricity generating devices for use;
- documents confirming the installed capacity of the power-generating facility;
- the documents issued by the electrical system operator to whose grid the RES facility is connected:
  a) the decision defining the technical conditions for connecting the system to the electricity grid (grid connection conditions) or the connection agreement;
  b) the report confirming the technical inspection of the power devices and their approval and acceptance for use;
  c) the report confirming the operation check of the measurement and settlement systems (known as the detailed technical service (OTS) order report)
- a power evacuation diagram highlighting the places where the quantity of the generated electricity is measured and outlining the separation of ownership of systems, devices and facilities between the entrepreneur and the electricity system operator highlighting all the generation equipment;

- a summary of projected annual revenues and costs for the business activity covered by the concession application, for a period of at least three full calendar years;
- financial statements for the last three years;
- other documents confirming that the entrepreneur has, or is able to secure, sufficient financing for proper performance of the licensed activity (e.g. bank guarantees, insurance guarantees, guarantee agreements, credit facility agreements, loan agreements etc.);
- valid certificates from the competent tax authority and customs authority, obtained not earlier than 3 months before their presentation to the licensing authority, confirming that the entrepreneur has no overdue payments towards the state budget;
- a valid certificate from the competent branch of the Polish Social Insurance Institution (ZUS), obtained not earlier than 3 months before its presentation to the licensing authority, confirming either that the entrepreneur has no overdue social security contribution payments or that it is not registered as a contribution payer;
- a a valid certificate from the bank that keeps the basic account of the entrepreneur which specifies the value of the transactions, the payment capacity, the creditworthiness of the entrepreneur and contains information about the credit facilities granted to the entrepreneur and the information on whether the account is free from any enforcement orders, obtained not earlier than 3 months before its presentation to the licensing authority.

The process

Once the application is filed, the licensing authority verifies the documentation to determine if it meets the criteria specified in Article 33 of the Energy Law and it requests an opinion from the local province executive board.

Licence grant may be contingent on the posting of a bond to satisfy any third-party claims which may arise as a result of improper performance of the licensed activity, including environmental damage.

Importantly, after obtaining the licence, the generator must pay an annual licence fee, which is calculated based on the revenue of the RES system. The RES systems up to 5 MW are exempt from the fee.

Obtaining the licence also entails a periodic reporting requirement, usually to the President of the URE.

02. ONSHORE WIND ENERGY

Duration of the process

Electricity generation licensing, e.g. for a wind farm, is a process that should be completed within a month. However, this is just a theory based on the administrative procedure and it does not account for the specificities of the licensing process, which usually takes a few months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the licence

The authority responsible for issuing the licence is the President of the URE.

The licence application must be filed to the local URE branch having jurisdiction over the power plant.

Licence validity period

The licence is granted for an indefinite term, not shorter than 10 years and not longer than 50 years, unless the entrepreneur requests a shorter term.

What is the fee for the licence?

The stamp duty for an energy generation licence is PLN 616 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the President of the URE. The cost of the appeal is PLN 1000.

Can the application be filed online?

You can file the application online through the ePUAP service.

2.11. MICRO AND SMALL WIND TURBINES

Although micro and small wind installations are not as popular as their photovoltaic counterparts, they are increasingly recognized as a valuable complement to the energy mix. One of their key advantages is a relatively stable energy production profile, which makes them an attractive solution for entities with relatively high energy demand that exceeds the generation capacity of a photovoltaic installation of comparable size. Nevertheless, for such systems, it is essential to thoroughly assess local wind conditions and the investment's profitability, as limited wind speeds at low elevations above ground level may significantly reduce their viability.

The division into micro- and small turbines relies on the capacity of the devices.

Micro-wind turbines are systems of a total installed capacity up to 50 kW which are connected to an electricity grid of a rated voltage below 110 kV.

Small wind turbines are systems of a total installed capacity above 50 kW but up to 1 MW which are connected to an electricity grid of a rated voltage below 110 kV.

2.11.1. Micro-wind turbines

Micro-wind turbines usually take the form of surface or rooftop systems, with either horizontal or vertical axis configurations.

The investment process for the construction of micro-wind turbines has been substantially simplified when compared to large-scale wind farms.

Location and title to land

Micro-wind turbines usually serve the purpose of producing energy for private use. Hence they are most commonly located in a close proximity to the buildings and other structures they power. In this respect, they differ considerably from large-scale wind farms, which are in principle located far from buildings.

Environmental decision

Wind power systems with a height not exceeding 30 m are exempt from the requirement to obtain an environmental decision.

Planning

The rule of locating wind farms at least 700 m away from the nearest buildings with a residential function does not apply to micro-wind turbines.

Micro-wind turbines can be installed near or directly on residential buildings.

Electricity grid connection

If the capacity of a micro-system is lower than or equal to the connection capacity of the structure on which the micro-system will be installed, a connection request must be filed to the operator within 30 days before the planned connection of the micro-system to the grid and the operator reviews the request.

If the micro-system connection capacity exceeds the connection capacity of the structure on which it is installed an application for grid connection conditions is required in accordance with 2.5.1. of this chapter.

The following must be attached to the application:

- a diagram of the electrical system presenting how the micro-system is to be connected;
- certification confirming the technical parameters, operational and dynamic characteristics of the connected devices, installations, or networks, including the technical specification/data sheets of generation and conversion equipment;
- an equipment certificate meeting the NC RfG requirements, issued by an authorised certifying entity;
- authorisation(s) for the person(s) authorised by the applicant to act on the applicant's behalf;
- seller's electricity purchase agreement (in cases where the applicant intends to sell electricity to a seller of choice or to an obliged seller);
- a statement on holding the legal title to the real property where the project is to be implemented and to the micro-system specified in the request;
- statement of the installer confirming their qualifications and the legal and technical compliance of the connection;
- additional appendices of the applicant, especially related to circumstances which may affect safe functioning of the micro-system or the grid.

After reviewing the request, the operator connects the micro-system.

Construction permit

In accordance with current regulations, construction of rooftop micro-wind turbines up to 3 m requires neither a pre-construction notification nor a construction permit. The construction of rooftop micro-wind turbines above 3 m requires a notification but not a construction permit. However, the simplifications for rooftop turbines do not extend to ground systems, which still require a construction permit.

The competent authority for a notification is the county administrator (Polish: starosta). The notification must be submitted before the intended commencement of the construction works. The architectural and construction administration authority has 21 days after the delivery of the notification to object by issuing a relevant decision. If the architectural and construction administration authority fails to object by that time, the investor may start the construction works.

A notification can be submitted either in paper format or on the e-Budownicwo website.

Licence

Micro-wind turbines are exempt from the licensing requirement. They can start to generate electricity as soon as they are commissioned.

2.11.2. Small wind turbines

Small wind turbines (i.e. with a capacity above 50 kW but up to 1 MW) have been granted fewer investment simplifications than micro-wind turbines.

Unlike micro-wind turbines, small wind farms must respect the rule of being located at least 700 m from the nearest buildings with a residential function.

The investment process simplifications for wind farms are:

- no requirement to obtain an environmental decision for systems up to 30 m;
- no requirement to obtain an electricity generation licence, which is replaced by entry in the register of small RES electricity generators;
- small rooftop systems up to 12 m high are exempt from the requirement to obtain a construction permit, on the terms as specified in section 2.11.1.

Register of small RES electricity generators

Entry in the register of small RES electricity generators replaces the licence decision for small wind turbines of an installed capacity from 50 kW to 1 MW.[37]

The commencement of energy production from a small turbine requires an entry in the register of small generators because this activity is regulated by the government. However, the entry requirements are much less strict than for the energy generation licence referred to in 2.10.

Purpose of the entry

The purpose of the entry in the register of small RES electricity generators is to offer a simplified and expedited approval process for a business in the energy sector.

When is the entry required?

Entry in the register is required after the operational notification is obtained but before the small RES generator starts to produce and sell energy.

Elements of an application for the entry

The template form for investors is available on the URE website at:

https://bip.ure.gov.pl/bip/rejestry-i-bazy/wytworcy-energii-w-male/2138,Rejestr-wytworcow-energii-w-malej-instalacji.html

The application must be accompanied by:

- a statement of the generator that it is in no arrears with any taxes, levies and social security contributions;
- a statement of the generator that the data included in the application are correct and that the conditions referred to in Article 9(1) of the RES Act are met, with confirmed awareness for the criminal liability for submitting false statements;
- a receipt for a stamp duty for the entry;
- if the application is filed through an authorised representative, the authorisation must be attached along with a receipt for a stamp duty for the authorisation.

[37] *Article 7 of the RES Act*

The process

The authority checks internally if the application is error free. If the authority does not find any errors, the generator is entered in the register and the authority issues a certificate of entry in the register.

Duration of the process

The President of the URE is obligated to enter an entrepreneur in the register of small RES electricity generators within 21 days after receiving the application.[38]

If the President of the URE violates the 21-day time limit for entry in the register, the investor may commence the activity 28 days after the authority receives the application.

Importantly, obtaining an entry in the register also entails a periodic reporting requirement, usually to the President of the URE.

Authority competent for making the entry

The authority responsible for making the entry is the President of the URE.

The application must be filed to the local URE branch having jurisdiction over the power plant.

Entry validity period

The entry in the register has no expiry date.

[38] *Article 11a of the RES Act*

02. ONSHORE WIND ENERGY

What is the fee for the entry?

Entry in the register requires a stamp duty of PLN 616 and payable upon submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days to appeal to the Warsaw Regional Court's Competition and Consumer protection Court via the authority that issued the decision. The cost of the appeal is PLN 1000.

Can the application be filed online?

You can file the application online through the ePUAP service.

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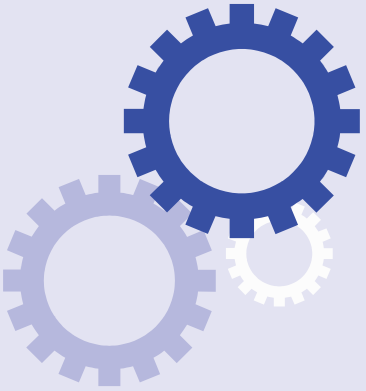
03. OFFSHORE WIND ENERGY

3.1. TECHNOLOGY DESCRIPTION

Offshore wind energy is a technology relying on the use of the kinetic energy of the wind present in maritime areas. The energy generation mechanism is analogical to that for onshore wind turbines – the kinetic energy of the wind is transformed into mechanical energy in the form of the rotation of the rotor. This energy is transmitted through the shaft and the gearbox to the generator, which subsequently transforms it into electricity. Compared to onshore installations, offshore wind farms are larger and feature higher turbine efficiency, resulting from the greater stability and strength of wind over marine areas.

At the time this Handbook was released, Poland had no offshore wind farms. According to Poland's Energy Policy to 2040, the installed capacity of offshore wind energy is going to be 5.9 GW in 2030 and 11 GW in 2040. This means that by 2030, offshore wind farms will account for 13% and in 2040 for 19% of the electricity generated in Poland. The first offshore wind farms in the Polish Exclusive Economic Zone will start to produce energy in 2026.

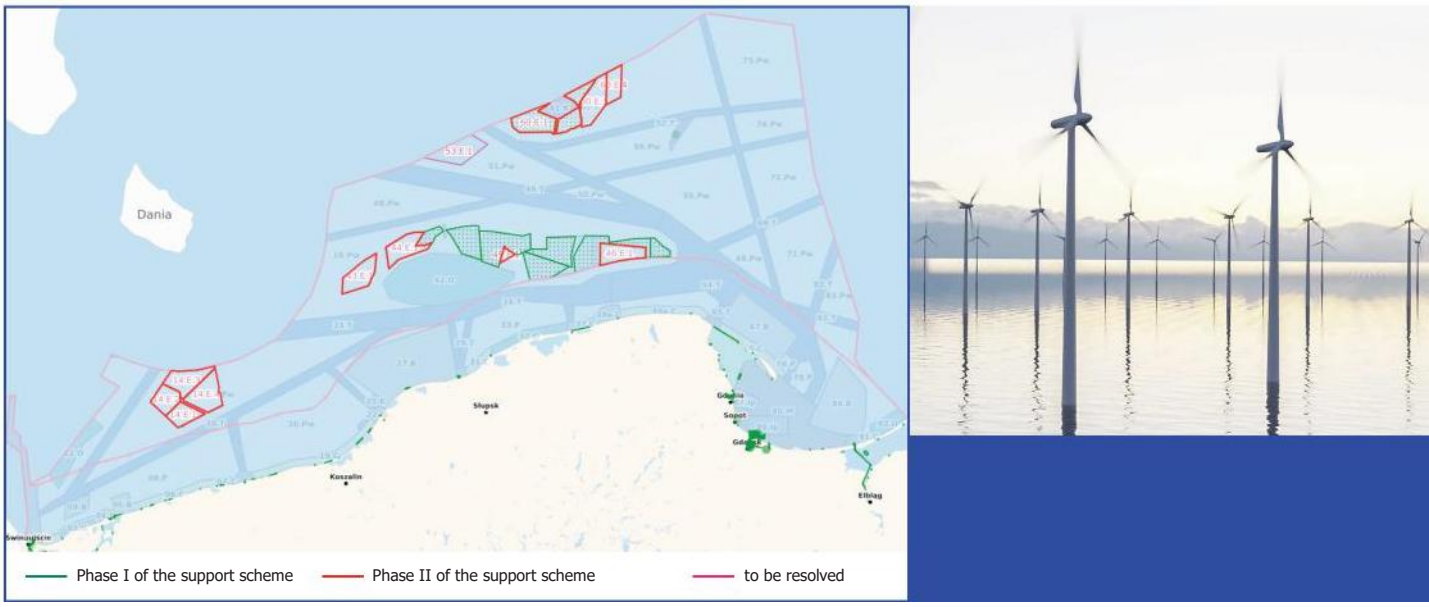


3.2. CHOOSING PROJECT LOCATION

The location possibilities for offshore wind farms are much more limited than for onshore wind power systems. Offshore wind farms in Poland can only be located in the Exclusive Economic Zone. This means a minimum distance from the coastline of 12 nautical miles (about 22 km from the shore).

The legal instrument for checking the permissible locations of offshore wind farms is the PZPPOM. Maritime areas having electricity generation from renewable sources as their basic function are identified in that plan.

It is worth noting that Annexes 1 and 2 to the OWF Act specifically define the areas designated for the deployment of offshore wind farms, in relation to which producers may apply for the right to cover the negative balance. These areas fall within maritime zones designated in the PZPPOM as having the primary function of renewable energy generation and cover a total of 2,310.8 km². Their distribution is located in the regions of the Słupsk Bank, the Central Bank, and the Odra Bank.



Map of the planned locations of future offshore wind farms within Poland's exclusive economic zone. Source: MKiŚ's own elaboration based on SIPAM

Another important factor is the depth of the maritime areas. In the deeper waters of the Baltic Sea, floating wind farm technology shows potential. However, at present, investors in Polish maritime zones are planning offshore wind farm projects based on fixed-bottom foundations anchored to the seabed.

3.3. PERMIT DECISION FOR THE ERECTION OR USE OF ARTIFICIAL ISLANDS, STRUCTURES AND EQUIPMENT IN POLISH MARITIME AREAS

The PSZW decision typically constitutes the first step in the investment process for an offshore wind power plant[39], although regulations do not preclude obtaining the environmental decision as the initial step.

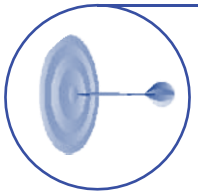
For offshore wind farms, the PSZW replaces the requirement to obtain legal title to the property on which the investment is carried out – this results from the specific legal conditions applicable to maritime areas.[40]

[39] *Article 23(1) of the MAMA Act*

[40] *D. Trzcińska, M. Trzciński, Lokalizacja przedsięwzięć energetycznych na obszarach morskich Rzeczypospolitej Polskiej w świetle aktualnych przepisów prawa (Location of power projects in polish maritime areas in the light of the current legislation, real properties). Nieruchomości. Kwartalnik Ministerstwa Sprawiedliwości (Real Properties. Quarterly of the Ministry of Justice)*

03. OFFSHORE WIND ENERGY

Purpose of the PSZW



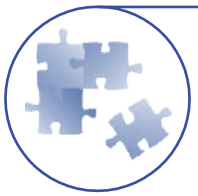
The purpose of the PSZW is to legally erect an offshore wind farm within the Polish Exclusive Economic Zone. No offshore wind farms can be built or used in internal sea waters and in the territorial sea.

When is the PSZW required?

The decision is required at the very beginning of the investment process wherever a project of building an offshore wind farm is planned. To apply for the PSZW, the investor must verify if the project is consistent with the PZPPOM. A PSZW can be issued exclusively with regard to a project that complies with the PZPPOM. Furthermore, the location of a planned offshore wind farm must correspond to the areas defined in Annex 1 and Annex 2 to the OWF Act.

A PSZW is necessary for the investor to be able to apply for an auction eligibility certificate for auctions involving the right to cover the negative balance in the case of electricity generated in offshore wind farms.

Elements of an application for the PSZW



An application for the PSZW should include[41]:

- the name, registered office and address of the applicant;
- detailed identification of the project requiring the permit and its objective, along with:
  a) the proposed location defined using geocentric geodetic coordinates applied on a sea map to outline the site intended for the implementation and operation of the project. The location must correspond to the basin defined in Annex 2 to the OWF Act;
  b) the surface area of the basin intended for the implementation and operation of the project and the period necessary to implement and operate the project;
  c) the characteristic technical parameters and value of the planned project, including project implementation stages and schedule and the method for transferring the output to the shore. The required scope of the characteristic technical parameters is presented further in the Handbook;
  d) assessment of the economic, social and environmental impact.

[41] *Specifications of the application elements included in Article 27a(1) and Article 27a(2) of the MAMA Act.*

In addition to the content of the application presented above, the following must be attached:

- a certificate or statement of entry in the relevant register, which must contain especially the number of that entry, if the applicant is an entity other than a natural person who is a sole trader. In the case of a statement, it must include the following notice: "I am aware of the criminal liability for false statements";
- description of the technology of the planned project;
- information about the environment situated within the impact range of the planned project;
- description and assessment of potential project impacts on the environment and its natural resources – both living creatures and minerals;
- description of the measures to mitigate harmful project impacts on the marine environment;
- description of the adopted assumptions and applied methods of forecasting and using marine environment data and identification of the difficulties encountered in the collection of the necessary information;
- a draft monitoring scheme including environmental monitoring and management of the investment and operation process;
- description of the elements of the environment protected under the Nature Act, including without limitation any national parks within the expected project impact range.

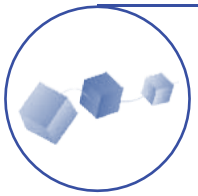
Pursuant to Article 23(5a) of the MAMA Act, an application for the PSZW must include the following characteristic technical project parameters:

- the number and dimensions of building structures or temporary building structures, including offshore wind turbines, offshore substations or offshore servicing or residential stations;
- the expected annual quantity of the electricity produced by the offshore wind farm;
- the maximum installed capacity of the offshore wind farm;
- the minimum distance between offshore wind turbines;
- the way of installing (including the depth of) the cables connecting particular offshore wind turbines with offshore substation and their technical parameters;
- the maximum total height of the offshore wind turbine with the rotor;
- the minimum and maximum diameter of the rotor of the offshore wind turbine;
- the minimum distance between the average sea level and the blade of the offshore wind turbine at the lowest position;

- the type of underground supporting structures and foundations of offshore wind turbines and the remaining above-water facilities of the offshore wind farms;
- the maximum height of the offshore wind turbine supporting structures along with the connecting section and the remaining above-water facilities of the offshore wind farm above average sea level;
- the power output technology and the technical parameters of the internal grid connection of the offshore wind farm;
- the maximum quantity of the oils and lubricants used in a single offshore wind turbine;
- the number and size of vessels by stages: construction, operation and shutdown.

If the application contains any trade secrets, the applicant submits an additional copy of the application which includes only the appendices without any trade secrets. The characteristic project technical parameters and the proposed project location are not trade secrets.

The process



The application along with all the documents is filed to the minister in charge of maritime economy, currently the Minister of Infrastructure, who checks its formal and content-related aspects.

Afterwards, the minister seeks opinions from ministers in charge of: State assets, energy, economy, energy resources management, climate, culture and national heritage protection, fishery, environment, geology, internal affairs, the Minister of National Defence and the head of the Polish Internal Security Agency (ABW).

They should issue the opinions within 90 days after receiving the opinion request from the minister in charge of maritime economy. If the time limit is not observed, they are deemed to have no reservations, which means that the permit can be issued (provided that the remaining legal requirements are met).

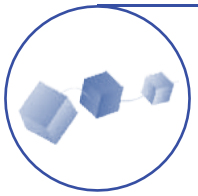
The minister in charge of maritime economy is under the obligation to deny the PSZW if the issue of the PSZW could result in at least one of the potential threats referred to in Article 23(3) of the MAMA Act. These include threats to:

- the environment, sea resources or undersea resources, including reasonable management of mineral deposits;
- the interest of the national economy;
- national defence and national security;
- the safety of maritime transport;

- safe sea fishing;
- safe aircraft flights;
- underground archaeological heritage;
- the safety related to research, identification and extraction of mineral resources from the bottom of the sea and the Earth's interior beneath it;
- the basic functions referred to in Article 37a(3) of the MAMA Act, where applicable (the basic function means the main intended purpose of the area designated in the plans).

It must be added that the authority's right to deny the PSZW is not limited to the above reasons only and the authority may deny the PSZW also in other cases, at its administrative discretion.

The process



Once an application for the PSZW is filed, the minister in charge of maritime economy promptly posts a notice on the BIP of the Minister of Infrastructure and on the website of the authority supporting this minister, inviting other PSZW applications for the basin covered by that application.

The announcement includes information on:

- the subject matter of the decision to be issued in the case;
- the location defined using geocentric geodetic coordinates;
- the surface area of the basin intended for the project covered by that application;
- the authority competent for the permit;
- the possibility of filing other PSZW applications within 60 days of the BIP notice date;
- the application evaluation criteria;
- the most important application evaluation criterion;

If at least one complete application is submitted within 60 days following the publication of the above notice on the BIP, the Minister of Infrastructure holds an award process to choose the entity to be granted the PSZW for that area of the basin.

Information on notices inviting other PSZW applications for the same area of the basin is available on the website:

https://www.gov.pl/web/infrastruktura/ogloszenia-na-podstawie-art-27c-ustawy-o-obszarach-morskich2

The application evaluation criteria[42] for the award process are:

- the compliance of the planned projects with the PZPPOM, where compliance is understood as:
  a) positive opinions on the application from the authorities referred to in Article 23(2) of the MAMA Act (i.e. the ministers in charge of: State assets, energy, economy, energy resources management, climate, culture and national heritage protection, fishery, environment, geology, internal affairs, the Minister of National Defence and the head of the Polish Internal Security Agency (ABW) or absence of reservations on this matter;
  b) the possibility of using the basin specified in the application for the purposes specified in the application, taking into account the planning materials referred to in secondary legislation enacted under Article 37b(4) of the MAMA Act;
  c) demonstration that it will still be possible to implement projects other than related directly to the planned project within that basin;
- the permit duration proposed by the applicant, including the construction and operation start and end dates for the planned project, i.e.:
  a) how far the planned project construction and operation start and end dates are aligned with the interest of the national economy, for example how the contribute to the furtherance of the national energy policy;
- how the funds required for the fee referred to in Article 27b(1)(1) of the MAMA Act, i.e. the fee for the PSZW, are secured – a proof of:
  a) a bank guarantee;
  b) a deposit paid to the bank account for deposited sums opened for the authority supporting the Minister of Infrastructure, to be returned within 30 days after the award process or after the submission of a statement on withdrawal from the award process;
  c) an insurance guarantee;
  d) a surety;
- how the planned project is financed, taking into account the applicant's own funds, loans, credit facilities and the proposed project co-financing from public funds; the evaluation is made based on the following criteria:
  a) if the project can be implemented using the applicant's own funds; the evaluation is based on:
     - financial statements for the past three financial years or, if the applicant has been in business for less than three years – for the period of business;

[42] *The criteria are included in Article 27g(1) of the MAMA Act. Detailed criteria are defined in the Regulation of the Minister of Infrastructure of 27 November 2021 on evaluation of applications in the award process (Journal of Laws item 2203 as amended).*

- and the applicant's calculation of the ratio representing its capacity to finance the planned project from the applicant's own funds plus calculation of the applicant's own funds with a certified auditor's report on the attestation service referred to in the Polish Act on Certified Auditors, Auditing Firms and Public Supervision (Journal of Laws of 2020 item 1415 and of 2021 item 1598 and 2106) to confirm that the ratio has been calculated correctly;

b) if the project can be implemented using funds coming from loans or credit facilities; the evaluation is based on:
   - at least a current credit rating within the meaning of Article 3(1)(a) of the Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies assigned by: Fitch – at least the BBB- rating category or Moody's – at least the Baa3 rating category or Standard & Poor's – at least the BBB- rating category;

c) if the planned project can be implemented using the available public funds, including European Union grants; the evaluation is based on:
   - at least the documents confirming the award of public funds for the project in question, including European Union grants; the value of the public funds awarded for the project cannot be lower than 20% of the project value;

- if adequate staff, organisational and logistic resources can be secured to implement the planned project; the evaluation is based on the investor's experience with similar projects, i.e.:
  a) projects involving investment in: offshore wind farm(s) of a total installed capacity representing at least 10% of the maximum installed capacity defined in the application, or the operation of such projects for at least 3 years, or investment in onshore wind farm(s) of a total installed capacity of at least 20% of the maximum installed capacity specified in the application, or their operation for at least 3 years, or
  b) projects involving construction of an electricity grid or a system for power evacuation from an offshore wind farm within the meaning of Article 3(13) of the Polish OWF Act, of a voltage not lower than 110 kV and an aggregate length equalling at least twice the distance between the basin covered by the application and the coastline, calculated along straight line, or the operation of such a grid or such a set of equipment for power evacuation for at least 3 years;
- the contribution of the planned projects to the furtherance of the EU and domestic sectoral policies; the evaluation is based on:

a) positive impact of the planned project on energy transition and on limitation of greenhouse gas emissions;
b) the qualitative contribution to the furtherance of particular domestic sectoral policies;
c) the qualitative contribution to the furtherance of particular EU sectoral policies.

If more than one applicant has achieved the eligibility minimum and the highest score (a tie), the following criteria decide, where each subsequent criterion is applied if there is still more than one candidate left:

- an applicant who received more points than other selected parties in more of the above-presented application evaluation criteria;
- if there is still a tie – the applicant who has received more points for the most important application evaluation criterion defined in the notice of the Minister of Infrastructure inviting other PSZW applications;
- if there is still a tie – the applicant whose application offers a lower ratio of the project value to the maximum installed capacity of the offshore wind farm.

The results of the award process are announced in the office of the Minister of Infrastructure as the authority supporting the minister in charge of maritime economy and on the BIP of that authority. The notice on the result lists the applicants who have achieved the minimum eligibility score, listed in a decreasing order in terms of points. If the winning entity has been chosen in one of the processes specified in items 1 to 3 above, the applicants are listed in the sequence arising from those regulations, with the winner specified.

After the award process, the Minister of Infrastructure:

- issues the PSZW to the winning entity not earlier than 14 days following the announcement of the process results or
- declares the process inconclusive if none of the applicants has achieved the minimum eligibility score or invalidates the award process in the event of a gross breach of the applicable laws or interests of the participating entities.

Each award process participant has 14 days following the announcement of results to file a motion for invalidation of the award process in the event of a gross breach of the applicable laws or interests of the participating entities. The motion for the invalidation is filed to the Minister of Infrastructure performing the tasks of the minister in charge of maritime economy.

An award process participant can request the Minister of Infrastructure to reconsider the decision invalidating the award process within 14 days of receiving the decision. Once this remedy is exhausted, the applicant can complain to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

03. OFFSHORE WIND ENERGY

Duration of the process

The duration of the PSZW process depends on whether the award process and the appeal process have taken place.

If there has been no award process, the whole process can be expected to take about six months, given that the authorities specified in the statute must submit their opinions on the application.

If an award process has been conducted, the whole process may take about a year.

Authority competent for the PSZW

The authority competent for issuing the PSZW is the minister in charge of maritime economy, i.e. the Minister of Infrastructure.

PSZW validity period

The PSZW for the construction, operation and shutdown of an offshore wind farm is issued for a period starting from the date when the permit became final and binding and ending 30 years after date when the operation of the offshore wind farm started. This means that the duration of this period is up to the authority issuing the decision and differs depending on when the operation of the offshore wind farm starts.

If an entity that has received the PSZW fails to obtain a construction permit for the whole or a part of the project within 8 years following the PSZW issue date, the issuing authority declares it expired.

There is an exception to this rule when the entity that received the PSZW provides written explanations not later than 60 days before the expiry of the period of 8 years after the PSZW issue date and confirms that it has taken all the actions required by the law to secure a construction permit. In such a case, the time limit required for obtaining the construction permit is extended but by no more than 2 years following the 8 years after the PSZW issue date.

If artificial islands, structures and equipment have been built and used in accordance with the requirements specified in the PSZW, the authority that issued the PSZW can extend its validity period for up to 20 years. The PSZW validity period is extended by way of a decision at the request of the entity to whom the PSZW was granted, provided that the request is filed not later than 120 days before the expiry of the above deadlines.

What is the fee for the PSZW?

The fee is PLN 1500 and it must be paid within 14 days of deliver of a notice to pay.

An additional fee of 1% of the value of the planned project is also required.[43]

The additional fee is paid as follows:

a) 10% of the full fee within 90 days after the PSZW becomes final and binding;
b) 30% of the full amount within 30 days of the start of construction works;
c) 30% of the full amount within 30 days of the date when the operation of the artificial islands, structures and equipment started;
d) 30% of the full amount 3 years after the payment referred to in point (c) above.

The stamp duty for an authorisation is PLN 17.

How to appeal?

The applicant has no right to appeal against the PSZW decision but may request the minister in charge of maritime economy, within 14 days, to reconsider the case. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application must be filed in an electronic format to the electronic ePUAP box of the competent public administration body or to the address for electronic submissions.

Applications filed otherwise are left unreviewed.

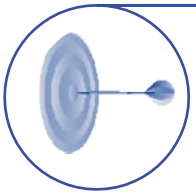
[43] *Article 27b of the MAMA Act*

3.4. DECISION ON ENVIRONMENTAL CONDITIONS

The investor is required to apply for a decision on environmental conditions, which enables the implementation of the offshore wind farm project.[44]

Please note that the obligation to obtain an environmental decision applies only to the construction of the offshore wind farm itself. However, the set of facilities used to export power from the offshore wind farm[45] is classified as a project that may potentially have a significant impact on the environment. Nevertheless, due to the importance of assessing cumulative impacts within the entire offshore wind farm project, an environmental decision must also be obtained for this part of the investment.

Purpose of the decision



The basic purpose of the environmental decision is to assess the impact of the planned project on the environment and to determine the conditions to be met by the investor in order to minimise the negative consequences for nature and human health.

In the environmental decision, the Regional Director for Environmental Protection (RDOŚ) either approves or rejects the project and defines the environmental protection requirements and the conditions to be met by the investor at project implementation and operation stages. So the purpose of the decision is to balance the needs for economic growth and the protection of the environment and human health.

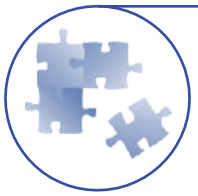
When is the decision required?

The decision is required in any case for projects of building wind farms in Polish maritime areas along with a system for power evacuation from the offshore wind farm, regardless of the capacity of the farm. The decision should be obtained after the investor receives the PSZW.

[44] *Article 71 of the EIA Act*

[45] *A system for power evacuation from an offshore wind farm is understood more strictly as a separate system of devices and structures, whether or not permanently attached to the ground, including the bottom of the sea, which is used to evacuate power from the wind farm from the terminal blocks of upper voltage of the transformer(s) of electrical substation(s) situated in Polish maritime areas to the place of ownership separation defined in preliminary connection conditions or in connection conditions.*

Elements of an application for the decision



The process of issuing an environmental decision is initiated by an application of the investor. Since offshore wind farms are classified as projects having a significant environmental impact, the application should:[46]

- specify the person filing the application and their address;
- include a request for an environmental decision for a specific project.

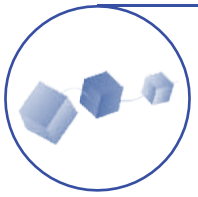
The investor should attach the following to the application:

- an environmental impact report for the project, or, in place of the report, a Project Information Sheet (KIP) submitted together with an application for determining the scope of the report (Article 69 of the EIA Act);
- a letter confirming project compliance with the PZPPOM, if the plan has been adopted, or a statement confirming its absence;
- proof of stamp duty payment;
- for applications filed by authorised representatives – the authorisation and the proof of payment of the stamp duty for the authorisation.

For the application concerning the set of facilities used to export power, the following additional attachments must be included:

- a copy of the cadastral map, certified by the competent authority, in paper or electronic form, covering the anticipated area where the project will be implemented, as well as the area that will be affected by the project in the variant proposed by the applicant. This area includes:
  a) the anticipated site of the project and the area within 100 meters from its boundaries
  b) plots where environmental quality standards may be exceeded as a result of the project's implementation, operation, or use;
  c) plots within the range of significant environmental impact of the project, which may impose restrictions on the use of the property in accordance with its current designation.

The process



Once the application is filed, the Regional Director for Environmental Protection reviews it to establish whether the offshore wind farm or the system for power evacuation from the offshore wind farm can take place in accordance with the environmental protection and nature conservation regulations and consults other authorities where required.

[46] *Article 73 and Article 74 of the EIA Act*

The key document analysed at this stage is the environmental impact report prepared by the investor. It is an obligatory[47] attachment to an application for an environmental decision, as the construction of an offshore wind farm is legally classified as a project that may always have a significant impact on the environment. Alternatively, the investor may submit a project information sheet along with a request to determine the scope of the report (Article 69(1) of the EIA Act). Determining the scope of the report is obligatory if the project may have a transboundary environmental impact (Article 69(2) of the EIA Act).

The regulations require that the report include information enabling the assessment of the following environmental impact criteria:

- the impact of the proposed project on the environment and the population, including human health and living conditions, material assets, cultural heritage, landscape (including cultural landscape), mutual interactions between these elements, and the accessibility of mineral deposits;
- risk of major failures, natural disasters and construction accidents;
- the options and ways of preventing and reducing negative environmental impacts;
- the required scope of monitoring.

Furthermore, a project environmental impact report should:

- describe the planned project, especially by presenting:
  a) a description of the whole project and the site use conditions at the implementation and operation or use stages, also addressing areas at a special risk of flood within the meaning of Article 16(34) of the Water Law;
  b) the main characteristics of the production processes;
  c) the expected types and quantities of emissions, including waste, arising from the project implementation and operation or use stages;
  d) information on the biological diversity, utilisation of natural resources, including soil, water and earth surface;
  e) information on the demand for and consumption of energy;
  f) information on demolition works for projects having a potentially significant environmental impact;
  g) a risk – assessed based on scientific knowledge – of major failures, natural disasters and construction accidents, taking into consideration the substances used and the technologies applied, including the risk related to climate change;

[47] *Article 74(1)(1) of the EIA Act*

- describe the elements of the natural environment covered by the expected environmental impact of the planned project, including:
  a) elements of the environment covered by conservation under the Nature Act and the wildlife corridors within the meaning of this Act;
  b) the hydromorphological, physicochemical, biological and chemical properties of waters;
- present the results of the nature inventory, in both descriptive and cartographic form (if conducted), together with a description of the methodology, constitute an annex to the environmental impact report;
- present other data underlying the description of natural environment elements;
- describe any historical monuments under conservation pursuant to monument conservation and care regulations which may be situated in the vicinity of or within the impact range of the project;
- describe the landscape where the project is to be located;
- present the information on ties to other projects, especially on cumulative impacts of any continuing, completed or planned projects which have an environmental decision and which are located within the planned site of the project in question and within the project impact range or which have impacts within the project impact range;
- describe the consequences expected for the environment if the project is abandoned; the description must include the available environmental information and scientific knowledge;
- describe the project variants, taking into account its specific characteristics or environmental impacts, including the variant selected for implementation, a reasonable alternative variant, and a reasonable variant most beneficial to the environment (the environmentally optimal variant may be identical to either the selected implementation variant or the reasonable alternative variant);
- describe the expected impact of the analysed variants on the environment (also in the case of a serious industrial accident, natural disaster or construction accident), on the climate (including greenhouse gas emissions and impacts important from the perspective of adapting to climate changes), as well as the possible cross-border environmental impact;
- compare the impacts of the analysed variants on:
  a) people, plants, animals, fungi, natural habitats, water and air;
  b) the earth surface (taking into account soil mass movements) and the landscape;
  c) physical property;
  d) historical monuments and cultural landscape covered by the existing documentation especially entered in the register of historical monuments;

e) the nature conservation forms referred to in Article 6 (1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites;

f) the elements referred to in Article 68(2)(2)(b) of the EIA Act, if they have been included in the environmental impact assessment report or if they are required by the competent authority;

g) mutual interactions between the elements listed in items (a) through (f) above;

- justify the variant proposed by the applicant, taking into account the information regarding the determination of the expected environmental impacts of the analysed variants and the comparison of their impacts mentioned above;
- describe the forecasting methods used by the applicant and the expected significant environmental impacts of the planned project, including direct, indirect, secondary, cumulative, short-, medium- and long-term permanent and temporary environmental impacts from:

  a) the existence of the project;

  b) the utilisation of natural resources;

  c) emissions;
- describe the anticipated actions to avoid, prevent, limit or offset any negative environmental impacts, especially impacts on the nature conservation forms referred to in Article 6 (1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites, along with the assessment of their effectiveness at the stages of project implementation, operation, use or shutdown;
- address the environmental objectives arising from strategic documents important from the perspective of project implementation;
- present the issues in a graphic version;
- include a cartographic presentation of the issues at a scale as required by the subject matter and level of detail of the issues analysed in the report for comprehensive presentation of the completed environmental impact analyses;
- analyse the possible social conflicts related to the planned project;
- present the proposed monitoring of project environmental impacts at the project implementation and operation or use stages, especially the impact on the nature conservation forms referred to in Article 6 (1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and on the continuity of the wildlife corridors that connect those sites, and present the information on the results of other monitoring which may be relevant for establishing the responsibilities in this respect;
- specify any difficulties resulting from technological shortcomings or gaps in the state of the art which were encountered during report preparation works;

- summarise the information included in the report using non-specialist language by addressing every element of the report;
- specify the report date, the first name, last name and signature of the author or, if the report was prepared by a team of authors, specify the first name, last name and signature of the team leader and the first names, last names and signatures of the team members;
- contain, as an appendix to the report, a statement of the author or, if the report was prepared by a team of authors, a statement of the team leader, on compliance with the requirements laid down in Article 74 a(2) of the EIA Act;
- provide the sources of the information underlying the report.

The scope of the environmental impact assessment report is determined by the provisions of the EIA Act and is specified in detail by the Regional Director for Environmental Protection during the stage of defining the scope of the report. This is done after consulting the competent authorities participating in the procedure for issuing the decision on environmental conditions.

Subsequently, the report is analyzed by the Regional Director for Environmental Protection in terms of the criteria set for the applicant and is either agreed upon or reviewed by the relevant authorities involved in the procedure. The process also ensures public participation (so-called public consultations). Following this, the authority may issue an environmental decision.

It should be noted that, pursuant to Article 63(5)-(6) of the EIA Act, the authority responsible for issuing the environmental decision suspends the proceedings for the duration of the report preparation, which must be completed by the investor within no more than three years. Upon the expiry of this period, the request to initiate the procedure is deemed withdrawn.

The refusal to issue a decision is not discretionary in nature, and the authority may deny consent for the implementation of the project in the following cases:

- the project location is inconsistent with the PZPPOM;
- a cooperating authority refuses to approve the implementation conditions for the RES project;
- the environmental impact assessment for the project suggests that the project cannot be implemented in the variant proposed by the applicant and the applicant rejects the project variant suggested by the Regional Director for Environmental Protection;
- the environmental impact assessment for the project suggests that the project may have a significant negative impact on a Natura 2000 site;

Duration of the process

The environmental decision for offshore wind farms and sets of equipment for power evacuation is issued within 90 days after the application is filed.

In practice, this time limit may be longer, as it does not include the periods specified by law for obtaining additional agreements, opinions, or the duration of any suspension of the proceedings. Furthermore, the issuance of the decision may be delayed, for example, in the case of conducting a transboundary procedure.

Authority competent for the decision

The authority responsible for issuing the decision is the Regional Director for Environmental Protection (RDOŚ) having jurisdiction over the project site.

Decision validity period

An environmental decision can be used at subsequent stages of the investment process for 10 years after it becomes final and binding.

What is the fee for the decision?

The stamp duty for an environmental decision is PLN 205 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days to appeal against the decision to the General Director for Environmental Protection (GDOŚ). Appeals are reviewed within 60 days of their delivery. Subsequent remedies available to the investor include a right to complain to the Provincial Administrative Court and then to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP, some of the attachments to the application must be provided in paper form.

3.5. CONNECTION TO THE ELECTRICITY GRID

Before obtaining a construction permit for an offshore wind farm, the investor is obligated to secure the connection of the power plant to the electricity grid.[48] For the onshore part of the infrastructure transmitting power from the offshore wind farm, the connection procedure follows the approach outlined in point 2.5 of the chapter on onshore wind power plants.

The connection process depends on whether the investor decides to apply for public support in the form of the right to cover the negative balance referred to in Chapter 3 or 4 of the OWF Act.

If the investor decides not to claim the right to cover the negative balance, the connection process follows the procedure specified in section 2.5 of the chapter on onshore wind farms, except for the following differences:

- the generator attaches the PSZW to the application to confirm that the source can be located in the planned project site;
- the generator includes the following statement in the application: *"Aware of the criminal liability for false statements under Article 233(6) of the Polish Criminal Code of 6 June 1997, I hereby represent that I decide not to claim the right to cover the negative balance referred to in Article 40(1)(3) of the OWF Act for the offshore wind farm covered by this application."*
- Except for the advance payment, the generator must submit a performance bond to secure the obligations under the connection agreement, which is PLN 60 for every kilowatt of the connection capacity defined in the application for grid connection conditions; the bond may be submitted as a deposit or as an insurance guarantee or a bank guarantee;
- grid connection conditions are issued within 150 days after the filing of the application for grid connections or after the payment of the advance, whichever happens later.

If the investor intends to apply for public support in the form of the right to cover the negative balance, the connection process follows the rules described above and consists of the following steps:

- preliminary grid connection conditions are obtained;
- conversion of preliminary grid connection conditions into final connection conditions following a successful auction.;
- the connection agreement is signed;
- the electricity distribution agreement is signed.

[48] *Article 7 of the Energy Law*

3.5.1. Preliminary grid connection conditions

Preliminary grid connection conditions are the first document which the investor is required to obtain when seeking to connect an offshore wind farm.

Preliminary grid connection conditions define the technical details related to connecting an offshore wind farm but they do not obligate the operator to sign the connection agreement. Preliminary grid connection conditions transform into grid connection conditions upon the receipt by the investor of public support for the offshore wind farm,[49] i.e. on the date when the generator receives the decision referred in Article 18 of the OWF Act or wind the auction referred to in Article 26(1) of the OWF Act.

The application for preliminary grid connection conditions is filed to the distribution or transmission grid operator of the grid to which the investor plans to connect.

The content of an application for preliminary grid connection conditions is essentially consistent with the list in section 2.5.1. of the chapter on onshore wind farms, except for the following differences:

- the generator attaches the PSZW to the application to confirm that the source can be located in the planned project site;
- grid connection conditions are issued within 150 days after the filing of the application for grid connections or after the payment of the advance, whichever happens later.

Preliminary grid connection conditions are valid for 2 years after their delivery to the investor but the time limit is extended if the generator, not later than 2 months before the expiry of the preliminary grid connection conditions, applies to the energy company for the extension. In such a case, the time limit is extended by another 2 years.

Preliminary grid connection conditions and grid connection conditions for an offshore wind farm can define conditions that do not guarantee reliable energy supply, which are going to be included in the connection agreement.

An investor whose application for grid connection conditions has been rejected may file a complaint to the President of the URE[50] Decisions of the President of the URE can be challenged before the Competition and Consumer Protection Court (i.e. Warsaw Regional Court's 17th Competition and Consumer Protection Court).

[49] *Article 51(1)(1) of the OWF Act*

[50] *Pursuant to Article 49(2) of the OWF Act*

3.5.2. Electricity grid connection conditions

The grid connection conditions are a document issued by the distribution system operator or the transmission system operator to define the technical details of connecting an offshore wind farm and they obligate the operator to sign a project-grid connection agreement with the investor. The connection conditions "temporarily book the grid space" for a specific offshore wind farm.

The investor obtains grid connection conditions through the transformation of preliminary grid connection conditions. The transformation of preliminary grid connection conditions takes place once the investor is granted the right to cover the negative balance of the electricity produced in the offshore wind farm and fed to the grid as referred to in Article 18(1) of the OWF Act or wins the auction referred to in Article 26(1) of the OWF Act.

Grid connection conditions are valid for 2 years after the transformation of the preliminary grid connection conditions. The operator must provide a draft connection agreement to the investor within 60 days of the transformation.

3.5.3. Electricity grid connection agreement

The connection agreement serves as the ground for connecting an offshore wind farm to the electricity grid. It is a contract signed between the distribution system operator or the transmission system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the grid connection conditions or in the preliminary grid connection conditions.

In order to complete this task, both parties undertake to perform works to connect the generation source to the transmission system. In practice, the crucial element of a connection agreement is the modification of the grid, the transmission facilities and other technical devices by the operator to make it possible to receive the energy generated by the RES system. The main commitment on the part of the generator is to build the generation source and the electric power connection.

In the connection agreement for an offshore wind farm, the transmission system operator or the distribution system operator guarantees, if the right to cover the negative balance has been granted, reliable energy supply starting from the day that falls seven years after the transmission system operator or the distribution system operator, as applicable, receives the information that the investor has been granted public support in the form of right to cover the negative balance under Article 18(1) of the OWF Act or Article 26(1) of the OWF Act.[51] According to the OWF Act, the operator may, where justified, include a commitment in the connection agreement to guarantee reliable energy supply earlier than that.

[51] *Article 54(1) of the OWF Act*

3.6. PERMIT TO INSTALL AND MAINTAIN CABLES WITHIN INTERNAL SEA WATERS AND THE TERRITORIAL SEA AND APPROVAL FOR INSTALLATION AND MAINTENANCE OF CABLES IN THE EXCLUSIVE ECONOMIC ZONE

Once the PSZW is obtained, the next step to be taken by the investor is to obtain a decision to authorise them to lay cables in maritime areas. The supply of the energy produced by an offshore wind farm requires the grid infrastructure for transporting the energy across maritime areas to the grid connection point.[52]

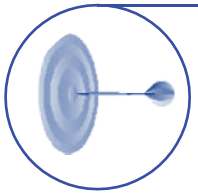
In terms of this investment task, the investor must secure the following decisions:

- the first one is a permit to lay and maintain cables within internal sea waters and the territorial sea;
- the other one is an approval for installation and maintenance of cables in the Exclusive Economic Zone.

Consequently, two separate decisions must be obtained.

For both of these decisions, if the generator is the investor, the Polish Act on Preparing and Implementing Strategic Transmission Grids may apply, which makes it possible to execute strategic decisions regarding transmission grids[53].

Purpose of the decisions



The main purpose of the decisions is to guarantee a possibility of transferring the produced electricity from the offshore wind farm. The process is also intended to minimise the environmental impact through proper determination of cable routing or appropriate security measures.

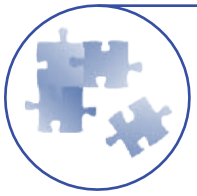
When are the decisions required?

The decisions can be obtained after the PSZW is issued and after the applicant obtains preliminary grid connection conditions or grid connection conditions or the transmission or distribution grid connection agreement(s) for the offshore wind farm from which power is going to be evacuated through a system of power evacuation devices or elements of that system – but before the construction permit application is filed.

[52] *Article 26 and 27 of the MAMA Act*

[53] *Polish Act on Preparing and Implementing Strategic Transmission Grids of 24 July 2015 (consolidated text: Journal of Laws of 2023 item 1680 amended)*

Elements of an application for the decisions



The PUUK and UUUK application should specify the following:

- the name, registered office and address of the applicant;
- detailed identification of the project requiring the permit and its objective, along with:
  a) the proposed location defined with geocentric geodetic coordinates which are applied on a maritime map and which outline the area intended for project implementation and operation;
  b) the surface area of the basin intended for the implementation and operation of the project and the period necessary to implement and operate the project;
  c) the characteristic technical parameters and the project value, including project stages and schedule and the methods for transferring the output to the shore;
  d) project value – to be stated for projects planned, implemented or operated in the Exclusive Economic Zone;
  e) assessment of the economic, social and environmental impact.

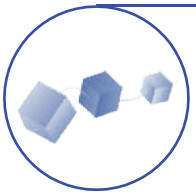
Regardless of the application content presented above, the following appendices must be attached:

- a certificate or statement of entry in the relevant register, which must contain especially the number of that entry, if the applicant is an entity other than a natural person who is a sole trader. In the case of a statement, the statement must include the following notice therein: "I am aware of the criminal liability for false statements;"
- description of the technology of the planned project;
- information about the environment within the impact range of the planned project;
- description and assessment of the potential impacts of the project on the environment and its natural resources, whether living creatures or minerals;
- description of the measures to mitigate harmful impacts of the project on the sea environment;
- description of the adopted assumptions and applied methods of forecasting and using the data about the marine environment and identification of the difficulties encountered in the collection of the necessary information;
- a draft monitoring scheme including environmental monitoring and management of the investment and operation process;

- description of the elements of the environment protected under the Nature Act, including without limitation any national parks within the expected project impact range;
- originals or certified copies of preliminary grid connection conditions or grid connection conditions or the transmission or distribution grid connection agreement(s) for the offshore wind farm from which power is going to be evacuated through a system of power evacuation devices or elements of that system covered by the application.

If the application contains any trade secrets, the application submits an additional copy of the application which includes only appendices that do not contain trade secrets. The characteristic technical parameters of the project and the proposed project location are not trade secrets.

The process



The application, together with all accompanying documents, is submitted to the competent authority. In the case of a decision concerning internal maritime waters and the territorial sea, it is submitted to the director of the maritime office with jurisdiction over the area of the planned investment. In the case of a decision concerning the exclusive economic zone, it is submitted to the minister competent for maritime affairs (currently: the Minister of Infrastructure), who conducts both formal and substantive review of the application.

Subsequent stages differ depending on the type of permit.

Permit to install and maintain cables within internal sea waters and the territorial sea

Before the permit is issued, the authority seeks opinions from ministers in charge of: State assets, energy, economy, management of energy resources, climate, culture and national heritage protection, fishery, environment, geology, water resources management, internal affairs, Minister of National Defence and the head of the Polish Internal Security Agency (ABW).

Additionally, if cables and pipelines planned to run within internal sea waters and the territorial are also expected to partially run on the shore, an opinion of the local commune administrator (Polish: wójt) or mayor having jurisdiction over the location of the cables or pipelines must be sought.

The above authorities should issue the opinion within 90 days after receiving the request and if not opinion is issued within that time limit, they are deemed to have no reservations. This means that failure on the part of the authorities to issue an opinion does not prevent the decision from being issued.

The authority is under the obligation to deny the decision if it could result in any of the threats referred to in Article 23(3) of the MAMA Act.

These include threats to:

- the environment, marine resources or undersea resources, including reasonable management of mineral deposits;
- the interest of the national economy;
- national defence and national security;
- the safety of maritime transport;
- safe sea fishing;
- safe aircraft flights;
- underground archaeological heritage;
- the safety related to research, identification and extraction of mineral resources from the bottom of the sea and the Earth's interior beneath it;
- the basic functions referred to in Article 37a(3) of the MAMA Act, where applicable (the basic function means the main intended purpose of the area designated in the plans).

It must be added that the authority’s right to deny the decision is not limited only to the above reasons and the authority may deny it also in other cases, at its administrative discretion.

Approval for installation and maintenance of cables in the Exclusive Economic Zone

Before issuing the approval, the Minister verifies if the installation and maintenance of cables impedes the exercise of Poland's rights in the Exclusive Economic Zone.

When issuing the decision regarding the approval, the Minister of Infrastructure seeks the opinions of ministers in charge of: State assets, energy, economy, management of energy resources, climate, culture and national heritage protection, fishery, environment, geology, water resources management, internal affairs, Minister of National Defence and the head of the Polish Internal Security Agency (ABW).

The above authorities should issue the opinion within 90 days after receiving the request and if not opinion is issued within that time limit, they are deemed to have no reservations. This means that failure on the part of the authorities to issue an opinion does not prevent the decision from being issued.

The authority is under the obligation to deny the decision if it could result in any of the threats referred to in Article 23(3) of the MAMA Act.

These include threats to:

- the environment, marine resources or undersea resources, including reasonable management of mineral deposits;
- the interest of the national economy;
- national defence and national security;
- the safety of maritime transport;
- safe sea fishing;
- safe aircraft flights;
- underground archaeological heritage;
- the safety related to research, identification and extraction of mineral resources from the bottom of the sea and the Earth's interior beneath it;
- the basic functions referred to in Article 37a(3) of the MAMA Act, where applicable (the basic function means the main intended purpose of the area designated in the plans).

It must be added that the authority's right to deny the decision is not limited only to the above reasons and the authority may deny it also in other cases, at its administrative discretion.

Duration of the process

Given the requirement of seeking opinions for the application and the fact that the authorities have 90 days to state their position, the estimated duration of the process is about six months.

03. OFFSHORE WIND ENERGY

Authority competent for the decisions

The permit to install and maintain cables within internal sea waters and the territorial sea (PUUK) is the local head of the Maritime Office.

The authority competent for issuing the approval for installation and maintenance of cables in the Exclusive Economic Zone is the minister in charge of maritime economy, i.e. the Minister of Infrastructure.

Decisions validity period

The PUUK and the UUUK for the system for power evacuation from offshore wind farms are valid from the date when the decision becomes final and binding to the expiry of 30 years after the operation start date of the offshore wind farm from which power is evacuated using that set of equipment for power evacuation or elements of that system. However, if:

- the cable installation activities are not commenced within the 10 years after the date when the decision became final and binding or
- the use of the cable on the terms as defined in the permit does not commence within 15 years after the date when the decision became final and binding

– the authority issuing the PUUK or UUUK may declare it expired by decision.

If cables or pipelines were installed and maintained in line with the permit's requirements, the authority may extend its validity for up to 20 years. The extension is granted by decision upon request from the permit holder, submitted no later than 120 days before the original expiry date.

What is the fee for the permit?

The fee is PLN 1500 for each of the decisions. It must be paid within 14 days after the delivery of the notice to pay.

The stamp duty for an authorisation is PLN 17.

How to appeal?

The applicant has 14 days from the delivery of the PUUK decision to appeal to the Minister of Infrastructure via the head of the competent Maritime Office. Further remedies include a complaint to the Provincial Administrative Court and, subsequently, to the Supreme Administrative Court.

In the case of the UUUK, no appeal is available, but the party may request the Minister of Infrastructure to reconsider the case within 14 days. Further remedies also include a complaint to the Provincial Administrative Court and then to the Supreme Administrative Court.

Can the application be filed online?

The application must be submitted electronically to the mailbox or designated address of the competent authority. Applications not submitted in electronic format will not be reviewed.

3.7. REPORTING AND MARKING AN OFFSHORE WIND FARM AS AN AVIATION OBSTACLE

Due to their height, wind farms can act as aviation obstacles within the meaning of the Polish Aviation Law.[54] The following wind turbines can be considered as aviation obstacles under that law:

- wind turbines above the height determined by the specific obstacle limitation surfaces mentioned in the Regulation of the Minister of Infrastructure of 12 January 2021 on aviation obstacles, obstacle limitation surfaces and hazardous devices;[55]
- wind turbines higher than 100 m above the level of the terrain surrounding the site or above water, situated in Poland or in the Polish Exclusive Economic Zone;
- wind turbines which were recognised by the President of the Polish Civil Aviation Authority, the Minister of National Defence or the minister competent for internal affairs as aviation obstacles because they pose a potential threat to aircraft traffic.

If the wind farm meets at least one of the above criteria, the party that is the owner, perpetual user of or holder of real rights to the real property, whoever actually holds the real property where the aviation obstacle is located, is required to mark it as a wind farm according to the rules described in the Polish Aviation Law and the regulations thereto. Afterwards, they must report the facility to the President of the Polish Civil Aviation Authority, the Minister of Defence and the minister competent for internal affairs. Notification of a permanent aerial obstacle must be submitted no later than two months prior to the date on which the structure reaches a height that qualifies it as an aerial obstacle, or prior to the date on which it reaches its final intended height.

[54] *Article 87[1] of the Polish Aviation Law of 3 July 2002 (Journal of Laws of 2022 item 1235 amended)*

[55] *Regulation of the Minister of Infrastructure of 12 January 2021 on aviation obstacles, obstacle limitation surfaces and hazardous devices (Journal of Laws no. 264).*

3.8. GEOLOGY DECISIONS

Before commencing the construction design, the investor must secure the following geology decisions:

- a decision approving the design of geological works, which is prepared in order to define the geological engineering conditions for erecting an offshore wind farm and the devices and facilities forming the set of equipment for power evacuation, as well as any annexes to the design of geological works;[56]
- a decision approving the geological documentation laying down the geological engineering conditions for erecting an offshore wind farm and the devices and facilities forming the set of equipment for power evacuation, as well as any annexes to the geological documentation.[57]

3.8.1. Decision approving the design of geological works

Purpose of the decision

The purpose of a decision approving the design of geological works is for the minister in charge of the environment to verify the geological conditions of project implementation in order to ensure the safety of the investor's works.

In accordance with the currently applicable regulations, geological works involving seismic surveys within the maritime areas of the Republic of Poland, aimed at the foundation of offshore wind farms and associated power transmission infrastructure as defined respectively in Article 3(3) and (13) of the Act of 17 December 2020 on the Promotion of Electricity Generation in Offshore Wind Farms (Journal of Laws of 2023, items 1385, 1681, and 1762), may only be carried out on the basis of a geological works project.

The design of geological works defines in particular:

- the objective of the planned works and how it is going to be attained;
- the type of the geological records that are expected to be created as a result of the geological works;
- the schedule of geological works;
- the space where the geological works are to be performed;
- the undertakings necessary for environmental protection (including groundwater protection), the methods for refilling excavations and boreholes, land reclamation methods as well as any tasks which are intended to prevent potential damage caused by the planned works.

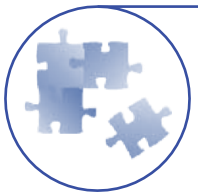
[56] *Article 80 of the PGM Act*
[57] *Article 93 of the PGM Act*

03. OFFSHORE WIND ENERGY

When is the decision required?

The investor must secure the decision approving the design of geological works before applying for a construction permit, which means before starting any geological works related to the construction of the offshore wind farm and the system for power evacuation from the offshore wind farm.

Elements of an application for the decision



The application for approval of the design of geological works must:

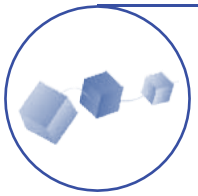
- specify the person filing the application and their address;
- contain the request for approval of the attached design of geological works along with the time brackets for which the approval is needed.

Furthermore, the applicant should attach the following:

- 2 copies of the geological works project must be submitted, the geological administration authority may also request an electronic version;
- information about the title the applicant holds to the real property where the works are to be performed;
- a proof of stamp duty payment;
- authorisation – if the application is filed by an authorised representative;
- proof of payment of the stamp duty for the authorisation if the application is submitted by an authorised representative.

The geological works project may be developed using geological data made available by the Polish Geological Institute – National Research Institute through publicly accessible online platforms (geologia.pgi.gov.pl; baza.pgi.gov.pl), including the mobile version (geolog.pgi.gov.pl).

The process



Once filed, the application for approval of the design of geological works is reviewed by the minister in charge of the environment, who checks it for content-related and formal aspects. The authority consults the design of the geological works with the commune administrator (Polish: wójt) or the mayor having jurisdiction over the site of the geological works and also with the minister of national defence and the minister in charge of fishery.

Pursuant to Article 8(1) and (2) of the Act of 9 June 2011 – Geological and Mining Law, decisions concerning internal maritime waters, the territorial sea, and the coastal zone require agreement with the director of the competent maritime office. Decisions concerning the exclusive economic zone require agreement with the minister competent for maritime affairs.

The minister in charge of the environments is obligated to deny the approval of the design of geological works if:

- the planned geological works would violate environmental protection requirements,

- the design of the geological works does not meet legal requirements;
- the types and scope of the planned geological works and their performance method are not consistent with the objective of the works.
- The proposed geological works may pose a threat to the public interest as referred to in Article 29(1)(1)(a) and (b) of the Geological and Mining Law.

Once the geological works project is approved, the authority responsible for the approval is obliged to promptly deliver a copy of the decision to the locally competent geological administration authorities, mining supervision authorities, and the national geological service.

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

Authority competent for the decision

The authority responsible for approving the design of geological works is the minister in charge of the environment, i.e. currently the Minister of Climate and Environment.

Decision validity period

The design of geological works is approved for not more than 5 years, depending on the scope and schedule of the intended works.

What is the fee for the decision?

The stamp duty for the approval of a design of geological works is PLN 10 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

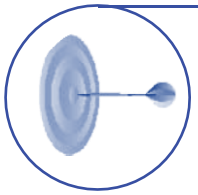
The applicant has no right to appeal. The party may request a reconsideration of the case by the minister competent for environmental matters within 14 days from the date of receipt of the decision approving the geological works project. Subsequently, a complaint may be filed with the Voivodeship Administrative Court, and thereafter with the Supreme Administrative Court.

Can the application be filed online?

The application must be filed in an electronic format to the e-PUAP mail box of the competent public administration body or to the address for electronic submissions. Applications filed otherwise are left unreviewed.

3.8.2. Decision approving the geological documentation

Purpose of the decision



The main purpose of the decision approving the geological documentation is to define the geological engineering conditions for erecting an offshore wind farm and the devices and facilities forming the system for power evacuation from the offshore wind farm.

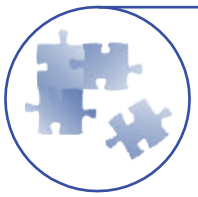
The geological engineering documentation defines in particular:

- the geological structure, the geological engineering conditions and the hydrogeological conditions of the construction ground or space;
- if the studied area is fit for the planned project;
- the forecast changes in the environment which may arise as a result of the functioning and shutdown of the intended project – where there is no environmental impact report requirement under separate regulations.

When is the decision required?

Prior to submitting the construction design and thereby commencing construction works related to the offshore wind farm and the associated power transmission infrastructure, it is required to obtain a decision approving the geological documentation.

Elements of an application for the decision



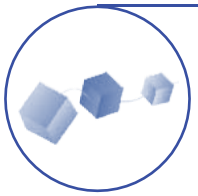
An application for approval of the geological documentation must:

- specify the person filing the application and their address;
- define the subject matter of the application (title of the study).

Furthermore, the applicant should attach the following:

- the geological documentation in 2 copies in paper format and in 2 copies in an electronic format on digital data storage devices;
- a proof of stamp duty payment;
- authorisation – if the application is filed by an authorised representative;
- proof of payment of the stamp duty for the authorisation if the application is submitted by an authorised representative.

The process



The process for approving the geological documentation focuses only on verifying the formal aspect, i.e. whether the attached documentation is complete and correct. Decisions issued under the Act that concern internal maritime waters, the territorial sea, and the coastal zone require agreement with the director of the competent maritime office. Decisions issued under the Act that concern the exclusive economic zone require agreement with the minister competent for maritime affairs.

The authority is under the obligation to refuse to issue the decision if:

- the geological documentation fails to meet the legal requirements;
- the geological documentation was created unlawfully.

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

Authority competent for the decision

The authority responsible for approving the geological documentation is the minister in charge of the environment, i.e. currently the Minister of Climate and Environment.

Decision validity period

The approval of geological documentation has no expiry date.

What is the stamp duty for the certificate?

The stamp duty for the approval of geological documentation is PLN 10 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

The applicant has no right to appeal. The party may request a reconsideration of the case by the same authority that issued the decision, within 14 days from the date of its receipt. Subsequently, a complaint may be filed with the Voivodeship Administrative Court, followed by an appeal to the Supreme Administrative Court.

Can the application be filed online?

The application can be filed in an electronic format to the e-PUAP mail box of the competent public administration body or to the address for electronic submissions.

3.9. DOCUMENTATION REQUIRED TO CONFIRM SAFE OPERATION OF OFFSHORE WIND FARMS

Since offshore wind farms are crucial for energy safety, the investor is obligated to obtain, at the administrative and construction process stage, the documentation confirming system compliance with both the government technical requirements and the safety procedures, taking into account e.g. the sea rescue service, the traffic of vessels and national defence plans[58].

3.9.1. Decisions approving the expert opinions and plans required under the Polish Maritime Safety Act

Pursuant to the MS Act, offshore wind farms and the sets of equipment for power evacuation must meet the requirements related to safety, environmental protection, state maritime boundary protection and national defence.

The above criteria are verified through the mechanism of approving, by way of administrative decisions, the expert opinions and plans prepared by the investor to align the project with the requirements of maritime safety, environmental protection and national defence.

In accordance with Article 113a(2) of the MS Act, the construction of an offshore wind farm along with the accompanying the set of equipment for power evacuation must take into account:

1. compliance with the obtained location permits and the decision on environmental conditions;
2. navigation safety;
3. the safety of the staff hired for the construction, operation and shutdown of the offshore wind farm;
4. the functioning of communication systems, maritime safety, state maritime boundary protection and national defence;
5. protection of the marine environment.

In order to comply with the requirements specified in items 2, 3 and 5 above, the power generator must provide:

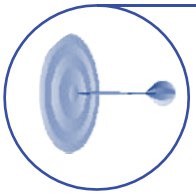
- an expert opinion on navigation addressing the impact of the offshore wind farm and the set of equipment for power evacuation on the safety and the efficiency of navigation in Polish maritime areas;
- a technical expert opinion on the impact of the offshore wind farm and the set of equipment for power evacuation on Polish A1 and A2 sea areas of the Global Maritime Distress and Safety System (GMDSS) and the Operational Communication System of the Maritime Search and Rescue Service;

[58] *Article 113a(1) and Article 113a(2) of the MS Act*

- a technical expert opinion assessing the impact of the offshore wind farm and the associated infrastructure on the National Maritime Safety System;
- a rescue plan specifying the types of risks to the health and safety of personnel involved in the construction, operation, and decommissioning of the offshore wind farm and the associated equipment; the methods and procedures to be followed in the event of such risks; and the resources and means provided by the producer to implement the rescue plan.;
- a plan for eliminating hazards and contaminants for the offshore wind farm and the set of equipment for power evacuation.

The above expert opinions and plans are approved by way of decisions by the head of the Maritime Office having jurisdiction over the site where a major part of the offshore wind farm or the set of equipment for power evacuation is located.

Purpose of the expert opinions and plans

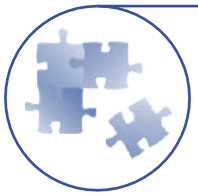


The most important purpose to define the methods and means of offsetting the negative impact of the offshore wind farm and the system for power evacuation from the offshore wind farm on the safety and efficiency of the navigation of ships in Polish maritime areas and on the functioning of the following systems: the Global Maritime Distress and Safety System, the Operational Communication System of the Maritime Search and the Rescue Service and the National Maritime Safety System.

When is the approval required?

The investor must obtain the decisions approving the expert opinions and plans before applying for the construction permit for the offshore wind farm and the system for power evacuation from the offshore wind farm.

Elements of the application for approval of the expert opinions and plans



The application should include:

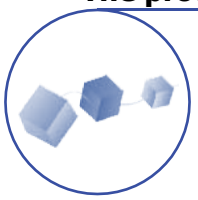
- identification and address of the applicant;
- the request to approve the expert opinion specified in the application;
- a proof of stamp duty payment;
- if the application is filed through an authorised representative, the authorisation must be attached along with a receipt for a stamp duty for the authorisation.

The expert opinion must be attached to the application. The detailed content of the expert opinions and plans is defined in the following regulations:

- **Annexes 1, 2, and 3** to the Regulation of the Minister of Infrastructure of 15 December 2021 on the navigational and technical expertise for offshore wind farms and associated equipment;
- **Annexes 1 and 2** to the Regulation of the Minister of Infrastructure of 15 December 2021 on the rescue plan and the plan for combating hazards and pollution for offshore wind farms and associated equipment;

The expert opinions are prepared by individuals who are duly qualified and have documented experience in navigation or communication or the protection of marine environment, as applicable.

The process



The applications for approval of expert opinions and plans are filed to the head of the Maritime Office having jurisdiction over the project site, who reviews the applications for formal aspects and content.

The head of the Maritime Office is also under the obligation to seek opinions from:

- the Director of the Maritime Search and Rescue Service, in the case of the expert assessments and plans referred to in points 1–2 and 4–5 above;
- the Chief Maritime Fishing Inspector (Główny Inspektor Rybołówstwa Morskiego) for the expert opinion referred to in 1 above.

The opinions are issued within 60 days after the investor submits the expert opinion or plan. If no opinion is issued within that time, this means that there are no reservations.

Duration of the process

Within three months after the investor applies for the approval of an expert opinion or plan.

Authority competent for the approval of the expert assessments and plans

The expert assessments and plans listed above, as well as their updates, are approved by the director of the maritime office within whose jurisdiction the majority of the offshore wind farm or the associated power transmission infrastructure is located.

Approval validity period

The expert opinion referred to in item 1 above is open-ended.

The expert opinions referred to in items 2 and 3 above are valid for an indefinite period but 60 days before the planned date of the first electricity generation in the offshore wind farm the investor must deliver to the head of the Maritime Office the documentation required to verify if the assumptions and conclusions in the expert opinions are correct. The measurements and tests for the verification must be performed not later than 90 days before the planned date of the first electricity generation in the offshore wind farm.

The maximum validity period of the plans referred to in items 4 and 5 above is 5 years. Pursuant to the MS Act, the Investor must revise them at least every 5 years.

The plans are revised by way of an administrative decision.

What is the fee for the approval of the expert opinions and plans?

Fee for the approval of:

- ***an expert opinion on navigation addressing the impact of the offshore wind farm and the set of equipment for power evacuation on the safety and the efficiency of navigation in Polish maritime areas – PLN 4000;***
- ***a technical expert opinion on the impact of the offshore wind farm and the set of equipment for power evacuation on Polish A1 and A2 sea areas of the Global Maritime Distress and Safety System (GMDSS) and the Operational Communication System of the Maritime Search and Rescue Service – PLN 4000;***
- ***a technical expert opinion on the impact of the offshore wind farm and the set of equipment for power evacuation on the National Maritime Safety System (KSBM) – PLN 4000;***
- ***the rescue plan for the offshore wind farm and the set of equipment for power evacuation – PLN 4000;***
- ***the plan for eliminating hazards and contaminants for the offshore wind farm and the set of equipment for power evacuation – PLN 4000.***

The fee must be paid at the submission of the application for expert opinion approval. The stamp duty for an authorisation is PLN 17.

How to appeal?

An appeal against a decision refusing to approve the expert assessments or plans must be submitted within 7 days from the date of delivery of the decision, via the director of the maritime office that issued the refusal, to the minister competent for maritime affairs, currently the Minister of Infrastructure.

Can the application be filed online?

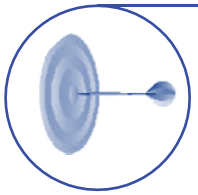
The application for issuing a decision may be submitted electronically via the ePUAP platform.

3.9.2. Decisions approving expert opinions in the field of communication systems operation, maritime safety, protection of the state border at sea, and national defense.

In addition to the approval of the expert opinions and plans discussed above, the legislator requires two additional expert opinions addressing project impact on the functioning of communication systems, maritime safety, state maritime boundary protection and national defence. Pursuant to Article 113c(1) and Article 113(c)(2) of the MS Act, the investor must secure a decision approving the following expert opinions:

- a technical expert opinion on the impact of the offshore wind farm and the set of equipment for power evacuation on national defence systems, including the radiolocation system, the technical observation system, the maritime radiocommunication system and the air traffic control system of Polish Armed Forces;
- a technical expert opinion on the impact of the offshore wind farm and the set of equipment for power evacuation on the radiolocation system, the technical observation system and the maritime radiocommunication system of the Polish Border Guard.

Purpose of the expert opinions

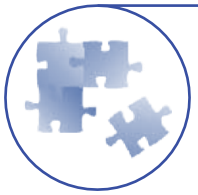


The main purpose of obtaining and approving the expert opinions is to guarantee maritime security, understood mainly as project harmonisation with the existing infrastructure, systems and plans of Polish Armed Forces and Border Guard.

When is the approval required?

The investor must obtain the decisions approving the expert opinions and plans before applying for the construction permit for the offshore wind farm and the system for power evacuation from the offshore wind farm.

Elements of the application for approval of the expert opinions



The application for approval of an expert opinion should include:

- identification and address of the applicant;
- the request to approve the expert opinion specified in the application;
- a proof of stamp duty payment;
- if the application is filed through an authorised representative, the authorisation must be attached along with a receipt for a stamp duty for the authorisation.

The expert opinion constitutes an attachment to the application.

The detailed content of the expert opinions is specified in **Annexes No. 1 and 2** to the Regulation of the Minister of National Defence of 10 October 2022 on the detailed scope of technical expert opinions regarding the assessment of the impact of an offshore wind farm and associated power evacuation infrastructure on national defence systems and the maritime border protection system.

03. OFFSHORE WIND ENERGY

The process

The applications for approval of the expert opinions are reviewed for formal aspects – whether they are complete and comply with the requirements presented above. Afterwards, their content is analysed to verify if the investor has met the requirement of comprehensive approach to national defence and national security issues.

Duration of the process

Within three months after the investor applies for the approval of the expert opinions.

Authority competent for the approval

The technical opinion on the impact of the offshore wind farm and the set of equipment for power evacuation on national defence systems, including the radiolocation system, the technical observation system, the maritime radiocommunication system and the air traffic control system of Polish Armed Forces, is approved by the Minister of National Defence.

The technical expert opinion on the impact of the offshore wind farm and the set of equipment for power evacuation on the radiolocation system, the technical observation system and the maritime radiocommunication system of the Polish Border Guard is approved by the minister in charge of internal affairs, i.e. currently the Minister of the Interior and Administration.

What is the fee for the decision?

The notification is exempt from a stamp duty.

The stamp duty for an authorisation is PLN 17.

How to appeal?

The applicant has 7 days to appeal to the Minister of National Defence or to the minister in charge of internal affairs, as appropriate.

Can the application be filed online?

An application for issuing a decision may be submitted electronically via the ePUAP platform.

3.10. CERTIFICATION OF OFFSHORE WIND FARMS AND SETS OF EQUIPMENT FOR POWER EVACUATION

Given the scale of the impact of a project involving an offshore wind farm and a set of equipment for power evacuation and the significance of the project for the energy security, the investor must comply with a number of certification obligations.

Pursuant to Article 113g(1) of the MS Act, the investor must obtain the following certificates at the stage of the investment and construction process for the offshore part:

1. **certificate of design conformity** issued after the construction design is prepared but before the construction supervision authority is notified of the intended construction commencement date for the offshore wind farm or the set of equipment for power evacuation – to certify the conformity of the construction design with the technical standards defining the requirements to be met by an offshore wind farm or a set of equipment for power evacuation;
2. **commissioning certificate** issued after the erection of the offshore wind farm or a part thereof or the set of equipment for power evacuation but not later than 30 days before the planned date when the electricity generated by the offshore wind farm or a part thereof is to be fed to the grid for the first time based on a licence – to certify the conformity of the construction process with the construction design and with the certificate of design conformity referred to in item 1;
3. **certificate of operation safety** issued before the expiry date of the certificate referred to in item 2 but not earlier than 3 months before the expiry date of the certificate referred to in item 2 – to certify the completeness and accuracy of the documentation in terms of proper maintenance and technical servicing of the offshore wind farm or parts thereof or the set of equipment for power evacuation.

Purpose of Certification of Offshore Wind Farms and Power Evacuation Systems

The purpose of the certification process is to verify whether the offshore wind farm and the associated power evacuation infrastructure meet the requirements regarding:

- structural and construction safety in terms of strength, load-bearing capacity, and stability;
- fire safety;
- operational safety;
- environmental protection;
- functional suitability for the intended use of various types of equipment, structures
- or installations comprising the offshore wind farm.

This compliance is confirmed by certificates obtained by the investor[59].

Which institutions are authorized to issue certificates?

Certificates may only be issued by so-called recognized organizations, the list of which is maintained by the Minister of Infrastructure, acting as the competent authority for maritime affairs.

[59] *Article 82(1) of the OWF Act*

The current list of recognized organizations is available at:

https://www.gov.pl/web/infrastruktura/obwieszczenie-ministra-infrastruktury-z-dnia-12-lipca-2023-r-w-sprawie-wykazu-uznanych-organizacji-upowaznionych-do-wydawania-certyfikatow-potwierdzajacych-spelnienie-wymagan-okreslonych-w-art-82-ust-1-ustawy-z-dnia-17-grudnia-2020-r-o-promowaniu-wytwarzania-energii-elektrycznej-w-morskich-farmach-wiatrowych

Certificate validity

- certificate of design conformity – open-ended;
- commissioning certificate – issued for not more than 5 years;
- certificate of operation safety – issued for not more than 5 years; it can be renewed not earlier than 3 months before its expiry date.

3.11. EXPERT OPINION ON DESIGN AND WORKMANSHIP CONFORMITY SUBMITTED TO THE TRANSMISSION SYSTEM OPERATOR

Pursuant to Article 82(2) of the OWF Act, in order to ensure proper integration of the system for power evacuation from the offshore wind farm, the generator must submit the following additional expert opinions to the transmission system operator (Polskie Sieci Elektroenergetyczne S.A.):

- expert opinion on design conformity, issued after the detailed designs are prepared but before the construction starts and
- expert opinion on workmanship conformity, issued after the end of construction works to confirm the conformity of the construction process with the detailed design and with the expert opinion referred to in item 1 above, along with an application for an interim operational notification (ION) as defined in Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators for the offshore wind farm or a part thereof;

The above expert opinions must comply with the requirements defined in the legislation enacted under Article 83 of the OWF Act for sets of equipment for power evacuation or offshore electrical substations.

The above expert opinions are prepared by an entity that can document its experience in assessment of technical documentation and in supervision over construction, modification or operation of a set of equipment for power evacuation. The experience must encompass at least 2 projects of the same or a similar scope over the past 10 years.

Details of the contents of the expert opinions are defined in more detail in the Regulation of the Minister of Climate and Environment of 25 May 2022 on detailed requirements for elements of the set of equipment for power evacuation and for elements of offshore electrical substations.[60]

3.12. CONSTRUCTION PERMIT

Construction permit is the element of the investment process that underlies the commencement of the construction works related to the development of an offshore wind farm or a system for power evacuation from an offshore wind farm. Without this permit it is not possible to start construction works or apply for an operational notification for the power station.[61]

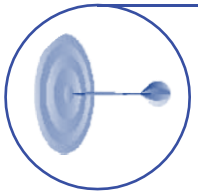
[60] *Footnote removed*

[61] *Article 28(1) of the Construction Law*

Please note that a construction permit applies to the whole construction project specified by the investor in the application. However, there is no obligation to build the whole project at once. The Construction Law permits splitting a project into stages and parts under certain conditions.[62] Division into stages is permitted if the construction project encompasses more than one facility. However, an investor who opts for the division must be aware that the construction permit can apply only to a facility or a group of facilities that can function on their own as intended.

It must be noted that a construction permit for a system for power evacuation from an offshore wind farm may also be subject to the Polish Act on Preparing and Implementing Strategic Transmission Grids, which makes it possible to execute strategic decisions regarding transmission grids[63].

Purpose of the construction permit



A construction permit verifies if the planned project complies with the law and respects the interests of the parties whose rights it is not allowed to violate. From the investor's perspective, the main purpose of obtaining a construction permit is to start the construction works to build the offshore wind farm and the set of equipment for power evacuation. A construction permit defines the rights and responsibilities of the investor related to project implementation.

When is the permit required?

A construction permit for an offshore wind farm or a system for power evacuation from the offshore wind farm is necessary after:

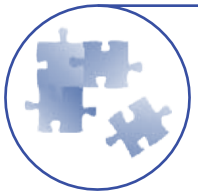
- the PSZW is obtained;
- the environmental decision is obtained;
- the decision approving the design of geological works and the approval of geological documentation are obtained;
- the PUUK and UUUK is obtained (this applies to a set of equipment for power evacuation) may be replaced by a location decision issued pursuant to the Act on Preparing and Implementing Strategic Transmission Grids[63];
- the minister in charge of energy grants their approval (for construction of an electricity transmission line[64];
- the electricity grid connection conditions are obtained.

[62] *Article 33(1) of the Construction Law*

[63] *Polish Act on Preparing and Implementing Strategic Transmission Grids of 24 July 2015 (consolidated text: Journal of Laws of 2023 item 1680 amended)*

[64] *For more on the approval to be granted by the minister in charge of energy, see Article 32(1a) of the Construction Law*

Elements of an application for the permit



The application for a construction permit should include the following elements:

- details of the person filing the application and their address;
- the request for a construction permit decision for a specific construction project (importantly, the construction law states that for a construction project covering more than one facility, a construction permit may, at the investor's request, pertain to selected facilities or to a complex of facilities able function on their own in accordance with their intended purpose).[65]

Furthermore, the investor should attach the following:

- a construction design – along with the opinions, approvals, permits and other documents as required under separate legal acts or copies of the same (in paper format – 3 copies or in an electronic format);
- a declaration on having the right to use the real property for construction purposes (for offshore wind farms, this title is the PSZW);
- the PUUK (this applies to a set of equipment for power evacuation);
- the UUUK (this applies to a set of equipment for power evacuation);
- the visual appendix specifying the anticipated project implementation site and the anticipated project impact area, and especially the map referred to in Article 74(1)(3a) of the EIA Act previously attached to the environmental decision;

The construction project, which constitutes an annex to the application, consists of the following components:

- a plot or land development design prepared on an up-to-date map for design purposes or on a copy thereof, presenting:
  a) the plot or land boundaries;
  b) the location, outline and arrangement of the existing and planned building structures, including the utilities on the plot and any building facilities located outside the building structure;
  c) the sewage discharge or treatment method (where applicable);
  d) the traffic system with specification of the characteristic elements, dimensions, ordinates and mutual distances between objects – in relation to the existing and planned buildings in the neighbouring areas,
  e) information about the project impact area;

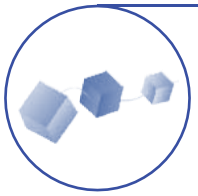
[65] *Article 33(1) of the Construction Law*

- an architectural and construction design which covers:
  a) the spatial arrangement and the architectural form of the existing and planned building structures;
  b) the intended use of the building structures;
  c) the characteristic technical parameters of the building structures;
  d) a geotechnical opinion and the information on how the building structure is attached to the ground;
  e) the planned material-related and technical solutions which influence the surroundings, including the environment;
  f) ecology characteristics;
- a technical design including:
  a) the planned structural solutions of the facility along with the results of static strength calculations;
  b) the planned necessary technical and material-related solutions;
  c) as needed – the geology engineering report or the geotechnical conditions for laying the building foundations;
  d) other design records;
- a plot or land development design and an architectural construction design – along with the opinions, approvals, permits and other documents as required under separate legal acts, or copies of the same.

Furthermore, the following must be attached to the construction design:

- a statement that the design author has the qualifications to hold an independent technical function in the construction industry;
- a statement of the engineer that the design was prepared in accordance with the applicable laws and the construction principles.

The process



After the investor submits the application, the voivode (Polish: wojewoda) checks its formal compliance. Afterwards, the voivode establishes the parties to the procedure. This is particularly important because the parties to the procedure not always include only the investor but sometimes also the entities in the vicinity of the project or within the project impact range. Once all the parties are established, each of them is notified of the initiation of the procedure.

After the preliminary and formal actions, the voivode checks the content of the application and reviews any motions submitted by the other parties to the procedure.

03. OFFSHORE WIND ENERGY

Duration of the process

The construction permit for an offshore wind farm and the set of equipment for power evacuation is issued within 90 days after the application is filed.

Authority competent for the permit

The authority in charge of issuing a construction permit for a wind farm is the voivode (Polish: wojewoda). If the construction project is implemented in areas falling under the jurisdiction of two voivodes, the procedure is handled by the voivode having jurisdiction over a bigger portion of the project site.

Permit validity period

The construction permit decision is issued for a period of three years from the date it becomes final and is subject to immediate enforceability. If construction is not commenced within these three years, or if it is interrupted for a period longer than three years, the construction permit shall expire.

What is the fee for the permit?

The stamp duty for a construction permit is PLN 155 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days to appeal against the decision to the Chief Construction Supervision Inspector (Główny Inspektor Nadzoru Budowlanego) through the voivode who issued the challenged decision. Appeals should be reviewed within 60 days of their delivery. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and to the Supreme Administrative Court.

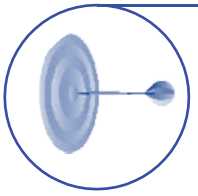
Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on e-Budownictwo.

3.13. OPERATIONAL NOTIFICATION

On completion of the construction of an offshore wind farm or a set of equipment for power evacuation, an operational notification is required before electricity generation can commence.[66] The notification confirms that the plant can be lawfully used as intended, in accordance with the already issued construction permit.

Purpose of the notification



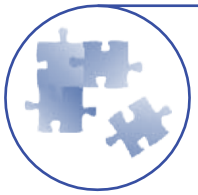
The basic purpose of the decision is to verify if the erected offshore wind farm or the set of equipment for power evacuation has been completed in accordance with the basic design and if it is fit for use. This entails a mandatory inspection of the project after the end of the construction process by the Provincial Construction Supervision Inspector (Wojewódzki Inspektor Nadzoru Budowlanego).

When is the notification required?

An operational notification is required after the construction works covered by the construction permit are completed but before the operation of the offshore wind farm starts.

An operational notification is still required even if the investor intends to commence the operation of only a part of the project covered by the construction permit.

Elements of an application for the notification



An application shall include:[67]

- details of the investor, including a correspondence address;
- identification of the construction supervision authority;
- identification of the construction permit decision underlying the implementation of the project;
- identification of the real property where the facility is located.

[66] *Article 55(1) of the Construction Law*

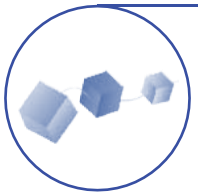
[67] *The template of an operational notification application is included in Annex 3 to the Regulation of the Minister of Development and Technology of 31 March 2022 establishing the template for the notification on completion of construction works and the operational notification (Journal of Laws of 715).*

Furthermore, the investor should attach the following:

- original construction daily log in paper format or, if the log is digital, the number of the log referred to in Article 47h(2) of the Construction Law;
- the technical design;
- a statement of the construction manager that the building structure complies with the construction design or the conditions of the construction permit and with the applicable laws and that the construction site has been brought to a proper condition and cleaned up;
- a statement that appropriate land management of adjacent areas has been secured wherever the operation of the facility depends on appropriate management of such areas;
- reports concluding the inspections and checks of the connections, systems and technical devices guaranteeing the use of the structure as intended; the reports must be prepared by individuals having construction qualifications in the required specialities, including those referred to in Article 14 of the Supervision Act;
- the decision authorising the operation of a technical device, referred to in Article 14 of Technical Inspection Act of 21 December 2000 (Journal of Laws 2024 item 1194 as amended);
- surveyor documentation with results of the as-built site survey;
- confirmation, in accordance with separate regulations, of the acceptance of the completed connections;
- copies of the drawings forming a part of the approved design, including the changes made and, where appropriate, a supplementary description of the changes where the changes do not significantly deviate from the approved design;
- receipt for a stamp duty for the permit;
- for applications filed by authorised representatives – the authorisation and the receipt for the stamp duty for the authorisation.

An operational notification is not just an official permission for the investor to use a building but it also defines the conditions of using the building at its operation stage.

The process



An investor who should obtain an operational notification for an offshore wind farm with a set of equipment for power evacuation is required to report the completion of the offshore wind farm construction process and the intention to commence the operation of the offshore wind farm to the Provincial Construction Supervision Inspector and, as required by specific legislation, to the local:

- State Sanitary Inspectorate (Państwowa Inspekcja Sanitarna) and
- State Fire Service (Państwowa Straż Pożarna).

The authorities determine if the building structure has been erected in accordance with the construction design. They should issue opinions within 14 days of receiving the notification and if they fail to do so, they are deemed to have no objections.

Once the operational notification application is filed, the Provincial Construction Supervision Inspector having jurisdiction over the project site is required to inspect the construction site compliance with the determinants and conditions specified in the prior construction permit and conformity with the construction design. The inspection precedes the grant of an operational notification.

The Provincial Construction Supervision Inspector holds a mandatory inspection before the expiry of 21 days after the delivery of the request, i.e. the submission of the application of an operational notification. The authority notifies the investor about the mandatory inspection within 7 days following the delivery of the notice. Importantly the investor is required to participate in the mandatory inspection at the set time.

The inspection includes checking:

- the compliance of the building structure with the plot or land development design;
- the compliance of the building structure with the architectural and building design and the technical design in terms of:
  a) the characteristic technical parameters as regards the footprint area, height, length, width,
  b) the workmanship of the visible load-bearing elements of the building structural system;
  c) the workmanship of construction works;
  d) the workmanship of the systems ensuring the use of the building structure as intended;

- compliance with the conditions specified in Article 55(1b) of the Construction Law if the operation of the building structure is to commence before the completion of all construction works;
- the construction products particularly important for structural safety and fire safety;
- if the construction permit provides for an obligation to demolish any existing building structures not expected to be used any more or any temporary building structures – compliance with this obligation, provided that the time limit for the demolition specified in the permit has expired;
- if the construction site has been cleaned up.

After the mandatory inspection, the Provincial Construction Supervision Inspector prepares a report in three copies. One copy is delivered to the investor promptly after the inspection, the second one is delivered to a higher-level authority, i.e. the Chief Construction Supervision Inspector (Główny Inspektor Nadzoru Budowlanego) and the third one is retained by the Provincial Construction Supervision Inspector.

If the inspection results are positive, the Provincial Construction Supervision Inspector having jurisdiction over the project site issues an operational notification for the offshore wind farm or the set of equipment for power evacuation. In the offshore wind farm operational notification the construction supervision authority may determine the conditions of using the wind farm or may make the operation of the plant contingent upon the completion of specific construction works within a specified time limit.

Duration of the process

An operational notification should be issued within 30 days following the submission of the application.

Authority competent for the notification

The authority in charge of issuing an operational notification for an offshore wind farm or a set of equipment for power evacuation is the Provincial Construction Supervision Inspector having jurisdiction over the project site.

If the project is implemented in areas falling under the jurisdiction of two Provincial Construction Supervision Inspectors, the procedure is handled by the one that has jurisdiction over a bigger portion of the project site.

03. OFFSHORE WIND ENERGY

Notification validity period

The notification is open-ended.

What is the fee for the notification?

The stamp duty for an operational notification is PLN 38.75 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 2 weeks to appeal against the decision to the Chief Construction Supervision Inspector (Główny Inspektor Nadzoru Budowlanego) through the authority that issued the challenged decision. Subsequent remedies available to the investor include a right to complain to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The notification can be submitted online to the public administration body having jurisdiction over the matter on the e-Budownictwo website.

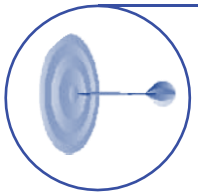
3.14. RES ELECTRICITY GENERATION LICENCE

Energy can be produced in an offshore wind farm and sold once the investor obtains the RES electricity generation licence.[68] This makes the licence a prerequisite for the investor to be able to use the RES support schemes.

Importantly, obtaining a licence for an offshore wind farm entails an obligation to regularly pay an additional licence fee. For offshore wind farms, the licence fee is higher than for other sources. Offshore wind farms cannot have a real property tax so they pay an additional licence fee that depends on the revenue and on the installed capacity.

Details of the licence fee amounts for offshore wind farms are included in the Regulation of the Council of Ministers of 12 October 2021 on licence fees (Journal of Laws item 1938).

Purpose of the licence

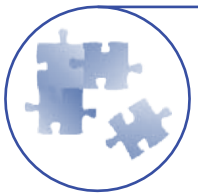


The purpose of the licence is for the government to authorise an activity in a branch of the economy that is particularly important from the perspective of public interest, i.e. the energy sector. The licence decision defines the conditions and the duration of this activity.

When is the licence required?

The concession decision is obtained after securing the permit for the operation of the offshore wind farm and its connection to the power grid. It is therefore the final decision issued in the investment and construction process of a wind power plant.

Elements of a licence application



The list of the documents required with an application for wind power generation licence is provided by the President of the URE, who initiates the procedure of reviewing the licence issue criteria defined in the Energy Law.

[68] *Article 32(1)(1)(b) of the Energy Law*

The list of the documents is available on:

https://www.ure.gov.pl/pl/biznes/jak-uzyskac-koncesje/energia-elektryczna/784,Odnawialne-zrodla-energii.html

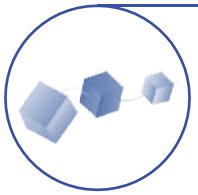
In accordance with the current list, a basic licence application should include:

- the person filing the application and their address;
- a request for a licence to generate energy from renewable sources;
- an extract from the KRS register of companies obtained not earlier than 3 months before the submission of the application to the authority in charge of issuing the licence;
- a list of all the parties with a significant influence or control or co-control, within the meaning of Article 3(1)(34), Article 3(1)(35) and Article 3(1)(36)(a), 3(1)(36)(b), 3(1)(36)(e) and 3(1)(36)(f) of the Polish Accounting Act along with the information which of the above relationships reflects the relationship between the entrepreneur and a given party and the information on what grounds the above parties are present on that list, plus a valid certificate of no criminal record from the National Criminal Register for such parties;
- a statement of the entrepreneur that not bankruptcy petition has been filed against it;
- a statement of the entrepreneur that it has not been deleted from the register of regulated activities in the past 3 years as a result of a decision prohibiting the entrepreneur from engaging in an activity covered by the entry in the register because it:
  a) filed a false statement on the legal compliance of such activity or
  b) failed to remedy its breach of the legal requirements for such activity by the deadline set by the authority, or
  c) committed a gross breach of the legal requirements for such activity;
- a document confirming that the entrepreneur is registered as a VAT payer;
- a certificate of excise duty identification number, where applicable, issued by the head of the tax office;
- a statement of the entrepreneur confirming there are no reasons to suspend the procedure based on Article 33(3a) of the Energy Law whereunder the President of the URE suspends the procedure wherever the entrepreneur or above-mentioned individuals are indicted for a crime or a tax crime related to their business activity;
- A statement by the entrepreneur confirming that all individuals employed in the operation of networks, installations, and equipment used in the licensed activity hold qualification certificates required under the provisions of the Energy Law, as well as other certificates issued pursuant to separate regulations, authorizing them to operate such networks, installations, and equipment;

- information provided by the entrepreneur regarding the networks, equipment, and installations specified in the Regulation of the Minister of Climate and Environment of 1 July 2022 on the detailed rules for confirming the possession of qualifications by persons engaged in the operation of equipment, installations, and networks that will be used in the activity covered by the application, as well as the number of individuals employed in their operation, including the qualification certificate numbers;
- Documents confirming the entrepreneur's legal title to the facilities and installations necessary for conducting the activity covered by the concession;
- description of the parameters and the technical condition of the electricity generation equipment;
- documents confirming that the devices comprising the installation meet the requirement referred to in Article 32(1a) of the Energy Law;
- the PSZW;
- the construction permit,
- documents containing the information that the construction process has ended and the operation of the facility commences (operational notification);
- decisions of the Polish Office of Technical Inspection (UDT) approving the electricity generating devices for use;
- documents confirming the installed capacity of the power-generating facility;
- the documents issued by the electricity system operator to whose grid the offshore wind farm is connected:
  a) the decision defining the technical conditions for connecting the system to the electricity grid (grid connection conditions) or the connection agreement;
  b) the report confirming the technical inspection of the power devices and their approval and acceptance for use;
  c) the report confirming the operation check of the measurement and settlement systems (known as the detailed technical service (OTS) order report);
- a power evacuation diagram highlighting the places where the quantity of the generated electricity is measured and outlining the separation of ownership of systems, devices and facilities between the entrepreneur and the electricity system operator and highlighting all the generating facilities;

- summary of the annual planned revenue and costs of the activity covered by the licence application for at least three full calendar years;
- financial statements for the last three years;
- other documents confirming that the entrepreneur has, or is able to secure, sufficient financing for proper performance of the licensed activity (e.g. bank guarantees, insurance guarantees, guarantee agreements, credit facility agreements, loan agreements etc.);
- valid certificates from the competent tax authority and tax and customs authority, obtained not earlier than 3 months before their presentation to the licensing authority, confirming that the entrepreneur has no overdue payments towards the state budget;
- a valid certificate from the competent branch of the Polish Social Insurance Institution (ZUS), obtained not earlier than 3 months before its presentation to the licensing authority, confirming either that the entrepreneur has no overdue social security contribution payments or that it is not registered as a contribution payer;
- a valid certificate from the bank that keeps the basic account of the entrepreneur which specifies the value of the transactions, the payment capacity, the creditworthiness of the entrepreneur and contains information about the credit facilities granted to the entrepreneur and the information on whether the account is free from any enforcement orders, obtained not earlier than 3 months before its presentation to the licensing authority.

The process



The competent authority checks the application for formal accuracy and notifies all the parties that the procedure has been initiated. Afterwards, after the formal activities, the authority checks if a licence can be issued in this specific case.

Before issuing a licence, the authority may require the applicant to post a bond to secure any third-party claims which may arise as a result of improper performance of the business activity, including potential environmental losses.

The bond cannot be lower than 1/12 of the highest annual revenue from the business activity for which the licence is to be granted as expected by the applicant in the next consecutive 3 years.

Once the procedure is completed and all the requirements provided for by the law are met, the authority issues the licence.

The licence should specify:

- the entity, its registered office or residence and their address;
- the object and scope of the licensed activity;
- the start date of the licensed activity and the conditions for the performance of the activity;
- licence term;
- Detailed performance conditions of the licensed economic activity which are to ensure proper services for the recipients in terms of:
  a) the capacity necessary to supply fuel or energy in a continuous and reliable way and in compliance with the quality requirements defined in the legislation issued under Article 9(1) through Article 9(4), Article 7 and Article 8 of the Energy Law,
  b) notifying the President of the URE if the licensed activity has failed to be commenced or has been terminated or limited during the licence term:
     - securing the environment in the course of and after the termination of the licensed activity;
     - the detailed rules of renewing the bond where applicable;
     - the number in the KRS register of companies, where applicable, or the number in an equivalent register in European Union member states, the Swiss Confederation, the European Free Trade Association (EFTA)
     - the parties to the European Economic Area agreement or Turkey and the tax identification number (NIP).

The licence should also define the business shutdown conditions for the energy company after the licence expires or is withdrawn.

The energy company that receives the licence pays an annual fee to the state budget, which is included in business costs.

Please note that the competent authority may order the energy company to continue the licensed activity even if the license has expired, for a period not longer than 2 years if the public interest so requires. If an activity pursued following such an order brings losses, the energy company is entitled to have loss covered by the State Treasury in an amount limited to reasonable business costs defined in the licence, on a due diligence basis.

03. OFFSHORE WIND ENERGY

Duration of the process

Electricity generation licensing, e.g. for a wind farm, is a process that should be completed within a month. However, this is just a theory based on the administrative procedure and it does not account for the specificities of the licensing process, which usually takes a few months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the licence

The authority responsible for issuing the licence is the President of the URE.

The licence application must be filed to the local URE branch having jurisdiction over the power plant.

Licence validity period

The licence is granted for an indefinite term, not shorter than 10 years and not longer than 50 years, unless the entrepreneur requests a shorter term.

What is the fee for the licence?

The stamp duty for an energy generation licence is PLN 616 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the President of the URE. The cost of the appeal is PLN 1000.

Can the application be filed online?

The application must be filed in an electronic format or to the e-PUAP mail box of the competent public administration body or to the address for electronic submissions.

04. BIOGAS AND BIOMETHANE

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04. BIOGAS AND BIOMETHANE

4.1. TECHNOLOGY DESCRIPTION

Biogas plants are systems that produce energy from the biogas obtained primarily in the fermentation process of plant biomass, animal excrements, organic waste (for example from the food industry), municipal waste, post-slaughter waste or biological sludge from sewage.

Biogas is classified as a renewable energy source within the meaning of the RES Act. The detailed biogas production process depends on the type of the biogas plant. In most cases, the resulting biogas is used on the site for combined heat and power generation. Some biogas plants process and purify biogas into biomethane, which is then injected into the gas grid or subjected to liquefaction or compression processes, allowing the gas fuel to be transported by means other than gas pipelines. As a by-product of biogas plant operations, digestate (also known as post-fermentation residue) is produced. Its use depends on the composition of the biomass used for biogas production, with digestate most commonly utilized in agriculture.

a) as fertiliser or plant growth aid based on the Polish Fertiliser and Fertilisation Act of 10 July 2007 (consolidated text: Journal of laws of 2023 item 569 as amended), after the requirements regarding the marketing authorisation are met (pursuant to Article 4 of the Act);

b) in waste processing according to the R10 recovery procedure, pursuant to the Polish Waste Act of 14 December 2012 (consolidated text: Journal of Laws of 2023 item 1587 as amended), after obtaining the R10 waste processing permit referred to in Article 42(2) of the Act.

The activity of a biogas plant is linked in particular to agriculture, which is mainly because of access to raw materials. Unlike most types of the RES systems the functioning of a biogas plant does not rely on weather conditions but on continuous access to biomass. Biogas plants can produce energy even for 8,000 hours a year (90% of the time), unlike the other RES systems, where the annual capacity Factor ranges from 10 to 40%.

This is why biogas plants are a valuable component of the renewable energy source scheme, with a tremendous growth potential. The estimations to date suggest that the average annual quantity of agricultural biogas that can be obtained in Poland exceeds 8 billion m^3.

4.2. CHOOSING PROJECT LOCATION

Before the investment and construction process for a biogas plant is initiated, the potential location should be analysed. Finding an appropriate location for the biogas plant is the preliminary, necessary and essential prerequisite for successful completion of the subsequent administrative procedures. The most important factors to be considered at this stage include:

- the location of the real property, which should be verified during the audit stage;
- the level of available connection capacity at the planned point of connection to the power grid (or, in the case of biomethane plants, the possibility of connection to the gas distribution network (network absorption capacity) or the gas transmission network);
- access to the heating grid/possibility of investing in network infrastructure;
- any forms of nature conservation which may apply to the real property;
- legal title to the real property.

Property location

While analysing biogas plant location options (other than those located near landfill sites or wastewater treatment plants), one should first take into account the issue of ensuring access to the substrate, which includes in particular the possibility of guaranteeing continuous supplies and productivity of the biogas obtained as a result of substrate processing. The main challenge for investor is to choose a real property with a potential of creating an efficient supply chain based on collaboration with other parties within up to twenty kilometres from the biogas plant.

Another important element to be considered is the digestate storage and management possibility. The plot where the biogas plant is to be built should also be isolated from residential area, especially through the creation of special green belts. The details are laid down in the Regulation of the Minister of Agriculture and Rural Development of 13 January 2023 on the technical conditions to be met by building structures and their locations (Journal of Laws 2023, item 297).

An investor must account also for the issue of providing the site utilities, i.e. water and sewage ,connections or linear infrastructure, which will be necessary in the future for functioning of the biogas plant.

Electricity grid connection capacity and access

When planning the construction of a renewable energy installation connected to the power grid in a selected location, it is necessary to consider the level of available connection capacity at that site, as it is a key factor determining the feasibility of grid connection. A lack of available connection capacity in the indicated location may result in the relevant power system operator issuing a refusal to connect, or providing connection conditions that require additional investment in grid infrastructure.

This is why the value of the available connection capacity should be analysed for planned energy sources before the project is launched. The obligation to publish relevant information, which must be updated at least on a quarterly basis, is stipulated in Article 7(8l) of the Energy Law. Electricity companies that transmit or distribute electricity publish: the values of the total available connection capacity for sources; the planned changes to these values over the next 5 years following their publication; and the list of parties applying for source connection to an electricity grid of a rated voltage above 1 kV. Due to the lack of real-time updates of the aforementioned data, verifying the availability of free connection capacity is challenging for investors.[69]

[69] *As the published information may no longer reflect the current status, the indicated available capacity should not be considered a guarantee of obtaining the desired connection terms.*

Access to the heating grid

An element that increases the profitability of biogas plant investments is the possibility of managing the heat produced in biogas plants in the cogeneration process. So the choice of a potential biogas plant location should also take into account the possibilities of receiving the heat, i.e. the local heat infrastructure should be assessed, along with the entities potentially willing to receive and use the heat produced in rural areas. The solution is used rarely, mainly because of the substantial distance between a biogas plant and access to the nearest heat pipelines, which run mostly across urban areas. Details on connecting a plant to the heating grid are discussed in section 4.7. of this chapter.

Forms of nature conservation which may apply to the real property

When determining the location of a future biogas plant, it is also necessary to verify whether any part of the planned investment is situated within or in close proximity to a protected natural area.

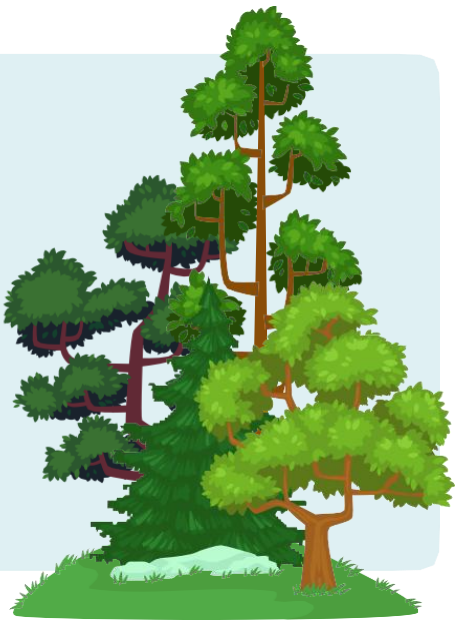
Locating an investment project within a protected natural area may hinder or completely prevent further progress of the investment process.

In particular, it should be noted that restrictions or a complete inability to carry out the investment may apply to areas where the following are present:

- national parks,
- nature reserves,
- landscape parks,
- protected landscape areas,
- Natura 2000 sites,
- ecological sites
- nature and landscape complexes.

The above restrictions also extend to the buffers zones of:

- nature national parks,
- nature reserves,
- landscape parks.



Legal title to the real property

The key matter preceding the commencement of administrative processes is to secure the title to the real property where the biogas plant is to be located. To hold a title means to have the right to use the property. So the first step to be taken by an investor planning a project is to audit the legal status of the land especially to review the title register for the property.

The title that guarantees the fullest protection of the investor's interests is land ownership.

There is also a practice of erecting biogas plants on leased properties. However, the solution entails the risk that the ownership of the plant may be merged with the ownership of the real property. In accordance with the Polish Civil Code, structures erected on a real property share its legal status so the ownership of the system installed on the real property may pass to the land owner.

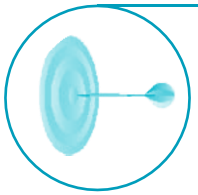
To minimise the risk, if the biogas plant is to be built on a leased property, the investor should make sure that the lease contract expressly address the issue of ownership of the biogas plant and include a clear, unconditional provision that the biogas plant elements brought by the lessee are not a part of the real property but have been positioned there for temporary use and are owned exclusively by the lessee.

The law does not require a lease contract to have any specific form in order to be deemed valid. An ordinary written form of the contract may be recognised as sufficient to secure the title to a real property. However, an investor may find themselves at a major disadvantage if the real property is sold by the owner to a third party because if this happens, the buyer of the real property acquires the right to terminate the lease. A lease agreement concluded in the form of a notarial deed, in accordance with Article 41b of the Waste Act, is required if the investor intends to manage digestate resulting, for example, from the processing of municipal waste (waste from group 20) under the R10 recovery procedure. An investor may seek protection against this risk by using a special contract form, i.e. written form with certified date (Polish: 'data pewna'). Moreover, for the investor to be able to use this protection, the contract must be a fixed-term contract and the real property must be handed over to the lessee. Another solution to reduce the risk is to disclose the rights of the lessee in the title register kept for the real property; this requires signing a written contract with signatures certified by a notary public.

4.3. DECISION ON ENVIRONMENTAL CONDITIONS

In most cases, the first step in the investment and construction process for a biogas plant is obtaining the decision on environmental conditions of the project (environmental decision).[70]

Purpose of the decision



The basic purpose of an environmental decision is to assess the impact of the planned project on the environment and to determine the conditions to be met by the investor in order to minimise the negative consequences for nature and human health.

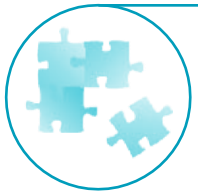
In the environmental decision, the authority specifies, among other things, the environmental protection requirements and the conditions that must be met by the investor during the implementation and operation of the project. So the purpose of the decision is to balance the needs for economic growth and the protection of the environment and human health.

When is the decision required?

Obtaining an environmental decision is required in most cases of biogas investments. The need to obtain it arises prior to acquiring a Decision on Land Development Conditions and a construction permit[71], and in some cases also at the stage of obtaining a waste processing permit.

Exemptions from the requirement to prepare environmental impact assessments and secure an environmental decision requirement apply to facilities for agricultural biogas production which have an installed capacity up to 0.5 MW or which produce an equivalent quantity of agricultural biogas used for purposes other than electricity generation.

Elements of an application for the decision



The process of issuing an environmental decision is initiated by an application of the investor. Since biogas plants with an installed capacity of 0.5 MW are classified as projects having a potentially significant environmental impact,[72] the application should:

- specify the person filing the application and their address;
- include a request for an environmental decision for a specific project.

[70] *Article 71(1) of the EIA Act*
[71] *Article 72(1) of the EIA Act*
[72] *Pursuant to § 2(1)(47) of the Regulation of the Council of Ministers of 10 September 2019 on projects likely to have a significant impact on the environment (Journal of Laws, item 1839, as amended), non-agricultural biogas plants capable of receiving no less than 10 tonnes of waste per day or with a total capacity of no less than 25,000 tonnes are considered projects that always have a significant impact on the environment. In such cases, the application must include an environmental impact report or a project information sheet together with a request to determine the scope of the report.*

The investor should attach the following to the application:

- a project data sheet (KIP) for a project that involves building a biogas plant and where an environmental impact assessment is requested pursuant to Article 59(1)(2) of the EIA Act – an environmental impact report;
- Environmental impact report for biogas plants classified as projects that may always significantly affect the environment (falling under § 2(1)(47) of EIR), whereby the investor may submit a project data sheet (KIP) together with an application for determining the scope of the report instead of the full environmental impact report, pursuant to Article 69 of the EIA Act.
- a copy of a cadastral map certified by a competent authority, either as a hard copy or digital, which covers the planned project site and the area on which the project, in the variant proposed by the applicant, will have an impact. This impact area is understood as:
  a) the planned project implementation site and the area up to 100 m form the boundaries of that site;
  b) the plots on which the environmental quality standards would be breached as a result of the implementation, operation or use of the project, or
  c) the plots within the range of a significant project impact which may result in restrictions on the currently intended development of the real property;
- a map, in paper and electronic form, at a sufficient scale to guarantee the legibility of the presented data, outlining the site where the project is expected to be implemented and outlining the expected project impact area within 100 m from the boundaries of the site;
- extract and excerpt from the Local Spatial Development Plan or an annotation that there is no Local Spatial Development Plan (if the competent authority for issuing the environmental decision is the Regional Director for Environmental Protection);
- an extract from the register of land or any other paper or digital document issued by the authority keeping the register of land and buildings which makes it possible to establish the parties to the procedure and which specifies at least the reference number of the plot and, if disclosed, the title register number for the plot, the first and last name or the business name and the address of the registered party – for the expected project site and for the project impact area (it is not required to attach if the number of parties to the environmental decision procedure exceeds 10);
- a cost-benefit analysis (this does not apply to systems with a minimum thermal input up to 20 MW);
- proof of stamp duty payment;
- for applications filed by authorised representatives – the authorisation and the proof of payment of the stamp duty for the authorisation.

USEFUL NOTE

Despite the submission of a KIP by the investor, during the procedure the authority may determine the obligation to carry out an environmental impact assessment of the project, which entails the investor's duty to prepare a full environmental impact report. In such cases, the investor is required to conduct in-depth studies concerning the environmental conditions for the implementation of the investment.

The process

Once the application is filed, the authority reviews it to establish if the biogas plant project can be implemented in accordance with the regulations of environmental protection law and it formulates the necessary opinions/requirements in this respect.

During the procedure, the authority may determine the obligation to prepare an environmental impact assessment report for the project, in such cases, it should specify the scope of the report that must be submitted by the applicant. If the investment is to be located within landscape parks or areas of protected landscape, the applicant may independently request the determination of the scope of the report.

The regulations require that the report include information enabling the assessment of the following environmental impact criteria:

- the impact of the project on the environment and the population, including human health and living conditions, material assets, cultural heritage, landscape (including cultural landscape), interactions between these elements, and the accessibility of mineral deposits;
- risk of major failures, natural disasters and construction accidents;
- the options and ways of preventing and reducing negative environmental impacts;
- the required scope of monitoring.

Furthermore, a project environmental impact report should:

- describe the planned project, especially by presenting:
  a) a description of the whole project and the site use conditions at the implementation and operation or use stages, also addressing areas at a special risk of flood within the meaning of Article 16(34) of the Water Law;
  b) the main characteristics of the production processes;

c) the expected types and quantities of emissions, including waste, arising from the project implementation and operation or use stages;

d) information on the biological diversity, utilisation of natural resources, including soil, water and earth surface;

e) information on the demand for and consumption of energy;

f) information on demolition works for projects having a potentially significant environmental impact;

g) a risk – assessed based on scientific knowledge – of major failures, natural disasters and construction accidents, taking into consideration the substances used and the technologies applied, including the risk related to climate change;

- describe the elements of the natural environment covered by the expected environmental impact of the planned project, including:

  a) elements of the environment covered by conservation under the Nature Act and the wildlife corridors within the meaning of this Act;

  b) the hydromorphological, physicochemical, biological and chemical properties of waters;

- results of the nature inventory in descriptive and cartographic form, if conducted, together with a description of the methodology, constituting an annex to the report;
- present other data underlying the description of natural environment elements;
- describe any historical monuments under conservation pursuant to monument conservation and care regulations which may be situated in the vicinity of or within the impact range of the project;
- describe the landscape where the project is to be located;
- present the information on ties to other projects, especially on cumulative impacts of any continuing, completed or planned projects which have an environmental decision and which are located within the planned site of the project in question and within the project impact range or which have impacts within the project impact range;
- describe the consequences expected for the environment if the project is abandoned; the description must include the available environmental information and scientific knowledge;
- describe the project variants, taking into account its specific characteristics or its environmental impacts, indicating the selected implementation variant, a reasonable alternative variant, and a reasonable variant most beneficial to the environment (the reasonable environmentally beneficial variant may be identical to the selected implementation variant or the reasonable alternative variant);

- describe the expected impact of the analysed variants on the environment (also in the case of a serious industrial accident, natural disaster or construction accident), on the climate (including greenhouse gas emissions and impacts important from the perspective of adapting to climate changes), as well as the possible cross-border environmental impact;
- compare the impacts of the analysed variants on:
  a) people, plants, animals, fungi, natural habitats, water and air;
  b) the earth surface (taking into account soil mass movements) and the landscape;
  c) physical property;
  d) historical monuments and cultural landscape covered by the existing documentation especially entered in the register of historical monuments;
  e) the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites;
  f) the elements listed in Article 68(2)(2)(b) of the EIA Act, if they have been included in the environmental impact assessment report or if they are required by the competent authority;
  g) mutual interactions between the elements listed in items (a) through (f) above;
- justify the variant proposed by the applicant, taking into account the information regarding the determination of the expected environmental impact of the analysed variants and the comparison of their impacts mentioned above;
- describe the forecasting methods used by the applicant and the expected significant environmental impacts of the planned project, including direct, indirect, secondary, cumulative, short-, medium- and long-term, permanent and temporary environmental impacts from:
  a) the existence of the project;
  b) the utilisation of natural resources;
  c) emissions;
- describe the anticipated actions to avoid, prevent, limit or offset any negative environmental impacts, especially impacts on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites, along with the assessment of their effectiveness at the stages of project implementation, operation, use or shutdown;
- reference to environmental objectives arising from strategic documents relevant to the implementation of the project;

- present the issues in a graphic version;
- include a cartographic presentation of the issues at a scale as required by the subject matter and level of detail of the issues analysed in the report for comprehensive presentation of the completed environmental impact analyses;
- analyse the possible social conflicts related to the planned project;
- present the proposed monitoring of project environmental impacts at the project implementation and operation or use stages, especially the impact on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and on the continuity of the wildlife corridors that connect those sites, and present the information on the results of other monitoring which may be relevant for establishing the responsibilities in this respect;
- specify any difficulties resulting from technological shortcomings or gaps in the state of the art which were encountered during report preparation works;
- summarise the information included in the report using non-specialist language by addressing every element of the report;
- specify the report date, the first name, last name and signature of the author or, if the report was prepared by a team of authors, specify the first name, last name and signature of the team leader and the first names, last names and signatures of the team members;
- contain, as an appendix to the report, a statement of the author or, if the report was prepared by a team of authors, a statement of the team leader, on compliance with the requirements laid down in Article 74a(2) of the EIA Act;
- provide the sources of the information underlying the report.

Subsequently, the report is reviewed by the competent authority in terms of the criteria specified for the applicant and is subject to consultation with relevant institutions. The authority may then issue an environmental decision.

It should be noted that, pursuant to Article 63(5–6) of the EIA Act, the authority responsible for issuing the environmental decision suspends the proceedings for the duration of the report preparation, which must be completed by the investor within no more than three years. After this period, the request to initiate the procedure is considered withdrawn.

It is important to highlight that the authority may determine there is no need to conduct an environmental impact assessment, in which case the environmental decision may be issued immediately.

Refusal to issue the decision is not discretionary. The authority is obliged to refuse consent for the implementation of the project in the following cases:

- non-compliance of the biogas plant's location with the Local Spatial Development Plan if such a plan has been adopted;
- refusal to agree on the conditions for project implementation by a cooperating authority;

- If the environmental impact assessment indicates that the project cannot be implemented in the variant proposed by the applicant, and the applicant rejects the variant suggested by the authority;
- the environmental impact assessment for the project suggests that the project may have a significant negative impact on a Natura 2000 site;
- the environmental impact assessment for the project suggests that the project adversely affects the possibility of attaining the environmental objectives referred to in Article 56, Article 57, Article 59 and Article 61 of the Water Law.

Duration of the process

Finalizing the case by issuing an environmental decision, for example for a biogas plant—should, in theory, be completed within one month. However, this timeframe is based solely on administrative procedure and does not reflect the specific nature of the process, which typically lasts several months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals, opinions. ensuring public participation or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the decision

As a general rule, the authority competent to issue the environmental decision is the municipal authority—specifically, the mayor, town or city president, or the voivodeship marshal (in the case of municipal waste). In certain cases, the competent authority is also the Regional Director for Environmental Protection (RDOŚ). During the procedure, the competent authority seeks opinions from cooperating bodies, including the Regional Director for Environmental Protection, the State Sanitary Inspection authorities (in accordance with the division specified in Article 78 of the EIA Act), and the authority responsible for water law assessments. In cases where an environmental impact assessment is required, the locally competent Regional Director for Environmental Protection plays a decisive role in the course of the proceedings.

Decision validity period

An environmental decision remains valid and binding until it is removed from legal circulation and may be used in subsequent stages of the investment process. However, within 6 years from the date on which the decision became final or within 10 years if the deadline has been extended (provided that the party who submitted the application for the environmental decision, or the entity to which the decision was transferred, received confirmation from the authority that issued the decision in the first instance, before the 6-year period expired, stating that the conditions for project implementation specified in the environmental decision remain valid), it is possible to submit an application for a subsequent decision.

What is the fee for the decision?

The stamp duty for an environmental decision is PLN 205 and it must be paid at the submission of the application.

The stamp duty for an authorization is PLN 17.

How to appeal?

An appeal against the decision may be submitted within 14 days from the date of its delivery, including delivery by public notice, to the competent Regional Administrative Appeals Board (Samorządowe Kolegium Odwoławcze). Subsequently, a complaint may be filed with the Voivodeship Administrative Court, and then with the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP, some of the attachments to the application must be provided in paper form.

4.4. PLANNING

Within the subsection on spatial planning, the legal basis enabling the location of biogas plants will be discussed. In the Polish legal framework, the most important instruments are the Local Spatial Development Plans. In areas not covered by such plans, during the transitional period following the entry into force of the spatial planning reform (Act of 7 July 2023 amending the SP&M Act and certain other acts – Journal of Laws 2023, item 1688, subsequently amended by the Act of 4 April 2025 amending the SP&M Act and certain other acts – Journal of Laws 2025, item 527), the key instrument is the Decision on Land Development Conditions. An additional solution introduced by the aforementioned reform is the Integrated Investment Plan (ZPI), which will be discussed later in this chapter.

4.4.1. Local Spatial Development Plan

The Local Spatial Development Plan is the basic legal instrument related to planning. This is why, before starting the investment and construction process, an investor must first verify whether the project site is covered by a Local Spatial Development Plan.

If there is no Local Spatial Development Plan for the site, a Decision on Land Development Conditions must be obtained. Project compatibility with the Local Spatial Development Plan or with the Decision on Land Development Conditions is a prerequisite for locating the project within a given site. This is the stage that precedes the issue of the construction permit.

Rules of locating biogas plants based on Local Spatial Development Plans

Pursuant to the SP&M Act, if the project site is covered by a Local Spatial Development Plan, adopted on the basis of a general plan, the location of the following types of biogas plants is permitted exclusively under the Local Spatial Development Plan:

- biogas plants located on agricultural land of classes I–III and forest land;
- biogas plants located on agricultural land of class IV with an installed electrical capacity exceeding 150 kW or used for conducting business activities related to electricity generation;
- biogas plants with an installed electrical capacity exceeding 1000 kW, regardless of the type of land (in case of biogas plants with lower capacity, except those located on the types of

land mentioned above, the investment and construction process may be carried out on the basis of a Decision on Land Development Conditions even if there is no Local Spatial Development Plan in force for the area or if the land use designation does not explicitly permit the construction of a biogas plant) [73].

The location of RES installations based on Local Spatial Development Plans adopted during the transitional period (not based on the general plan) requires that the plan explicitly includes the possibility of locating RES systems.

Rules for locating biogas plants based on Local Spatial Development Plans adopted after 30 October 2021 and before 24 September 2023.[74]

According to the previously applicable SP&M Act, if the investment area is covered by a Local Spatial Development Plan, the admissibility of locating a biogas plant is as follows:

- the location of a biogas plant with an installed electrical capacity exceeding 500 kW is only permitted in areas explicitly designated for such use in the municipality's the Study of Local Determinants and Directions in Spatial Development. In practice, this means that if the Local Spatial Development Plan does not foresee the area being designated for biogas plant development, the building authority is likely to refuse to issue a construction permit;
- the location of a biogas plant with an installed electrical capacity not exceeding 500 kW is also permitted in areas not explicitly designated for biogas plant development in the study.

For proceedings pending before 24 September 2023, the previous provisions of the SP&M Act, including Article 10(2a), apply.

For Local Spatial Development Plans adopted before 30 October 2021, the rules for locating biogas plants differ:

- if the Local Spatial Development Plan was adopted after 25 September 2010, the location of a biogas plant with an installed electrical capacity exceeding 100 kW is permitted only if the plan explicitly provides for such an installation;
- if the Local Spatial Development Plan was adopted before 25 September 2010, the location of a biogas plant is permitted even on properties not explicitly designated for renewable energy installations, regardless of capacity.

Please note that interpretation of the SP&M Act, especially in terms of Local Spatial Development Plans established before 30 October 2021, is approached by the judicature inconsistently and as such it requires a case-by-case legal assessment to account for the specificities of a particular Local Spatial Development Plan.

Amendment/adoption of a Local Spatial Development Plan

If the investment area is covered by a Local Spatial Development Plan whose provisions do not allow for the location of the intended RES system, or if the area is not covered by a Local Spatial Development Plan and the investment may only be located on the basis of such a plan, the investor is entitled to submit an application for the amendment or adoption of a Local Spatial Development Plan.

[73] *Article 10(2a) of the SP&M Act*

[74] *Information notice of the President of the URE no. 8/2023*

Application for the amendment or adoption of a Local Spatial Development Plan is submitted to the commune administrator, town mayor, or city president and is registered in the register of applications for the preparation or amendment of the Local Spatial Development Plan. Subsequently, the authority assesses the compliance of the application with the applicable general plan and analyzes its justification.

The municipality's general plan is a new planning instrument that is to be adopted obligatorily for the entire municipality (excluding closed areas), as a local law act, and is ultimately intended to replace the Study of Local Determinants and Directions in Spatial Development. The provisions contained in the general plan will be binding both for local plans and for decisions on land development and use conditions.

In the event of non-compliance of the application for amendment/adoption of the Local Spatial Development Plan with the general plan, it is first necessary to apply for changes to the general plan, and subsequently for the amendment/adoption of the Local Spatial Development Plan. If the authority accepts the application, it may refer it to the municipal council, which adopts a resolution to commence the preparation of the Local Spatial Development Plan.

Pursuant to Article 58 of the amendment to the SP&M Act, until municipalities adopt general plans, no later than June 30, 2026 as stipulated by the amendment- the inclusion of RES systems in a newly adopted Local Spatial Development Plan does not need to comply with the provisions of the existing study.

An application for the amendment/adoption of a Local Spatial Development Plan constitutes merely a proposal. The applicable regulations do not provide for any specific procedures or deadlines for its consideration. **The decision regarding the application is not subject to appeal.** Therefore, it should be noted that the procedure for amending or adopting a Local Spatial Development Plan may be lengthy and does not guarantee the success of the intended investment.

The amendment to the SP&M Act introduces a simplified procedure (Article 27b(1)(1)) for adopting or amending Local Spatial Development Plans concerning only the location of RES systems other than wind farms, allowing certain obligations to be omitted and deadlines shortened.

It is also worth mentioning that the amendment introduces a special form of local plan known as **the Integrated Investment Plan (ZPI)**, which may be used by investors in cases where no local plan exists or the existing plan requires amendment. The ZPI is adopted by the municipal council upon the investor's request submitted via the commune administrator, town mayor, or city president. The ZPI is to cover the area of the main investment (e.g., RES system or residential development) as well as complementary investments (e.g., public roads, green spaces, or public utility facilities). Upon its entry into force, the ZPI will supersede any existing local plans or their parts applicable to the area covered by the ZPI.

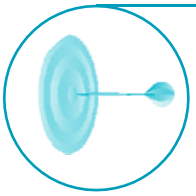
Importantly, if the ZPI concerns exclusively the location of RES installations other than wind power plants and does not involve the conditions specified in Article 27b(2) of the SP&M Act, the procedure for adopting the ZPI will also be simplified (Article 27b(1)(1) of the SP&M Act).

For more detailed information on the procedures for adopting ZPIs and simplified Local Spatial Development Plans for certain RES systems, please refer to the website (**NCP-RES**).

Confirmation of project compliance with the Local Spatial Development Plan

An investor may obtain a certificate confirming that the planned project complies with the Local Spatial Development Plan.

Purpose of the confirmation



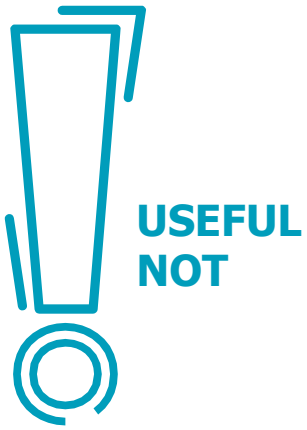
The purpose of the confirmation is to verify if the planned project will comply with the Local Spatial Development Plan.

When is the confirmation required?

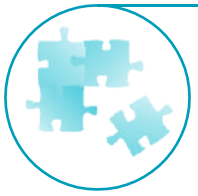
Obtaining the confirmation is not mandatory but is serves to confirm that the planned project complies with the Local Spatial Development Plan.

The local community of the commune also contributes to the final structure of the Local Spatial Development Plan through public consultations carried out in the process of drafting the final text of the Local Spatial Development Plan.

Comments from the community may actually influence the location of particular sites on the plan including sites intended for the construction of biogas power plants.



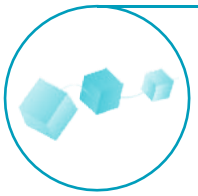
Elements of a confirmation application



An application for a certificate confirming project compliance should also include:

- proof of payment of the stamp duty for the application;
- authorisation, if the application is submitted by an authorised representative;
- receipt for the stamp duty on the authorisation, if the application is submitted by an authorised representative;

The process



Project compliance with the Local Spatial Development Plan is confirmed by a certificate issued by the locally competent commune administrator or mayor upon the investor's request.

Obtaining the certificate is not mandatory **and its content is not binding upon the construction authorities at the stage of applying for the construction permit.**

04. BIOGAS AND BIOMETHANE

Duration of the process

Up to 7 days following the filing of the application.

Authority competent for the confirmation

The commune administrator or mayor having jurisdiction over the project site.

Confirmation validity period

The certificate is open-ended but it expires if the Local Spatial Development Plan is amended.

What is the fee for the certificate?

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

The party that has been denied the issuance of a certificate has the right to appeal to the Local Government Appeals Board within 7 days from the date of receiving the refusal.

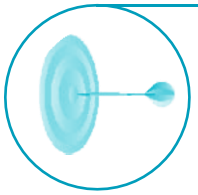
Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

4.4.2. Decision on Land Development Conditions

During the transitional period following the entry into force of the spatial planning reform (effective until June 30, 2026, or until the municipality adopts a general plan), the Decision on Land Development Conditions remains the most commonly used document for the location of biogas plants. In areas not covered by a Local Spatial Development Plan, the Decision on Land Development Conditions serves as the legal basis for locating such investments and enables the investor to apply for a construction permit.[75]

Purpose of a Decision on Land Development Conditions



The main purpose of a Decision on Land Development Conditions is to establish the construction and land development conditions related to a photovoltaic power plant which are necessary to integrate the investment with the local spatial development.

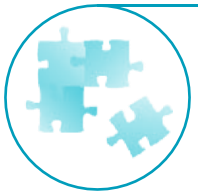
When is a Decision on Land Development Conditions required?

In a typical course of the investment and construction process, a Decision on Land Development Conditions is usually obtained after the investor receives the environmental decision (if required) but before the application for grid connection conditions is filed. It is obtained only if the project site is not covered by a Local Spatial Development Plan.

No Decision on Land Development Conditions can be obtained for a biogas plant if the real property consists of class I to III agricultural land (in such a case, a Local Spatial Development Plan must be established and the minister in charge of rural development must grant permission to use the real property for non-farming purposes).

[75] *Article 59 of the SP&M Act*

Elements of a Decision on Land Development Conditions application



The process of issuing a Decision on Land Development Conditions is initiated by an application of the investor. The application shall:

- specify the person filing the application and their address;
- contain the request for a Decision on Land Development Conditions for a specific project.

Furthermore, the investor should attach the following:

- a base map or, if there is none, a cadastral map from the national survey and cartographic resource for the site to which the application pertains and for the project impact area, at a 1:500 or 1:1000 scale, either in an electronic format – in the applicable National Spatial Reference System – or as a hard copy;
- outline of the boundaries of the site covered by the application;
- investment characteristics including:
  a) the demand for water and energy; the wastewater discharge or treatment methods; other technical infrastructure needs and, where necessary, waste neutralisation methods;
  b) the planned land development and the characteristics of the land use and development, including the intended purpose and dimensions of proposed building structures and the land surface to be transformed, presented in the form of text and visual materials;
  c) the characteristic technical parameters of the project and the data characterising the environmental impact of the project;
- a copy of the environmental decision;
- proof of stamp duty payment;
- authorisation, if the application is submitted by an authorised representative.

Anyone can apply for a Decision on Land Development Conditions, regardless of their title to the property.

Importantly, more than one decision can be issued, provided that they are issued for different applicants.

The process

Once the application for a Decision on Land Development Conditions is filed, the authority analyses the actual condition and legal status of the site where the project is to be implemented and it sends inquiries to the cooperating authorities about site development and construction conditions which arise from separate regulations.

For a Decision on Land Development Conditions to be issued, the following conditions must be met:

- the existing or planned service infrastructure on the site is sufficient for the construction project;
- the site does not require a permission to change the designated purpose of agricultural and forest land to non-agricultural and non-forestry purposes or it is covered by a permission obtained during the establishment of Local Spatial Development Plans which expired based on Article 67 of the SP&M Act referred to in Article 88(1) of the SP&M Act;
- the decision complies with other regulations;
- the construction project is not situated within:
  a) with respect to which, by virtue of a decision establishing the location of a strategic investment in the transmission network, as referred to in Article 5(1) of the Act on the Preparation and Implementation of Strategic Investments in the Transmission Network, a prohibition has been established pursuant to Article 22(2)(1) of the same Act;
  b) the control zone established on both sides of a gas pipeline;
  c) the security zone established on both sides of a pipeline.

It must be noted that with regard to the RES systems, the legislator has waived the "good neighbours" principle, which used to entail the obligation to demonstrate that a project would follow the existing building pattern. The requirement to secure access to a public road was also waived.

A construction permit must be preceded by a Decision on Land Development Conditions.

Duration of the process:

Up to **90 days** from the date of submission of the application for the issuance of the decision.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the Decision on Land Development Conditions may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

04. BIOGAS AND BIOMETHANE

Authority competent for a Decision on Land Development Conditions

The authority competent for issuing the Decision on Land Development Conditions decision is the commune (Polish: gmina) authority, i.e. either the commune administrator (Polish: wójt) or the mayor. There is an exception for Decision on Land Development Conditions regarding restricted areas. For such areas, the Decision on Land Development Conditions is issued by the competent voivode (Polish: wojewoda).

Decision on Land Development Conditions validity period

During the transitional period following the entry into force of the amendment to the SP&M Act—i.e., until the end of 2025 or until the municipality adopts a general plan—the Decision on Land Development Conditions remains valid indefinitely (i.e., without a fixed expiration date).

What is the fee for a Decision on Land Development Conditions?

The stamp duty for a Decision on Land Development Conditions is PLN 598 (unless the application is filed by the owner of the real property, an organisation pursuing an activity of public interest, a budgetary unit or a local government unit – in such a case, the application is exempt from the fee) and it is required at the submission of the application.

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving a decision issued by a commune administrator or mayor, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze).

After receiving a decision issued by the voivode, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the Minister of Development and Technology.

Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

Changes introduced by the amendment to the SP&M Act

The Act of 7 July 2023 amending the Spatial Planning and Management Act and certain other acts (as further modified by the Act of 4 April 2025) introduced the following key changes:

- the validity period of a Decision on Land Development Conditions is limited to five years – for permissions issued from 1 January 2026 (any permissions issued before that are open-ended);
- to require compliance of the Decision on Land Development Conditions with the general plan of the commune (the view prevailing until now was that a Decision on Land Development Conditions does not have to be consistent with the Study of Local Determinants and Directions in Spatial Development as the requirement applies only to Local Spatial Development Plans).

It is important to note that from the date of adoption of general plans or from 1 July 2026, the possibility of locating RES systems based on Decision on Land Development Conditionss will be significantly limited.

4.5. ENVIRONMENTAL PERMITS

Since the functioning of biogas plants may cause emissions have negative environmental impacts, the investor should secure the environmental permits required for the activity.

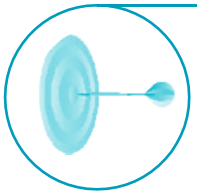
The type of the required environmental permits is strictly connected with the technical parameters of the biogas plant.

The environmental permits referred to in this section are independent from the requirement to first obtain the environmental decision referred to in section 4.3 of this chapter.

4.5.1. Integrated permit

In the case of a biogas plant with a capacity to process no less than 100 tonnes of waste per day, or 10 tonnes of animal by-products, the investor is required to obtain an integrated permit. This permit constitutes a consolidated form of authorisation that incorporates other emission-related permits.

Purpose of the permit



With an integrated permit, a single decision replaces the following decisions/permits: [76]

- permit for the release of gas or particulate matter into the air;
- permit under the water legislation for the release of sewage into water or soil (including the specification of water intake conditions);
- waste generation permit (along with permits for waste recovery, neutralisation, transport and accumulation);
- noise emission permit;
- electromagnetic field emission permit.

Importantly, in the case of an integrated permit, each of the above stages should apply the most beneficial solutions from the perspective of the requirement to eliminate or limit emissions. The purpose is to reduce the administrative load on entrepreneurs and to ensure more effective environmental protection through the coordination of various aspects related to the planned project.

An integrated permit includes project environmental impact assessment, including aspects such as the protection of air, waters, soil, natural resources, waste management, noise etc. An integrated permit defines the conditions to be met during project implementation and operation stages in order to protect the environment and public health.

[76] *Article 201 of the Environmental Law*

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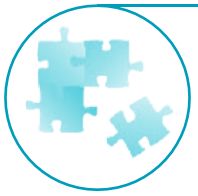
When is the permit required?

The permit is required for biogas plants with a processing capacity of at least 100 t a day wherever the biogas production is the outcome of waste recovery or neutralisation based on anaerobic fermentation (the requirement also applies to a plant for neutralisation or recovery of fallen or slaughtered animals or animal by-products of a production capacity above 10 t a day).

Elements of an application for the permit



An integrated permit application must take into account the following basic conditions defined for permit applications in Article 184 of the Environmental Law:

- identification and address or registered office of the system operator;
- identification of the main operator of the plant or the scope of responsibility of particular operators in charge of specific parts of the plant for plant operation in accordance with the environmental protection law;
- address of the site where the system operates;
- information on the legal title to the system;
- information on the type of system, equipment and technologies used and the technical characteristics of emission sources and locations;
- assessment of the technical condition of the system;
- information on the activity;
- description of the assumed system operation variants;
- a block (general) diagram together with the mass balance and the types of materials, raw materials and fuels used which are significant from the standpoint of environmental protection requirements;
- information on the energy used or produced by the system;
- emission size and source or location – current and proposed – during normal operation of the system and under abnormal conditions, such as in particular start-up and shutdown;
- the conditions and parameters characterising the operation of the plant – defining the moment of ending the start-up and the moment of starting the shutdown of the plant;
- information on planned periods of system operation under abnormal conditions;
- information on the existing or anticipated environmental impacts of emissions;

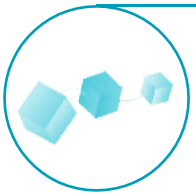
- results of measurements, where required, of emissions from the system;
- emission changes, if occurring after last permit was obtained for the system;
- proposed actions, including the specification of technical-, designed to prevent or reduce the emissions and, if the actions are to be implemented in the period for which the permit is to be issued – and the proposed completion date of such actions;
- proposed procedures for monitoring the technological processes relevant to environmental protection requirements, in particular the measurement or recording of emissions and the fire safety requirements in the case of a waste generation permit including waste collection or processing;
- the declared time and method of shutting down the system or a specific part thereof without any risks for the environment – if the system is planned to be shut down during the period for which the permit is to be issued;
- the declared total time of further operation of the system, if it affects the determination of the environmental protection requirements, and the declared method of documenting the time of such operation;
- the declared system commissioning date in the case referred to in Article 191a of the Environmental Law;
- the period for which the permit is to be issued.

Furthermore, the application contains:

- information regarding a system requiring an integrated permit (e.g. environmental impact, cross-border environmental impact, the forecast noise emissions, the forecast quantity, condition and composition of industrial sewage, the forecast quantity of the water to be used);
- justification for the proposed emission quantities;
- description of variants of the measures to prevent contaminants;
- copy of a cadastral map with outlined boundaries of the site where a limited use area must be established;
- initial report (containing for example information about the activity pursued on the project site, information on the activities pursued on the site of the plant in the past, if available; names of risk-causing substances that are used, produced or released by onsite facilities that require an integrated permit; information on soil, ground and groundwater contamination with risk-causing substances on the project site);

- a document confirming that the applicant is entitled to act in legal transactions, if the system operator is not a natural person;
- a summary of the application using non-specialist language.
- in the case of waste generation permit – a fire safety study meeting the requirements defined in Article 42(4b)(1) of the Waste Act;
- a fire safety study laying down the fire safety conditions for the system, facility or a part thereof or another waste management site which were agreed with the County (City) Chief of the State Fire Service, prepared by:
  a) a fire safety expert within the meaning of chapter 2a of the Polish Fire Safety Act – if the province marshal (Polish: marszałek województwa) or the Regional Director for Environmental Protection (RDOŚ) is the competent authority,
  b) the person referred to in Article 4(2a) of that Act – if the county administrator is the competent authority;
- certificate of no criminal record for a system manager:
  a) with regard to crimes against the environment,
  b) who is a natural person or, for a shareholder, commercial proxy, supervisory board member or director of a system manager, who is a legal person or an organisational unit without legal personality – with regard to the crimes referred to in Article 163, Article 164 or Article 168 in conjunction with Article 163(1) of the Polish Criminal Code of 6 June 1997 – in the case of a waste generation permit.

The process



Once the investor files the application, the authority first reviews the formal sides of the application to check if it is complete and if it complies with the formal requirements. If any shortcomings are identified, the investor is required to remedy them.

After the formal review, the authority determines the emission conditions to be taken into account in the permit. They must not result in a breach of the emission threshold values. Importantly, emission conditions should assume that the investor will use of the best practices determined in the BAT conclusions.

The BAT conclusions for waste processing are defined in the Commission Implementing Decision (EU) 2018/1147 of 10 August 2018.

04. BIOGAS AND BIOMETHANE

Duration of the process

The permit should be issued within 6 months after the application submission date.[77]

Authority competent for the permit

The competent authority, depending on the type and scale of the installation, is either the county administrator (starosta) or the mayor of a city with county rights. In certain other cases, the competent authority may be the marshal of the voivodeship or the Regional Directorate for Environmental Protection.

Permit validity period

An integrated permit is open-ended, unless the system operator requests a fixed term.

What is the fee for the permit?

A registration fee is calculated according to the formula:

$$F = B \times AV / TV$$

F – registration fee amount

B – base rate of the registration fee for a given facility type

AV – maximum theoretical (attainable) value of the parameter characterising the scale of the activity pursued at the facility

TV – threshold value of the parameter characterising the scale of the activity pursued at a facility of a given type

[77] *Article 209 of the Environmental Law*

How to appeal?

After receiving the decision, the applicant has 14 days to appeal against it to the Local Appeal Body (Samorządowe Kolegium Odwoławcze). Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

You can file the application online through the ePUAP service. We recommend that you contact the local county authorities (Polish: starostwo powiatowe) before applying to confirm if they process online applications.

4.5.2. Other environmental permits

If the scale of the activity of the biogas plant does not require an integrated permit, the investor should consider if the parameters of its activity require the following permits:

- permit to discharge sewage into water or soil;
- waste generation and processing permit;
- permit to release gases or particulate matter into the air,

Investors who intend to distribute digestate, i.e. the residue remaining after the fermentation process, should also consider seeking a permit from the minister competent for agriculture to trade in an organic fertiliser or an organic agent improving soil properties.

In certain cases, agricultural biogas plants are exempt from the requirement to obtain a waste processing permit, provided they use substrates listed by the Minister of Climate in the official register of materials permitted for use in agricultural biogas plants

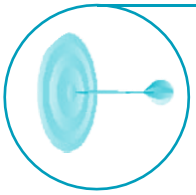
4.5.2.1. Permit to discharge sewage into water or soil

The release of sewage into the water and the ground is one of the situations which are recognised as extending beyond common or ordinary water use. Where such an activity takes place in connection with the operation of a biogas plant, it may be necessary to obtain a permit to discharge sewage into water or soil.[78]

[78] *Article 389 of the Water Law*

04. BIOGAS AND BIOMETHANE

Purpose of the permit



The purpose of the permit is to authorise a biogas plant to legally discharge sewage to water or soil.

When is the permit required?

The functioning of a biogas plant may require securing a permit under the Water Law. This applies for instance to water intake above 5 m^3 a day. The aforementioned permit will also be required for instance to discharge industrial sewage containing substances particularly harmful to the water environment to sewage systems owned by third parties.

The above examples must not be treated as a full list of criteria for the requirement to obtain a permit under the water legislation. Every investor should each time undertake an individualised assessment for their project based on the requirements of the Environmental Law and the Water Law.

Authority competent for the permit

In most cases, the authority responsible for issuing the permit is the director of the Regional Water Management Board (RZGW) of Polish Waters having jurisdiction over the project. In some cases, the Director of the Executive Board of the Polish Waters Catchment Area (Dyrektor Zarządu Zlewni Wód Polskich) may be the competent authority.

Additionally, if the investor is unsure whether the planned investment requires a water law permit or a water law notification, it is advisable to contact the **water supervision authority** located closest to the site of the planned investment.

Duration of the process:

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

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Permit validity period

The permit is issued for a definite period no longer than 10 years.

What is the fee for the permit?

The fee for granting water consents for the issuance of a water law permit amounts to PLN 286.

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

An appeal against a decision issued by the Director of the Executive Board of the Polish Waters Catchment Area shall be submitted within 14 days from the date of delivery of the decision, including delivery by public notice, to the Director of the Regional Water Management Board of Polish Waters.

An appeal against a decision issued by the Director of the Regional Water Management Board of Polish Waters shall be submitted within 14 days from the date of delivery of the decision, including delivery by public notice, to the President of Polish Waters.

Subsequent available remedies include a complaint to the Provincial Administrative Court, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

You can file the application online through the ePUAP service. We recommend that you contact the local branch of Polish Waters (Wody Polskie) before applying to confirm if it processes online applications.

4.5.2.2. Waste generation permit

Unless required to secure an integrated permit, an investor planning to build a biogas plant should apply for the following permits related to waste management:

- a waste generation permit (if it generates waste above 5000 t per annum – in the case of other than hazardous waste):[79]
- a waste processing permit,[80] which encompasses: recovery processes, including the pre-recovery preparations, and neutralisation processes, including the pre-neutralisation preparations; for biogas plants, the most appropriate energy recovery types are R10, i.e. "Land treatment resulting in benefit to agriculture or ecological improvement" and R3 "Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes);" a full list of biogas plant recovery processes is available in Annex 1 to the Waste Act.

As a general rule, separate permits are issued for waste generation and for waste processing. However, it is possible to combine both permits into a single consolidated permit, provided that the applicant submits such a request.

It must be added that in the present legal environment, the generator must, before using waste for processing purposes, in accordance with Article 11 of the Waste Act, submit a request for recognising an object or substance as a by-product (Polish: zgłoszenia uznania przedmiotu lub substancji za produkt uboczny) to the province marshal (Polish: marszałek województwa) having jurisdiction over the waste generation location. This means the requirement to notify the province marshal of the substrate used by the biogas plant. The province marshal reviews the request and issues a relevant decision authorising the processing of this waste. The permit is valid for up to 10 years.

Authority competent for the permit

Province marshal:

- for issuing a waste collection permit where the maximum total mass of all the types of waste stored per annum exceeds 3000 t;
- for systems able to accept at least 10 t of waste per 24 hours or systems of a minimum total capacity equivalent to 25,000 t, except for agricultural biogas production systems.

County administrator:

- in all other cases.

[79] *Article 180a of the Environmental Law*

[80] *Article 41 of the Waste Act*

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Duration of the process:

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Permit validity period

The permit is issued for a definite period no longer than 10 years.

What is the fee for the permit?

The stamp duty for a waste collection and/or processing permit is PLN 616.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving a decision issued by the province marshal, the applicant has 14 days to appeal against the decision to the Minister of Climate and Environment.

After receiving a decision issued by the county administrator the applicant has 14 days to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze).

Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The authorities currently do not provide an option of applying for a waste generated permit online.

4.5.2.3. Permit to release gases or particulate matter into the air

Permits to release gases or particulate matter into the air are required only for biogas plants of a rated thermal input above 15 MW. So it applies only to the narrow group of the largest biogas plants which usually qualify for an integrated permit anyway due to their technical parameters. As a result, the practical application of this permit with regard to biogas plants is marginal[81].

Nevertheless, pursuant to Article 152(1) of the EIA Act, an installation from which emissions do not require a permit, but which may have a negative impact on the environment, is subject to notification to the environmental protection authority. According to § 2(4)(1) of the Regulation of the Minister of the Environment of 2 July 2010 on the types of installations whose operation requires notification, an energy installation with a nominal thermal capacity greater than 1 MW requires notification due to the release of gases or dust into the air.

Authority competent for the permit

County administrator:

- in most cases.

Province marshal:

- for systems qualified as projects always having a significant environmental impact.

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Permit validity period

The permit is issued for a definite period no longer than 10 years.

[81] *Article 220 of the Environmental Law*

What is the fee for the permit?

The stamp duty for issuing the decision amounts to PLN 2011 for large enterprises and PLN 506 for micro, small, or medium-sized enterprises.

The stamp duty for an authorisation is PLN 17.

How to appeal?

An appeal against a decision issued by the province marsshal must be submitted within 14 days from the date of delivery of the decision, including delivery by public notice, to the minister competent for environmental matters.
An appeal against a decision issued by the county administrator must be submitted within 14 days from the date of delivery of the decision, including delivery by public notice, to the competent Local Appeal Body (Samorządowe Kolegium Odwoławcze).
Subsequently, a complaint may be lodged with the Provincial Administrative Court (WSA), and then with the Supreme Administrative Court (NSA).

Can the application be filed online?

You can file the application online through the ePUAP service. We recommend that you contact the local country authorities or marshal office (Polish: urząd marszałkowski) before applying to confirm if they process online applications.

4.5.2.4. Digestate management

For agricultural biogas plants, the investor also has the right to manage the post-digestion residue left after a correct biomass digestion process. Such residues can serve as fertiliser.

Digestate from agricultural biogas plants is usually managed in two procedures:

- R10 recovery, i.e. land treatment of waste resulting in benefit to agriculture or ecological improvement or, simply speaking, utilisation of post-digestion waste in agriculture;[82]
- obtaining a permit from the Minister competent for agriculture to trade in organic and mineral fertilizers or soil improvers on the market.[83]

Please note that the rules for managing digestate residues differ for certain agricultural biogas plants that are subject to simplified administrative procedures under the Act of 13 July 2023 on Facilitating the Preparation and Implementation of Investments in Agricultural Biogas Plants and Their Operation (Journal of Laws of 2023, item 1597). Details are presented in section 4.11.2 of this document regarding the digestate product.

[82] *Article 30(2)(1) of the Waste Act*
[83] *Article 4 of the Fertiliser Act*

04. BIOGAS AND BIOMETHANE

Authority competent for the permit

The competent authority for issuing a permit to place organic and mineral fertilizers or soil conditioners on the market is the Minister of Agriculture and Rural Development.

The permit for R10 recovery is in most cases issued by the county administrator. However, there are exceptions where the permit is issued by a province marshal, such as:

- a biogas plant qualified as a project which may always have a significant environmental impact;
- for other than hazardous waste recovered through a process of filling adversely transformed land, where the waste quantity placed in the excavation or cave-in is at least 10 Mg a day or the total capacity of the excavation or cave-in is at least 25,000 t;
- for municipal systems;
- where the total weight of all types of stored waste is 3000 t per annum.

Permit validity period

The permit for placing organic and mineral fertilizers or soil conditioners on the market is issued for an indefinite period. The permit for recovery under the R10 process is issued for a fixed period, not exceeding 10 years.

What is the fee for the permit?

The fee for the permit to put organic and mineral fertilizers or soil conditioners in circulation is PLN 705. The fee for the R10 recovery permit is PLN 616.

The stamp duty for an authorisation is PLN 17.

How to appeal?

In the case of the permit to put organic and mineral fertilizers or soil conditioners in circulation, the party may request the Minister of Agriculture and Rural Development to reconsider the case.
In the case of the R10 recovery permit:
- the applicant has 2 weeks from the date of delivery of the decision, including delivery by public notice, to appeal against the decision of the county administrator to the Local Appeal Body;
- after receiving a decision issued by the province marshal, the applicant has 2 weeks from the date of delivery of the decision, including delivery by public notice to appeal against the decision to the Minister of Climate and Environment.
Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

In the case of a permit for placing organic and mineral fertilizers or soil conditioners on the market, the application may be submitted electronically via the ePUAP platform or through the website [ewnioseknawozy.minrol.gov.pl.](ewnioseknawozy.minrol.gov.pl)

Currently, authorities do not provide the option to submit an application for a permit for recovery under the R10 process via electronic means.

4.6. CONNECTION TO THE ELECTRICITY GRID

Grid connection is a stage of the investment and construction process that precedes obtaining a construction permit or is carried out in parallel with it. Connecting to the grid enables the delivery of electricity generated by the biogas plant. An exception is so-called "off-grid" installations, which operate outside the national power system. Under the current legal framework, grid connection is a necessary condition for the supply and sale of electricity from a biogas plant[84].

Ensuring a grid connection is an investment and construction process stage consisting of the following steps:

- the investor obtains the grid connection conditions
- the connection agreement is signed;
- the electricity distribution agreement is signed.

4.6.1. Electricity grid connection conditions

The grid connection conditions are a document issued by the distribution system operator or the transmission system operator to define the technical details of connecting a biogas power plant and they obligate the operator to sign a biogas plant grid connection agreement with the investor. The connection conditions "temporarily book the grid space" for a specific biogas project.

If the connection agreement is not concluded within 24 months from the date the connection conditions are received, the conditions expire and no longer constitute an obligation to conclude the connection agreement.

Elements of an application for grid connection conditions

An application for grid connection conditions is submitted to the distribution system operator or to the transmission system operator that owns the grid to which the investor intends to connect the system.

[84] *Article 7 of the Energy Law*

The application must specify:

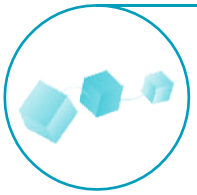
- the person filing the application and their address;
- the request for grid connection conditions for a specific biogas power plant project;
- the maximum annual capacity of the produced electricity and the quantity of electricity fed to the grid;
- the installed capacity, generation capacity, available capacity, apparent power of generators and the maximum capacity referred to in Article 2(16) of Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators;
- the range of the permissible changes to the loads of the generators or their groups;
- the number of the energy generating facilities to be connected;
- the size of the planned demand for capacity and electricity to cover the generator's own needs;
- the degree of compensation of the reactive power linked to the receipt electric power for the electricity generator's internal needs;
- the degree of compensation of the reactive power linked to the feeding of the generated electricity to the grid;
- the anticipated values of the electric parameters of the grid and the transformers forming a part of the biogas plant system and devices;
- the minimum import capacity to guarantee the safety of people and property based on Article 11(6) of the Energy Law if electricity supply and consumption restrictions are imposed;
- the technical information regarding the interferences caused by the devices, systems and grids of the applicant and the characteristics of the loads as required to determine the connection conditions for entities from connection groups I to IV.

The investor should also attach the following:

- an extract and excerpt from the Local Spatial Development Plan or, if there is none, the Decision on Land Development Conditions for the real property specified in the application;
- a document confirming the investor's title to use the real property where the biogas plant specified in the application is to be located;
- the development plan on a land survey and height map to show the positioning of the facility to be connected in relation to the existing grid;

- certification confirming the technical parameters, operational characteristics, and performance specifications of the equipment, installations, or networks to be connected.;
- a single-line electrical diagram of the devices, systems or grids to be connected along with their description.

The process



Once the investor files an application for grid connection conditions, the operator analyses the technical and economic possibilities of connecting the generating facility. Technical reasons are usually associated with the availability of connection capacity at the point of connection – the operator checks if it is possible to safely supply power through the grid even in the case of extreme loads.

In the case of biogas plants with an installed capacity exceeding 2 MW, the operator is required to provide an expert assessment of the impact of the facility on the power system.

In terms of economic criteria, the operator analyses if it has the funds to develop the grid to the extent required to connect the biogas plant.

Duration of the process

The grid connection conditions application processing time for biogas plants is:

- up to 120 days after the application filing date for applicants from connection group III or VI – where the facility is to be connected to a grid above 1 kV and has an electricity source or electricity storage;
- up to 150 days after the application filing date for applicants from connection group I or II.[85]

Please note that if the operator refuses to issue the grid connection conditions, the Energy Law creates the terms and conditions for the relations between the operator and the investor.

[85] *Article 7(8g) of the Energy Law*

If the operator refuses to connect the facility because of:

- lack of the technical conditions for the connection arising from lack of the required grid transmission capacity at the time proposed by the entity applying for the connection of a RES system – the energy company shall define the planned time limit for and the conditions of the necessary grid development or modernisation and specify when the connection will be made;
- lack of economic possibilities – the energy company may sign a grid connection agreement establishing a connection fee in an amount agreed with the grid connection applicant;
- lack of both technical and economic conditions – the grid sections to be used to connect the system owned by the grid connection applicant may be built and developed by the grid connection applicant in coordination with the energy company.

Grid connection conditions validity period

Grid connection conditions are valid for 2 years after their delivery date.

During the validity period, the grid connection conditions represent a conditional commitment of the electricity transmission or distribution company to enter into a connection agreement.

What is the fee for the grid connection conditions?

Within 14 days from the date of submitting the application to the operator, the investor is required to pay an advance towards the issuance of grid connection conditions. The amount is PLN 30 gross per each kilowatt (kW) of requested connection capacity (applicable to grids with a voltage higher than 1 kV).

The advance must not be higher than PLN 3,000,000. If the operator refuses to issue the grid connection conditions, the advance is returned to the account of the investor. If the grid connection conditions are issued the advance is credited against the connection fee.[86]

After signing the grid connection agreement, the connection costs borne by the investor, in the case of renewable energy installations with an installed electrical capacity not exceeding 5 MW, amount to 50% of the total connection investment costs (excluding prosumer installations). For installations exceeding 5 MW, the investor is required to cover 100% of the connection investment costs.

[86] *Please note that some operators follow a practice of collecting the advance for grid connection conditions only after they obtain a reasonable confirmation that it is possible to connect the generating facility.*

How to appeal?

An investor whose application for grid connection conditions has been rejected may file a complaint to the President of the URE based on Article 8 of the Energy Law. Decisions of the President of the URE can be challenged before the Warsaw Regional Court's Competition and Consumer Protection Division, in accordance with Article 30(2) of the Energy Law.

Can the application be filed online?

Most operators allow the submission of an application for grid connection conditions electronically, using dedicated online application forms.

4.6.2. Electricity grid connection agreement

The connection agreement serves as the ground for connecting a biogas plant to the electricity grid. It is a contract signed between the distribution system operator or the transmission system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the grid connection conditions.

In order to complete this task, both parties undertake to perform works to connect the generation source to the distribution system. Any requirements related to the reconstruction or replacement of network components are carried out in accordance with the provisions specified in the connection conditions.

The RES systems are privileged in terms of grid access. As long as there are technical and economic possibilities for that, the grid operator is obligated to sign a connection agreement first with an RES system. Another sign of the legislator's preferential treatment of RES systems in terms of grid connection is the reduction of the connection fee for the RES sources to only a half of the actual connection costs incurred by the operator.

Deadline for the obligations under the electricity grid connection agreement

For grid connection agreements regarding biogas plants, the time limit for the first supply of energy from the connected generation source should not be longer than 48 months. Failure to deliver energy for the first time within this period may result in the termination of the grid connection agreement in accordance with the provisions of the Energy Law.

Securing the connection route

One of the most important elements of the connection agreement is identification of the grid connection point, i.e. the point where the electricity generated by the biogas plant will be fed to the distribution or transmission grid.

If the grid connection point is situated outside the investor's land (most cases), the investor is responsible for building a link between the biogas plant and the grid connection point. In such a case, it is necessary to secure the titles to the real properties situated on the route of the electric power link.

How the titles to the real properties situated along the cable route should be secured depends on whether the link is to run across plots consisting of a road (whether or not having the status of a public road) or across privately owned properties.

Private property

The most common way to secure the legal right to use a private property across which a cable route is expected to run is utility easement. This solution authorises the owner of transmission facilities – the biogas plant project investor who intends to build, or has already built, transmission facilities – to use a real property to the extent required to install, and to subsequently use, transmission facilities on the property. Utility easement is a limited real right effective with regard to each successive owner of the real property across which the transmission facilities are to run. It is established in a notary deed and it is disclosed in the title register. It can be either fee-based or free of charge, in accordance with the provisions of the Civil Code.

Real property with a public road status

For properties with a public road status, the title to use the property is governed by the Roads Act – especially by Article 39 and Article 40. Securing the legal right to use a real property with a public road status is a multistep process. The first step is to obtain a decision issued under Article 39(3) and 39(3a) of the Roads Act by the road administrator to authorise to location of building structures or facilities within the roadway which are not related to road management needs or road traffic needs.

This step is followed by a decision issued under Article 40(1) and Article 40(2) of the Roads Act which permits occupying the roadway space in order to perform construction works or install- condition infrastructure facilities within the roadway which are not related to road management needs or road traffic needs. The decision permitting the occupation of the roadway for the purpose of performing the works is issued for up to ten plus days and it authorises the holder to physically enter the property in order to perform construction works.

The decision which permits installing facilities within the roadway is issued for a period of a few to a few dozen years and it grants the holder a legal right to install the facilities. Importantly, there are fees charged for both the occupation of the roadway and the installation of technical infrastructure facilities in the roadway. In the former case, it is a one-off fee and in the latter case, it is an annual fee.

Road property without a public road status

In the case of internal commune - roads without a public road status, there is no single systematised procedure for securing the cable routing. Usually, communes issue informal permits for this purpose, which do not have the status of administrative decisions, where they authorise the installation of the facilities – this is equivalent to a decision issued under Article 39(3) and Article 39(3a) of the Roads Act. Subsequently, they sign an agreement with the- storage whereunder the real property is provided for use in return for an annual fee – this is equivalent to a decision issued under Article 40(1) and Article 40(2) of the Roads Act.

Another possibility of securing the right to the land property is the already mentioned utility easement.

The above-mentioned titles securing the cable routing are not the only available legal options. There are also lease agreements or unnamed contracts which are structured similarly to a lease agreement. Unfortunately, the rights they grant to the real properties are not as lasting as the ones described above.

4.7. CONNECTION TO THE HEATING GRID

A biogas plant is a facility which may use the cogeneration process to produce not only electricity but also thermal energy, which is an extra source of income for the investor. However, to supply the heat to recipients, the facility must be first connected to the heating grid.

Ensuring a connection to a heating grid is an investment and construction process stage consisting of the following steps:

- the investor obtains the heating grid connection conditions;
- the connection agreement is signed;
- the contract for heat distribution and sale is signed.

4.7.1. Heating grid connection conditions

The heating grid connection conditions are a document issued by the distribution system operator or the transmission system operator to define the technical details and costs of connecting a biogas plant and they obligate the operator to sign a biogas plant grid connection agreement with the investor. The connection conditions "temporarily book the grid space" for a specific biogas project.

If the generator does not sign a connection agreement within 24 months, the connection conditions expire.

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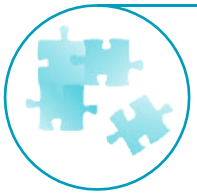
Elements of an application for grid connection conditions

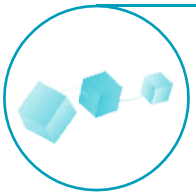


An application for grid connection conditions is submitted to the heating grid operator that owns the grid to which the investor intends to connect the plant.

The application must specify:

- the person filing the application and their address;
- the request for network connection conditions for a specific biogas power plant project;
- the type and the attainable parameters of the heating medium, including the pressure, temperature and physicochemical properties of the medium conveying the heat to be fed to the heating grid and the permissible contaminants of the heating medium conveyed back from this grid to the heat source;
- the maximum and minimum thermal input that can be supplied fed the heat source to the heating grid and, if this input is to be achieved in stages, the schedule of implementing subsequent stages and the maximum and minimum thermal input for these stages;
- the technical data for the heat source, including the data regarding the subsequent development stages for this source:
  a) the heat source process system and the efficiency of the equipment producing the heat;
  b) the system to adjust the quantity of the heat fed to the heating grid and the characteristics of the equipment adjusting the intensity of the flow and the temperature of the heating medium;
  c) the measurement & settlement system and the characteristics of the equipment used to measure the quantity and the parameters of the heating medium conveying the heat fed from the heat source to the heating grid;
  d) the maximum and minimum efficiency of the water treatment system for the water supplied to the heating company or to the heat distributor to fill the heating grid and the receiving systems and to replenish any losses of the heating medium;
- the proposed starting date and conditions of heat supply;
- the document confirming the legal title to the facility;
- a development plan or a site plan presenting the location of the plant, in relation to the existing heating grid and other structures and land infrastructure;
- assessment of the impact of the source to be connected on the functioning of the heating system.

The process



Once the investor files an application for grid connection conditions, the operator analyses the technical and economic possibilities of connecting the generating facility.

The processing time of a heating grid connection conditions application is up to **3 months.**

If the operator rejects the application the investor has the right to appeal to the President of the URE who may obligate the operator to sign a connection agreement pursuant to Article 8 of the Energy Law.

Grid connection conditions are valid for 2 years after their delivery date.

During the validity period, the connection conditions represent a conditional commitment of the heat transmission or distribution company to enter into a connection agreement.

4.7.2. Heating Grid connection agreement

The connection agreement serves as the legal ground for connecting a biogas plant to the heating grid. It is a contract signed between the heating system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the connection conditions.

In order to complete this task, both parties undertake to perform works to connect the generation source to the heat distribution system. Any requirements related to the reconstruction or replacement of network components are carried out in accordance with the provisions specified in the connection conditions.

Connection cost

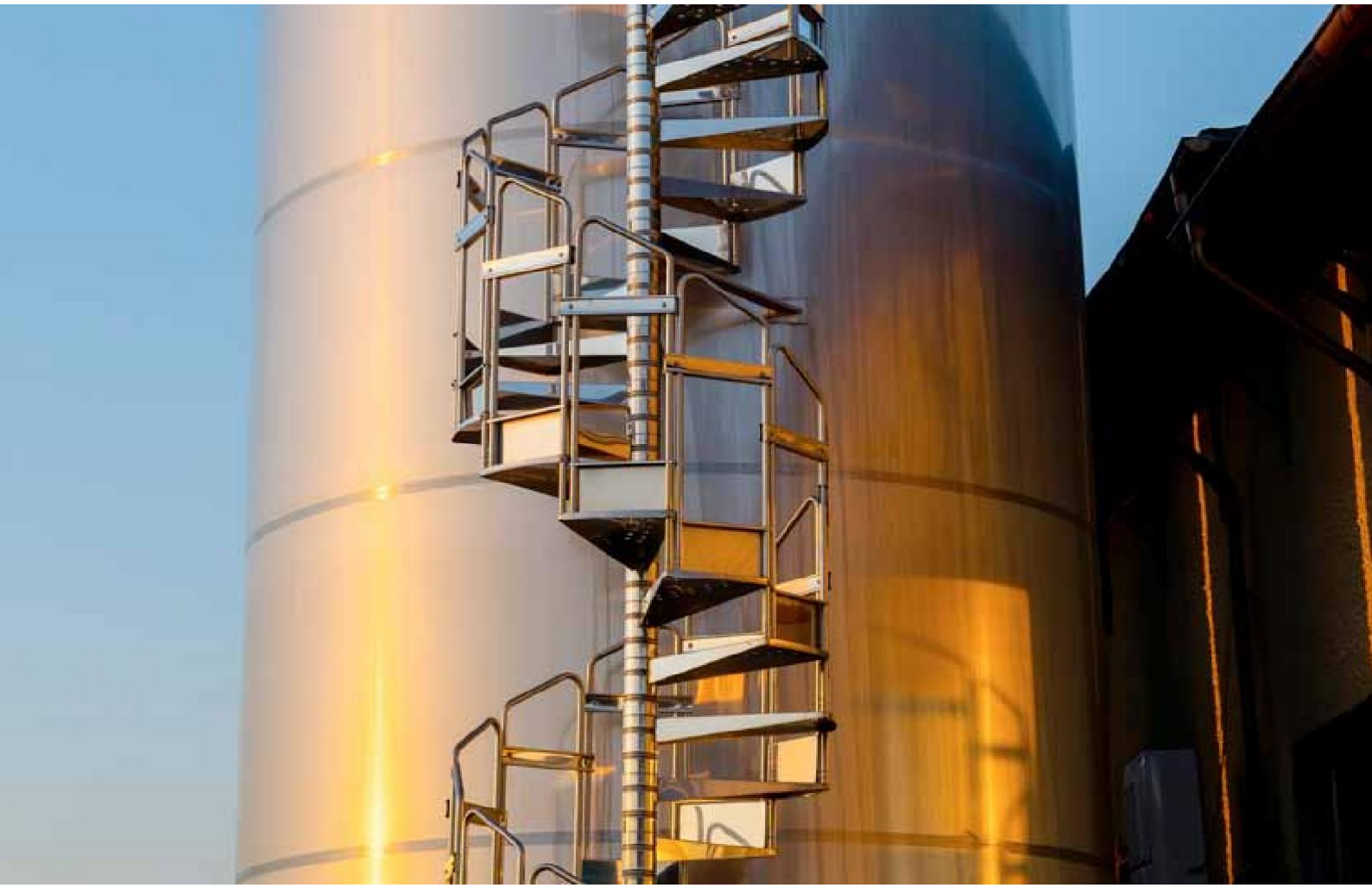
The connection agreement also defines how the costs of the connection works will be settled. The connection cost is established based on the actual expenses incurred by the energy company to connect the RES system. There is an exception for biogas plants functioning as cogeneration facilities of an installed capacity below 1 MW – they pay a half of the payment established based on the actual expenses.

4.7.3. Obligation to purchase the heat

An investor benefits from the obligation to purchase the heat produced by the RES system, described in Article 116 of the RES Act. There is an exception for cases where there is already an efficient heating system within the meaning of Article 7b(4) of the Energy Law functioning across the whole area of a given heating grid.

The obligation to purchase the heat is performed by the company that distributes or produces heat and sells it to the end recipients within the range of a given heating grid.

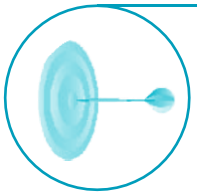
With the heat purchase obligation, an investor who produces heat at a biogas plant does not have to search for a buyer for the heat. The heat purchase obligation imposed on the heating company releases the investor from this requirement, although the investor may also sell the heat to another party of their choice, such as a nearby manufacturing plant.



4.8. CONSTRUCTION PERMIT

Construction permit is the element of the investment process that constitutes the legal basis for commencing construction works on a biogas plant. Without this decision, it is not possible to start construction works, nor at a later stage to proceed with its operation.[87]

Purpose of the permit



A construction permit verifies if the planned project complies with the law and respects the interests of the parties whose rights it is not allowed to violate. From the investor's perspective, the main purpose of obtaining a construction permit is to start construction work to build the biogas plant. A construction permit defines the rights and responsibilities of the investor related to project implementation.

Pursuant to Article 3(7) of the Construction Law, construction works are also understood as alteration, assembly, renovation or demolition of a building structure.

USEFUL NOTE

When is the permit required?

Considering the typical course of the investment and construction process, the investor obtains the construction permit decision after first securing:

- the environmental decision, where applicable;
- the Decision on Land Development Conditions (unless a Local Spatial Development Plan applies);
- A decision authorizing the exclusion from agricultural production, in the case of properties including:
  a) agricultural land created from mineral and organic soils classified as classes I, II, III, IIIa, IIIb,
  b) agricultural land of classes IV, IVa, IVb, V and VI created from organic soils,
  c) other agricultural land indicated by the Act on the Protection of Agricultural and Forest Land.
- electricity grid connection conditions or heating grid connection conditions.[88]

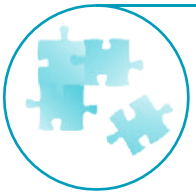
In the case of biogas plants, obtaining a construction permit is required for all types of installations, except for agricultural biogas micro-installations.

The construction of the power connection, which constitutes the cable section linking the biogas plant with the grid connection point, is most often carried out on the basis of a notification (Article 29 of the Construction Law), which replaces a construction permit in the case of simpler construction projects

[87] *Article 54 of the Construction Law*

[88] *It can be processed concurrently with the construction permit.*

Elements of a construction permit application



The mandatory elements of the construction permit application are specified in the Construction Law. They are:

- details of the person filing the application and their address;
- the request for a construction permit decision for a specific construction project (importantly, the construction law states that for a construction project covering more than one facility, a construction permit may, at the investor's request, pertain to selected facilities or to a complex of facilities able to function on their own in accordance with their intended purpose).

Furthermore, the investor should attach the following:

- a plot or land development design and an architectural construction design – along with the opinions, approvals, permits and other documents as required under separate legal acts or copies of the same (in paper format – 3 copies or in an electronic format);
- a declaration on having the right to use the real property for construction purposes.
- for construction projects preceded by an environmental decision issued in a process requiring the participation of the public – a visual appendix specifying the anticipated project implementation site and the anticipated project impact area, provided that the submission of this appendix was required by the regulations in effect on the date of applying for the environmental decision, and especially the map referred to in Article 74(1)(3a) of the EIA Act;
- the Decision on Land Development Conditions, where required under the spatial planning and development laws;
- a proof of payment of the stamp duty for the construction permit application;
- for applications filed by authorised representatives – the authorisation and a proof of stamp duty payment.

The crucial appendix to the construction permit application is the construction design. Construction design requirements are laid down in the Construction Law. A construction design must include:

- a plot or land development design prepared on an up-to-date map for design purposes or on a copy thereof, presenting:
  a) the plot or land boundaries;
  b) the location, outline and arrangement of the existing and planned building structures, including the utilities on the plot and any building facilities located outside the building structure;
  c) the sewage discharge or treatment method;
  d) the traffic system and the arrangement of vegetation, with specification of the characteristic elements, dimensions, ordinates and mutual distances between objects – in relation to the existing and planned buildings in the neighbouring areas,
  e) information about the project impact area;

- an architectural and construction design which covers:
  a) the spatial arrangement and the architectural form of the existing and planned building structures;
  b) the intended use of the building structures;
  c) the characteristic technical parameters of the building structures;
  d) a geotechnical opinion and the information on how the building structure is attached to the ground;
  e) the planned material-related and technical solutions which influence the surroundings, including the environment;
  f) ecology characteristics;

- a technical design including:
  a) the planned structural solutions of the facility along with the results of static strength calculations;
  b) the planned necessary technical and material-related solutions;
  c) as needed – the geology engineering report or the geotechnical conditions for laying the building foundations;
  d) other design records;

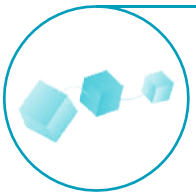
- opinions, approvals, permits and other documents referred to in Article 33(2)(1) of the Construction Law.

Furthermore, the following must be attached to the construction design:

- a statement that the design author has the qualifications to hold an independent technical function in the construction industry;
- a statement of the engineer that the design was prepared in accordance with the applicable laws and the construction principles.

04. BIOGAS AND BIOMETHANE

The process



Once the construction permit application is filed, the authorities make the preliminary determinations and give approvals or seek the opinions of other authorities.

Parties to the construction permit acquisition process: the investor, owners of the real properties (perpetual users of the real properties) or administrators of the real properties within the project impact range.

Duration of the process

A construction permit should be issued within 65 days following the submission of the application (Article 35(6) of the Construction Law). If this deadline is not observed, the higher-level authority fines the architectural and construction authority with PLN 500 for every day of delay.

Authority competent for the permit

The authority competent to issue a construction permit is, as a rule, the county administartor (starosta). However, there may be cases specified in Article 82 of the Construction Law in which the first-instance authority is the voivode.

Permit validity period

The works under a construction permit must commence not later than 3 years following the date when the construction permit decision became final and binding. Any suspension of construction works must not be longer than 3 years. This means that if the construction works do not commence within 3 years after a final construction permit is obtained or if works are suspended for more than 3 years, the construction permit expires.

What is the fee for the permit?

The stamp duty for a construction permit is PLN 155 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days from the date of delivery of the decision, including by public notice, to appeal against the decision to the local voivode through the county administrator who issued the challenged decision. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on e-Budownictwo.

4.9. NOTIFICATION ON THE COMPLETION OF CONSTRUCTION WORKS AND OPERATIONAL NOTIFICATION

The operation of a biogas plant may commence based on:

- notification on completion of construction works and absence of an objection on the part of the construction authority, or
- an operational notification for the biogas plant.

The choice of the right process depends on the technical parameters of the biogas plant.

If the plant is classified as a building, i.e. it is permanently attached to the ground, it is separated from the space with dividing structures and it has foundations and a roof – an operational notification will be required.

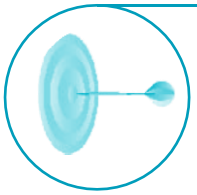
If the plant is classified from a structural point of view as a non-building structure (Polish: budowla) rather than a building, all that the investor needs to do is notify the authority that the construction works are completed and it may start to operate the plant if the authority does not object. The dominant view, which is partially supported by judicial rulings (judgment of the Supreme Administrative Court of 7 April 2021, III FSK 2947/21), is that biogas plants do not require an operational notification because they are not buildings within the meaning of the Construction Law and they are not classified as facilities requiring this permit listed in the Annex to the Construction Law.

In any case, this requires an in-depth verification based on the technical parameters of a specific biogas plant.

4.9.1. Notification on the completion of construction works

The operation of a biogas plant can commence once the Country Construction Supervision Inspectorate (Powiatowy inspektorat Nadzoru Budowlanego) is notified that the construction works are completed, provided that the Inspectorate does not object by way of a decision within 14 days of receiving the notification.[89]

Purpose of the notification



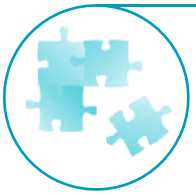
The purpose of the notification is to enable the commencement of the use of the biogas plant after the completion of its construction.

[89] *Article 54 of the Construction Law*

When is the notification required?

The notification on the completion of construction works replaces an operational notification. The notification should precede the commencement of biogas plant operation.

Elements of the notification



The notification on the completion of construction works should contain the following elements:

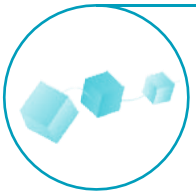
- details of the investor, including a correspondence address;
- identification of the construction supervision authority;
- identification of the construction permit decision underlying the implementation of the project;
- identification of the real property where the facility is located.

Furthermore, the investor must attach the following with the notification:

- original construction daily log or, if the log is digital, the number of the log;
- the technical design;
- a statement of the construction manager that the building structure complies with the construction design or the conditions of the construction permit and with the applicable laws and that the construction site has been brought to a proper condition and cleaned up; where appropriate the same applies to roads, streets, adjacent properties, buildings or premises;
- a statement that appropriate land management of adjacent areas has been secured wherever the operation of the facility depends on appropriate management of such areas;
- reports concluding the inspections and checks of: the connections, systems and technical devices guaranteeing the use of the structure as intended; the reports must be prepared by individuals having construction qualifications in the required specialities, also those referred to in Article 14 of the Act on Technical Inspection of 21 December 2000 (Journal of Laws 2024 item 1194 as amended);
- decision permitting the operation of a technical device (where required);
- surveyor documentation with results of the as-built site survey;
- confirmation, in accordance with separate regulations, of the acceptance of the completed connections;
- certificate of the commune administrator or mayor confirming compliance with the requirement to implement a supplementary project (where required);

- copies of the drawings forming a part of the approved design, including the changes made and, where appropriate, a supplementary description of the changes where the changes do not significantly deviate from the approved design;
- authorisation to represent the investor (if the application is submitted by an authorised representative) along with a proof of payment of the stamp duty for the authorisation.

The process



The authority reviews the application for formal matters and checks if the facility was built in accordance with the construction permit.

The authority may object to the notification on completion of construction works especially if the authority establishes that the building structure covered by the investor's notification was built in violation of the conditions defined in the construction permit and, as a consequence, an operational notification is required.

Before the 14-day time limit for the objection expires, the construction supervision authority may, ex officio, issue a statement that there are no grounds for an objection. With the statement the authority waives the right to object and the investor may start to operate the facility covered by the notification.

Duration of the process

The use of the biogas plant may commence 14 days after the notification has been submitted, provided that the authority does not raise an objection within this period, or earlier if the building supervision authority issues a certificate confirming no grounds for objection[90].

[90] *Article 54 of the Construction Law*

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Authority competent for the notification

The competent authority to which the notification must be submitted decision is the County Construction Supervision Inspectorate (Polish: Powiatowy Inspektorat Nadzoru Budowlanego).

What is the fee for the notification?

The notification is exempt from a stamp duty.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days to appeal against the decision to the local Provincial Construction Supervision Inspectorate (Wojewódzki Inspektorat Nadzoru Budowlanego). Appeals should be reviewed within 60 days of their delivery. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

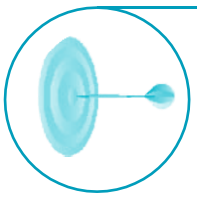
The notification can be submitted online to the public administration body having jurisdiction over the matter on the e-Budownictwo website.

4.9.2. Operational notification

An operational notification will be required for biogas plants which are recognised as buildings under the construction law. In such a case, they are classified as category XVIII facilities from the Annex to the Construction Law which, as per Article 55 of the Construction Law, must receive an operational notification before they can be used[91]

Another case where an operational notification is required is a situation where the investor intends to commence the operation of a part of a biogas plant before completing all the construction works. Another exception requiring an operational notification is to authorise illegal construction.

Purpose of the notification



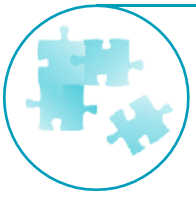
The basic purpose of the decision is to verify if the erected biogas plant has been made in accordance with the construction permit and if it is fit for use. This entails a mandatory inspection of the project after the end of the construction process.

When is the notification required?

An operational notification is required after the construction works covered by the construction permit end but before the operation of the biogas plant starts.

An operational notification is still required even if the investor intends to commence the operation of only a part of the project covered by the construction permit.

Elements of an application for the notification



An application shall include:

- details of the investor, including a correspondence address;
- identification of the construction supervision authority;
- identification of the construction permit decision underlying the implementation of the project;
- identification of the real property where the facility is located.

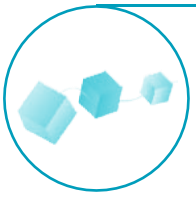
[91] *Article 55 of the Construction Law*

Furthermore, the investor should attach the following:

- original construction daily log or, if the log is digital, the number of the log referred to in Article 47h(2) of the Construction Law;
- the technical design;
- a statement of the construction manager that the building structure complies with the construction design or the conditions of the construction permit and with the applicable laws and that the construction site has been brought to a proper condition and cleaned up;
- a statement that appropriate land management of adjacent areas has been secured wherever the operation of the facility depends on appropriate management of such areas;
- reports concluding the inspections and checks of: the connections, systems and technical devices guaranteeing the use of the structure as intended; the reports must be prepared by individuals having construction qualifications in the required specialities;
- the decision authorising the operation of a technical device, referred to in Article 14 of the Act on Technical Inspection of 21 December 2000 (Journal of Laws 2024 item 1194 as amended);
- surveyor documentation with results of the as-built site survey;
- confirmation, in accordance with separate regulations, of the acceptance of the completed connections;
- certificate of the commune administrator or mayor confirming compliance with the requirement to implement a supplementary project (where required);
- copies of the approved design drawings, including the changes made and, where appropriate, a supplementary description of the changes where the changes do not significantly deviate from the approved design;
- receipt for a stamp duty for the permit;
- for applications filed by authorised representatives – the authorisation and the proof of payment of the stamp duty for the authorisation.

An operational notification is not just an official permission for the investor to use a building but it also defines the conditions of using the building at its operation stage.

The process



An investor who should obtain an operational notification for a facility is required to report the completion of the biogas plant construction process and the intention to commence the operation of the biogas plant to the construction authority and, as required by specific legislation, to the local:

- State Sanitary Inspectorate (Państwowa Inspekcja Sanitarna) and
- State Fire Service (Państwowa Straż Pożarna).

These authorities take a position on the compliance of the construction project with the building design and should issue their opinions within 14 days

from the date of receipt of the notification. If this deadline is not met, it is deemed that no objections have been raised. Once the application is filed, the construction supervision authority is required to inspect the construction site compliance with the determinants and conditions specified in the prior construction permit and conformity with the construction design. The inspection precedes the grant of an operational notification.

The construction supervision authority conducts a mandatory inspection before the expiry of 21 days following the delivery of the notice. The authority notifies the investor about the mandatory inspection within 7 days following the delivery of the notice (i.e. application submission). Importantly the, investor is required to participate in the mandatory inspection at the set time.

The inspection includes checking:

- the compliance of the building structure with the plot or land development design;
- the compliance of the building structure with the architectural and building design and the technical design in terms of:
  a) the characteristic technical parameters as regards the footprint area, height, length, width;
  b) the workmanship of the visible load-bearing elements of the building structural system;
  c) the workmanship of construction works;
  d) the workmanship of the systems ensuring the use of the building structure as intended;
- compliance with the conditions specified in Article 55(1b) of the Construction Law if the operation of the building structure is to commence before the completion of all construction works;
- the construction products particularly important for structural safety and fire safety;
- if the construction permit provides for an obligation to demolish any existing building structures not expected to be used any more or any temporary building structures – compliance with this obligation, provided that the time limit for the demolition specified in the permit has expired;
- if the construction site has been cleaned up.

After the mandatory inspection, the construction authority prepares a report in three copies. One copy is delivered to the investor promptly after the inspection, the second one is delivered to a higher-level authority and the third one is retained by the construction supervision authority.

If the inspection result is positive, the authority issues an operational notification for the biogas plant. In the biogas plant operational notification the construction supervision authority may determine the conditions of plant operation or may make the plant operation contingent upon the completion of specific construction works within a specified time limit.

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Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the notification

An operational notification for a biogas plant is issued by the County Construction Supervision Inspector (Powiatowy Inspektor Nadzoru Budowlanego).

Notification validity period

The notification is open-ended.

What is the fee for the notification?

The stamp duty for an operational notification is PLN 38.75 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including by public notice, to appeal against the decision to the local Provincial Construction Supervision Inspectorate (Wojewódzki Inspektorat Nadzoru Budowlanego). Subsequent remedies available to the investor include a complaint to the Provincial Administrative

Can the application be filed online?

The notification can be submitted online to the public administration body having jurisdiction over the matter on the e-Budownictwo website.

4.10. LICENCE AND OTHER BUSINESS PERMITS

The type of permit for a biogas plant activity depends mainly on the size of the plant and on the types of energy it produces.

The requirements for particular business permits are presented in the table below and are described in detail in subsequent parts of this chapter.

Type of Biogas Plant	Installation Capacity Threshold	**Relevant Permit**
Non-agricultural biogas plants	Micro-installation (pursuant to Article 2(19) of the RES Act)	No permit required – notification to the distribution system operator is mandatory
	Small installation (pursuant to Article 2(18) of the RES Act)	Entry in the register of energy producers in small installations
	Large-scale RES installation (with a total installed electric capacity exceeding 1 MW or a thermal capacity in cogeneration exceeding 3 MW, where the total installed electric capacity exceeds 1 MW)	License for the generation of electricity from renewable energy sources
Agricultural Biogas Plants	Micro-installation (pursuant to Article 2(19) of the RES Act) or agricultural biogas micro-installation, i.e. a renewable energy source installation with an annual agricultural biogas output of up to 200,000 m^3	No permit required – notification to the electricity or gas distribution system operator is mandatory
	Installation other than micro-installations	Entry in the register of agricultural biogas producers maintained by the National Support Centre for Agriculture (KOWR)

4.10.1. RES electricity generation licence

A licence for generation of electricity from renewable energy sources is usually the last step preceding the commencement of electricity sale by a biogas plant.[92]

Purpose of the licence

The purpose of the licence is for the government to authorise an activity in a branch of the economy that is particularly important from the perspective of public interest, i.e. the energy sector. The licence decision defines the conditions and the duration of this activity.

When is the licence required?

A licence decision is obtained once the operation of a biogas plant starts and after the plant is connected to the electricity grid.

This makes it the last decision to be obtained in the investment and construction process for a biogas plant.

Elements of an application for the licence

The list of the documents required with an application for a biogas electricity generation licence is provided by the President of the URE, who initiates the procedure of reviewing the licence issue criteria defined in the Energy Law.

The list of the documents is available on:

https://www.ure.gov.pl/pl/biznes/jak-uzyskac-koncesje/energia-elektryczna/784,Odnawialne-zrodla-energii.html

[92] *Article 32 of the Energy Law*

In accordance with the current list, a basic licence application should include:

- details of the person filing the application and their address;
- a request for a licence to generate energy from renewable sources;
- an extract from the KRS register of companies obtained not earlier than 3 months before the submission of the application to the authority in charge of issuing the licence;
- a list of all entities that have a significant influence over the applicant or exercise control or joint control over the applicant, together with a current certificate from the National Criminal Register confirming the absence of criminal convictions of these entities;
- a statement by the entrepreneur confirming that no petition for bankruptcy has been filed against them and that they are not in the process of liquidation;
- a statement of the entrepreneur that it has not been deleted from the register of regulated activities in the past 3 years as a result of a decision prohibiting the entrepreneur from engaging in an activity covered by the entry in the register because it:

  a) filed a false statement on the legal compliance of such activity;

  b) failed to remedy its breach of the legal requirements for such activity by the deadline set by the authority, or

  c) committed a gross breach of the legal requirements for such activity;

- a document confirming that the entrepreneur is registered as a VAT payer;
- a certificate of excise duty identification number, where applicable, issued by the head of the customs office;
- a statement of the entrepreneur confirming there are no reasons to suspend the procedure based on Article 33(3a) of the Energy Law, whereunder the President of the URE suspends the procedure wherever the entrepreneur or the above-mentioned individuals are indicted for a crime or a tax crime related to their business activity;
- a statement of the entrepreneur that all the individuals hired to operate the systems, facilities and devices used in the performance of the licensed activity have the qualification certificates required under the Energy Law and the qualification certificates issued based on other regulations which authorise them to operate such systems, facilities and devices;

- information provided by the entrepreneur regarding the networks, equipment, and installations specified in the Regulation of the Minister of Climate and Environment of 1 July 2022 on the detailed rules for confirming the possession of qualifications by persons engaged in the operation of equipment, installations, and networks that will be used in the activity covered by the application, as well as the number of individuals employed in their operation, including the qualification certificate numbers;
- documents confirming the entrepreneur's legal title to the facilities and systems required for the licensed activity, for example a notary deed, a copy of the title register, an extract from the land register, the lease agreements, the loan for use agreements, purchase invoices for the equipment used to generate electricity;
- description of the parameters and the technical condition of the electricity generation equipment;
- documents confirming that the devices comprising the installation meet the requirement referred to in Article 32(1a) of the Energy Law;
- location-related decisions (a Decision on Land Development Conditions or an extract and excerpt from the Local Spatial Development Plan);
- the construction permit;
- documents containing the information that the construction process has ended and the operation of the facility commences (notification to the competent construction authority on the completion of the construction process submitted at least 14 days before the intended operation commencement date). If the competent construction supervision authority does not object to the project, a statement with relevant information about this should be attached to case files after the expiry of 14 days after the delivery of the above notification;
- decisions of the Polish Office of Technical Inspection (Urząd Dozoru Technicznego, UDT) approving the electricity generating devices for use;
- documents confirming the installed capacity of the power-generating facility;
- the documents issued by the electrical system operator to whose grid the RES facility is connected:
  a) the decision defining the technical conditions for connecting the system to the electricity grid (grid connection conditions) or the connection agreement;
  b) the report confirming the technical inspection of the power devices and their approval and acceptance for use;
  c) the report confirming the operation check of the measurement and settlement systems (known as the detailed technical service (OTS) order report);

- a power evacuation diagram highlighting the places where the quantity of the generated electricity is measured and outlining the separation of ownership of systems, devices and facilities between the entrepreneur and the electricity system operator highlighting all the generation equipment;
- summary of the annual planned revenue and costs of the activity covered by the licence application for at least three full calendar years;
- financial statements for the last three years;
- other documents confirming that the entrepreneur has, or is able to secure, sufficient financing for proper performance of the licensed activity (e.g. bank guarantees, insurance guarantees, guarantee agreements, credit facility agreements, loan agreements etc.);
- valid certificates from the competent tax authority and tax and customs authority, obtained not earlier than 3 months before their presentation to the licensing authority, confirming that the entrepreneur has no overdue payments towards the state budget;
- a valid certificate from the competent branch of the Polish Social Insurance Institution (ZUS), obtained not earlier than 3 months before its presentation to the licensing authority, confirming either that the entrepreneur has no overdue social security contribution payments or that it is not registered as a contribution payer;
- a valid certificate from the bank that keeps the basic account of the entrepreneur which specifies the value of the transactions, the payment capacity, and the creditworthiness of the entrepreneur and contains information about the credit facilities granted to the entrepreneur and the information on whether the account is free from any enforcement orders, obtained not earlier than 3 months before its presentation to the licensing authority.

The above list of documents is indicative only and it should be each time verified with the URE.

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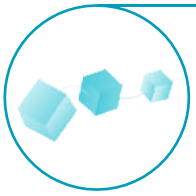
The process



Once the application is filed, the licensing authority verifies the documentation to determine if it meets the criteria specified in Article 33 of the Energy Law and it requests an opinion from the local province executive board.

Licence grant may be contingent on the posting of a bond to satisfy any third-party claims which may arise as a result of improper performance of the licensed activity, including environmental damage.

Importantly, after obtaining the permit, the generator must pay an annual licence fee, which is calculated based on the revenue of the RES system. The RES systems up to 5 MW are exempt from the fee.

Obtaining the licence also entails a periodic reporting requirement, usually to the President of the URE.

Duration of the process

Electricity generation licensing, e.g. for a biogas plant, is a process that should be completed within a month. However, this is just a theory based on the administrative procedure and it does not account for the specificities of the licensing process, which usually takes a few months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the licence

The authority responsible for issuing the licence is the President of the URE.

The license application should be submitted to the URE regional office with jurisdiction over the applicant's registered office.

Licence validity period

The licence is granted for an indefinite term, not shorter than 10 years and not longer than 50 years, unless the entrepreneur requests a shorter term.

What is the fee for the licence?

The stamp duty for an energy generation licence is PLN 616 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including by public notice, to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the President of the URE. The cost of the appeal is PLN 1000.

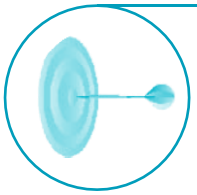
Can the application be filed online?

You can file the application online through the ePUAP service.

4.10.2. Register of small RES electricity generators

Entry in the register of small RES electricity generators replaces the licence decision for biogas plants of an installed capacity from 50 kW to 1 MW other than agricultural biogas plants.[93]

Purpose of the entry



The purpose of the entry in the register of small RES electricity generators is to offer a simplified and expedited approval process for a business in the energy sector.

[93] *Article 7 of the RES Act*

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When is the entry required?

The entry in the register should be made after the biogas plant is built, accepted and connected to the grid.

Elements of an application for the entry

The template form for the investor is available on the URE website at:

https://bip.ure.gov.pl/bip/rejestry-i-bazy/wytworcy-energii-w-male/2138,Rejestr-wytworcow-energii-w-malej-instalacji.html

The application must be accompanied by:

- a statement of the generator that it is in no arrears with any taxes, levies and social security contributions;
- a statement of the generator that the data included in the application are correct and that the conditions referred to in Article 9(1) of the RES Act are met, with confirmed awareness for the criminal liability for submitting false statements;
- a receipt for a stamp duty for the entry;
- if the application is filed through an authorised representative, the authorisation must be attached along with a receipt for a stamp duty for the authorisation.

The process

The authority checks internally if the application is error-free. If the authority does not find any errors, the generator is entered in the register and the authority issues a certificate of entry in the register.

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Duration of the process

The President of the URE is obligated to enter an entrepreneur in the register of small RES electricity generators within 21 days after receiving the application.

If the President of the URE violates the 21-day time limit for entry in the register, the investor may commence the activity 28 days after the authority receives the application.[94]

Importantly, obtaining an entry in the register also entails a periodic reporting requirement, usually to the President of the URE.

Authority competent for making the entry

The authority responsible for making the entry in the register is the President of the URE.

The application must be filed to the local URE branch having jurisdiction over the applicant's registered office**.**

Entry validity period

The entry in the register has no expiry date.

What is the fee for the entry?

The stamp duty for entry in the register is PLN 616 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days from the date of delivery of the decision, including by public notice, to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the authority that issued the decision. The cost of the appeal is PLN 1000.

Can the application be filed online?

You can file the application online through the ePUAP service.

[94] *Article 11a of the RES Act*

4.11. AGRICULTURAL BIOGAS PLANTS

Agricultural biogas plants are the most common biogas plant types in Poland. The investment process for agricultural biogas plants slightly differs from the standard process presented above. The purpose of the changes is usually to expedite the implementation of agricultural biogas plant projects – the legislator assumes that the development process for such projects in agricultural areas should be especially dynamised and facilitated.

Simplifications for the construction of agricultural biogas plants:

- the business activity permit – entry in the register of agricultural biogas producers kept by the KOWR;
- the administrative and legal processes – as discussed in this subchapter.

What is an agricultural biogas plant?

An agricultural biogas plant is a renewable energy source (RES) installation intended for the production of agricultural biogas as defined in Article 2(2) of the RES Act, i.e., gas obtained through the process of methane fermentation of:

a) agricultural products and by-products of agriculture, including animal manure,

b) products from the processing of agricultural-origin products and by-products, waste or residues from such processing, including from food processing and production, originating from industrial plants, as well as from on-site wastewater treatment plants of agri-food processing facilities, where industrial wastewater is separated from other types of sludge and wastewater,

c) expired or unfit-for-consumption food products,

d) fats and oil-water separation mixtures containing exclusively edible oils and fats,

e) plant biomass collected from areas other than those registered as agricultural land,

f) animal manure obtained from activities other than agriculture,

- excluding biogas obtained from municipal waste, landfills, and substrates originating from wastewater treatment plants other than those specified in point (b).

4.11.1. Entry in the register of agricultural biogas producers

In Poland, entry in the register of agricultural biogas producers is the most common way of obtaining a permit for a business activity involving biogas production.[95]

Purpose of the entry

The purpose of the entry in the register of agricultural biogas producers is to offer a simplified and expedited approval process for businesses in the energy sector. Analysis of the applicable legislation shows that the legislator wants rural areas to be especially promoted as the locations of biogas plants, mainly because of the accessibility of the raw material.

When is the entry required?

The entry should be made once the biogas plant is built, accepted and connected to the grid.

Elements of an application for the entry

The template form for the investor is available on the KOWR website at:

https://www.gov.pl/web/kowr/warunki-uzyskania-wpisu-do-rejestru-wytworcow-biogazu-rolniczego

The application for the entry includes:

- identification, registered office and address of the producer;
- the tax identification number (NIP) of the producer;
- the type and scope of the business activity involving agricultural biogas production and the place of performing this activity;

[95] *Article 23 of the RES Act*

- the annual capacity for a RES facility producing agricultural biogas as measured in m^3/year, or the annual output and capacity of the renewable energy source installation intended for biomethane production, where biomethane will be produced from agricultural biogas, expressed respectively in m^3/year and MW; or the total installed electric capacity of the RES installation producing electricity from agricultural biogas;
- indication whether this application is submitted by an eligible entity meeting the conditions set out in Article 3(2) of the Act of 13 July 2023 on Facilitating the Preparation and Implementation of Investments in Agricultural Biogas Plants and Their Operation (Journal of Laws, item 1597), which has implemented an investment in an agricultural biogas plant meeting the conditions specified in Article 4(1) of that Act;
- a statement on no arrears with any taxes, levies and social security contributions;
- a statement that the above data are accurate;
- proof of payment of the stamp duty for the application;
- authorisation with proof of stamp duty payment.
- in the case of submission by an attorney – a power of attorney together with proof of payment of the stamp duty for the power of attorney.

The procedure ends with the generator being entered in the register and the authority issuing a certificate of entry in the register.

Duration of the process

The applicant is entered in the register within 7 days after the KOWR Headquarters receives a correct application along with all the statements.[96]

If the KOWR Director General fails to make the entry on time and more than 14 days have passed since the day the Director General received the application, the generator may commence the activity.

Authority competent for making the entry

The authority responsible for making the entry in the register is the KOWR Director General.

[96] *Article 27a of the RES Act*

04. BIOGAS AND BIOMETHANE

Entry validity period

The entry in the register has no expiry date.

What is the fee for the entry?

The stamp duty for entry in the register is PLN 616 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

An appeal against the decision must be lodged within 14 days from the date of delivery of the decision, including by public notice, to the Minister of Agriculture and Rural Development. Subsequently, the investor may file a complaint with the Provincial Administrative Court, and thereafter with the Supreme Administrative Court.

Can the application be filed online?

You can file the application online through the ePUAP service or erolnik.gov.pl platform.

4.11.2. Expedited administrative processes for certain types of agricultural biogas plants

Which entities can benefit from the expedited investment process for biogas plants?

The Polish Act on Simplified Preparation, Implementation and Functioning of Agricultural Biogas Plants of 13 July 2023 has been enacted to expedite the administrative processes connected with opening agricultural biogas plants. It simplifies the investor's efforts preceding the construction of a biogas plant.[97]

To benefit from the expedited process for the construction of an agricultural biogas plant, an investor must jointly meet the conditions listed below.

The investor-related conditions – the investor must be classified into one of the following groups:

1. a natural person, an unincorporated organisational unit that is granted the legal capacity under statutory regulations or a legal person who, as a part of an agricultural activity, runs a farm or a special branch of agricultural production;
2. a natural person referred to in item 1 above who is entered in the Central Registration and Information on Business (CEiDG) and has the production of electricity, heat, agricultural biogas from biomethane or from agricultural biogas listed as its objects of business;
3. a group of agricultural producers recognised under the legislation on groups of agricultural producers and their associations;
4. an entity that runs a business involving the production, storage or co-packing of agricultural food products and is entered in a central register of entities operating on the market of agricultural food products;
5. an entity that is a wine manufacturer, within the meaning of Article 2(23) of the Act on Wine Products, which produces wine or grape must exclusively from grapes obtained from vineyards registered in the vineyard register located in the territory of the Republic of Poland, as referred to in Article 21(1) of that Act;;
6. an entity that is an energy cooperative, within the meaning of Article 2(33a) of the RES Act, a cooperative within the meaning of Article 1 § 1 of the Cooperative Law Act, or a farmers' cooperative within the meaning of Article 4(1) of the Act on Farmers' Cooperatives;
7. an entity referred to in Article 7 of the Act on Higher Education and Science (universities and other institutions forming the higher education and science system);
8. an entity that is the coordinator of an energy cluster within the meaning of Article 2(15a) of the RES Act which consists of entities specified in items 1 to 7, operating within its area of activity;
9. an entity that is a company whose shares are held by at least one of the entities specified in points 1 to 6.

[97] *Polish Act on Simplified Preparation, Implementation and Functioning of Agricultural Biogas Plants of 13 July 2023 (Journal of Laws item 1597).*

The location-related condition – the biogas plant must be situated on a property to which the eligible entity holds a legal title:

a) an entity operating an agricultural holding or a special branch of agricultural production, or conducting activities specified in Article 3(1)(4) or (5) of the Act on Facilitating the Preparation and Implementation of Investments in Agricultural Biogas Plants and Their Operation;

b) a legal person or an organizational unit without legal personality, which is granted legal capacity by law, in which shares or interests are held exclusively by an eligible entity operating an agricultural holding or a special branch of agricultural production;

– from which at least part of the substrates used in this agricultural biogas plant will originate.

The condition related to the technical parameters of the biogas plant – the expedited administrative process is limited to biogas plants which have as their objects of business the production of:

a) electricity – total installed capacity up to 3.5 MW;

b) heat – total heat generating capacity in combined production up to 10.5 MW;

c) agricultural biogas – annual agricultural biogas production capacity up to 14 million m^3;

d) biomethane – annual biomethane and agricultural biogas production capacity up to 8.4 million m^3.

The condition related to substrates used – the expedited administrative process is limited to biogas plants which use the following in their production exclusively:

a) agricultural products and by-products, including animal excrements;

b) products from the processing of products of agricultural origin and by-products; waste or residues from such processing (also from the processing and production of food) coming from industrial plants;

c) plant biomass harvested from areas other than recorded as agricultural areas;

d) animal excrements obtained from an activity other than agricultural activity.

A precise list of these components has been specified in the Regulation of the Minister of Agriculture and Rural Development of 12 October 2023 on the detailed list of substrates that may be used in an agricultural biogas plant.

The substrates indicated in the regulation must be used in the agricultural biogas plant benefiting from the facilitation throughout the entire operational period of the installation.

How does the expedited procedure change the investment process?

Local Spatial Development Plans:

- for biogas plants of an installed capacity above 1 MW or producing an equivalent quantity of heat, biogas or methane, the location of biogas plants can deviate from the Local Spatial Development Plan, if approved by a resolution of the Commune Council (a resolution locating an agricultural biogas plant);
- in the case of an agricultural biogas plant with an installed capacity not exceeding 1 MW or producing an equivalent amount of heat, biogas, or biomethane, where the intended site use stipulated in the Local Spatial Development Plan provides for a possibility of erecting structures related to agriculture or production or storage also permits locating an agricultural biogas plant (with the exceptions provided for in statutory regulations).

Decision on Land Development Conditionss:

- for biogas plants of an installed capacity up to 1 MW, the Decision on Land Development Conditions should be issued within 65 days and if it is not, the authority will have to pay a fine;
- for biogas plants of an installed capacity up to 1 MW, a closed list of parties to the Decision on Land Development Conditions procedure was established in order to expedite the processing of the case.

Connection to the electricity grid:

- an energy company distributing electricity is obligated to issue the grid connection conditions for an eligible entity within 90 days after receiving the grid connection application. This applies to biogas plants of an installed capacity up to 2 MW.

Construction permit:

- the time limit for the authority to issue the construction permit is shortened from 65 to 45 days and an authority who fails to comply will face a fine.

Waste processing permit:

- publication by the minister responsible for climate of a list of substrates that may be used in an agricultural biogas plant (in certain cases, no permit for waste processing is required);
- furthermore, the procedure before the competent Province Marshal regarding the confirmation of compliance with the conditions for recognising an object or substance as a by-product will not be required.

Digestate utilisation:

- the possibility of placing on the market or using for own purposes post-fermentation products derived from substrates specified on the above-mentioned list published by the minister responsible for climate;

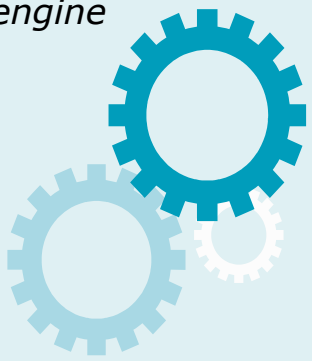
4.12. BIOMETHANE PLANTS

TECHNOLOGY DESCRIPTION

A particularly convenient biogas management method is to treat it and upgrade it to biomethane, which can be either fed to the gas grid or condensed/compressed and sold as Bio-LNG/BioCNG.

Biomethane is a purified form of biogas which may be produced using various substrates. The most common ones are: energy crops, other plant and agricultural substrates (including manure), sewage waste and sludge, residues from the agricultural and food industry and the household bio-waste fraction. Pursuant to the Polish Renewable Energy Sources Act, biomethane is a gas obtained from biogas, agricultural biogas or renewable hydrogen, subjected to the purification process and fed to the gas grid or transported in a compressed or condensed form by means other than gas grids or used to refuel engine vehicles without having to be transported.

According to some estimates, Poland's technical potential for biomethane production amounts to 3 billion m³ per year by 2030 and 9 billion m³ per year by 2050. However, it should be assumed that the realistic potential may be significantly lower, reaching approximately 1.5 billion m³.



Description of administrative processes

The administrative processes connected with the investment process for biomethane plants are mostly the same as the processes for other biogas plants. This is because a biomethane plant is actually a biogas plant but with an extra biogas treatment system.

As regards the investment process differences between biomethane plants and biogas plants, the investor should pay attention to the following issues:

- connection of a biomethane plant to the gas grid;
- a type of licence to run a biomethane production business;
- a separate type of support system for biomethane.

4.12.1. Connection of a biomethane plant to the gas grid

Ensuring a connection of a biomethane plant to a gas grid is an investment and construction process stage consisting of the following steps:

- the investor obtains the gas grid connection conditions;
- the connection agreement is signed;
- the gas distribution agreement is signed.

4.12.1.1. Gas grid connection conditions

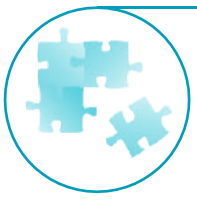
Connection conditions to the gas network refer to a type of document issued by the operator of the gas distribution or transmission system, specifying the technical details and costs associated with connecting a biomethane plant to the gas network.

If the producer does not conclude a connection agreement within 24 months, the connection conditions become invalid.

Unlike for electricity grid connection, the gas grid operator is not required to publish information on the availability of the grid connection/absorption capacity for the gas grid connection.

Consequently, it is recommended that, before applying for connection conditions, the investor request the operator for a presentation of the possibilities of connecting to the operator's grid. Based on that request, the operator prepares an information notice on the connection possibility in the grid connection point specified by the investor. After receiving a confirmation from the operator regarding the grid absorption capacity and the possibility of receiving biomethane, the investor should apply for the grid connection conditions.

Elements of an application for gas grid connection conditions



An application for grid connection conditions is submitted to the distribution system operator or to the transmission system operator that owns the gas grid to which the investor intends to connect the system.

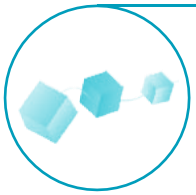
The application must specify:

- details and address of the applicant;
- the location of the biomethane plant;
- the proposed location of the grid entry point where the biomethane is to be supplied;
- the anticipated biomethane supply start date;
- the connection capacity of the biomethane plant and the anticipated quantity to be supplied to the biomethane grid (per hour, per day, per annum);
- biomethane pressure in the supply point, biomethane quality parameters, and a description of biomethane supply in particular months;
- the declaration by the applicant confirming that the biomethane meets the quality parameters specified in the Network Code for Gas Distribution Systems (IRiESD).

Furthermore, the investor should attach the following:

- a document confirming the title to the real property or the facility to be connected;
- a 1:1,000 (1:2,000) site map with a marked entry point in the distribution system;
- a 1:25,000 overview map with the location of facilities;
- extract from the KRS register of companies;
- a statement regarding the title to use the facility or real property;
- the authorisation, if the application is filed by an authorised representative.

The process



After the investor submits an application for the issuance of gas grid connection conditions, the operator analyses whether there are technical and economic possibilities to connect the generating unit. Technical reasons are most often associated with the absorption capacity of the local gas grid — the operator examines whether it is possible to safely receive biomethane and further transport it through the gas network, and also determines the quality parameters that the biomethane must meet in order to be injected into the gas grid at the given location.

As part of the economic criteria, the operator examines the economic efficiency of the connection as well as whether it has the financial resources required to expand the grid to the extent necessary to connect the biogas plant.

If the issuance of gas grid connection conditions is refused, the energy undertaking engaged in the transmission or distribution of gaseous fuels is obliged to indicate an alternative location that is the closest one, provided that connection at that location meets the technical and economic conditions.

In order to comply with the requirements of the Regulation on the detailed conditions for the operation of the gas system and to ensure that the parameters of biomethane meet the parameters of the gas fuel transmitted or distributed through the existing gas network, an investor connecting a biomethane plant is required to:

- install and operate a hygrometer and process chromatographs used to measure the quality parameters of gas fuel (biomethane), including sulphur content;
- construct a reverse-flow installation for the re-treatment of gas with improper parameters;
- inject into the distribution network biomethane with a calorific value meeting the conditions prevailing in the given zone (ORCS) as specified in the connection conditions;
- bear the costs associated with additional components where their use is required.

Duration of the process

The application is analysed within 90 days of the submission date of a complete application.

Grid connection conditions validity period

Grid connection conditions are valid for 2 years after their delivery date.

What is the fee for grid connection conditions?

Unlike in the case of connections to an electricity grid, the investor does not have to pay an advance for grid connection conditions. The fee for the connection will be specified in the connection agreement.

How to appeal?

An investor whose application for grid connection conditions has been rejected may file a complaint to the President of the URE based on Article 8 of the Energy Law. Decisions of the President of the URE can be challenged before the Warsaw Regional Court's Competition and Consumer Protection Court.

Can the application be filed online?

It is generally permissible to submit an application for the issuance of connection conditions in electronic form using specially provided application forms.

4.12.1.2. Gas Grid Connection agreement

The gas grid connection agreement serves as the legal ground for connecting a biogas plant to the gas grid. It specifies the amount of the connection fee as well as the deadlines for its implementation.

It is a contract signed between the distribution system operator or the transmission system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the grid connection conditions.

In order to complete this task, both parties undertake to perform works to connect the generation source to the gas grid.

The provisions of the connection agreement are based on the previously issued connection conditions, which define the terms of cooperation between the operator and the investor. The agreement also specifies the estimated connection fee, calculated as 100% of the actual costs incurred for the connection. Additionally, for the delivery of biomethane to the gas distribution network, a technical agreement is required to establish the conditions and methods of cooperation between the gas network operator and the biogas plant operator.

After signing the connection agreement and completing the connection to the gas network, in order to start biomethane deliveries to the gas network, it is necessary to conclude a contract for the provision of gas fuel distribution services and/or a contract for the provision of gas fuel transmission services, which, upon fulfillment of the conditions specified therein, will enable the delivery of biomethane through the gas network.

4.12.2. Legislative changes regarding biomethane

Considering the potential for biomethane production in Poland, in 2023 the legislator significantly improved the regulatory environment, adapting it to the production of this fuel. The main modifications were introduced by the Act of 17 August 2023 amending the Act on Renewable Energy Sources and certain other acts (Journal of Laws, item 1762), which included extensive changes to the regulation of biomethane plant operations. The most important elements include:

- introduction of a separate register for activities involving the production of biogas for biomethane production or the production of biomethane from biogas, referred to as the biogas producers' register;
- addition of activities involving the production of biomethane from agricultural biogas to the register of agricultural biogas producers;
- establishment of a separate support system for biomethane production, based on the right to cover the negative balance referred to in Article 93(2)(3) of the RES Act;
- introduction of an operational support system for biomethane production installations with a total installed capacity, converted to installed electric capacity, not exceeding 1 MW.

4.13. LANDFILL BIOGAS PLANTS

A special type of plant is a landfill biogas plant, which produces biogas from the biomass in waste landfills.

Landfill biogas plants are primarily intended for the energy recovery of biogas generated from biodegradable waste deposited in landfills. Therefore, an investor interested in constructing a landfill biogas plant should carry out the investment and construction process related either to the development of a new waste landfill or to the installation of a biogas plant at an existing landfill site.In accordance with the Regulation of the Minister of the Environment of 30 April 2013 on waste landfills,[98] every landfill where biodegradable waste is expected to be stored should have a system for removing landfill gas. Landfill gas should be purified and used for energy production purposes (by landfill biogas plants) or, where this is impossible, burnt. Such handling of landfill gas reduces the fire hazard, the explosion hazard and the atmosphere pollution risk.

Landfill biogas plants are usually an integral part of the landfill and are covered by a shared landfill construction permit. An investor interested in building a landfill biogas plant should remember that the application for a landfill construction permit must include the information on collecting, treating or neutralising landfill gas in accordance with Article 127(4)(8) of the Waste Act.

4.14. BIOGAS PLANTS AT SEWAGE TREATMENT PLANTS

Another variant for a biogas plant is to tie it to a sewage system plant. The biomass from a sewage treatment plant may be used to produce biogas, which seems a beneficial way to handle sewage waste, especially in the context of the restrictions on sewage waste landfilling under Article 122 of the Waste Act.

The technology of biogas production from sewage treatment plants relies primarily on sludge digestion chambers and the capture and purification of biogas for its energy utilization, most commonly in cogeneration units. Unlike the other biogas plant types, the facilities that process sludge have a reliable inflow of substrate without any extra efforts. As a result, a biogas plant at a sewage treatment plant is a certain source of both electricity and thermal energy. The investment process for biogas plants at sewage treatment plants follows the general rules presented for biogas plants. The investor should pay special attention to the environmental permits related to the functioning of such biogas plants.

[98] *Regulation of the Minister of the Environment of 30 April 2013 on landfills (consolidated text: Journal of Laws of 2022 item 1902)*

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05. BIOMASS AND BIOLIQUIDS

5.1. TECHNOLOGY DESCRIPTION

Biomass utilisation is one of the most commonly used energy carriers.

From the technical perspective, biomass consists of biodegradable products or their parts, waste or residues of biological origin.[99] The main source of biomass is agriculture, complemented by forestry.

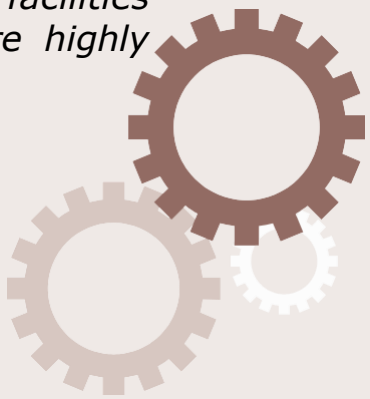
From the legal perspective, biomass is the biodegradable part of products, waste or residues of biological origin from agriculture (including plant and animal substances), forestry and the related branches of the economy, including fishery and aquaculture, processed biomass, especially in the form of briquette, pellets, torrefied biomass, biochar, as well as the biodegradable part of industrial or household waste of plant or animal origin, including waste from waste processing plants and waste from water and sewage treatment, especially sludge, in accordance with the waste-related regulations classifying the energy portion recovered from thermal waste processing.

The most common use for biomass is to combust it in order to generate thermal energy (often with electricity cogeneration).

In addition, biomass is often used for:

- *the production of biogas and, by extension, biomethane;*
- *pyrolysis, gasification and production of liquid biofuels;*
- *torrefaction and production of solid biofuels.*

The biomass category is clearly vast. As a result, the facilities using biomass for energy generation purposes are highly diverse as well.



They include:

- *large-scale power plant blocks using biomass;*
- *heat-only or cogeneration biomass boilers, often of industrial use;*
- *small fireplaces and boilers burning biomass.*

[99] *P. Gołas, Podręcznik OZE. Ekonomia, technika, prawo, samorząd, społeczeństwo (RES Guide. Economics, Technology, Law, Local Government, Society), p. 91.*

5.2. CHOOSING PROJECT LOCATION

The commencement of the investment and construction process for a biomass-based energy installation should be preceded by an analysis of the potential location. Finding an appropriate location for the biomass plant is the preliminary, necessary and essential prerequisite for successful completion of the subsequent administrative procedures. The most important factors to be considered at this stage include:

- the location of the property, which should be verified during the audit phase;
- access to the heating grid/feasibility of investing in network infrastructure;
- the level of available connection capacity at the planned point of connection to the power grid;
- any forms of nature conservation which may apply to the real property;
- legal title to the real property.

Property location

While analysing plant location options, one should first take into account the issue of ensuring access to the substrate, which includes in particular the possibility of guaranteeing its continuous supplies and productivity. The main challenge for the investor is to choose a real property with a potential for creating an efficient supply chain based on collaboration with other parties within the plant.

Another important element to be considered is the possibility of storing and managing the biomass processing residues. The plot where the biomass plant is to be built should also be, as far as practicable, isolated from buildings, especially through the creation of special green belts. The details are laid down in the Regulation of the Minister of Agriculture and Rural Development of 13 January 2023 on the technical conditions to be met by building structures and their locations (Journal of Laws item 297).

Finally, an investor must account for the issue of providing the site utilities, i.e. water and sewage connections or linear infrastructure, which will be necessary in the future for proper functioning of the biomass plant.

Access to the heating grid

When selecting a potential location for a biomass installation, it is important to consider the capacity of the local district heating infrastructure and the entities willing to purchase the generated heat. A key factor is the distance between the installation and the district heating network. Details regarding the connection of the installation to the heating network are provided in section 5.6 of this chapter.

Electricity grid connection capacity and access

An element that increases the profitability of a biomass plant investment project is making use of the cogeneration process which is combined heat and power production.

When planning the construction of a renewable energy installation connected to the power grid at a selected location, it is essential to consider the level of available connection capacity at that site, as it is a fundamental determinant of the feasibility of connecting the installation to the grid. A lack of available connection capacity at the indicated location may result in the relevant power system operator issuing a refusal to connect, or connection conditions that require additional investments in grid infrastructure.

This is why the value of the available connection capacity should be analysed for the planned energy sources before the project is launched. The obligation to publish relevant information, which must be updated at least on a quarterly basis, is stipulated in Article 7(8l) of the Energy Law. Electricity companies that transmit or distribute electricity publish on their websites: the values of the total available connection capacity for sources; the planned changes to these values over the next 5 years following their publication; and the list of parties applying for source connection to an electricity grid of a rated voltage above 1 kV. Due to the lack of real-time updates of the aforementioned data, verifying the availability of free connection capacity by investors is significantly hindered[100].

[100] *The information is historical and the specified free connection capacity does not guarantee obtaining the expected connection conditions*

Forms of nature conservation which may apply to the real property

Before choosing the location for a future biomass processing plant, the investor must verify if even a part of the planed site is covered by any forms of nature conservation or in close proximity to a protected natural area.

Locating the investment within a protected area may hinder or entirely prevent further implementation of the investment process. In particular, it should be noted that restrictions—or a complete inability to carry out the investment—may apply to areas where the following are present:

- national parks,
- nature reserves,
- landscape parks,
- protected landscape areas,
- Natura 2000 sites,
- ecological sites
- nature and landscape complexes.

The above restrictions also extend to the buffers zones of:

- national parks,
- nature reserves,
- landscape parks.

Legal title to the real property

The key stage preceding the initiation of administrative procedures is securing legal title to the property on which the biomass installation is to be located. Holding legal title means having the right to manage and dispose of the property. Therefore, as a first step, an investor planning such an investment should conduct a legal audit of the land property, in particular by reviewing the contents of the land and mortgage register relevant to the given property.

The title that guarantees the fullest protection of the investor's interests is land ownership.

There is also a practice of erecting biomass plants on leased properties. However, the solution entails the risk that the ownership of the plant may be merged with the ownership of the real property. In accordance with the Polish Civil Code, structures erected on a real property share its legal status so the ownership of the system installed on the real property may pass to the land owner.

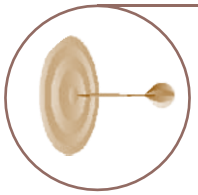
To minimise the risk, if the biomass plant is to be built on a leased property, the investor should make sure that the lease contract expressly address the issue of ownership of the biomass plant and include a clear, unconditional provision that the biogas plant elements brought by the lessee are not a part of the real property but have been positioned there for temporary use and are owned exclusively by the lessee.

The law does not require a lease contract to have any specific form in order to be deemed valid. An ordinary written form of the contract may be recognised as sufficient to secure the title to a real property. However, an investor may find themselves at a major disadvantage if the real property is sold by the owner to a third party because if this happens, the buyer of the real property acquires the right to terminate the lease. An investor may seek protection against this risk by using a special contract form, i.e. written form with certified date (Polish: 'data pewna'). Moreover, for the investor to be able to use this protection, the contract must be a fixed-term contract and the real property must be handed over to the lessee. Another solution to reduce the risk is to disclose the rights of the lessee in the title register kept for the real property; this requires signing a written contract with signatures certified by a notary public.

5.3. DECISION ON ENVIRONMENTAL CONDITIONS

Obtaining a decision on environmental conditions (environmental decision) is, in most cases, the first stage in the investment and construction process for a renewable energy installation utilizing biomass[101].

Purpose of the decision



The basic purpose of an environmental decision is to assess the impact of the planned project on the environment and to determine the conditions to be met by the investor in order to minimise the negative consequences for nature and human health.

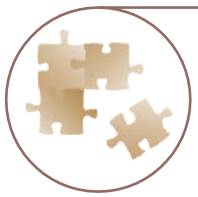
As part of the environmental decision, the authority specifies, among other things, the environmental protection requirements and the conditions that must be met by the investor during the implementation and operation of the project. The purpose of the decision is to ensure a balance between the needs of economic development and the protection of the environment and human health.

When is the decision required?

An environmental decision must be obtained before a Decision on Land Development Conditions and before a construction permit.

The requirement applies to all plants that combust or co-combust biomass, with a thermal input – understood as the volume of energy introduced in the plant fuel over a time unit at the rated load of such plants – not lower than 25 MW or, for solid fuel, not lower than 10 MW.

Elements of an application for the decision



The process of issuing an environmental decision is initiated by an application of the investor. The application should:

- details of the person filing the application and their address;
- a statement of the request, i.e., issuance of an environmental decision for a specific project.

The investor should attach the following documents to the application:

- a project data sheet (KIP) for biomass installations classified as projects that may potentially have a significant impact on the environment (with a thermal capacity of less than 300 MW), or a project environmental impact report if an environmental impact assessment is required pursuant to Article 59(1)(2) of the EIA Act.

[101] *Article 72(1) of the EIA Act*

The investor should attach the following to the application:

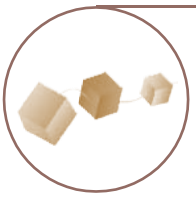
- an environmental impact report is required for biomass installations classified as projects that are always likely to have a significant impact on the environment (with a thermal capacity of no less than 300 MW), or alternatively, a project data sheet (KIP) accompanied by a request to determine the scope of the report, pursuant to Article 69 of the EIA Act.
- a copy of a cadastral map certified by a competent authority, either as a hard copy or digital, which covers the planned project site and the area on which the project, in the variant proposed by the applicant, will have an impact. This impact area is understood as:
  a) the planned project implementation site and the area up to 100 m form the boundaries of that site;
  b) the plots on which the environmental quality standards would be breached as a result of the implementation, operation or use of the project, or
  c) the plots within the range of a significant project impact which may result in restrictions on the currently intended development of the real property;
- a map, in paper and electronic form, at a sufficient scale to guarantee the legibility of the presented data, outlining the site where the project is expected to be implemented and outlining the expected project impact area within 100 m from the boundaries of the site;
- extract and excerpt from the Local Spatial Development Plan, where applicable, or an annotation that there is no Local Spatial Development Plan;
- an extract from the register of land or any other paper or digital document issued by the authority keeping the register of land and buildings which makes it possible to establish the parties to the procedure and which specifies at least the reference number of the plot and, if disclosed, the title register number for the plot, the first and last name or the business name and the address of the registered party – for the expected project site and for the project impact area (this attachment is not required if the number of parties involved in the environmental decision procedure exceeds 10);
- a list of the plots where preparatory works involving tree and shrub clearance, if any are expected to be carried out;
- a cost-benefit analysis (this does not apply to systems with a minimum thermal power up to 20 MW);
- proof of stamp duty payment;
- for applications filed by authorised representatives – the authorisation and the proof of payment of the stamp duty for the authorisation.

05. BIOMASS AND BIOLIQUIDS

USEFUL NOTE

Despite the submission of a project data sheet (KIP) by the investor, during the procedure the authority may determine that an environmental impact assessment is required, which entails the obligation for the investor to prepare an environmental impact report. In such cases, the investor is required to conduct in-depth studies concerning the environmental conditions for the implementation of the project.

The process



Once the application is filed, the authority reviews it to establish if the biomass plant project can be implemented in accordance with the regulations of the environmental protection law and it formulates the necessary requirements in this respect.

During the procedure, the authority may determine that an environmental impact report must be prepared. In such cases, the authority should specify the scope of the report that must be submitted by the applicant. If the investment is to be located within landscape parks or areas of protected landscape, the applicant may independently request the determination of the report's scope.

The regulations require that the report include information allowing for the assessment of the following environmental impact criteria:

- the impact of the project on the environment and the population, including human health and living conditions, material assets, cultural heritage, landscape,including cultural landscape, interactions between these elements, and access to mineral deposits
- risk of major failures, natural disasters and construction accidents;
- the options and ways of preventing and reducing negative environmental impacts;
- the required scope of monitoring.

Furthermore, a project environmental impact report should:

- describe the planned project, especially by presenting:
  a) a description of the whole project and the site use conditions at the implementation and operation or use stages, also addressing areas at a special risk of flood within the meaning of Article 16(34) of the Water Law;

b) the main characteristics of the production processes;

c) the expected types and quantities of emissions, including waste, arising from the project implementation and operation or use stages;

d) information on the biological diversity, utilisation of natural resources, including soil, water and earth surface;

e) information on the demand for and consumption of energy;

f) information on demolition works for projects having a potentially significant environmental impact;

g) a risk – assessed based on scientific knowledge – of major failures, natural disasters and construction accidents, taking into consideration the substances used and the technologies applied, including the risk related to climate change;

- describe the elements of the natural environment covered by the expected environmental impact of the planned project, including:

a) elements of the environment covered by conservation under the Nature Act and the wildlife corridors within the meaning of this Act;

b) the hydromorphological, physicochemical, biological and chemical properties of waters;

- present results of the nature inventory, in both descriptive and cartographic form, if conducted, along with a description of the methodology, should be included as an attachment to the report.;
- present other data underlying the description of natural environment elements;
- describe any historical monuments under conservation pursuant to monument conservation and care regulations which may be situated in the vicinity of or within the impact range of the project;
- describe the landscape where the project is to be located;
- present the information on ties to other projects, especially on cumulative impacts of any continuing, completed or planned projects which have an environmental decision and which are located within the planned site of the project in question and within the project impact range or which have impacts within the project impact range;
- describe the consequences expected for the environment if the project is abandoned; the description must include the available environmental information and scientific knowledge;
- describe the project variants, taking into account its specific characteristics or environmental impacts, including: the variant selected for implementation, a reasonable alternative variant, and a reasonable variant most beneficial to the environment (the environmentally optimal variant may be identical to either the selected implementation variant or the reasonable alternative variant);

- describe the expected impact of the analysed variants on the environment (also in the case of a serious industrial accident, natural disaster or construction accident), on the climate (including greenhouse gas emissions and impacts important from the perspective of adapting to climate changes), as well as the possible cross-border environmental impact;
- compare the impacts of the analysed variants on:
  a) people, plants, animals, fungi, natural habitats, water and air;
  b) the earth surface (taking into account soil mass movements) and the landscape;
  c) physical property;
  d) historical monuments and cultural landscape covered by the existing documentation especially entered in the register of historical monuments;
  e) the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites;
  f) elements listed in Article 68(2)(2)(b) of the EIA Act, if they have been included in the environmental impact report or if they are required by the competent authority."
  g) mutual interactions between the elements listed in items (a) through (f) above;
- justify the variant proposed by the applicant, taking into account the information regarding the determination of the expected environmental impact of the analysed variants and the comparison of their impacts mentioned above;
- describe the forecasting methods used by the applicant and the expected significant environmental impacts of the planned project, including direct, indirect, secondary, cumulative, short-, medium- and long-term, permanent and temporary environmental impacts from:
  a) the existence of the project;
  b) the utilisation of natural resources;
  c) emissions;
- describe the anticipated actions to avoid, prevent, limit or offset any negative environmental impacts, especially impacts on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites, along with the assessment of their effectiveness at the stages of project implementation, operation, use or shutdown;
- address the environmental objectives arising from strategic documents important from the perspective of project implementation;

- present the issues in a graphic version;
- include a cartographic presentation of the issues at a scale as required by the subject matter and level of detail of the issues analysed in the report for comprehensive presentation of the completed environmental impact analyses;
- analyse the possible social conflicts related to the planned project;
- present the proposed monitoring of project environmental impacts at the project implementation and operation or use stages, especially the impact on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and on the continuity of the wildlife corridors that connect those sites, and present the information on the results of other monitoring which may be relevant for establishing the responsibilities in this respect;
- specify any difficulties resulting from technological shortcomings or gaps in the state of the art which were encountered during report preparation works;
- summarise the information included in the report using non-specialist language by addressing every element of the report;
- specify the report date, the first name, last name and signature of the author or, if the report was prepared by a team of authors, specify the first name, last name and signature of the team leader and the first names, last names and signatures of the team members;
- contain, as an appendix to the report, a statement of the author or, if the report was prepared by a team of authors, a statement of the team leader, on compliance with the requirements laid down in Article 74 a(2) of the EIA Act;
- provide the sources of the information underlying the report.

Subsequently, the report is analysed by the authority in terms of the criteria established for the applicant and is consulted with competent institutions. If the report is approved, the authority may then issue the environmental decision.

It should be noted that, pursuant to Article 63(5–6) of the EIA Act, the authority responsible for issuing the environmental decision suspends the procedure for the duration of the report preparation, which must be completed by the investor within no more than 3 years. After this period, the request to initiate the procedure is considered withdrawn.

It is also worth noting that the authority may determine that there is no need to conduct an environmental impact assessment and, in such cases, may issue the environmental decision immediately.

A refusal to issue the decision is not discretionary as the authority may only refuse to grant the approval in specific, statutory cases, i.e. if:

- the location of the wind farm is incompatible with the Local Spatial Development Plan, if any;

- a cooperating authority refuses to approve the implementation conditions for the RES project;
- the environmental impact assessment for the project suggests that the project cannot be implemented in the variant proposed by the applicant and the applicant rejects the project variant suggested by the authority;
- the environmental impact assessment for the project suggests that the project may have a significant negative impact on a Natura 2000 site;
- the environmental impact assessment for the project suggests that the project adversely affects the possibility of attaining the environmental objectives referred to in Article 56, Article 57, Article 59 and Article 61 of the Water Law.

Duration of the process

Finalizing the case by issuing an environmental decision—for example, for a photovoltaic installation—should, in theory, be completed within one month. However, this is only a theoretical timeframe based on administrative procedures and does not reflect the specific nature of the process, which typically lasts several months.

In practice, this period may be longer, as it does not include the timeframes stipulated by regulations for obtaining agreements, opinions, public participation in the procedure, or periods during which the procedure is suspended. Moreover, the issuance of the decision may be delayed due to other reasons, such as the fault of the applicant or circumstances beyond the authority's control, for example, the need to supplement documentation

Authority competent for the decision

As a general rule, the authority responsible for issuing the environmental decision is the municipal authority, specifically the mayor, town mayor, or city president, and in certain cases, the Regional Directorate for Environmental Protection (RDOŚ). During the procedure, the competent authority seeks opinions from cooperating bodies, including the Regional Director for Environmental Protection, the State Sanitary Inspection authorities (in accordance with the division specified in Article 78 of the EIA Act), the authority responsible for water law assessments, and the Director of the Maritime Office—only in cases involving projects located in marine areas. In cases where an environmental impact assessment is required, the locally competent Regional Director for Environmental Protection plays a decisive role in the course of the procedure.

Decision validity period

The environmental decision remains valid and in force until it is removed from legal circulation and may be used in subsequent stages of the investment process.
However, within 6 years from the date on which the decision became final—or within 10 years if the deadline is extended (provided that the party who submitted the application for the environmental decision, or the entity to which the decision was transferred, received confirmation from the authority that issued the decision in the first instance, before the 6-year deadline, that the conditions for implementing the project specified in the environmental decision remain valid)—it is possible to submit an application for a follow-up decision.

What is the fee for the decision?

The stamp duty for an environmental decision is PLN 205 and it must be paid at the submission of the application.

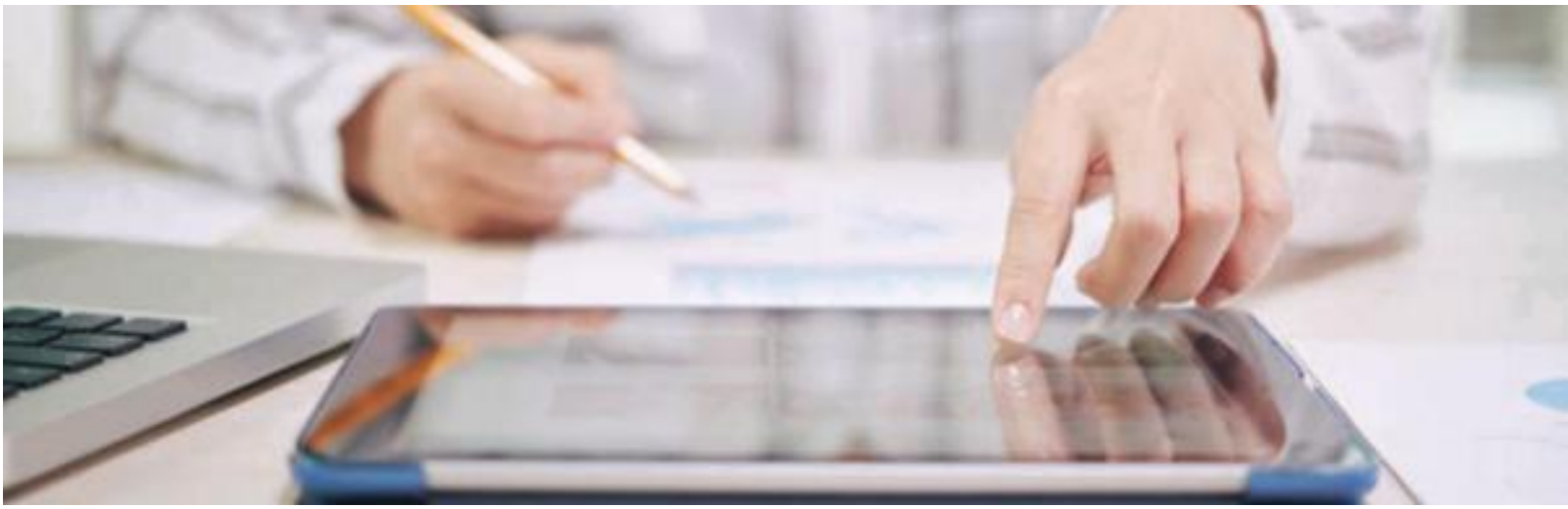
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date the decision is delivered, including via public notice, to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze). Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application for an environmental decision may be submitted electronically via the ePUAP platform; however, some attachments to the application must be provided in paper form.



5.4. PLANNING

As part of the subsection on spatial planning, the legal foundations enabling the siting of photovoltaic power plants will be discussed. In the Polish legal framework, the most important instruments are Local Spatial Development Plans. In areas not covered by such plans, during the transitional period following the entry into force of the spatial planning reform (Act of 7 July 2023 amending the SP&M Act and certain other acts, Journal of Laws 2023, item 1688, subsequently amended by the Act of 4 April 2025 amending the SP&M Act and certain other acts), Decision on Land Development Conditionss play a key role. An additional instrument introduced by the reform is the Integrated Investment Plan (ZPI), which is discussed later in the chapter.

5.4.1. Local Spatial Development Plan

The Local Spatial Development Plan is the primary planning instrument used to determine the location of renewable energy installations utilizing biomass. Therefore, when initiating the investment and construction process, it is necessary to verify whether the investment site is covered by a Local Spatial Development Plan.

If no Local Spatial Development Plan exists for the given area, it is necessary to obtain a Decision on Land Development Conditions. Only compliance of the investment with the provisions of the Local Spatial Development Plan or with the Decision on Land Development Conditions determines the possibility of implementing the project on the designated site. This stage precedes the issuance of a construction permit.

Rules of locating biomass plants based on the Local Spatial Development Plan

According to the currently binding version of the SP&M Act, if the investment area is covered by a Local Spatial Development Plan adopted on the basis of a general plan, the location of the following types of biomass installations is permissible exclusively under the provisions of the Local Spatial Development Plan:

- biomass installations located on agricultural land of classes I–III and forest land;
- biomass installations located on agricultural land of class IV, with an installed electrical capacity exceeding 150 kW or used for conducting business activities related to electricity generation;
- biomass systems with an installed electrical capacity exceeding 1000 kW, regardless of the type of land (for biomass systems with lower capacity—except those situated on the types of land mentioned above—the investment and construction process may be carried

out on the basis of a Decision on Land Development Conditions even if the area is not covered by a Local Spatial Development Plan or its designation does not explicitly permit the construction of a biomass system)[102].

The location of renewable energy sources based on Local Spatial Development Plan adopted during the transitional period (i.e., not based on a general plan) requires that the location of RES systems be explicitly included in the local plan.

Rules for locating photovoltaic power plants under Local Spatial Development Plans adopted between 30 October 2021 and 24 September 2023[103]

According to the previously binding version of the SP&M Act, if the investment area is covered by a Local Spatial Development Plan, the permissibility of siting biomass installations was as follows:

- the location of a biomass installation with an installed electrical capacity exceeding 500 kW was only permissible in areas explicitly designated for such development in the municipality's Study of Local Determinants and Directions in Spatial Development. This means that if the Local Spatial Development Plan did not foresee the allocation of the area for biomass installation development, the building authority would most likely refuse to issue a construction permit.
- The development of biomass installations with an installed electrical capacity not exceeding 500 kW is also permissible in areas that are not explicitly designated for development in the municipality's Study of Local Determinants and Directions in Spatial Development.

For proceedings initiated and not concluded before 24 September 2023, the previous provisions of the SP&M Act shall apply, including Article 10(2a).

For Local Spatial Development Plans established before 30 October 2021, the rules are different:

- if the Local Spatial Development Plan was adopted after 25 September 2010, the location of a biomass sytem with an installed electrical capacity exceeding 100 kW is permissible only if the Local Spatial Development Plan explicitly provides for siting of such a system.
- in case of Local Spatial Development Plans adopted before 25 September 2010, the location of a biomass installation is also permissible on properties that have not been explicitly designated for the construction of RES installations, regardless of their capacity.

It should be noted that the interpretation of the SP&M Act particularly with regard to Local Spatial Development Plans adopted before 30 October 2021, is addressed inconsistently in case law and requires an individual legal assessment that takes into account the specific characteristics of the given Local Spatial Development Plan.

Amendment/adoption of a Local Spatial Development Plan

If the investment area is covered by a Local Spatial Development Plan whose provisions do not allow for the development of the intended renewable energy installation, or if the area is not covered by a Local Spatial Development Plan the investment may only be located on the basis of such a plan, the investor is entitled to submit an application for the amendment or adoption of a Local Spatial Development Plan. An application for the amendment or adoption of a Local Spatial Development Plan is submitted to the mayor, town mayor, or city president and is registered in the register of applications for the preparation or amendment of a Local Spatial Development Plan.

[102] *Article 10(2a) of the SP&M Act*

[103] *Information notice of the President of the URE no. 8/2023.*

The competent authority then assesses the application's compliance with the binding general plan and analyzes its justification.

The municipal general plan is a new planning instrument that must be adopted for the entire municipality (excluding restricted areas). It holds the status of a local law and is intended to eventually replace the Study of Local Determinants and Directions in Spatial Development. The provisions of the general plan will be binding both for Local Spatial Development Plans and for decisions on land development and use.

In the case of non-compliance between the application for the amendment/adoption of a Local Spatial Development Plan and the general plan, the applicant must first request an amendment to the general plan, followed by a request to amend or adopt the Local Spatial Development Plan. If the authority supports the application, it may refer it to the municipal council, which then adopts a resolution to initiate the preparation of the Local Spatial Development Plan.

Pursuant to Article 58 of the amended SP&M Act, until municipalities adopt general plans—no later than 30 June 2026, as required by the amendment—the inclusion of RES installations in a Local Spatial Development Plan does not need to be consistent with the municipality's the Study of Local Determinants and Directions in Spatial Development.

An application to amend or adopt a Local Spatial Development Plan constitutes merely a proposal. The legislation does not provide for any specific procedures or deadlines for its consideration. **There is no right to appeal the decision.** Therefore, it should be noted that the procedure for amending or adopting a Local Spatial Development Plan may be lengthy and does not guarantee the success of the intended investment.

A facilitation introduced by the recent amendment to the SP&M Act is the **possibility of adopting/ amending Local Spatial Development Plans through a simplified procedure** (Article 27b(1)(1) of the SP&M Act). This procedure may be applied if the adoption or amendment of the Local Spatial Development Plan concerns exclusively the location of RES installations other than wind power plants. The simplified procedure allows for the omission of certain obligations and the shortening of deadlines for specific actions.

It is also worth noting that the amendment introduces a special form of Local Spatial Development Plan that may be used by investors in the absence of an existing plan or when the current plan requires amendment — **the Integrated Investment Plan (ZPI).** The ZPI is adopted by the municipal council upon the investor's application submitted via the mayor, town mayor, or city president. The ZPI must cover the area of the main investment (e.g., RES installation or residential development) as well as complementary investments (e.g., public roads, green areas, or public utility facilities). Once adopted, the ZPI will override the provisions of any existing Local Spatial Development Plans or their parts that apply to the area covered by the ZPI.

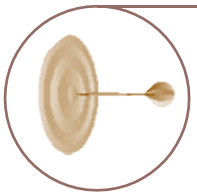
Importantly, if the ZPI concerns exclusively the location of RES systems other than wind power plants and does not involve the specific conditions set out in Article 27b(2) of the SP&M Act, its adoption will also follow the simplified procedure (Article 27b(1)(1) of the SP&M Act).

Further details regarding the procedure for adopting a ZPI and the simplified procedure for adopting Local Spatial Development Plans for certain RES systems (Article 27b(1)(1) of the SP&M Act) are available on the website **NCP-RES**.

Confirmation of project compliance with the Local Spatial Development Plan

An investor may obtain a certificate confirming that the planned project complies with the Local Spatial Development Plan.

Purpose of the confirmation



The purpose of the confirmation is to verify if the planned project will comply with the Local Spatial Development Plan.

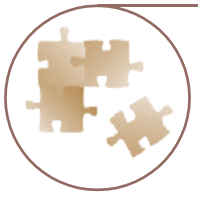
When is the confirmation required?

Obtaining the confirmation is not mandatory; this is just to confirm that the planned project complies with the Local Spatial Development Plan.

The local community of the commune also contributes to the final structure of the Local Spatial Development Plan through public consultations carried out in the process of drafting the final text of the Local Spatial Development Plan.

Comments from the community may actually influence the location of particular sites on the plan including sites intended for the construction of biomass plants.

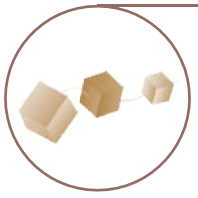
Elements of a confirmation application



An application for a certificate confirming project compliance should also include:

- proof of payment of the stamp duty for the application;
- authorisation if the application is submitted by an authorised representative;
- proof of payment of the stamp duty for the authorisation if the application is submitted by an authorised representative.

The process



Project compliance with the Local Spatial Development Plan is confirmed by a certificate issued by the locally competent commune administrator or mayor upon the investor's request.

Obtaining the certificate is not mandatory and its content is not binding upon the construction authorities at the stage of applying for the construction permit.

05. BIOMASS AND BIOLIQUIDS

Duration of the process

Up to 7 days following the filing of the application.

Authority competent for the confirmation

The commune administrator or mayor having jurisdiction over the project site.

Confirmation validity period

The certificate is open-ended but it expires if the Local Spatial Development Plan is amended.

What is the fee for the certificate?

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

An applicant who was denied a certificate has 7 days to appeal to the Local Appeal Body.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

5.4.2. Decision on Land Development Conditions

The permission (Polish: decyzja o warunkach zabudowy) still remains the most commonly used document serving as the basis for locating photovoltaic power plants. On sites that are not covered by a Local Spatial Development Plan, the Decision on Land Development Conditions is the basis for locating a project and a prerequisite for applying for a construction permit.[104]

Purpose of a Decision on Land Development Conditions

The main purpose of a Decision on Land Development Conditions is to establish the construction and land development conditions related to a biomass plant which are necessary to integrate the investment with the local spatial development.

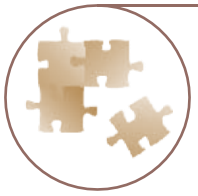
When is a Decision on Land Development Conditions required?

In a typical course of the investment and construction process, a Decision on Land Development Conditions is usually obtained after the investor receives the environmental decision (if required) but before the application for grid connection conditions is filed. It is obtained only if the project site is not covered by a Local Spatial Development Plan.

No Decision on Land Development Conditions can be obtained for a biomass plant if the real property consists of class I to III agricultural land (in such a case, a Local Spatial Development Plan must be established and the minister in charge of rural development must grant permission to use the real property for non-farming purposes).

[104] *Article 59 of the SP&M Act*

Elements of a Decision on Land Development Conditions application



The process of issuing a Decision on Land Development Conditions is initiated by an application of the investor. The application shall:

- specify of the person filing the application and their address;
- contain the request for a Decision on Land Development Conditions for a specific project.

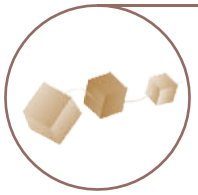
Furthermore, the investor should attach the following:

- a base map or, if there is none, a cadastral map from the national survey and cartographic resource for the site to which the application pertains and for the project impact area, at a 1:500 or 1:1000 scale, either in an electronic format – in the applicable National Spatial Reference System – or as a hard copy;
- outline of the boundaries of the site covered by the application;
- investment characteristics including:
  a) the demand for water and energy; the wastewater discharge or treatment methods; other technical infrastructure needs and, where necessary, waste neutralisation methods;
  b) the planned land development and the characteristics of the land use and development, including the intended purpose and dimensions of proposed building structures and the land surface to be transformed presented in the form of text and visual materials;
  c) the characteristic technical parameters of the project and the data characterising the environmental impact of the project;
- a copy of the environmental decision;
- proof of stamp duty payment;
- authorisation, if the application is submitted by an authorised representative.

Anyone can apply for a Decision on Land Development Conditions, regardless of their title to the property.

Importantly, more than one decision can be issued, provided that they are issued for different applicants.

The process



Once the application for a Decision on Land Development Conditions is filed, the authority analyses the actual condition and legal status of the site where the project is to be implemented and it sends inquiries to the cooperating authorities about site development and construction conditions which arise from separate regulations.

For a Decision on Land Development Conditions to be issued, the following conditions must be met:

- the existing or planned service infrastructure on the site is sufficient for the construction project;
- the site does not require a permission to change the designated purpose of agricultural and forest land to non-agricultural and non-forestry purposes or it is covered by a permission obtained during the establishment of Local Spatial Development Plans which expired based on Article 67 of the SP&M Act mentioned in Article 88(1) of the SP&M Act;
- the decision complies with other regulations;
- the construction project is not situated within:
  a) in relation to properties covered by a decision establishing the location of a strategic investment in transmission infrastructure, as referred to in Article 5(1) of the Act on the Preparation and Implementation of Strategic Investments in Transmission Networks, a prohibition—referred to in Article 22(2)(1) of the same Act—has been imposed;
  b) the control zone established on both sides of a gas pipeline;
  c) the security zone established on both sides of a pipeline.

It must be noted that with regard to an RES system, the legislator has waived the "good neighbours" principle, which used to entail the obligation to demonstrate that a project would follow the existing building pattern.

A construction permit must be preceded by a Decision on Land Development Conditions.

Duration of the process

Up to 90 days.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the Decision on Land Development Conditions may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the Decision on Land Development Conditions

The authority competent for issuing the Decision on Land Development Conditions is the commune (Polish: gmina) authority, i.e. either the commune administrator (Polish: wójt) or the mayor. There is an exception for Decision on Land Development Conditionss regarding restricted areas. For such areas, the Decision on Land Development Conditions is issued by the competent voivode (Polish: wojewoda).

Decision on Land Development Conditions validity period

During the transitional period (following the entry into force of the amendment to the SP&M Act until the end of 2025 or until the municipality adopts its general plan, whichever comes first.

What is the fee for the Decision on Land Development Conditions?

The stamp duty for a Decision on Land Development Conditions is PLN 598 (unless the application is filed by the owner of the real property, an organisation pursuing an activity of public interest, a budgetary unit or a local government unit – in such a case, the application is exempt from the fee) and it is required at the submission of the application.

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving a decision issued by a commune administrator or mayor, the applicant has 14 days from the date the decision is delivered, including delivery by public notice, to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze).

After receiving a decision issued by the voivode, the applicant has 14 days from the date the decision is delivered, including delivery by public notice, to appeal against the decision to the Minister of Development and Technology.

Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

Legislative changes

The Act of 7 July 2023 amending the Spatial Planning and Management Act and certain other acts (as further modified by the Act of 4 April 2025) introduced the following changes:

- the validity period of a Decision on Land Development Conditions is limited to five years- for permissions issued from 1 January 2026 (any permissions issued before that are open-ended);
- to require compliance of the Decision on Land Development Conditions with the general plan of the commune (the view prevailing until now was that a Decision on Land Development Conditions does not have to be consistent with the Study of Local Determinants and Directions in Spatial Development as the requirement applies only to Local Spatial Development Plans).

It is important to note that from the date of adoption of general plans or from 1 July 2026, the possibility of locating RES systems based on Decision on Land Development Conditions will be significantly limited.

5.5. ENVIRONMENTAL PERMITS

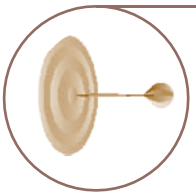
Since the functioning of a biomass plant may cause emissions with an adverse environmental impact, an environmental decision may be required in certain causes before applying for a construction permit.

The environmental permits referred to in this section are independent from the requirement to first obtain the environmental decision referred to in section 5.3.

The type of environmental permit depends on the environmental pressures of the biomass plant.

5.5.1. Integrated permit

Purpose of the permit



With an integrated permit, a single decision replaces the following decisions/permits:[105]

- permit for the release of gas or particulate matter into the air;
- permit under the water legislation for the release of sewage into water or soil (including the specification of water intake conditions);
- waste generation permit (along with permits for waste recovery, neutralisation, transport and accumulation);
- noise emission permit;
- electromagnetic field emission permit.

Importantly, in the case of an integrated permit, each of the above stages should apply the most beneficial solutions from the perspective of the requirement to eliminate or limit emissions. The purpose is to reduce the administrative load on entrepreneurs and to ensure more effective environmental protection through the coordination of various aspects related to the planned project.

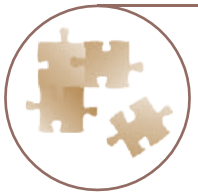
An integrated permit includes project environmental impact assessment, including aspects such as the protection of air, waters, soil, natural resources, waste management, noise etc. An integrated permit defines the conditions to be met during project implementation and operation stages in order to protect the environment and public health.

[105] *Article 201 of the Environmental Law*

When is the permit required?

The permit is required for biomass plants of at least 50 MW.

Elements of an application for the permit



An integrated permit application must take into account the following basic conditions defined for permit applications in Article 184 of the Environmental Law:

- identification and address or registered office of the system operator;
- identification of the main operator of the plant or the scope of responsibility of particular operators in charge of specific parts of the plant for plant operation in accordance with the environmental protection law;
- address of the site where the system operates;
- information on the legal title to the system;
- information on the type of system, equipment and technologies used and the technical characteristics of emission sources and locations;
- assessment of the technical condition of the system;
- information on the type of activity carried out;
- description of the assumed system operation variants;
- a block (general) diagram together with the mass balance and the types of materials, raw materials and fuels used which are significant from the standpoint of environmental protection requirements;
- information on the energy used or produced by the system;
- emission size and source or location – current and proposed – during normal operation of the system and under abnormal conditions, such as in particular start-up and shutdown;
- the conditions and parameters characterising the operation of the plant – defining the moment of ending the start-up and the moment of starting the shutdown of the plant;
- information on planned periods of system operation under abnormal conditions;
- information on the existing or anticipated environmental impacts of emissions;

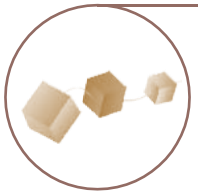
- results of measurements, where required, of emissions from the system;
- emission changes, if occurring after last permit was obtained for the system;
- proposed actions, including the specification of technical measures designed to prevent or reduce the emissions and, if the actions are to be implemented in the period for which the permit is to be issued – and the proposed completion date of such actions;
- proposed procedures for monitoring the technological processes relevant to environmental protection requirements, in particular the measurement or recording of emissions and the fire safety requirements in the case of a waste generation permit including waste collection or processing;
- the declared time and method of shutting down the system or a specific part thereof without any risks for the environment – if the system is planned to be shut down during the period for which the permit is to be issued;
- the declared total time of further operation of the system, if it affects the determination of the environmental protection requirements, and the declared method of documenting the time of such operation;
- the declared system commissioning date in the case referred to in Article 191a of the Environmental Law;
- the period for which the permit is to be issued.

Furthermore, the application contains:

- information regarding a system requiring an integrated permit (e.g. environmental impact, cross-border environmental impact, the forecast noise emissions, the forecast quantity, condition and composition of industrial sewage, the forecast quantity of the water to be used);
- justification for the proposed emission quantities;
- description of variants of the measures to prevent contaminants;
- copy of a cadastral map with outlined boundaries of the site where a limited use area must be established;
- initial report (containing for example information about the activity pursued on the project site, information on the activities pursued on the site of the plant in the past, if available; names of risk-causing substances that are used, produced or released by onsite facilities that require an integrated permit; information on soil, ground and groundwater contamination with risk-causing substances on the project site);

- a document confirming that the applicant is entitled to act in legal transactions, if the system operator is not a natural person;
- a summary of the application using non-specialist language.
- in the case of waste generation permit – a fire safety study meeting the requirements defined in Article 42(4b)(1) of the Waste Act;
- a fire safety study laying down the fire safety conditions for the system, facility or a part thereof or another waste management site which were agreed with the County (City) Chief of the State Fire Service, prepared by:
  a) a fire safety expert within the meaning of chapter 2 a of the Polish Fire Safety Act – if the province marshal (Polish: marszałek województwa) or the Regional Director for Environmental Protection (RDOŚ) is the competent authority;
  b) the person referred to in Article 4(2 a) of that Act – if the county administrator is the competent authority;
- certificate of no criminal record for a system manager:
  a) with regard to crimes against the environment;
  b) who is a natural person or, for a shareholder, commercial proxy, supervisory board member or director of a system manager, who is a legal person or an organisational unit without legal personality – with regard to the crimes referred to in Article 163, Article 164 or Article 168 in conjunction with Article 163(1) of the Polish Criminal Code of 6 June 1997 – in the case of a waste generation permit.

The process



Once the investor files the application, the authority first reviews the formal sides of the application to check if it is complete and if it complies with the formal requirements. If any shortcomings are identified, the investor is required to remedy them.

After the formal review, the authority determines the emission conditions to be taken into account in the permit. They must not result in a breach of the emission threshold values. Importantly, emission conditions should assume that the investor will use of the best practices determined in the BAT conclusions.

The BAT conclusions for waste processing are defined in the Commission Implementing Decision (EU) 2018/1147 of 10 August 2018.

Duration of the process

The permit should be issued within 6 months after the application submission date.

Authority competent for the permit

Depending on the type and scale of the installation, the competent authority is either the county administrator (starosta) or the president of a city with county rights. In certain other cases, the competent authority may be the voivode or the Regional Directorate for Environmental Protection (RDOŚ).

Permit validity period

An integrated permit is open-ended, unless the system operator requests a fixed term.

What is the fee for the certificate?

A registration fee is calculated according to the formula:

$$F = B \times AV / TV$$

F – registration fee amount

B – base rate of the registration fee for a given plant type

AV – maximum theoretical (attainable) value of the parameter characterising the scale of the activity pursued at the facility

TV – threshold value of the parameter characterising the scale of the activity pursued at a facility of a given type

How to appeal?

After receiving the decision, the applicant has 14 days from the date the decision is delivered, including delivery by public notice, to appeal against it to the Local Appeal Body (Samorządowe Kolegium Odwoławcze). Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

You can file the application online through the ePUAP service. We recommend that you contact the local county authorities (Polish: starostwo powiatowe) before applying to confirm if they process online applications.

5.5.2. Other environmental permits

If the operation of a biomass installation does not require an integrated permit, the investor should consider whether the activities carried out will necessitate obtaining any of the following permits:

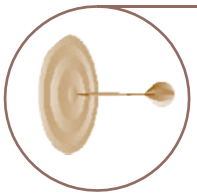
- permit to discharge sewage into water or soil;
- waste generation permit;
- permit to release gases or particulate matter into the air,

5.5.2.1. Permit to discharge sewage into water or soil

The discharge of wastewater into water or soil goes beyond the scope of common or ordinary use of water resources. If such activity is carried out in connection with the operation of a biomass-based installation, it may be necessary to obtain a permit for discharging wastewater into water or soil.

05. BIOMASS AND BIOLIQUIDS

Purpose of the permit



The purpose of the permit is to authorise a biomass plant to legally discharge sewage to water or soil.

When is the permit required?

The functioning of a biomass plant may require securing a permit under the Water Law. This applies for instance to water intake above 5 m^3 a day. The aforementioned permit will also be required for instance to discharge industrial sewage containing substances particularly harmful to the water environment to sewage systems owned by third parties.[106]

The above examples must not be treated as a full list of criteria for the requirement to obtain a permit under the water legislation. Every investor should each time undertake an individualised assessment for their project based on the requirements of the Environmental Law and the Water Law.

Authority competent for the permit

In most cases, the authority responsible for issuing a water law permit is the Director of the Regional Water Management Board of the State Water Holding Polish Waters, competent for the location of the investment. In certain cases, the competent authority may be the Director of the Catchment Management Board of the State Water Holding Polish Waters.

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the Decision on Land Development Conditions may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

[106] *Article 389 of the Water Law*

Permit validity period

The permit is issued for a fixed term not longer than 10 years.

What is the fee for the permit?

The fee for issuing a water law permit amounts to PLN 330.07.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

An appeal against a decision issued by the Director of the Executive Board of the Polish Waters Catchment Area must be submitted within 14 days from the date of delivery of the decision, including delivery by public notice, to the competent Director of the Regional Water Management Board.

If the decision was issued by the director of the Regional Water Management Board of Polish Waters you have 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against it to the President of Polish Waters.

Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

You can file the application online through the ePUAP service. We recommend that you contact the local branch of Polish Waters (Wody Polskie) before applying to confirm if it processes online applications.

5.5.2.2. Waste generation permit

Unless required to secure an integrated permit, an investor planning to build a biomass plant should apply for the following permits related to waste management:

- a waste generation permit (if it generates waste above 5000 t per annum – in the case of other than hazardous waste);[107]
- a waste processing permit,[108] which encompasses: recovery processes, including the pre-recovery preparations, and neutralisation processes, including the pre-neutralisation preparations;

There is a rule that separate permits are issued for waste collection and waste processing although it is possible to include both permits in one collective permit if so requested by the applicant.

A permit for the generation or processing of waste is not required in the case of items or substances classified as by-products that are not considered waste. In order to be recognized as such, all conditions specified in Article 10 of the Waste Act must be met. The producer is obliged to submit a notification to the voivodeship marshal competent for the location of production, requesting recognition of the item or substance as a by-product. This means the requirement to notify the province marshal of the substrate used by the biomass plant. The province marshal reviews the request and issues a relevant decision authorising the processing of this waste. The permit is valid for up to 10 years.

Authority competent for the permit

Province marshal:

- for a waste collection permit where the maximum total mass of all the types of waste stored per annum exceeds 3000 t;
- for systems able to accept at least 10 t of waste per 24 hours or systems of a minimum total capacity equivalent to 25,000 t;

County administrator:

- in all other cases.

[107] *Article 180a of the Environmental Law*

[108] *Article 41 of the Waste Act*

05. BIOMASS AND BIOLIQUIDS

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the permit may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Permit validity period

The permit is issued for a fixed term not longer than 10 years.

What is the fee for the permit?

The stamp duty for a waste collection and/or processing permit is PLN 616.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving a decision issued by the province marshal, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the Minister of Climate and Environment.

After receiving a decision issued by the county administrator the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze).

Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The authorities currently do not provide an option of applying for a waste generated permit online.

5.5.2.3. Permit to release gases or particulate matter into the air

The requirement to obtain a permit to release gases or particulate matter into the air applies only to biomass plants of a rate thermal input up to 10 MW.[109]

Authority competent for the permit

County administrator:

- in most cases.

Province marshal:

- for systems qualified as projects always having a significant environmental impact (plants combusting or co-combusting biomass in order to produce energy or of a thermal input not lower than 300 MW).

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the permit may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Permit validity period

The permit is issued for a fixed term not longer than 10 years.

[109] *Regulation of the Minister of Health of 2 July 2010 on cases where no permit is required to release gases or particulate matter into the air (Journal no 130, item 881)*

What is the fee for the permit?

PLN 2011 for large enterprises, PLN 506 for micro, small or medium enterprises.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving a decision issued by the province marshal, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the Minister of Climate and Environment.

After receiving a decision issued by the county administrator the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze).

Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

You can file the application online through the ePUAP service. We recommend that you contact the local country authorities or marshal office (Polish: urząd marszałkowski) before applying to confirm if they process online applications.

5.6. CONNECTION TO THE HEATING GRID

The main energy product of biomass plants is heat, often generated in combination with electricity. The combined heat and power production process is called cogeneration.

Securing a connection to the heating grid is the stage of the investment and construction process which usually directly precedes the construction permit acquisition stage. Grid connection makes it possible to supply the thermal energy produced by a biomass plant to its recipients and thus to sell it.

Ensuring a connection to a heating grid is an investment and construction process stage consisting of the following steps:

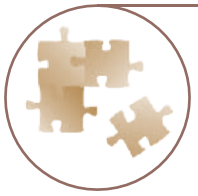
- the investor obtains the heating grid connection conditions;
- the connection agreement is signed;
- the contract for heat distribution and sale is signed.

5.6.1. Heating grid connection conditions

The heating grid connection conditions are a document issued by the distribution system operator or the transmission system operator to define the technical details of connecting a biomass plant and they obligate the operator to sign a biomass plant grid connection agreement with the investor. The connection conditions "temporarily book the grid space" for a specific biomass project.

If the generator does not sign a connection agreement within 24 months, the connection conditions expire.

Elements of an application for grid connection conditions

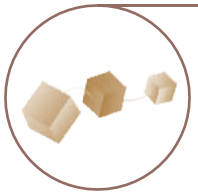


An application for grid connection conditions is submitted to the heating grid operator that owns the grid to which the investor intends to connect the plant.

The application must specify:

- the person filing the application and their address;
- the request for network connection conditions for a specific biomass plant project;
- the type and the attainable parameters of the heating medium, including the pressure, temperature and physicochemical properties of the medium conveying the heat to be fed to the heating grid and the permissible contaminants of the medium conveying the heat back from this network to the heat source;
- the maximum and minimum thermal input that can be supplied fed the heat source to the heating grid and, if this input is to be achieved in stages, the schedule of implementing subsequent stages and the maximum and minimum thermal input for these stages;
- specification of the technical characteristics of the heat source, including data describing its characteristics at successive stages of development: the technological configuration of the heat source and the capacity of heat-generating equipment; the system for regulating the amount of heat supplied to the district heating network; the characteristics of devices regulating the flow rate and temperature of the heat carrier; the metering and billing system; the characteristics of devices used to measure the quantity and parameters of the heat carrier supplied from the heat source to the district heating network; the maximum and minimum capacity of the water treatment installation supplying water to the district heating company or heat distributor for the purpose of filling the district heating network and consumer installations, as well as replenishing losses of the heat carrier.
- the proposed starting date and conditions of heat supply;
- the document confirming the legal title to the facility;
- a development plan or a site plan presenting the location of the plant in relation to the existing heating grid and other structures and land infrastructure;
- assessment of the impact of the source to be connected on the functioning of the heating system.

The process



Once the investor files an application for grid connection conditions, the operator analyses the technical and economic possibilities of connecting the generating facility.

The processing time of a heating grid connection conditions application is **3 months.**

If the operator rejects the application the investor has the right to appeal to the President of the URE who may obligate the operator to sign a connection agreement pursuant to Article 8 of the Energy Law.

Grid connection conditions are valid for 2 years after their delivery date.

During the validity period, the connection conditions represent a conditional commitment of the heat transmission or distribution company to enter into a connection agreement.

5.6.2.Connection agreement

The connection agreement serves as the legal ground for connecting a biomass plant to the heating grid. It is a contract signed between the heating system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the connection conditions.

In order to complete this task, both parties undertake to perform works to connect the generation source to the heat distribution system. In practice, the crucial element of a connection agreement is the modification of the grid and the construction of a connection to make it possible to receive the energy generated by the RES system. The main obligation of the producer is to build the generation source and cooperate with the operator in the performance of the connection tasks.

Connection cost

The connection cost is established based on the actual expenses incurred by the energy company to connect the RES system. There is an exception for biomass plants functioning as cogeneration facilities of an installed capacity below 1 MW – they pay a half of the payment established based on the actual expenses.

5.6.3. Obligation to purchase the heat

An investor benefits from the obligation to purchase the heat produced by the RES system described in Article 116 of the RES Act. There is an exception for cases where there is already an efficient heating system within the meaning of Article 7b(4) of the Energy Law functioning across the whole area of a given heating grid.

The obligation to purchase the heat is performed by the company that distributes or produces heat and sells it to the end recipients within the range of a given heating grid.

With the heat purchase obligation an investor who produces heat at a biomass plant does not have to search for a buyer for the heat. The heat purchase obligation imposed on the heating company releases the investor from this requirement, although the investor may also sell the heat to another party of their choice.

Please note that if heat is produced by a plant that combusts biomass, bioliquids, biogas or agricultural biogas together with other fuels, the purchase obligation applies only to the portion of the produced heat that corresponds to the share of the calorific value of the biomass, bioliquids, biogas or agricultural biogas in the calorific value of all the fuels used to produce heat in that plant.

5.7. CONNECTION TO THE ELECTRICITY GRID

In addition to producing heat, biomass plants may also generate electricity in the cogeneration process. The technical prerequisite for receiving electricity from a biomass plant is that the plant must be connected to the electricity grid.

The process of connecting a biomass plant to the electricity grid is analogical to the connection to the heating grid and it is based on the following elements:

- the investor obtains the grid connection conditions
- the connection agreement is signed;
- the electricity distribution agreement is signed.

5.7.1. Electricity grid connection conditions

The electricity grid connection conditions are a document issued by the distribution system operator or the transmission system operator to define the technical details of connecting a biomass plant and they obligate the operator to sign a biomass plant grid connection agreement with the investor. The connection conditions "temporarily book the grid space" for a specific biomass project.

If the producer does not conclude a connection agreement within 24 months from the date of receiving the connection conditions, those conditions expire and no longer constitute an obligation to enter into a connection agreement.

Elements of an application for grid connection conditions

An application for the issuance of connection conditions is submitted to the distribution system operator or transmission system operator that owns the network to which the investor intends to connect the installation.

The application must specify:

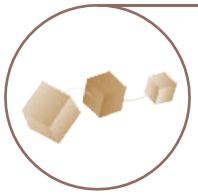
- the person filing the application and their address;
- the request for network connection conditions for a specific biomass plant project;

- the maximum annual capacity of the produced electricity and the quantity of electricity fed to the grid;
- the installed capacity, generation capacity, available capacity, apparent power of generators and the maximum capacity referred to in Article 2(16) of Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators;
- the range of the permissible changes to the loads of the generators or their groups;
- the number of the energy generation modules to be connected;
- the size of the planned demand for capacity and electricity to cover the generator's own needs;
- the degree of compensation of the reactive power linked to the receipt electric power for the electricity generator's internal needs;
- the degree of compensation of the reactive power linked to the feeding of the generated electricity to the grid;
- the anticipated values of the electric parameters of the grid and the transformers forming a part of the system and the devices;
- the minimum import capacity to guarantee the safety of people and property based on Article 11(6) of the Energy Law if electricity supply and consumption restrictions are imposed;
- the technical information regarding the interferences caused by the devices, systems and grids of the applicant and the characteristics of the loads as required to determine the connection conditions for entities from connection groups I to IV.

The investor should also attach the following:

- an extract and excerpt from the Local Spatial Development Plan or, if there is none, the Decision on Land Development Conditions for the real property specified in the application;
- a document confirming the investor's title to use the real property where the biomass plant specified in the application is to be located;
- the development plan on a land survey and height map to show the positioning of the facility to be connected in relation to the existing grid;
- the certification confirming the technical parameters, operational and performance characteristics of the connected equipment, installations, or networks;
- a single-line electrical diagram of the devices systems or grids to be connected along with their description.

The process



Once the investor files an application for grid connection conditions, the operator analyses the technical and economic possibilities of connecting the generating facility. Technical reasons are usually associated with the availability of connection capacity at the connection point in the local grid – the operator checks if it is possible to safely supply power through the grid even in the case of extreme loads.

In the case of a biomass installation with a capacity exceeding 2 MW, the operator ensures the preparation of an expert analysis of the impact of the facility on the power system.

In terms of economic criteria, the operator analyses if it has the funds to develop the grid to the extent required to connect the biomass plant.

Duration of the process

The grid connection conditions application processing time for biomass plants is:

- up to 120 days after the application filing date for applicants from connection group III or VI – where the facility is to be connected to a grid above 1 kV and has an energy source or energy storage;
- up to 150 days after the application filing date for applicants for applicants from connection group I or II.[110]

Please note that if the operator refuses to issue the grid connection conditions, the Energy Law creates the terms and conditions for the relations between the operator and the investor.

If the operator refuses to connect the facility because of:

- lack of the technical conditions for the connection arising from lack of the required grid transmission capacity at the time proposed by the entity applying for the connection of a RES system – the energy company shall define the planned time limit for and the conditions of the necessary grid development or modernisation and specify when the connection will be made;
- lack of economic possibilities – the energy company may sign a grid connection agreement establishing a connection fee in an amount agreed with the grid connection applicant;
- lack of both technical and economic conditions – the grid sections to be used to connect the system owned by the grid connection applicant may be built and developed by the grid connection applicant in coordination with the energy company.

[110] *Article 7(8g) of the Energy Law*

Grid connection conditions validity period

Grid connection conditions are valid for 2 years after their delivery date.

During the validity period, the grid connection conditions represent a conditional commitment of the electricity transmission or distribution company to enter into a connection agreement.

What is the fee for grid connection conditions?

Within 14 days of submitting the application to the operator, the investor is required to pay an advance towards the issuance of connection conditions. The amount is PLN 30 gross per each kilowatt (kW) of requested connection capacity (applicable to networks with a voltage higher than 1 kV).

The advance must not be higher than PLN 3,000,000. If the operator refuses to issue the grid connection conditions, the advance is returned to the account of the investor. If the grid connection conditions are issued, the advance is credited against the connection fee.[111]

Upon conclusion of the connection agreement, the connection costs incurred by the investor, in the case of renewable energy installations with an installed electric capacity not exceeding 5 MW, shall amount to 50% of the total expenditures for the connection implementation (excluding prosumer installations). For installations exceeding 5 MW, the investor is obliged to bear 100% of the expenditures for the connection implementation

How to appeal?

An investor whose application for grid connection conditions has been rejected may file a complaint to the President of the URE based on Article 8 of the Energy Law. Decisions of the President of the URE can be challenged before the Warsaw Regional Court's Competition and Consumer Protection Division.

Can the application be filed online?

Most operators allow the submission of an application for connection conditions in electronic form, using dedicated application forms provided for this purpose.

[111] *Please note that some operators follow a practice of collecting the advance for grid connection conditions only after they obtain a reasonable confirmation that it is possible to connect the generating facility.*

5.7.2. Electricity grid connection agreement

The connection agreement serves as the legal ground for connecting a biomass plant to the electricity grid. It is a contract signed between the distribution system operator or the transmission system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the grid connection conditions.

In order to carry out this task, both parties undertake to perform works aimed at connecting the generation source to the distribution network. Any requirements related to the reconstruction or replacement of network components shall be carried out in accordance with the provisions specified in the connection conditions.

The RES systems are privileged in terms of grid access. As long as there are technical and economic possibilities for that, the grid operator is obligated to sign a connection agreement first with an RES facility. Another sign of the legislator's preferential treatment of RES systems in terms of grid connection is the reduction of the connection fee for the RES sources to only a half of the actual connection costs incurred by the operator.

Deadline for the obligations under the electricity grid connection agreement

For grid connection agreements regarding biomass plants, the time limit for the first supply of energy from the connected generation source should not be longer than 48 months. Failure to deliver energy for the first time within this period may result in termination of the connection agreement in accordance with the provisions of the Energy Law.

Securing the connection route

One of the most important elements of the connection agreement is identification of the grid connection point, i.e. the point where the electricity generated by the biomass plant will be fed to the distribution or transmission grid.

If the grid connection point is situated outside the investor's land (most cases), the investor is responsible for building a link between the biomass plant and the grid connection point. In such a case, it is necessary to secure the titles to the real properties situated on the route of the electric power link.

How the titles to the real properties situated along the cable route should be secured depends on whether the link is to run across plots consisting of a road (whether or not having the status of a public road) or across privately owned properties.

Private property

The most common way to secure the legal right to use a private property across which a cable route is expected to run is utility easement. This solution authorises the owner of transmission facilities – the biomass project investor who intends to build, or has already built, transmission facilities – to use a real property to the extent required to install, and to subsequently use, transmission facilities on the property. Utility easement is a limited real right effective with regard to each successive owner of the real properties across which the transmission facilities are to run. It is established in a notary deed and it is disclosed in the title register. It can be either fee-based or free of charge, in accordance with the provisions of the Civil Code.

Real property with a public road status

For properties with a public road status, the title to use the property is governed by the Roads Act – especially by Article 39 and Article 40 of the Roads Act. Securing the legal right to use a real property with a public road status is a multistep process. The first step is to obtain a decision issued under Article 39(3) and 39(3a) of the Roads Act by the road administrator to authorise to location of building structures or facilities within the roadway which are not related to road management needs or road traffic needs.

This step is followed by a decision issued under Article 40(1) and Article 40(2) of the Roads Act, which permits occupying the roadway space in order to perform construction works or install technical infrastructure facilities within the roadway which are not related to road management needs or road traffic needs. The decision permitting the occupation of the roadway for the purpose of performing the works is issued for up to ten plus days and it authorises the holder to physically enter the property in order to perform construction works.

The decision which permits installing facilities within the roadway is issued for a period of a few to a few dozen years and it grants the holder a legal right to install the facilities. Importantly, there are fees charged for both the occupation of the roadway and the installation of technical infrastructure facilities in the roadway. In the former case, it is a one-off fee and in the latter case, it is an annual fee.

Road property without a public road status

In the case of internal commune roads without a public road status, there is no single systematised procedure for securing the cable routing. Usually, communes issue informal permits for this purpose, which do not have the status of administrative decisions, where they authorise the installation of the facilities – this is equivalent to a decision issued under Article 39(3) and Article 39(3a) of the Roads Act. Subsequently, they sign an agreement with the investor whereunder the real property is provided for use in return for an annual fee – this is equivalent to a decision issued under Article 40(1) and Article 40(2) of the Roads Act.

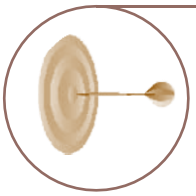
Another possibility of securing the right to the land property is the already mentioned utility easement.

The above-mentioned titles securing the cable routing are not the only available legal options. There are also lease agreements or unnamed contracts which are structured similarly to a lease agreement. Unfortunately the rights they grant to the real properties are not as lasting as the ones described above.

5.8. CONSTRUCTION PERMIT

Construction permit is the element of the investment process which is the starting point for the construction of a biomass plant. Without this permit, an investor cannot commence construction works or subsequently operate the plant.[112]

Purpose of the permit



A construction permit verifies if the planned project complies with the law and respects the interests of the parties whose rights it is not allowed to violate. From the investor's perspective the main purpose of obtaining a construction permit is to start the construction works to build the biomass plant. A construction permit defines the rights and responsibilities of the investor related to project implementation.

Pursuant to Article 3(7) of the Construction Law, construction works are also understood as alteration, assembly, renovation or demolition of a building structure.

When is the permit required?

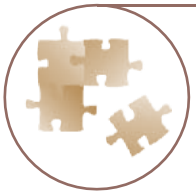
Considering the typical course of the investment and construction process, the investor obtains the construction permit decision after first securing:

- the environmental decision, where applicable;
- the Decision on Land Development Conditions (unless a Local Spatial Development Plan applies);
- the decision authorizing exclusion from agricultural production is required in the case of properties comprising:
  a) agricultural land formed from mineral and organic soils classified as classes I, II, III, IIIa, IIIb;
  b) agricultural land of classes IV, IVa, IVb, V, and VI formed from organic soils;
  c) other agricultural land indicated by the Act on the Protection of Agricultural and Forest Land.
- electricity grid connection conditions or heating grid connection conditions.[113]

[112] *Article 28 of the Construction Law*

[113] *It can be processed concurrently with the construction permit.*

Elements of an application for the permit



The mandatory elements of the construction permit application are specified in the Construction Law. They are:

- details of the person filing the application and their address;
- the request for a construction permit decision for a specific construction project (importantly, the construction law states that for a construction project covering more than one facility, a construction permit may, at the investor's request, pertain to selected facilities or to a complex of facilities able to function on their own in accordance with their intended purpose).

Furthermore, the investor should attach the following:

- a plot or land development design and an architectural construction design – along with the opinions, approvals, permits and other documents as required under separate legal acts or copies of the same (in paper format – 3 copies or in an electronic format);
- a declaration on having the right to use the real property for construction purposes.
- for construction projects preceded by an environmental decision issued in a process requiring the participation of the public – a visual appendix specifying the anticipated project implementation site and the anticipated project impact area, provided that the submission of this appendix was required by the regulations in effect on the date of applying for the environmental decision, and especially the map referred to in Article 74(1)(3a) of the EIA Act;
- the Decision on Land Development Conditions, where required under the spatial planning and development laws;
- a proof of payment of the stamp duty for the construction permit application;
- for applications filed by authorised representatives: the authorisation and the receipt for the stamp duty payment.

The crucial appendix to the construction permit application is the construction design. Construction design requirements are laid down in the Construction Law. A construction design must include:

- a plot or land development design prepared on an up-to-date map for design purposes or on a copy thereof, presenting:
  a) the plot or land boundaries;
  b) the location, outline and arrangement of the existing and planned building structures, including the utilities on the plot and any building facilities located outside the building structure;
  c) the sewage discharge or treatment method;
  d) the traffic system and the arrangement of vegetation, with specification of the characteristic elements, dimensions, ordinates and mutual distances between objects – in relation to the existing and planned buildings in the neighbouring areas;
  e) information about the project impact area;

- an architectural and construction design which covers:
  f) the spatial arrangement and the architectural form of the existing and planned building structures;
  g) the intended use of the building structures;
  h) the characteristic technical parameters of the building structures;
  i) a geotechnical opinion and the information on how the building structure is attached to the ground;
  j) the planned material-related and technical solutions which influence the surroundings, including the environment;
  k) ecology characteristics;

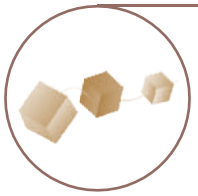
- a technical design including:
  l) the planned structural solutions of the facility along with the results of static strength calculations;
  m) the planned necessary technical and material-related solutions;
  n) as needed – the geology engineering report or the geotechnical conditions for laying the building foundations;
  o) other design records;

- opinions, approvals, permits and other documents referred to in Article 33(2)(1) of the Construction Law.

Furthermore, the following must be attached to the construction design:

- a statement that the design author has the qualifications to hold an independent technical function in the construction industry;
- a statement of the engineer that the design was prepared in accordance with the applicable laws and the construction principles.

The process



Once the construction permit application is filed, the authorities make the preliminary determinations and give approvals or seek the opinions of other authorities.

Parties to the construction permit acquisition process: the investor, owners of the real properties (perpetual users of the real properties) or administrators of the real properties within the project impact range.

Duration of the process

A construction permit should be issued within 65 days following the submission of the application (Article 35(6) of the Construction Law). If this deadline is not observed, the higher-level authority fines the architectural and construction authority with PLN 500 for every day of delay.

Authority competent for the permit

As a general rule, the authority competent to issue a construction permit is the county administrator (starosta). However, there are cases specified in Article 82 of the Construction Law for which the competent authority of first instance is the voivode.

Permit validity period

The works under a construction permit must commence not later than 3 years following the date when the construction permit decision became final and binding. Any suspension of construction works must not be longer than 3 years. This means that if the construction works do not commence within 3 years after a final construction permit is obtained or if works are suspended for more than 3 years, the construction permit expires.

What is the fee for the permit?

The stamp duty for a construction permit is PLN 155 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the local voivode through the county administrator who issued the challenged decision. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on e-Budownictwo.

5.9. NOTIFICATION ON THE COMPLETION OF CONSTRUCTION WORKS AND OPERATIONAL NOTIFICATION

The operation of a biomass plant may commence based on:

- notification on completion of construction works and absence of an objection on the part of the construction authority, or
- an operational notification for the biomass plant.

The choice of the right process depends on the technical parameters of the biomass plant.

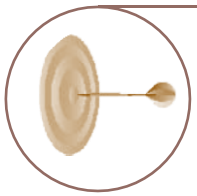
If the biomass plant is classified as a building, i.e. it is permanently attached to the ground, it is separated from the space with dividing structures and it has foundations and a roof – an operational notification will be required.

If the plant is classified from a structural point of view as a non-building structure (Polish: budowla) rather than a building all that the investor needs to do is notify the authority that the construction works are completed and the investor may start to operate the plant if the authority does not object.

5.9.1. Notification on the completion of construction works

The operation of a biomass plant can commence once the Country Construction Supervision Inspectorate (Powiatowy inspektorat Nadzoru Budowlanego) is notified that the construction works are completed provided that the Inspectorate does not object by way of a decision within 14 days of receiving the notification.[114]

Purpose of the notification



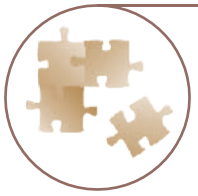
The purpose of the notification is to commence the operation of the biomass plant after the construction works are completed for projects were no construction

When is the notification required?

The notification on the completion of construction works replaces an operational notification. The notification should precede the commencement of biomass plant operation.

[114] *Article 54 of the Construction Law*

Elements of the notification



The notification on the completion of construction works should contain the following elements:

- details of the investor, including a correspondence address;
- identification of the construction supervision authority;
- identification of the construction permit decision underlying the implementation of the project;
- identification of the real property where the facility is located;

Furthermore, the investor must attach the following with the notification:

- original construction daily log or, if the log is digital, the number of the log;
- the technical design;
- a statement of the construction manager that the building structure complies with the construction design or the conditions of the construction permit and with the applicable laws and that the construction site has been brought to a proper condition and cleaned up; where appropriate the same applies to roads, streets, adjacent properties, buildings or premises;
- a statement that appropriate land management of adjacent areas has been secured wherever the operation of the facility depends on appropriate management of such areas;
- reports concluding the inspections and checks of: the connections, systems and technical devices guaranteeing the use of the structure as intended; the reports must be prepared by individuals having construction qualifications in the required specialities, including those referred to in Article 14 of the Act on Technical Inspection of 21 December 2000 (Journal of Laws 2024 item 1194 as amended);
- decision permitting the operation of a technical device (where required);
- surveyor documentation with results of the as-built site survey;
- confirmation, in accordance with separate regulations, of the acceptance of the completed connections;
- certificate of the commune administrator or mayor confirming compliance with the requirement to implement a supplementary project (where required);
- copies of the drawings forming a part of the approved design, including the changes made and, where appropriate, a supplementary description of the changes where the changes do not significantly deviate from the approved design;
- authorisation to represent the investor (if the application is submitted by an authorised representative) along with a receipt for the stamp duty for the authorisation.

The process

The authority reviews the application for formal matters and checks if the facility was built in accordance with the construction permit.

The authority may object to the notification on completion of construction works especially if the authority establishes that the building structure covered by the investor's notification was built in violation of the conditions defined in the construction permit and, as a consequence, an operational notification is required.

Before the 14-day time limit for the objection expires, the construction supervision authority may, ex officio, issue a statement that there are no grounds for an objection. With the statement, the authority waives the right to object and the investor may start to operate the facility covered by the notification.

Duration of the process

The operation of a biomass plant can start 14 days after the date of the notification if the authority fails to object within this time limit.[115]

Authority competent for the notification

The authority issuing the decision is the County Construction Supervision Inspectorate (Polish: Powiatowy Inspektorat Nadzoru Budowlanego).

What is the fee for the notification?

The notification is exempt from a stamp duty.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the local Provincial Construction Supervision Inspectorate (Wojewódzki Inspektorat Nadzoru Budowlanego). Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The notification can be submitted online to the public administration body having jurisdiction over the matter on the e-Budownictwo website.

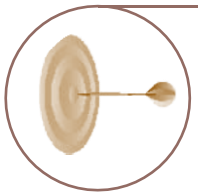
[115] *Article 54 of the Construction Law*

5.9.2. Operational notification

An operational notification will be required for biomass plants which are recognised as buildings under the construction law. In such a case, they are classified as category XVIII facilities from the Annex to the Construction Law which, as per Article 55 of the Construction Law, must receive an operational notification before they can be used.[116]

Another case where an operational notification is required is a situation where the investor intends to commence the operation of a part of a biomass plant before completing all the construction works. Another exception requiring an operational notification is to authorise illegal construction.

Purpose of the notification



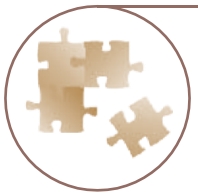
The basic purpose of the decision is to verify if the erected biomass plant has been made in accordance with the construction permit and if it is fit for use. This entails a mandatory inspection of the project after the end of the construction process.

When is the notification required?

An operational notification is required after the construction works covered by the construction permit end but before the operation of the plant starts.

An operational notification is still required even if the investor intends to commence the operation of only a part of the project covered by the construction permit.

Elements of an application for the notification



An application shall include:

- details of the investor, including a correspondence address;
- identification of the construction supervision authority;
- identification of the construction permit decision underlying the implementation of the project;
- identification of the real property where the facility is located.

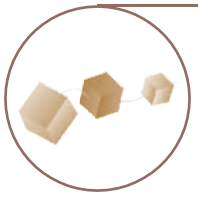
[116] *Article 55 of the Construction Law*

Furthermore, the investor should attach the following:

- original construction daily log or, if the log is digital, the number of the log referred to in Article 47h(2) of the Construction Law;
- the technical design;
- a statement of the construction manager that the building structure complies with the construction design or the conditions of the construction permit and with the applicable laws and that the construction site has been brought to a proper condition and cleaned up;
- a statement that appropriate land management of adjacent areas has been secured wherever the operation of the facility depends on appropriate management of such areas;
- reports concluding the inspections and checks of: the connections, systems and technical devices guaranteeing the use of the structure as intended; the reports must be prepared by individuals having construction qualifications in the required specialities;
- the decision authorising the operation of a technical device, referred to in Article 14 of the Act on Technical Inspection of 21 December 2000 (Journal of Laws 2024 item 1194 as amended);
- surveyor documentation with results of the as-built site survey;
- confirmation, in accordance with separate regulations, of the acceptance of the completed connections;
- copies of the drawings forming a part of the approved design, including the changes made and, where appropriate, a supplementary description of the changes where the changes do not significantly deviate from the approved design;
- receipt for a stamp duty for the permit;
- for applications filed by authorised representatives – the authorisation and the proof of payment of the stamp duty for the authorisation.

An occupancy permit is not just an official permission for the investor to use a building but it also defines the conditions of using the building at its operation stage.

The process



An investor who should obtain an operational notification for a facility is required to report the completion of the biomass plant construction process and the intention to commence the operation of the biomass plant to the construction authority and, as required by specific legislation, to the local:

- State Sanitary Inspectorate (Państwowa Inspekcja Sanitarna) and
- State Fire Service (Państwowa Straż Pożarna).

The authorities determine if the building structure has been erected in accordance with the construction design. They should issue opinions within 14 days of receiving the notification and if they fail to do so, they are deemed to have no objections.

Once the application is filed, the construction supervision authority is required to inspect the construction site compliance with the determinants and conditions specified in the prior construction permit and conformity with the construction design. The inspection precedes the grant of an operational notification.

The construction supervision authority conducts a mandatory inspection before the expiry of 21 days following the delivery of the notice. The authority notifies the investor about the mandatory inspection within 7 days following the delivery of the notice (i.e. application submission). Importantly the, investor is required to participate in the mandatory inspection at the set time.

The inspection includes checking:

- the compliance of the building structure with the plot or land development design;
- the compliance of the building structure with the architectural and building design and the technical design in terms of:
  a) the characteristic technical parameters as regards the footprint area, height, length, width,
  b) the workmanship of the visible load-bearing elements of the building structural system;
  c) the workmanship of construction works;
  d) the workmanship of the systems ensuring the use of the building structure as intended;
- compliance with the conditions specified in Article 55(1b) of the Construction Law if the operation of the building structure is to commence before the completion of all construction works;
- the construction products particularly important for structural safety and fire safety;
- if the construction permit provides for an obligation to demolish any existing building structures not expected to be used any more or any temporary building structures – compliance with this obligation, provided that the time limit for the demolition specified in the permit has expired;
- if the construction site has been cleaned up.

After the mandatory inspection, the construction authority prepares a report in three copies. One copy is delivered to the investor promptly after the inspection, the second one is delivered to a higher-level authority and the third one is retained by the construction supervision authority.

If the inspection result is positive, the authority issues an occupancy permit for the biomass plant. In the biomass plant operational notification the construction supervision authority may determine the conditions of plant operation or may make the plant operation contingent upon the completion of specific construction works within a specified time limit.

05. BIOMASS AND BIOLIQUIDS

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the permit may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the notification

An operational notification for a biomass plant is issued by the County Construction Supervision Inspector (Powiatowy Inspektor Nadzoru Budowlanego)

Notification validity period

The notification is open-ended.

What is the fee for the notification?

The stamp duty for an operational notification is PLN 38.75 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the local Provincial Construction Supervision Inspectorate (Wojewódzki Inspektorat Nadzoru Budowlanego). Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The notification can be submitted online to the public administration body having jurisdiction over the matter on the e-Budownictwo website.

5.10. LICENCE AND OTHER BUSINESS PERMITS

The type of permit for a biomass plant activity depends mainly on the size of the plant and on the type of energy it produces.

Please note that biomass is also often used as an addition in non-renewable fuel combustion in plants which cannot be classified as RES systems. Consequently, the tables below include separate types of business permits for the RES systems and for conventional energy systems where biomass is co-combusted with other fossil fuels.

The business permits for biomass plants classified as the RES systems are presented in the table below.

Type of Installation	Installation Capacity Threshold	Relevant permit
Biomass installation producing electricity or electricity together with heat in the cogeneration process	Micro-installation (pursuant to Article 2 point 19 of the RES Act)	No permit required – notification to the distribution system operator is mandatory
	Small installation (pursuant to Article 2 point 18 of the RES Act)	Entry in the register of electricity producers in small RES installations
	Large-scale RES installation (biomass installation with a total installed electrical capacity exceeding 1 MW)	RES electricity generation licence

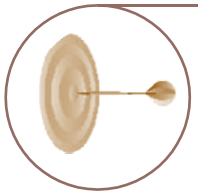
Business permits for non-RES biomass systems where the biomass is co-combusted with fossil fuels are presented in the table below.

Type of Installation	System description	Relevant permit
Biomass systems that generate heat only	Biomass installation producing heat with a total capacity above 5 MW (installations with lower capacity producing heat only are exempt from the obligation to obtain a license)	Heat generation licence
Biomass installation producing electricity and heat in cogeneration	Biomass installation generating electricity in the cogeneration process, co-firing biomass with other substances not classified as renewable sources, or hybrid installations – regardless of installed capacity	License for electricity generation in cogeneration units
Biomass installation producing electricity	Biomass installation generating electricity, co-firing biomass with other substances not classified as renewable sources, or hybrid installations – up to 1 MW	License for electricity generation

5.10.1. RES electricity generation licence

A licence for generation of electricity from renewable energy sources is usually the last step preceding the commencement of electricity sale by a biomass plant.[118]

Purpose of the licence



The purpose of the licence is for the government to authorise an activity in a branch of the economy that is particularly important from the perspective of public interest, i.e. the energy sector. The licence decision defines the conditions and the duration of this activity.

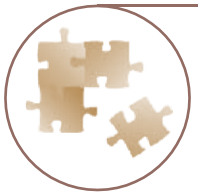
[118] *Article 32 of the Energy Law*

When is the licence required?

A licence decision is obtained once the operation of a biomass plant starts and after the plant is connected to the electricity grid.

This makes it the last decision to be obtained in the investment and construction process for a biomass plant.

Elements of an application for the licence



The list of the documents required with an application for a biomass electricity generation licence is provided by the President of the URE, who initiates the procedure of reviewing the licence issue criteria defined in the Energy Law.

The list of the documents is available on:

https://www.ure.gov.pl/pl/biznes/jak-uzyskac-koncesje/energia-elektryczna/784,odnawialne-zrodla-energii.html

In accordance with the current list, a basic licence application should include:

- details of the person filing the application and their address;
- a request for a licence to generate energy from renewable sources;
- an extract from the KRS register of companies obtained not earlier than 3 months before the submission of the application to the authority in charge of issuing the licence;
- a list of all the parties with a significant influence or control or co-control, within the meaning of Article 3(1)(34), Article 3(1)(35) and Article 3(1)(36)(a), 3(1)(36)(b), 3(1)(36)(e) and 3(1)(36)(f) of the Polish Accounting Act, over the applicant, along with the information which of the above relationships reflects the relationship between the entrepreneur and a given party and the information on what grounds the above parties are present on that list, plus a valid certificate of no criminal record from the National Criminal Register for such parties;
- a statement of the entrepreneur that not bankruptcy petition has been filed against it and that they are not in liquidation;

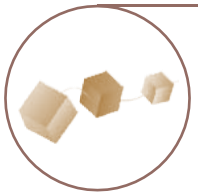
- a statement of the entrepreneur that it has not been deleted from the register of regulated activities in the past 3 years as a result of a decision prohibiting the entrepreneur from engaging in an activity covered by the entry in the register because it:
  a) filed a false statement on the legal compliance of such activity;
  b) failed to remedy its breach of the legal requirements for such activity by the deadline set by the authority, or
  c) committed a gross breach of the legal requirements for such activity;
- a document confirming that the entrepreneur is registered as a VAT payer;
- a certificate of excise duty identification number, where applicable, issued by the head of the tax office;
- a statement of the entrepreneur confirming there are no reasons to suspend the procedure based on Article 33(3a) of the Energy Law, whereunder the President of the URE suspends the procedure wherever the entrepreneur or the above-mentioned individuals are indicted for a crime or a tax crime related to their business activity;
- a statement of the entrepreneur that all the individuals hired to operate the systems, facilities and devices used in the performance of the licensed activity have the qualification certificates required under the Energy Law and the qualification certificates issued based on other regulations which authorise them to operate such systems, facilities and devices;
- information provided by the entrepreneur regarding the networks, equipment, and installations specified in the Regulation of the Minister of Climate and Environment of 1 July 2022 on the detailed rules for confirming the possession of qualifications by persons engaged in the operation of equipment, installations, and networks that will be used in the activity covered by the application, as well as the number of individuals employed in their operation, including the qualification certificate numbers;
- documents confirming the entrepreneur's legal title to the facilities and systems required for the licensed activity, for example a notary deed, a copy of the title register, an extract from the land register, the lease agreements, the loan for use agreements, purchase invoices for the equipment used to generate electricity;
- description of the parameters and the technical condition of the electricity generation equipment;
- documents confirming that the devices comprising the installation meet the requirement referred to in Article 32(1a) of the Energy Law;
- location-related decisions (a Decision on Land Development Conditions or an extract and excerpt from the Local Spatial Development Plan);

- the construction permit;
- documents containing the information that the construction process has ended and the operation of the facility commences (notification to the competent construction authority on the completion of the construction process submitted at least 14 days before the intended operation commencement date). If the competent construction supervision authority does not object to the project a statement with relevant information about this should be attached to case files after the expiry of 14 days after the delivery of the above notification;
- decisions of the Polish Office of Technical Inspection (Urząd Dozoru Technicznego, UDT) approving the electricity generating devices for use;
- documents confirming the installed capacity of the power-generating facility;
- the documents issued by the electrical system operator to whose grid the RES facility is connected:
  a) the decision defining the technical conditions for connecting the system to the electricity grid (grid connection conditions) or the connection agreement;
  b) the report confirming the technical inspection of the power devices and their approval and acceptance for use;
  c) the report confirming the operation check of the measurement and settlement systems (known as the detailed technical service (OTS) order report);
- a power evacuation diagram highlighting the places where the quantity of the generated electricity is measured and outlining the separation of ownership of systems, devices and facilities between the entrepreneur and the electricity system operator highlighting all the generation equipment;
- summary of the annual planned revenue and costs of the activity covered by the licence application for at least three full calendar years;
- financial statements for the last three years;
- other documents confirming that the entrepreneur has, or is able to secure, sufficient financing for proper performance of the licensed activity (e.g. bank guarantees, insurance guarantees, guarantee agreements, credit facility agreements, loan agreements etc.);
- valid certificates from the competent customs and tax authority and customs authority, obtained not earlier than 3 months before their presentation to the licensing authority, confirming that the entrepreneur has no overdue payments towards the state budget;

- a valid certificate from the competent branch of the Polish Social Insurance Institution (ZUS), obtained not earlier than 3 months before its presentation to the licensing authority, confirming either that the entrepreneur has no overdue social security contribution payments or that it is not registered as a contribution payer;
- a valid certificate from the bank that keeps the basic account of the entrepreneur which specifies the value of the transactions, the payment capacity, the creditworthiness of the entrepreneur and contains information about the credit facilities granted to the entrepreneur and the information on whether the account is free from any enforcement orders, obtained not earlier than 3 months before its presentation to the licensing authority.

The above list of documents is indicative only and it should be each time verified with the URE.

The process



Once the application is filed, the licensing authority verifies the documentation to determine if it meets the criteria specified in Article 33 of the Energy Law and it requests an opinion from the local province executive board.

Licence grant may be contingent on the posting of a bond to satisfy any third-party claims which may arise as a result of improper performance of the licensed activity, including environmental damage.

Importantly, after obtaining the permit, the generator must pay an annual licence fee, which is calculated based on the revenue of the RES system. The RES systems up to 5 MW are exempt from the fee.

Obtaining the licence also entails a periodic reporting requirement, usually to the President of the URE.

Duration of the process

Electricity generation licensing for a biomass system, is a process that should be completed within a month. However, this is just a theory based on the administrative procedure and it does not account for the specificities of the licensing process, which usually takes a few months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

05. BIOMASS AND BIOLIQUIDS

Authority competent for the licence

The authority responsible for issuing the licence is the President of the URE.

The licence application must be filed to the local URE branch having jurisdiction over the applicant's registered office.

Licence validity period

The licence is granted for an indefinite term, not shorter than 10 years and not longer than 50 years, unless the entrepreneur requests a shorter term.

What is the fee for the licence?

The stamp duty for an energy generation licence is PLN 616 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including by public notice, to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the President of the URE. The cost of the appeal is PLN 1000.

Can the application be filed online?

You can file the application online through the ePUAP service.

5.10.2. Register of small res electricity generators

Entry in the register of small RES electricity generators replaces the licence decision for biomass plants of an installed capacity from 50 kW to 1 MW.[120]

Purpose of the entry

The purpose of the entry in the register of small RES electricity generators is to offer a simplified and expedited approval process for a business in the energy sector.

When is the entry required?

The entry in the register should be made after the biomass plant is built, accepted and connected to the grid.

Elements of an application for the entry

The template form for the investor is available on the URE website at:

https://bip.ure.gov.pl/bip/rejestry-i-bazy/wytworcy-energii-w-male/2138,Rejestr-wytworcow-energii-w-malej-instalacji.html

The application must be accompanied by:

- a statement of the generator that it is in no arrears with any taxes, levies and social security contributions;
- a statement of the generator that the data included in the application are correct and that the conditions referred to in Article 9(1) of the RES Act are met, with confirmed awareness for the criminal liability for submitting false statements;
- proof of payment of the stamp duty for the application;
- if the application is filed through an authorised representative, the authorisation must be attached along with a receipt for a stamp duty for the authorisation.

The process

The authority checks internally if the application is error-free. If the authority does not find any errors, the generator is entered in the register and the authority issues a certificate of entry in the register.

[120] *Article 7 of the RES Act*

05. BIOMASS AND BIOLIQUIDS

Duration of the process

The President of the URE is obligated to enter an entrepreneur in the register of small RES electricity generators within 21 days after receiving the application.[121]

If the President of the URE violates the 21-day time limit for entry in the register, the investor may commence the activity 28 days after the authority receives the application.

Importantly, obtaining an entry in the register also entails a periodic reporting requirement, usually to the President of the URE.

Authority competent for making the entry

The authority responsible for making the entry in the register is the President of the URE.

The application must be filed to the local URE branch having jurisdiction over the plant.

Entry validity period

The entry in the register has no expiry date. Importantly, obtaining an entry in the register also entails a periodic reporting requirement, usually to the President of the URE.

What is the fee for the entry?

The stamp duty for entry in the register is PLN 616 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days from the date of delivery of the decision, including by public notice, to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the authority that issued the decision. The cost of the appeal is PLN 1000.

Can the application be filed online?

You can file the application online through the ePUAP service.

[121] *Article 11a of the RES Act*

5.11. BIOLIQUIDS

As has been mentioned in the introduction to this chapter, the biomass potential extends beyond the production of thermal energy. Bioliquid production is an interesting biomass application variant.

Bioliquids are liquid fuels produced from biomass for energy purposes other than transport. According to the definition in the Polish Renewable Energy Sources Act, bioliquids are used to produce electricity or heat in facilities meeting the requirements of emission standards, provided that such standards have been defined based on environmental protection regulations. So bioliquids cannot be treated as biofuels as the primary characteristic of the latter is their application in transport.

The use of bioliquids usually comes down to combined heat and power generation. Their main advantages over other plants that use biomass are:

- a greater flexibility of the plant, which makes it possible to quickly respond to the demand for capacity;
- a higher energy density;
- a lower emissivity of bioliquid combustion.

The investment process for opening a bioliquid processing plant is basically consistent with the administrative processes presented in this chapter for the collective category of biomass.

The main difference lies in business licensing as a bioliquid business does not require a licence.

Pursuant to Article 34 of the Polish Renewable Energy Sources Act, a bioliquid business constitutes regulated activity and requires entry into the register of producers conducting business activity in the field of biofuels, maintained by the Director General of the (KOWR).

5.11.1. Entry in the register of bioliquid producers

The purpose of the entry

The purpose of entry in the register of the RES bioliquid producers is to authorise a business activity involving bioliquid production. The entry in the register is a simplified procedure when compared to the licensing process.

When is the entry required?

Entry in the register should be made once the bioliquid production system is built, accepted and connected to the grid.

Elements of an application for the entry

The template form for investors is available on the KOWR website at:

https://www.gov.pl/web/kowr/formularze6

The request for the entry in the register of bioliquid producers contains:

- the identification, registered office, address and taxpayer identification number of the producer;
- the type and scope of the business activity involving bioliquid production and the place of performing this activity;
- the annual capacity of the bioliquid production plant or the total installed electrical capacity of the installation..

Furthermore, the following must be attached to the application:

- a statement of the bioliquid producer that it is in no arrears with any taxes, levies and social security contributions;
- a statement of the bioliquid producer that the data included in the application are correct and that the criteria defined in the RES Act are met;
- proof of payment of the stamp duty;
- if the application is submitted by an authorized representative, a power of attorney must be provided along with proof of payment of the stamp duty.

The process

The authority checks internally if the application is error-free. If the authority does not find any errors, the generator is entered in the register and the authority issues a certificate of entry in the register.

05. BIOMASS AND BIOLIQUIDS

Duration of the process

The applicant is entered in the register within 7 days after the KOWR Headquarters receives a correct application along with all the statements.[122]

If the KOWR Director General fails to make the entry on time and more than 14 days have passed since the day the Director General received the application, the generator may commence the activity.

Authority competent for making the entry

The authority responsible for making the entry in the register of bioliquid producers is the KOWR Director General.

Entry validity period

The entry in the register has no expiry date.

What is the fee for the entry?

The stamp duty for entry in the register is PLN 616 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including by public notice, to appeal against the decision to Minister of Agriculture and Rural Development. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

You can file the application online through the ePUAP service.

[122] *Article 27a of the RES Act*

06. HYDROPOWER

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06. HYDROPOWER

6.1. TECHNOLOGY DESCRIPTION

A hydropower plant is a power plant which transforms the energy of water into electricity using a hydropower turbine coupled with an electricity generator. This means a hydropower plant generates electricity by changing the potential energy of the running water into the mechanical energy in the turbine.

Depending on the water discharge method, we can identify the following hydropower plants:

- ***Run-of-the-river plants***
  Run-of-the-river plants use the energy of running waters to generate electricity.
  Unlike reservoir plants or pumped storage plants, run-of-the-river plants are unable to store water so they use only the continuous run of a watercourse, i.e. the momentary natural inflow.
- ***Reservoir plants***
  Reservoir plants use the water accumulated by a dam or a hydrotechnical structure. The water stored in the reservoir is used when needed to power the turbines and produce energy in the power plant.
- ***Pumped storage plants***
  Pumped storage plants, just like reservoir plants, use the water accumulated by a dam or a hydrotechnical structure. The energy generation system is situated between the upper and the lower reservoir. The functioning is based on appropriate pumping and discharge of water, as needed. The water discharged from the reservoir activates the turbines, which produce electricity.
- ***Tidal plants***
  Tidal plants power their turbines and produce electricity by utilising the natural phenomenon of tides.

Since Poland does not have the natural conditions to operate tidal plants, this study does not address the investment and construction process for such RES systems.

Whenever this chapter mentions hydropower plants, it refers to run-of-the-river plants and reservoir plants. Pumped storage plants are not addressed in this study due to the unique investment regime and the specificities of project implementation, which entails huge outlays; as a result such plants are usually built by government-owned companies or under contracts with government agencies.

6.2. CHOOSING PROJECT LOCATION

Before the investment and construction process for a hydropower plant is initiated, the potential location should be analysed. Finding an appropriate location for the power plant is the preliminary, necessary and essential prerequisite for successful completion of the subsequent administrative procedures. The most important factors to be considered at this stage include:

- the natural conditions of the potential investment site;
- the level of available connection capacity at the planned grid connection point;
- the possibility of securing the legal title to use the land for a hydropower plant, including land covered by waters.

Given the specificities of such RES systems, hydropower plants are located on land covered by waters, mainly land under natural watercourses.

Natural conditions

Project commencement must be preceded by an assessment of the energy potential of the watercourse where the hydroelectric power plant is to be located, including the flow rate, the height of water impoundment, and other technical conditions that determine the feasibility of utilizing the location for such an investment.

Electricity grid connection capacity and access

When planning the construction of a renewable energy installation connected to the power grid at a selected location, the level of available connection capacity must be taken into account, as it is a fundamental determinant of the possibility of connecting the installation to the grid. A lack of available connection capacity at the indicated location may result in the issuance of a refusal to connect by the relevant power system operator managing the grid, or in connection conditions indicating the need for additional investments in grid infrastructure.

This is why the value of the available connection capacity should be analysed for energy sources before the project is launched. The obligation to publish relevant information, which must be updated at least on a quarterly basis, is stipulated in Article 7(8l) of the Energy Law. Electricity companies that transmit or distribute electricity publish: the values of the total available connection capacity for sources; the planned changes to these values over the next 5 years following their publication; and the list of parties applying for source connection to an electricity grid of a rated voltage above 1 kV.[124]

The above information is available on websites of distribution system operators.

[124] *Due to the lack of regular updates, the information may be outdated at the time of verification, and the indicated available connection capacity does not guarantee the granting of the expected connection conditions.*

Legal title to the real property

Inland running waters are state-owned and as such are public waters. They are not subject to civil law trading, save for statutory exceptions. Hence, the process for obtaining a legal title to the land under water for the purpose of hydropower plant erection and operation is governed by the Water Law.

The State-Owned Property Management Procedure for state-property administered by the Regional Water Management Boards (RZGW) is defined in detail by the ordinance of the President of the State Water Holding Polish Waters.

State-owned water-covered land required for hydropower sector projects is provided for use in return for an annual fee. The land is handed over for use under a contract for use. The law does not provide for any transfer of the rights to manage water-covered land other than usage. Access to such land is governed by Article 261 of the Water Law Act. A prerequisite for granting land use rights is that the prospective user holds a water law permit or has submitted a water law notification, if required.

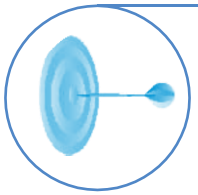
Before the contract is signed, the concerned party files an application for a contract for the use of land under running waters.
Except for specific cases, the Water Law Act stipulates that the disposal of real estate not classified as land covered by inland surface flowing waters must be conducted through a tendering procedure. The rules for conducting such tenders are set out in the Water Law Act and the regulation on the procedure for disposing of real estate owned by the State Treasury.
However, in the case of small hydropower investments, a non-tender procedure is typically applied, which, in accordance with the Water Law Act, may be used in situations such as:

- when the disposal of property is made to an entity managing existing infrastructure built on the property in accordance with the Building Law;
- when the disposal of property is related to the construction or operation of a water facility, provided that a water law permit has been issued or a promise of such a permit has been granted;
- when a subsequent agreement is concluded concerning the same property.

In the context of hydroelectric power investments, the subject of the agreement under the procedure concerning real estate not classified as land covered by inland surface flowing waters typically includes:

- water facilities or parts thereof under the management of Polish Waters;
- land under waters located beyond the shoreline of a natural watercourse;
- land within a cadastral parcel that also includes inland flowing waters owned by the State Treasury.

Purpose of the decision



The purpose of the decision is to secure a legal title to the real property where the hydropower plant is to be erected.

When is the decision required?

The decision should be obtained before the hydropower project implementation works start.

It can only be obtained after the approval under the water legislation is secured, which means that in the case of hydropower plants the contract for the use of land is not the first step of the investment process.

Elements of an application for the decision

The application template is available in the annex to the State-Owned Property Management Procedure. The link to download the annex is posted on the website:

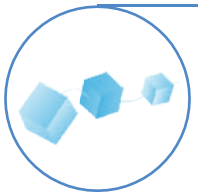
State-Owned Property Management Rules (Polish: Zasady gospodarowania mieniem skarbu państwa, wody.gov.pl).

In accordance with the State-Owned Property Management Procedure, the documents required to review the application and sign the contract (originals or certified copies) are:

- the cadastral map or the base map with outlined area intended for use and the current (issued not earlier than 6 months before the submission of the application) original of the extract from the register of land for the state-owned plot to be provided for use;
- the final and binding approval under the water legislation, a legalisation decision or a certificate confirming that a notification has been effectively submitted, if so required by the type of the activity pursued on the land;
- a current extract from the register of businesses – the KRS issued not earlier than 3 months before the submission of the application);
- an authorisation or another document which confirms the authority to act on behalf of the applicant.

The surface area of the land requested to be provided for use should also include the protective zone required for the functioning of the facilities related to the project as defined in separate regulations (including industry standards). The zone imposes or may impose restrictions on further use of this land by other entities and by the owner of the water.
Unless established in industry standards, the protective zone for infrastructure with foundations in or under the bottom of a watercourse or for transmission infrastructure such as power lines running above land covered by running water (above-ground infrastructure) must be situated at least 0.5 m from the outer edges of that infrastructure – for its protection in the case of maintenance works on watercourses or erection of other water structures and technical infrastructure.

The process



The competent authority reviews the application for content-related and formal requirements. If the application is complete, the authority may sign the contract for the use of land under running waters.

Additionally, every contract application must be approved by the Director of the Executive Board of the State Water Holding Polish Waters Catchment Area (Dyrektor Zarządu Zlewni Państwowego Gospodarstwa Wodnego Wody Polskie). The approval of the Director of the Executive Board of the State Water Holding Polish Waters Catchment Area is requested by the competent unit within the structure of the State Water Holding Polish Waters.

The contract is made in writing. If the annual fee for the use is above PLN 5000, the contract is made before a notary public.

Duration of the process

The director of the Regional Water Management Board (RZGW) has 120 days to review the application.[125] The time limit runs from the submission of a complete application but it depends on when the required approvals are obtained.

Authority competent for the decision

The application is submitted to the Director of the Regional Water Management Board (RZGW).

Decision validity period

Land with surface running waters can be provided for use for a fixed term up to 10 years or, in the case of contracts signed before a notary public, for a fixed term up to 15 years. If the conclusion of the contract is dictated by public interest, the contract can be signed for up to 20 years but not beyond the expiry date of the permit under the water legislation.

Where the use of the real property requires a water use permit under the water legislation, the term of the contract cannot extend beyond the expiry date of that permit.

[125] *§ 4.1. of the State-Owned Property Management Procedure for state-property administered by the Regional Water Management Boards (RZGWs) of the State Water Holding Polish Waters attached as the Annex to Ordinance no. 34/2022 of the President of the State Water Holding Polish Waters of 7 June 2022.*

What is the fee for the decision?

The annual fee for the provision of land covered by waters for use depends on the type of the pursued or planned project and on the related annual fee rate – arising from the Regulation of the Polish Council of Ministers of 28 December 2017 on the unit rate of the annual fee for the provision of land covered by waters for use – and on the surface area of land required for the project. The fee is calculated as the land area multiplied by the rate defined in the Regulation. The annual fee amounts and exemptions are non-negotiable. The annual fee amount is established proportionately to the duration of the activity. The surface area intended for use is given in full metres rounded up for every commenced metre.

The unit rate of the annual fee for the use of 1 m^2 of land necessary for:

- ***hydropower projects and intended for the construction of:***
  - ***a) hydropower plant buildings and the damming structure section with the water intake for the plant is PLN 8.90,***
  - ***b) water discharge and damming structures, fish ladders and other facilities and building structures is PLN 2.00;***

The real property use fee is indexed on an annual basis by the average annual consumer price index announced by the President of the Polish Central Statistical Office (GUS) in the Monitor Polski official gazette for the previous year, except for the indexation subject to the Polish Agricultural Tax Act of 15 November 1984 or the Polish Local Taxes and Levies Act of 12 January 1991. No indexation applies if the current index is below 100.

The annual rent for the use of damming structures or parts thereof for hydropower plants is at least 7% of the whole annual revenue from the produced electricity (determined based on a declaration made according to the template attached to the contract) but not less than the rent amount calculated based on the price rate for the surface area of the structure that is the subject matter of the lease contract, which is:[126]

- ***PLN 15 per 1 m^2 for area occupied by building structures of a hydropower plant;***
- ***PLN 4 per 1 m^2 for the area of a damming structure owned by the lessor, along with the remaining facilities and building structures related to the damming structure which are used by the lessee for power generation purposes.***

The annual rent for the use of building structures or parts thereof for hydropower plants is at least 7% of the whole annual revenue from the produced electricity (determined based on a declaration) but not less than the rent amount calculated based on the price rate for the surface area of the structure that is the subject matter of the lease contract, which is:[127]

- ***PLN 15 per 1 m^2 for area occupied by building structures of a hydropower plant;***
- ***PLN 4 per 1 m^2 for the area of a damming structure owned by the lessor, along with the remaining facilities and building structures related to the damming structure which are used by the lessee for power generation purposes.***

[126,127] https://www.gov.pl/web/wody-polskie/zasady-gospodarowania-mieniem-skarbu-panstwa

How to appeal?

Not applicable.

Can the application be filed online?

The application cannot be filed online.

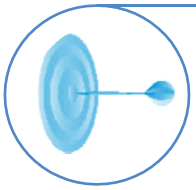
Securing the connection route

Except for signing the contract for the use of land under running waters, the investor must secure the title to the electricity link connecting the hydropower plant to the grid connection point. For more details on this matter, go to section 6.6.2.

6.3. DECISION ON ENVIRONMENTAL CONDITIONS

The first step in the investment and construction process for a hydropower plant is the decision on environmental conditions of the project (environmental decision).[128]

Purpose of the decision



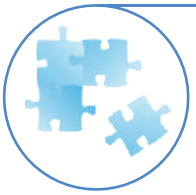
The basic Purpose of an environmental decision is to assess the impact of the planned project on the environment and to determine the conditions to be met by the investor in order to minimise the negative consequences for nature and human health.

In the environmental decision, the authority either approves or rejects the project and defines the environmental protection requirements and the conditions to be met by the investor at project implementation and operation stages. So the purpose of the decision is to balance the needs for economic growth and the protection of the environment and human health.

When is the decision required?

Hydropower plants are projects with a potentially significant environmental impact in accordance with the EIR, which means that the environmental decision under the EIA Act will be required in every case.

Elements of an application for the decision



The environmental decision issue process is initiated at the request of the investor. The application should:

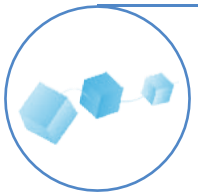
- specify the person filing the application and their address;
- include a request for an environmental decision for a specific project;

[128] *Article 72(1) of the EIA Act*

The investor should attach the following to the application:

- a project data sheet (KIP) for a project that involves building a hydropower plant, and in cases where an environmental impact assessment is requested pursuant to Article 59(1)(2) of the EIA Act – an environmental impact report for the project;
- an environmental impact report for biogas plants classified as projects that may always have a significant impact on the environment (falling under § 2(1)(35, 36) of the Regulation on Projects Likely to Significantly Affect the Environment); however, instead of the report, the investor may submit a project data sheet (KIP) together with an application for determination of the scope of the report (Article 69 of the EIA Act);
- a copy of a cadastral map certified by a competent authority, either as a hard copy or digital, which covers the planned project site and the area on which the project in the variant proposed by the applicant will have an impact. This impact area is understood as:
  a) the planned project implementation site and the area up to 100 m from the boundaries of that site;
  b) the plots on which the environmental quality standards would be breached as a result of the implementation, operation or use of the project, or
  c) the plots within the range of a significant project impact which may result in restrictions on the currently intended development of the real property;
- a map, in paper and electronic form, at a sufficient scale to guarantee the legibility of the presented data, outlining the site where the project is expected to be implemented and outlining the expected project impact area within up to 100 m from the boundaries of the site;
- an extract and excerpt from the Local Spatial Development Plan or an annotation that there is no Local Spatial Development Plan (if the competent authority for issuing the environmental decision is the Director for Environmental Protection – RDOŚ);
- an extract from the register of land or any other paper or digital document issued by the authority keeping the register of land and buildings which makes it possible to establish the parties to the procedure and which specifies at least the reference number of the plot and, if disclosed, the title register number for the plot, the first and last name or the business name and the address of the registered party – for the expected project site and for the project impact area (this document is not required if the number of parties to the environmental decision proceedings exceeds 10);
- proof of stamp duty payment;
- for applications filed by authorised representatives – the authorisation and the proof of payment of the stamp duty for the authorisation.

The process



Once the application is filed, the authority reviews it to establish if the hydropower plant project can be implemented in accordance with the regulations of environmental protection law and it formulates the necessary opinions/requirements in this respect.

During the proceedings, the authority may determine that an environmental impact assessment is required for the project. In such a case, the authority must specify the scope of the report to be submitted by the applicant. If the investment is to be located within a landscape park or an area of protected landscape, the applicant may independently request the determination of the scope of the report.

The regulations require that the report include information enabling the assessment of the following environmental impact criteria:

- the impact of the project on the environment and the population, including human health and living conditions, material assets, cultural heritage, landscape (including cultural landscape), interactions between these elements, and access to mineral deposits;
- risk of major failures, natural disasters and construction accidents;
- the options and ways of preventing and reducing negative environmental impacts;
- the required scope of monitoring.

Furthermore, a project environmental impact report should:

- describe the planned project, especially by presenting:
  a) a description of the whole project and the site use conditions at the implementation and operation or use stages, also addressing areas at a special risk of flood within the meaning of Article 16(34) of the Water Law;
  b) the main characteristics of the production processes;
  c) the expected types and quantities of emissions, including waste, arising from the project implementation and operation or use stages;
  d) information on the biological diversity, utilisation of natural resources, including soil, water and earth surface;
  e) information on the demand for and consumption of energy;
  f) information on demolition works for projects having a potentially significant environmental impact;
  g) a risk – assessed based on scientific knowledge – of major failures, natural disasters and construction accidents, taking into consideration the substances used and the technologies applied, including the risk related to climate change;

- describe the elements of the natural environment covered by the expected environmental impact of the planned project, including:
  a) elements of the environment covered by conservation under the Nature Act and the wildlife corridors within the meaning of this Act;
  b) the hydromorphological, physicochemical, biological and chemical properties of waters;
- present Results of the environmental inventory, presented in both descriptive and cartographic form, if conducted, together with a description of the methodology, attached as an annex to the report;
- present other data underlying the description of natural environment elements;
- describe any historical monuments under conservation pursuant to monument conservation and care legislation which may be situated in the vicinity of or within the impact range of the project;
- describe the landscape where the project is to be located;
- present the information on ties to other projects, especially on cumulative impacts of any continuing, completed or planned projects which have an environmental decision and which are located within the planned site of the project in question and within the project impact range or which have impacts within the project impact range;
- describe the consequences expected for the environment if the project is abandoned; the description must include the available environmental information and scientific knowledge;
- describe the project variants, taking into account its specific characteristics or environmental impacts, indicating the selected implementation variant, a reasonable alternative variant, and a reasonable variant most beneficial to the environment (the reasonable environmentally beneficial variant may be identical to either the selected implementation variant or the reasonable alternative variant);
- describe the expected impact of the analysed variants on the environment (also in the case of a serious industrial accident, natural disaster or construction accident), on the climate (including greenhouse gas emissions and impacts important from the perspective of adapting to climate changes), as well as the possible cross-border environmental impact;
- compare the impacts of the analysed variants on:
  a) people, plants, animals, fungi, natural habitats, water and air;
  b) the earth surface (taking into account soil mass movements) and the landscape;
  c) physical property;
  d) historical monuments and cultural landscape covered by the existing documentation especially entered in the register of historical monuments;

e) the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites;

f) elements listed in Article 68(2)(2)(b) of the EIA Act, if they have been included in the environmental impact report or are required by the competent authority;

g) mutual interactions between the elements listed in items (a) through (f) above;

- justify the variant proposed by the applicant, taking into account the information regarding the determination of the expected environmental impacts of the analysed variants and the comparison of their impacts mentioned above;
- describe the forecasting methods used by the applicant and the expected significant environmental impacts of the planned project, including direct, indirect, secondary, cumulative, short-, medium- and long-term, permanent and temporary environmental impacts from:

  a) the existence of the project;

  b) the utilisation of natural resources;

  c) emissions;
- describe the anticipated actions to avoid, prevent, limit or offset any negative environmental impacts, especially impacts on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites, along with the assessment of their effectiveness at the stages of project implementation, operation, use or shutdown;
- address the environmental objectives arising from strategic documents important from the perspective of project implementation;
- present the issues in a graphic version;
- include a cartographic presentation of the issues at a scale as required by the subject matter and level of detail of the issues analysed in the report for comprehensive presentation of the completed environmental impact analyses;
- analyse the possible social conflicts related to the planned project;
- present the proposed monitoring of project environmental impacts at the project implementation and operation or use stages, especially the impact on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and on the continuity of the wildlife corridors that connect those sites, and present the information on the results of other monitoring which may be relevant for establishing the responsibilities in this respect;
- specify any difficulties resulting from technological shortcomings or gaps in the state of the art which were encountered during report preparation works;

- summarise the information included in the report using non-specialist language by addressing every element of the report;
- specify the report date, the first name, last name and signature of the author or, if the report was prepared by a team of authors, specify the first name, last name and signature of the team leader and the first names, last names and signatures of the team members;
- contain, as an appendix to the report, a statement of the author or, if the report was prepared by a team of authors, a statement of the team leader, on compliance with the requirements laid down in Article 74a(2) of the EIA Act;
- provide the sources of the information underlying the report.

Subsequently, the report is reviewed by the authority in terms of the criteria specified for the applicant and is subject to consultation with the relevant institutions. The authority may then issue an environmental decision.

It should be noted that, pursuant to Article 63(5–6) of the EIA Act, the authority responsible for issuing the environmental decision shall suspend the proceedings for the duration of the report preparation, which must be completed by the investor within no more than 3 years. After this period, the request to initiate the proceedings is considered withdrawn.

It is also worth noting that the authority may determine that there is no need to conduct an environmental impact assessment and may proceed directly to issuing the environmental decision.

A potential refusal to issue an environmental decision is not discretionary. The authority may deny consent for the implementation of the project in the following cases:

- the location of the hydropower plant is incompatible with the Local Spatial Development Plan, if any (unless the hydroelectric power plant qualifies as a strategic investment under Article 59a(4) of the EIA Act);
- a cooperating authority refuses to approve the implementation conditions for the RES project;
- the environmental impact assessment for the project suggests that the project cannot be implemented in the variant proposed by the applicant and the applicant rejects the project variant suggested by the authority;
- the environmental impact assessment for the project suggests that the project may have a significant negative impact on a Natura 2000 site;
- the environmental impact assessment of the project suggests that the project adversely affects the possibility of attaining the environmental objectives referred to in Article 56, Article 57, Article 59 and Article 61 of the Water Law.

In the case of a hydroelectric power plant, a water law assessment is carried out as part of the environmental decision procedure.

Duration of the process

Finalizing the matter by issuing an environmental decision, for example, for a photovoltaic installation—should, in theory, be completed within one month. However, this is only a theoretical timeframe resulting from administrative procedure, which does not take into account the specific nature of the process, which typically lasts several months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Neither does this estimation include the time required to prepare the report, which can take even more than 12 months. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the decision

The authority competent for issuing the decision is the commune (Polish: gmina) authority, i.e. either the commune administrator (Polish: wójt) or the mayor or city president and, in certain cases, the Director for Environmental Protection (RDOŚ). In the process, the competent authority seeks the opinions of the cooperating authorities, i.e. the Regional Director for Environmental Protection (RDOŚ), authorities of the Polish State Sanitary Inspectorate (Państwowa Inspekcja Sanitarna) (in accordance with the division specified in Article 78 of the EIA Act), the authority competent for the assessments required under the water legislation and the head of the Maritime Office – only for projects implemented in offshore areas. In cases where an environmental impact assessment is required, the locally competent Regional Director for Environmental Protection plays a decisive role in the course of the proceedings.

Decision validity period

An environmental decision remains valid and binding until it is removed from legal circulation and may be used in subsequent stages of the investment process. Within 6 years from the date on which the decision became final—or within 10 years if the deadline has been extended (provided that the applicant or the entity to which the decision was transferred received confirmation from the authority that issued the environmental decision in the first instance, before the expiry of the 6-year period, that the conditions for implementing the project specified in the decision remain valid)—it is possible to submit an application for a subsequent decision.

What is the fee for the decision?

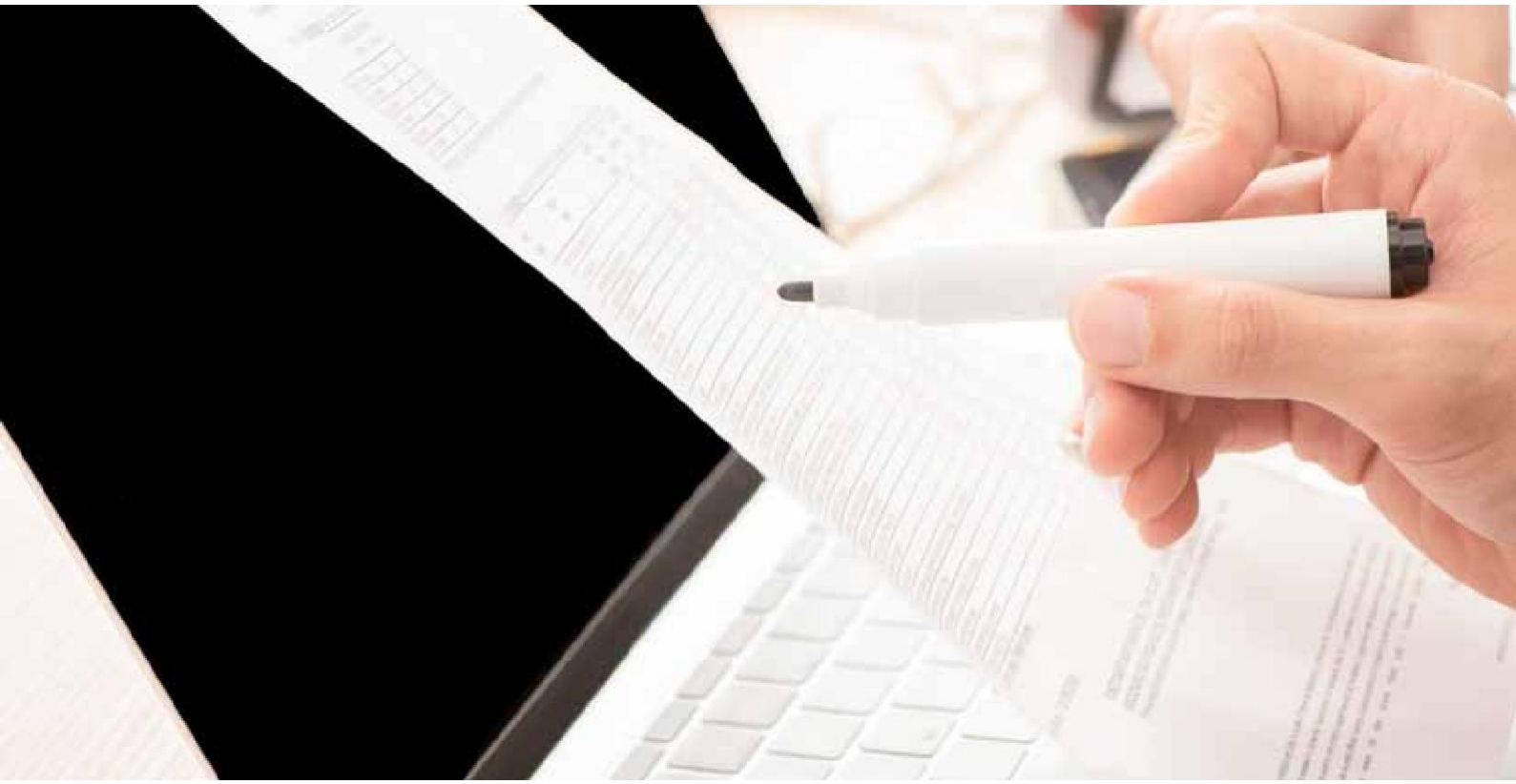
The stamp duty for an environmental decision is PLN 205 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including by public notice, to appeal against it to the Local Appeal Body (Samorządowe Kolegium Odwoławcze). Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application for the issuance of an environmental decision may be submitted electronically via the ePUAP platform, however, some of the attachments to the application must be provided in paper form.



6.4. PLANNING

This subsection on spatial planning discusses the legal foundations enabling the siting of hydroelectric power plants. In the Polish legal framework, the most important instruments are the Local Spatial Development Plan. In areas not covered by such plans, during the transitional period following the entry into force of the spatial planning reform (Act of 7 July 2023 amending the SP&M Act and certain other acts – Journal of Laws 2023, item 1688, subsequently amended by the Act of 4 April 2025 amending the SP&M Act and certain other acts – Journal of Laws 2025, item 527) - Decisions on Land Development Conditions apply. An additional instrument introduced by the aforementioned reform is the Integrated Investment Plan (ZPI), which is discussed later in this chapter.

6.4.1. Local Spatial Development Plan

Local Spatial Development Plan is the fundamental planning document on the basis of which hydroelectric power plants are located. Therefore, when initiating the investment and construction process, it is necessary to verify whether the investment area is covered by such a plan.

In the absence of a Local Spatial Development Plan for a given area, it is necessary to obtain a Decision on Land Development Conditions. Only compliance of the investment with the provisions of the Local Spatial Development Plan or the Decision on Land Development Conditions determines the possibility of implementing the investment in the given area. This stage precedes the issuance of a water law permit and a construction permit, and consequently, the conclusion of a land use agreement for land underwater.

Rules for Locating Hydroelectric Power Plants under Local Spatial Development Plan

According to the currently applicable wording of the Water Law, if the investment area is covered by a Local Spatial Development Plan adopted on the basis of a general plan, the location of the following is permitted solely on the basis of the Local Spatial Development Plan:

- hydroelectric power plants with a capacity exceeding 1000 kW[129].

The location of RES based on Local Spatial Development Plans adopted during the transitional period (i.e., not based on a general plan) requires that the system of RES be explicitly included in the local plan.

[129] *Article 14(6a) of the SP&M Act*

Rules for locating hydroelectric power plants based on Local Spatial Development Plans adopted between October 30, 2021 and September 24, 2023[130]

Pursuant to the SP&M Act currently in force, if a project site is covered by a Local Spatial Development Plan, the location of a hydropower plant is subject to the following rules:

- hydropower plants above 500 kW can only be located in areas clearly designated in the commune's Study of Local Determinants and Directions in Spatial Development (Polish: studium uwarunkowań i kierunków zagospodarowania przestrzennego). In practice, if the designated use of a site in the Local Spatial Development Plan is other than a hydropower plant, the construction authority will most likely deny a construction permit.
- hydropower plants up to 500 kW can be located also in areas which are not clearly designated in the commune's Study of Local Determinants and Directions in Spatial Development (Polish: studium uwarunkowań i kierunków zagospodarowania przestrzennego) as areas for hydropower plants.

For proceedings pending before 24 September 2023, the previous provisions of the SP&M Act, including Article 10(2a), apply.

For Local Spatial Development Plans established before 30 October 2021, the location rules are:

- if the Local Spatial Development Plan was established after 25 September 2010 a hydropower plant above 100 kW is only permitted if the Local Spatial Development Plan directly provides for a system of this type;
- for Local Spatial Development Plans established before 25 September 2010, hydropower plants may also be located on real properties which were not directly intended for RES systems, regardless of capacity.

Note that interpretation of the SP&M Act, especially in terms of Local Spatial Development Plans established before 30 October 2021, is approached by the judicature inconsistently and requires a case-by-case legal assessment to account for the specificities of a particular Local Spatial Development Plan.

Amendment/adoption of a Local Spatial Development Plan

If the investment area is covered by a Local Spatial Development Plan whose provisions do not allow for the location of the intended RES system, or if the area is not covered by Local Spatial Development Plan and the investment may only be located on the basis of such a plan, the investor is entitled to apply for the amendment/adoption of a Local Spatial Development Plan.

The application for amendment/adoption of a Local Spatial Development Plan is submitted to the mayor, town or city president, and is registered in the register of applications for the preparation or amendment of Local Spatial Development Plans. The competent authority then assesses the application's compliance with the applicable general plan and analyzes its justification.

The general municipal plan is a new mandatory planning instrument for the entire municipality (excluding closed areas), in the form of a local law, and is ultimately intended to replace existing plans. The provisions of the general plan will be binding both for local plans and for Decision on Land Development Conditions.

[130] *Information notice of the President of the URE no. 8/2023.*

In the event that an application for the amendment or adoption of a Local Spatial Development Plan is inconsistent with the General Plan, the first step is to request an amendment to the General Plan, followed by an application for the amendment or adoption of the Local Spatial Development Plan. If the competent authority supports the application, it may refer it to the Municipal Council, which then adopts a resolution to initiate the preparation of the Local Spatial Development Plan.

Pursuant to Article 58 of the amendment to the SP&M Act, until municipalities adopt general plans—no later than 30 June 2026, as stipulated by the amendment—the inclusion of RES installations in a Local Spatial Development Plan being adopted does not need to be consistent with the municipality's existing study.

An application for the amendment or adoption of a Local Spatial Development Plan constitutes merely a proposal. The applicable regulations do not provide for any specific procedures or deadlines for its consideration. There is no right to appeal the decision regarding the application. Therefore, it should be noted that the procedure for amending or adopting a Local Spatial Development Plan may be lengthy and does not guarantee the success of the intended project.

A facilitation introduced by the SP&M Act amendment allows adopting or amending Local Spatial Development Plans through a simplified procedure (Article 27b(1)(1) of the SP&M Act). This procedure is available if the adoption/amendment of the Local Spatial Development Plan concerns exclusively the location of RES systems other than wind power plants. The simplified procedure allows for the omission of certain obligations and the shortening of deadlines for specific actions.

It is also worth mentioning that the amendment to the SP&M Act introduces a special form of Local Spatial Development Plan that may be used by investors in the absence of a Local Spatial Development Plan or when the existing plan requires amendment—the Integrated Investment Plan (ZPI). The ZPI is adopted by the Municipal Council upon the investor's request submitted through the Mayor, Town or City President. The ZPI is to cover the area of the main investment (e.g., RES system or residential development) as well as supplementary investments (e.g., public roads, public green spaces, or public utility facilities). The entry into force of the ZPI repeals the existing Local Spatial Development Plans or their parts concerning the area covered by the ZPI.

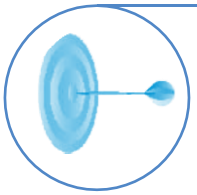
Importantly, if the ZPI concerns exclusively the location of RES installations other than wind power plants and does not involve the conditions specifically defined in Article 27b(2) of the SP&M Act, the procedure for adopting the ZPI will be simplified (Article 27b(1)(1) of the SP&M Act).

More detailed information regarding the procedure for adopting an ZPI and the simplified procedure for adopting a Local Spatial Development Plan for certain RES installations (Article 27b(1)(1) of the SP&M Act) is available on the website **NCP-RES**.

Confirmation of project compliance with the Local Spatial Development Plan

An investor may obtain a certificate confirming that the planned project complies with the Local Spatial Development Plan.

The purpose of the confirmation



The purpose of the confirmation is to verify if the planned project will comply with the Local Spatial Development Plan.

06. HYDROPOWER

When is the confirmation required?

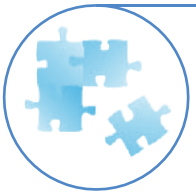
Obtaining the confirmation is not mandatory; this is just to confirm that the planned project complies with the Local Spatial Development Plan.

The local community of the commune also contributes to the final structure of the Local Spatial Development Plan through public consultations carried out in the process of drafting the final text of the Local Spatial Development Plan.

Comments from the community may influence the location of particular sites on the plan including sites intended for the construction of hydropower plants.

USEFUL NOTE

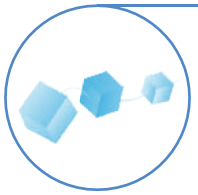
Elements of a confirmation application



An application for a certificate confirming project compliance should also include:

- proof of payment of the stamp duty for the application;
- authorisation, if the application is submitted by an authorised representative;
- receipt for the stamp duty on the authorisation, if the application is submitted by an authorised representative;

The process



Project compliance with the Local Spatial Development Plan is confirmed by a certificate issued by the locally competent commune administrator or mayor upon the investor's request.

Obtaining the certificate is not mandatory and its content is not binding upon the construction authorities at the stage of applying for the construction permit.

Duration of the process

Up to 7 days following the filing of the application.

Authority competent for the confirmation

The commune administrator or mayor or city president having jurisdiction over the project site.

Confirmation validity period

The certificate is open-ended but it expires if the Local Spatial Development Plan is amended.

What is the fee for the confirmation?

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

An applicant who was denied a certificate has 7 days to appeal to the Local Appeal Body.

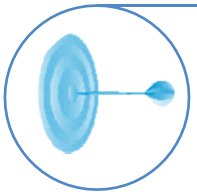
Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

6.4.2. Decision on Land Development Conditions

A Decision on Land Development Conditions constitutes the legal basis for locating construction projects on land not covered by a Local Spatial Development Plan. In such cases, obtaining a Decision on Land Development Conditions is a prerequisite for subsequently applying for a construction permit[131].

Purpose of a Decision on Land Development Conditions

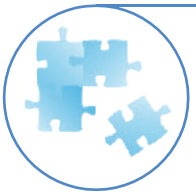


The main purpose of a Decision on Land Development Conditions is to establish the construction and land development conditions related to a hydropower plant which are necessary to integrate the investment with the local spatial development.

When is a Decision on Land Development Conditions required?

In a typical course of the investment and construction process, the Decision on Land Development Conditions is usually obtained after the investor receives the environmental decision but before the applications for grid connection conditions and for the construction permit are filed. It is obtained only if the project site is not covered by a Local Spatial Development Plan. The decision must be secured before the application for the permit under the water legislation is submitted.

Elements of a Decision on Land Development Conditions application



The process of issuing a Decision on Land Development Conditions is initiated by an application of the investor. The application should:

- identify the person filing the application and their address;
- contain the request for a Decision on Land Development Conditions for a specific project.

Furthermore, the investor should attach the following:

- a base map or, if there is none, a cadastral map from the national survey and cartographic resource for the site to which the application pertains and for the project impact area, at a 1:500 or 1:1000 scale, either in an electronic format – in the applicable National Spatial Reference System – or as a hard copy;

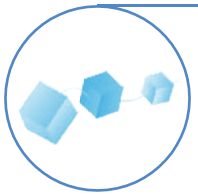
[131] *Article 59(1) of the SP&M Act*

- the outline of the boundaries of the site covered by the application on a copy of the base map or, if there is none, a copy of the cadastral map;
- investment characteristics including:
  a) the demand for water and energy; the wastewater discharge or treatment methods; other technical infrastructure needs and, where necessary, the waste neutralisation method;
  b) the planned land development and a description of building structures and land development, including the intended purpose and dimensions of the proposed building structures and the land surface to be transformed, presented as text and visual materials;
  c) the characteristic technical parameters of the project and the data characterising the environmental impact of the project;
- a copy of the environmental decision;
- proof of stamp duty payment;
- authorisation, if the application is submitted by an authorised representative.

Anyone can apply for a Decision on Land Development Conditions, regardless of their title to the property.

Importantly, more than one decision can be issued, provided that they are issued for different applicants.

The process



Once the application for a Decision on Land Development Conditions is filed, the authority analyses the actual condition and legal status of the site where the project is to be implemented and it sends inquiries to the cooperating authorities about site development and construction conditions which arise from separate regulations.

For a Decision on Land Development Conditions to be issued, the following conditions must be met:

- the existing or planned service infrastructure on the site is sufficient for the construction project;
- the site does not require a permission to change the designated purpose of agricultural and forest land to non-agricultural and non-forestry purposes or it is covered by a permission obtained during the establishment of Local Spatial Development Plans which expired based on Article 67 of the SP&M Act referred to in Article 88(1);

- the decision complies with other regulations;
- the construction project is not situated within:
  a) with respect to which, by virtue of a decision establishing the location of a strategic investment in the transmission network, as referred to in Article 5(1) of the Act on Strategic Investments in Transmission Networks, a prohibition has been imposed pursuant to Article 22(2)(1) of that Act;
  b) the control zone established on both sides of a gas pipeline;
  c) the security zone established on both sides of a pipeline.

It must be noted that with regard to the RES systems, the legislator has waived the "good neighbours" principle, which used to entail the obligation to demonstrate that a project would follow the existing building pattern. The requirement to secure access to a public road was also waived.

A construction permit must be preceded by a Decision on Land Development Conditions.

Duration of the process

Up to **90 days** from the date of submitting the application for the issuance of the decision.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for a Decision on Land Development Conditions

The authority competent for issuing a Decision on Land Development Conditions is the commune (Polish: gmina) authority, i.e. either the commune administrator (Polish: wójt) or the mayor. There is an exception that applies to Decision on Land Development Conditionss regarding restricted areas. For such areas, the Decision on Land Development Conditions is issued by the competent voivode (Polish: wojewoda).

Decision on Land Development Conditions validity period

During the transitional period (following the entry into force of the amendment to the SP&M Act, i.e. until the end of 2025 or until the municipality adopts a general plan), a Decision on Land Development Conditions remains valid indefinitely.

What is the fee for a Decision on Land Development Conditions?

The stamp duty for a Decision on Land Development Conditions is PLN 598 (unless the application is filed by the owner of the real property, an organisation pursuing an activity of public interest, a budgetary unit or a local government unit –
in such a case, the application is exempt from the fee) and it is required at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

An appeal against a decision issued by a commune administrator, town mayor, or city president must be submitted within 14 days from the date of delivery of the decision, including delivery by public notice, to the competent Local Appeal Body (Samorządowe Kolegium Odwoławcze).

An appeal against a decision issued by the voivode must be submitted within 14 days from the date of delivery of the decision, including delivery by public notice, to the Minister of Development and Technology.

Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

Legislative changes introduced by the amendment to the SP&M Act

The amendment to the SP&M Act and certain other acts of 7 July 2023, as further revised by the Act of 4 April 2025, introduced the following changes:

- limitation of the validity period of Decision on Land Development Conditionss to 5 years – applicable to permissions issued from 1 January 2026 onwards (permissions issued earlier remain valid indefinitely);
- requirement for Decision on Land Development Conditionss to be consistent with the municipality's general plan – previously, the prevailing view was that Decision on Land Development Conditionss did not need to be consistent with the Study of Local Determinants and Directions in Spatial Development, and that this requirement applied only to Local Spatial Development Plans.

It is important to note that from the time general plans are adopted or from 1 July 2026, the possibility of locating RES installations based on Decision on Land Development Conditionss will be limited.

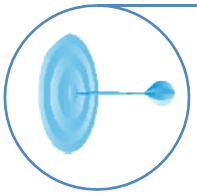
6.5. PERMIT UNDER THE WATER LEGISLATION

6.5.1. Assessment under the water legislation

In principle, the investor should apply for an assessment under the water legislation before applying for a permit under the water legislation. The assessment under the water legislation is required for projects or activities which may compromise the attainment of environmental objectives. Given the specificities of the technology, a hydropower plant may be a project affecting the attainment of environmental objectives. Considering the instructions in Article 428 of the EIA Act, since hydropower plants are projects with a potentially significant environmental impact, an assessment under the water legislation is replaced by the environmental decision. As a result, the current legal regulations do not require the investor to seek a separate assessment under the water legislation for the project.

6.5.2. Permit under the water legislation

Purpose of the permit

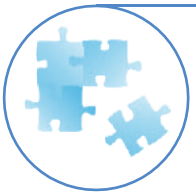


A permit under the water legislation is required for projects and activities which may affect the condition of groundwaters and/or surface waters as specified in detail in the Article 389 and other provisions of the Water Law. The permit lists the requirements that are imposed on the investor in connection with an activity requiring the permit.

When is the permit required?

For hydropower plants, a permit under the water legislation is always required. A permit under the water legislation for the construction and operation of a hydropower plant is required in two aspects, i.e. for the erection of a water structure and the provision of water services involving the use of water for energy purposes.

Elements of an application for the permit



An application for a permit under the water legislation should specify the planned activity or project, the planned use of waters (scope), the water structures intended to be built and the location thereof. The following must be attached to the application:

- a survey under the water legislation (Polish: operat wodno-prawny) meeting the requirements laid down in the Water Law which contains the preparation date and a description of the intended activity in a non-specialist language;

- the environmental decision along with an assessment under the water legislation;
- an extract and excerpt from the Local Spatial Development Plan or, where there is no Local Spatial Development Plan, a decision on location of a public utility project or a Decision on Land Development Conditions;
- extracts from the register of land or simplified extracts from the register of land for the real properties situated within the impact range of the intended use of waters or within the impact range of the water structures to be built;
- a draft water management manual containing a description of how the water will be managed and how the needs of all users benefiting from the water structures whom the manual concerns will be satisfied, in a number of copies accounting for the water owner and the number of plants using the waters to which the water management manual applies (this pertains to plants which are expected to impound water by using a damming structure with a retention height above 1 m and with devices to adjust flow or to enable mutually dependent use of waters by several plants);
- a confirmation of effective notification, as referred to in Article 118(1) of the Nature Act, if required.

A survey under the water legislation defines (in the descriptive part):

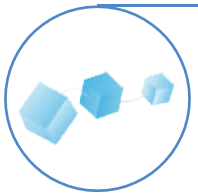
- the plant applying for the permit, its registered office and address;
- details of:
  a) the purpose and scope of the intended water use;
  b) the purpose and type of the planned water structures or works;
  c) the type of measurement devices and navigation signs
  d) the type and range of the intended water use or use of the planned water structures;
  e) the legal status of the real properties situated within the impact range of the intended water use or the intended use or the planned water structures, along with registered offices and addresses of their owners in accordance with the register of land and buildings;
  f) the responsibilities of the entity applying for a permit under the water legislation towards third parties;
- a description of water structure containing the basic parameters characterising the structure, the conditions of its construction and its location providing information about the name or number of the land precinct and the number(s) of the plot(s) and the coordinates;
- the characteristics of the waters covered by the permit under the water legislation;
- the characteristics of the wastewater or precipitation water or meltwater receiving body covered by the permit under the water legislation (if applicable);

- the arrangements arising from:
  a) the water management plan for the catchment area;
  b) the flood risk management plan;
  c) the drought consequences prevention plan;
  d) the sea water protection programme;
  e) the national municipal wastewater treatment programme;
  f) the development plan or programme for inland waterways of special transportation significance;
- the impact of the planned water structures or the intended water use on surface waters and groundwaters, especially on the condition of those waters and on the attainment of the environmental objectives defined for them;
- the size of inviolable flow and the method for its calculation and for reading its value on the site of the water use;
- the mean low flow for a long-term period (mlQ) or the groundwater resource;
- operating mode of the hydroelectric power plant and its parameters: Q_{inst} (installed flow rate), h_{inst} (water head), N_{inst} (installed capacity of the power plant);
- the planned start-up period, the procedure for start-up, shutdown or breakdown or any structures important for the implementation of the permit under the water legislation, as well as the extent and conditions of the use of waters and water structures in such situations along with their maximum acceptable duration;
- information on the nature conservation sites created or established based on the Nature Act which are present within the impact range of the intended use of waters and the planned water structures;

and (in the graphic section):

- the outline of the water structures and the impact range of the intended use of waters and the planned water structures along with their surface area on a land survey map, with marked real properties;
- basic longitudinal sections and cross-sections of the water structures and the beds of the running waters within the structure impact range;
- a drawing presenting the location of measurement devices and navigation signs;
- a functional or process drawing for the water structures.

The process



As a part of the verification process, the authority checks if a permit under the water legislation is allowed, i.e. whether the permit may violate:

- the provisions of protection plans and protection task plans for protected areas;
- the provisions of the flood risk management plan;
- the provisions of the drought consequences prevention plan;
- the provisions of the sea water protection programme;
- the provisions of the national municipal wastewater treatment programme;
- the provisions of the Local Spatial Development Plan, the Decision on Land Development Conditions and the decision on location of a public utility project;
- the requirements linked to the protection of human health, nature conservation and the protection of the cultural heritage listed in the register of historical monuments and any requirements arising from statutory or other separate regulations;
- the provisions of the water management plan for the catchment area (for hydropower plants, this verification is carried out at the stage of the assessment under the water legislation conducted as a part of the environmental decision process).

In the case of hydropower plants, the authority also checks if the planned water use for hydropower purposes will utilise the hydropower potential in a way that is reasonable from a technical and economic perspective.

The authority also checks if the plant that intends to use waters or built water structures or that plans other activities requiring a permit under the water legislation has complied with the obligations arising from any previously issued permits under the water legislation.

After the verification process, the administration authority must conclude the case by either granting or denying the permit under the water legislation.

If the verification result is negative for any of the items listed above, the authority will refuse to issue the permit.

06. HYDROPOWER

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation (provided that a complete application along with all required documentation has been submitted).

Authority competent for the permit

The authority competent for the permit, depending on project type is either the Director of the Executive Board of the State Water Holding Polish Waters Catchment Area (dyrektor zarządu zlewni Państwowego Gospodarstwa Wodnego Wody Polskie) or (less commonly) the Director of the Regional Water Management Board (RZGW) of the State Water Holding Polish Waters.

The application must be submitted to the locally competent authority.

If the State Water Holding Polish Waters is the applicant, the authority competent for approvals under the water legislation is the minister in charge of water management matters.

Permit validity period

The Polish Waters unit issues the permit for a fixed term not longer than 30 years.

What is the fee for the permit?

The stamp duty for a permit under the water legislation is PLN 330.07. Several permits under the water legislation can be issued in one decision.

The stamp duty is multiplied by the number of permits under the water legislation. The maximum stamp duty must not exceed PLN 6,601.67.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days to appeal. The appeal must be filed to the State Water Holding Polish Waters unit that issued the decision.

The appeal is reviewed by:

- ***the Director of the Regional Water Management Board of the State Water Holding Polish Waters – if the decision was issued by the Director of the Executive Board of the State Water Holding Polish Waters Catchment Area;***
- ***the President of the State Water Holding Polish Waters – if the decision was issued by the Director of the Regional Water Management Board.***

If the decision was issued by the minister in charge of water management matters (currently the Minister of Infrastructure), the investor should file a request for reconsideration rather than an appeal to that minister.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

6.6. CONNECTION TO THE ELECTRICITY GRID

Securing a connection to the electricity grid is a stage of the investment and construction process which can proceed concurrently with the construction permit acquisition process. It applies to a vast majority of hydropower plants, with the exception of off-grid systems, i.e. ones that function outside the national electricity system. In the current legal environment, connection to the grid is a prerequisite for the sale and supply of electricity to the recipients.

Ensuring a grid connection is an investment and construction process stage consisting of the following steps:

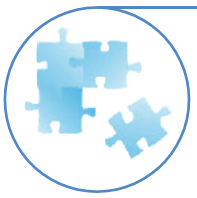
- the investor obtains the grid connection conditions;
- the connection agreement is signed;
- the electricity distribution agreement is signed.

6.6.1. Electricity grid connection conditions

The grid connection conditions are a document issued by the distribution system operator or the transmission system operator to define the technical details of connecting a hydropower plant and they obligate the operator to sign a project-grid connection agreement with the investor. The connection conditions "temporarily book the grid space" for the hydroelectric power plant.[132]

If the producer does not conclude a connection agreement within 24 months from the date of receiving the grid connection conditions, the conditions expire and no longer constitute a binding obligation to enter into a connection agreement.

Elements of an application for grid connection conditions



An application for grid connection conditions is submitted to the distribution system operator or to the transmission system operator that owns the grid to which the investor intends to connect the system.

The application must specify:

- the person filing the application and their address;
- the request for grid connection conditions for a specific RES system;

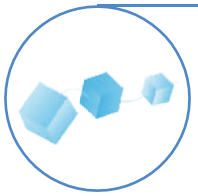
[132] *Article 7(3a) of the Energy Law*

- the maximum annual capacity of the produced electricity and the quantity of electricity fed to the grid;
- the installed capacity, generation capacity, available capacity, apparent power of generators and the maximum capacity referred to in Article 2(16) of Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators;
- the range of the permissible changes to the loads of the generators or their groups;
- the number of the energy generation modules to be connected;
- the size of the planned demand for capacity and electricity to cover the generator's own needs;
- the degree of compensation of the reactive power linked to the receipt electric power for the electricity generator's internal needs;
- the degree of compensation of the reactive power linked to the feeding of the generated electricity to the grid;
- the anticipated values of the electric parameters of the grid and the transformers forming a part of the plant system and devices structures;
- the minimum import capacity to guarantee the safety of people and property based on Article 11(6) of the Energy Law if electricity supply and consumption restrictions are imposed;
- the technical information regarding the interferences caused by the devices, systems and grids of the applicant and the characteristics of the loads as required to determine the connection conditions for entities from connection groups I to IV.

The investor should also attach the following:

- an extract and excerpt from the Local Spatial Development Plan or, if there is none, the Decision on Land Development Conditions for the real property specified in the application;
- a document confirming the investor's title to use the real property where the RES system specified in the application is to be located;
- the development plan on a land survey and height map to show the positioning of the facility to be connected in relation to the existing grid;
- a certificate confirming the technical parameters, operational and performance characteristics of the connected devices, installation, or network;
- a single-line electrical diagram of the devices, systems or grids to be connected along with their description.

The process



After the investor submits an application for the issuance of connection conditions to the grid, the operator analyzes whether there are technical and economic possibilities for connecting the generation unit. Technical reasons are most often associated with the availability of connection capacity at the connection point—the operator examines whether it is possible to safely transmit energy through the grid, even under extreme load conditions.

In the case of RES installations with a capacity exceeding 2 MW, the operator ensures that an expert analysis is prepared regarding the impact of the facility on the power system.

As for economic considerations, the operator assesses whether there are sufficient financial resources available to expand the grid as required for connecting the RES installation.

Duration of the process

The grid connection conditions application processing time for hydropower plants is:

- up to 120 days after the application filing date for applicants from connection group III or VI – where the facility is to be connected to a grid above 1 kV and has an energy source or energy storage;
- up to 150 days after the application filing date for applicants from connection group I or II.[133]

Please note that if the operator refuses to issue the grid connection conditions, the Energy Law creates the terms and conditions for the relations between the operator and the investor.

If the operator refuses to connect the facility because of:

- lack of the technical conditions for the connection arising from lack of the required grid transmission capacity at the time proposed by the entity applying for the connection of an RES system – the energy company shall define the planned time limit for and the conditions of the necessary grid development or modernisation and specify when the connection will be made;
- lack of economic possibilities – the energy company may sign a grid connection agreement establishing a connection fee in an amount agreed with the grid connection applicant;
- lack of both technical and economic conditions – the grid sections to be used to connect the system owned by the grid connection applicant may be built and developed by the grid connection applicant in coordination with the energy company.

[133] *Article 7(8g) of the Energy Law*

Grid connection conditions validity period

Grid connection conditions are valid for 2 years after their delivery date.

During the validity period, the grid connection conditions represent a conditional commitment of the electricity transmission or distribution company to enter into a connection agreement.

What is the fee for the grid connection conditions?

Within 14 days of submitting the application to the operator, the investor is required to pay an advance towards the issuance of connection conditions to the grid, amounting to PLN 30 gross for each kW of connection capacity requested (applicable to grids with a voltage higher than 1 kV).

The advance payment may not exceed PLN 3,000,000. In the event that the connection conditions are denied, the advance is refunded to the investor's account. If the connection conditions are granted, the advance is credited towards the connection fee.

After the connection agreement is concluded, the connection costs borne by the investor, in the case of RES installations with an installed electrical capacity not exceeding 5 MW, amount to half of the expenditures for the connection implementation (excluding prosumer installations). For installations exceeding 5 MW, the investor is required to cover 100% of the connection implementation costs.

How to appeal?

An investor whose application for grid connection conditions has been rejected may file a complaint to the President of the URE based on Article 8 of the Energy Law. Decisions of the President of the URE can be challenged before the Warsaw Regional Court's Competition and Consumer Protection Court.

Can the application be filed online?

Grid operators decide how and in what form an application must be submitted. This information is usually posted on websites so it is advisable to first verify if the application can be filed online.

[134] *Please note that some operators follow a practice of collecting the advance for grid connection conditions only after they obtain a reasonable confirmation that it is possible to connect the generating facility.*

6.6.2. Electricity grid connection agreement

The connection agreement serves as the ground for connecting a hydropower plant to the electricity grid. It is a contract signed between the distribution system operator or the transmission system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the grid connection conditions.

In order to complete this task, both parties undertake to perform works to connect the generation source to the distribution system. Any necessary reconstruction or replacement of network components is carried out in accordance with the provisions specified in the connection conditions.

The RES systems are privileged in terms of grid access. As long as there are technical and economic possibilities for that, the grid operator is obligated to sign a connection agreement first with an RES system. Another sign of the legislator's preferential treatment of RES systems in terms of grid connection is the reduction of the connection fee for the RES sources to only a half of the actual connection costs incurred by the operator.

Deadline for the obligations under the electricity grid connection agreement

For grid connection agreements regarding hydropower plants, the time limit for the first supply of energy from the connected generation source should not be longer than 48 months. Failure to introduce energy for the first time within the specified deadline may result in the termination of the connection agreement in accordance with the provisions of the Energy Law.

Securing the connection route

One of the most important elements of the connection agreement is identification of the grid connection point i.e. the point where the electricity generated by the hydropower plant will be fed to the distribution or transmission grid.

If the grid connection point is situated outside the investor's land (most cases), the investor is responsible for building a link between the hydropower plant and the grid connection point. In such a case, it is necessary to secure the titles to the real properties situated on the route of the electric power link.

How the titles to the real properties situated along the cable route should be secured depends on whether the link is to run across plots consisting of a road (whether or not having the status of a public road) or across privately owned properties.

Private property

The most common way to secure the legal right to use a private property across which a cable route is expected to run is utility easement. This solution authorises the owner of transmission facilities – the investor who intends to build, or has already built, transmission facilities – to use a real property to the extent required to install, and to subsequently use, transmission facilities on the property. Utility easement is a limited real right effective with regard to each successive owner of the real property across which the transmission facilities are to run. It is established in a notary deed and it is disclosed in the title register. It can be either fee-based or free of charge in accordance with the provisions of the Act – the Civil Code.

Real property with a public road status

For properties with a public road status, the title to use the property is governed by the Roads Act – especially by Article 39 and 40 of the Roads Act. Securing the legal right to use a real property with a public road status is a multistep process. The first step is to obtain a decision issued under Article 39(3) and Article 39(3a) of the Roads Act by the road administrator to authorise to location of building structures or facilities within the roadway which are not related to road management needs or road traffic needs.

This step is followed by a decision issued under Article 40(1) and Article 40(2) of the Roads Act which permits occupying the roadway space in order to perform construction works or install technical infrastructure facilities within the roadway which are not related to road management needs or road traffic needs. The decision permitting the occupation of the roadway for the purpose of performing the works is issued for up to ten plus days and it authorises the holder to physically enter the property in order to perform construction works.

The decision which permits installing facilities within the roadway is issued for a period of a few to a few dozen years and it grants the holder a legal right to install the facilities. Importantly, there are fees charged for both the occupation of the roadway and the installation of technical infrastructure facilities in the roadway. In the former case, it is a one-off fee and in the latter case, it is an annual fee.

Road property without a public road status

In the case of internal commune roads without a public road status, there is no single systematised procedure for securing the cable routing. Usually, communes issue informal permits for this purpose, which do not have the status of administrative decisions, where they authorise the installation of the facilities – this is equivalent to a decision issued under Article 39(3) and Article 39(3a) of the Roads Act. Subsequently, they sign an agreement with the investor whereunder the real property is provided for use in return for an annual fee – this is equivalent to a decision issued under Article 40(1) and Article 40(2) of the Roads Act.

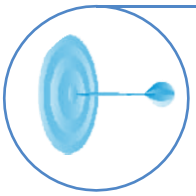
Another possibility of securing the right to the land property is the already mentioned utility easement.

The above-mentioned titles securing the cable routing are not the only available legal options. There are also lease agreements or unnamed contracts which are structured similarly to a lease agreement. Unfortunately the rights they grant to the real properties are not as lasting as the ones described above.

6.7. CONSTRUCTION PERMIT

Construction permit is the element of the investment process that constitutes the basis for commencing construction works related to the development of a hydropower plant. Without this permit, an investor cannot commence construction works or, subsequently, operate the plant.[135]

Purpose of the permit



A construction permit verifies if the planned project complies with the law and respects the interests of the parties whose rights it is not allowed to violate. From the investor's perspective, the main purpose of obtaining a construction permit is to start the construction works to build the hydropower plant. A construction permit defines the rights and responsibilities of the investor related to project implementation.

Pursuant to Article 3(7) of the Construction Law, construction works are understood as alteration, assembly, renovation or demolition of a building structure.

When is the permit required?

Considering the typical course of the investment and construction process, the investor seeks the construction permit after first securing:

- the environmental decision, where applicable;
- the Decision on Land Development Conditions (unless a Local Spatial Development Plan applies);
- a decision permitting exclusion from agricultural production for properties comprising:
  a) agricultural land formed from mineral and organic soils classified as classes I, II, III, IIIa, IIIb;
  b) agricultural land of classes IV, IVa, IVb, V, VI formed from organic soils;
  c) other agricultural land indicated by the Act on the Protection of Agricultural and Forest Land;
- the electricity grid connection conditions.[136]

For hydropower plants, a construction permit is required for all system types.

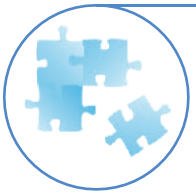
A notification is allowed for water impounding and discharging structures with a retention height below 1 m outside inland waterways and outside national parks, nature reserves, landscape parks and their buffer zones.

The electricity link that is the cable line connecting the hydropower plant with the grid connection point is usually built based on pre-construction notification which replaces a construction permit in the case of simpler construction projects.

[135] *Article 28 of the Construction Law*

[136] *It can be processed concurrently with the construction permit.*

Elements of the permit application



The mandatory elements of the construction permit application are specified in the Construction Law. They are:

- details of the person filing the application and their address;
- the request for a construction permit decision for a specific construction project (importantly, the construction law states that for a construction project covering more than one facility, a construction permit may, at the investor's request, pertain to selected facilities or to a complex of facilities able function on their own in accordance with their intended purpose).

Furthermore, the investor should attach the following:

- a plot or land development design and an architectural construction design – along with the opinions, approvals, permits and other documents as required under separate legal acts or copies of the same (in paper format – 3 copies or in an electronic format);
- a declaration on having the right to use the real property for construction purposes;
- for construction projects preceded by an environmental decision issued in a process requiring the participation of the public – a visual appendix specifying the anticipated project implementation site and the anticipated project impact area, provided that the submission of this appendix was required by the regulations in effect on the date of applying for the environmental decision, and especially the map referred to in Article 74(1)(3a) of the EIA Act;
- the Decision on Land Development Conditions, where required under the spatial planning and development laws or the decision on location of a public utility project;
- a proof of payment of the stamp duty for the construction permit application;
- for applications filed by authorised representatives – the authorisation and a proof of stamp duty payment.

The crucial appendix to the construction permit application is the construction design. Construction design requirements are laid down in the Construction Law. A construction design must include:

- a plot or land development design prepared on an up-to-date map for design purposes or on a copy thereof, presenting:
  a) the plot or land boundaries;

b) the location, outline and arrangement of the existing and planned building structures, including the utilities on the plot and any building facilities located outside the building structure;
c) the sewage discharge or treatment method;
d) the traffic system and the arrangement of vegetation, with specification of the characteristic elements, dimensions, ordinates and mutual distances between objects – in relation to the existing and planned buildings in the neighbouring areas;
e) information about the project impact area;

- an architectural and construction design which covers:
  a) the spatial arrangement and the architectural form of the existing and planned building structures;
  b) the intended use of the building structures;
  c) the characteristic technical parameters of the building structures;
  d) a geotechnical opinion and the information on how the building structure is attached to the ground;
  e) the planned material-related and technical solutions which influence the surroundings, including the environment;
  f) ecology characteristics;

- a technical design including:
  a) the planned structural solutions of the facility along with the results of static strength calculations;
  b) the planned necessary technical and material-related solutions;
  c) as needed – the geology engineering report or the geotechnical conditions for laying the building foundations;
  d) other design records;

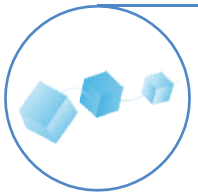
- opinions, approvals, permits and other documents referred to in Article 33(2)(1) of the Construction Law.

Furthermore, the following must be attached to the construction design:

- a statement that the design author has the qualifications to hold an independent technical function in the construction industry;
- a statement of the engineer that the design was prepared in accordance with the applicable laws and the construction principles.

06. HYDROPOWER

The process



Once the construction permit application is filed the authorities make the preliminary determinations and give approvals or seek the opinions of other authorities.

Parties to the construction permit acquisition process: the investor, owners of the real properties (perpetual users of the real properties) or administrators of the real properties within the project impact range.

Duration of the process

A construction permit should be issued within 65 days following the submission of the application (Article 35(6) of the Construction Law). If this deadline is not observed, the higher-level authority fines the architectural and construction authority with PLN 500 for every day of delay.

Authority competent for the permit

The voivode is the authority competent for issuing the construction permit for impounding, discharging, adjusting hydrotechnical structures and for canals and other structures used in shaping and using the water resources.

Permit validity period

The works under a construction permit must commence not later than 3 years following the date when the construction permit decision became final and binding. Any suspension of construction works must not be longer than 3 years. This means that if the construction works do not commence within 3 years after a final construction permit is obtained or if works are suspended for more than 3 years, the construction permit expires.

What is the fee for the permit?

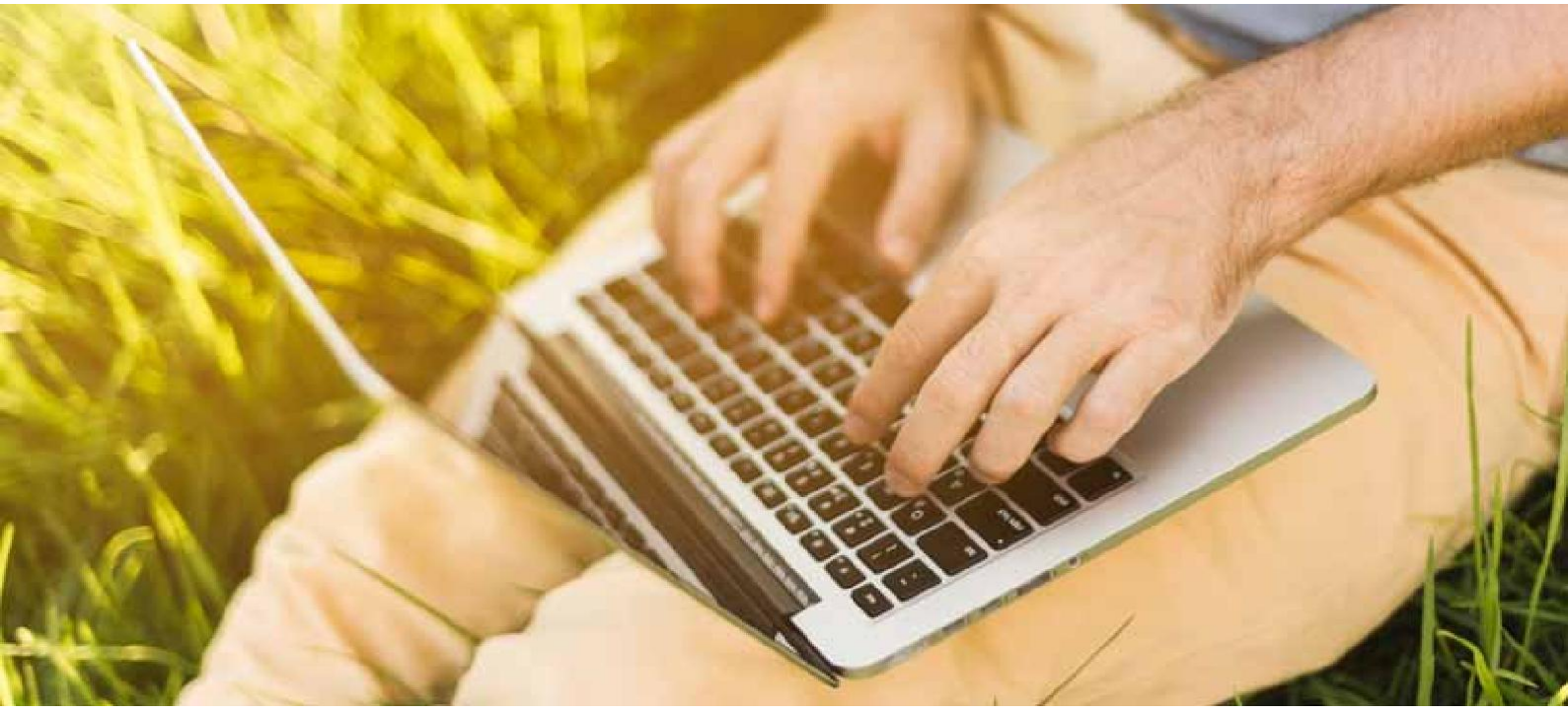
The stamp duty for a construction permit is PLN 155 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days from the date of its delivery, including delivery by public notice, to appeal against the decision to the Chief Construction Supervision Authority (Główny Urząd Nadzoru Budowlanego) through the voivode who issued the challenged decision. Subsequent remedies available to the investor include a complaint against the decision of the Chief Construction Supervision Authority to the Provincial Administrative Court. A judgement of the Provincial Administrative Court can be challenged before the Supreme Administrative Court.

Can the application be filed online?

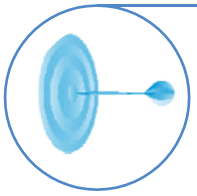
The application can be submitted online to the public administration body having jurisdiction over the matter on e-Budownictwo.



6.8. OPERATIONAL NOTIFICATION

Following the completion of the construction of the hydroelectric power plant, obtaining an occupancy permit is required prior to its use and the commencement of electricity generation[137]. This decision confirms the legal and proper use of the facility in accordance with the previously issued construction permit.

Purpose of the notification



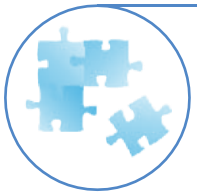
The basic purpose of the decision is to verify if the erected hydropower plant has been completed in accordance with the basic design and if it is fit for use. This entails a mandatory inspection of the project after the end of the construction process.

When is the notification required?

An operational notification is required after the construction works covered by the construction permit end but before the operation of the hydropower plant starts.

An operational notification is still required even if the investor intends to commence the operation of only a part of the project covered by the construction permit.

Elements of an application for the notification



An application shall include:

- details of the investor, including a correspondence address;
- identification of the construction supervision authority;
- identification of the construction permit decision underlying the implementation of the project;
- identification of the real property where the facility is located.

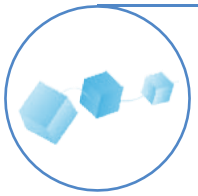
[137] *Article 55 of the Construction Law*

Furthermore, the investor should attach the following:

- original construction daily log or, if the log is digital, the number of the log referred to in Article 47h(2) of the Construction Law;
- the technical design;
- a statement of the construction manager that the building structure complies with the construction design or the conditions of the construction permit and with the applicable laws and that the construction site has been brought to a proper condition and cleaned up;
- a statement that appropriate land management of adjacent areas has been secured wherever the operation of the facility depends on appropriate management of such areas;
- reports concluding the inspections and checks of: the connections, systems and technical devices guaranteeing the use of the structure as intended; the reports must be prepared by individuals having qualifications in the required specialities;
- the decision authorising the operation of a technical device, referred to in Article 14 of the Act on Technical Inspection of 21 December 2000 (Journal of Laws 2024 item 1194 as amended);
- surveyor documentation with results of the as-built site survey;
- confirmation, in accordance with separate regulations, of the acceptance of the completed connections;
- certificate of the commune administrator or mayor confirming compliance with the requirement to implement a supplementary project (where required);
- copies of the drawings forming a part of the approved design, including the changes made and, where appropriate, a supplementary description of the changes where the changes do not significantly deviate from the approved design;
- receipt for a stamp duty for the permit;
- for applications filed by authorised representatives – the authorisation and the receipt for the stamp duty for the authorisation.

An operational notification is not just an official permission for the investor to use a building but it also defines the conditions of using the building at its operation stage.

The process



An investor who should obtain an operational notification for a facility is required to report the completion of the hydropower plant construction process and the intention to commence the operation of farm to the construction authority and, as required by specific legislation, to the local:

- State Sanitary Inspectorate (Państwowa Inspekcja Sanitarna) and;
- State Fire Service (Państwowa Straż Pożarna).

The authorities determine if the building structure has been erected in accordance with the construction design. The authorities should issue opinions within 14 days of receiving the notification and if they fail to do so, they are deemed to have no objections.

Once the application is filed, the construction supervision authority is required to inspect the construction site compliance with the determinants and conditions specified in the prior construction permit and conformity with the construction design. The inspection precedes the grant of an operational notification.

The construction supervision authority conducts a mandatory inspection before the expiry of 21 days following the delivery of the notice. The authority notifies the investor about the mandatory inspection within 7 days following the delivery of the notice. Importantly the investor is required to participate in the mandatory inspection at the set time.

The inspection includes checking:

- the compliance of the building structure with the plot or land development design;
- the compliance of the building structure with the architectural and building design and the technical design in terms of:
    a) the characteristic technical parameters as regards the footprint area, height, length, width,
    b) the workmanship of the visible load-bearing elements of the building structural system,
    c) the workmanship of construction works,
    d) the workmanship of the systems ensuring the use of the building structure as intended;
- compliance with the conditions specified in Article 55(1b) of the Construction Law if the operation of the building structure is to commence before the completion of all construction works;

- the construction products particularly important for structural safety and fire safety;
- if the construction permit provides for an obligation to demolish any existing building structures not expected to be- Nuthatch any more or any temporary building structures – compliance with this obligation, provided that the time limit for the demolition specified in the permit has expired;
- if the construction site has been cleaned up.

After the mandatory inspection the construction authority prepares a report in three copies. One copy is delivered to the investor promptly after the inspection, the second one is delivered to a higher-level authority and the third one is retained by the construction supervision authority.

If the inspection result is positive the authority issues an operational notification for the hydropower plant. In the wind farm operational notification, the construction supervision authority may determine the conditions of using the plant or may make the operation of the plant contingent upon the completion of specific construction works within a specified time limit.

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the notification

An operational notification for a wind farm is issued by the County Construction Supervision Inspector (Powiatowy Inspektor Nadzoru Budowlanego).

Notification validity period

The entry in the register has no expiry date.

What is the fee for the notification?

The stamp duty for an operational notification is PLN 38.75 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After a decision issued by the voivode, the applicant has 14 days from the date of its delivery, including delivery by public notice, to appeal against the decision to the Chief Construction Supervision Authority (Główny Urząd Nadzoru Budowlanego). through the authority that issued the challenged decision. Subsequent remedies available to the investor include a right to complain to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The notification can be submitted online to the public administration body having jurisdiction over the matter on the e-Budownictwo website.

6.9. LICENCE AND OTHER BUSINESS PERMITS

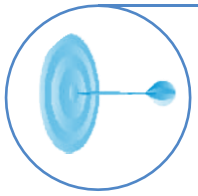
The type of permit for a hydropower plant activity depends mainly on the size of the plant and on the type of energy it produces.

6.9.1. RES electricity generation licence

Obtaining a licence is the last step to be completed before the sale of electricity from a hydropower plant can commence.

The electricity generation licence is needed for the RES systems with an installed capacity above 1 MW. Business activities involving systems with a capacity of at least 50 kW but up to 1 MW require entry in the register of small RES electricity generators (RMIOZE). Systems with a capacity up to 50 kW need neither an entry in the register nor a licence.

Purpose of the licence



The purpose of the licence is for the government to authorise an activity in a branch of the economy that is particularly important from the perspective of public interest, i.e. the energy sector.[138] The licence decision defines the conditions and the duration of this activity.

When is a licence decision required?

A licence is obtained once the operation of the hydropower plant starts and after the plant is connected to the electricity grid.

This makes it the last decision to be obtained in the investment and construction process for a hydropower plant (except for the cases described above).

[138] *Article 32(1) of the Energy Law*

Elements of a licence application

The list of the documents required with an application for a hydropower generation licence is provided by the President of the URE, who initiates the procedure of reviewing the licence issue criteria defined in the Energy Law.

The list of the documents is available on:

https://www.ure.gov.pl/pl/biznes/jak-uzyskac-koncesje/energia-elektryczna/784,odnawialne-zrodla-energii.html

In accordance with the current list, a basic licence application should include:

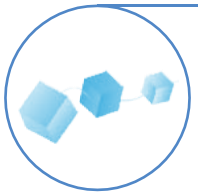
- details of the person filing the application and their address;
- a request for a licence to generate energy from renewable sources;
- an extract from the KRS register of companies obtained not earlier than 3 months before the submission of the application to the authority in charge of issuing the licence;
- a list of all the parties with a significant influence or control or co-control, within the meaning of Article 3(1)(34), Article 3(1)(35) and Article 3(1)(36)(a), 3(1)(36)(b), 3(1)(36)(e) and 3(1)(36)(f) of the Polish Accounting Act, over the applicant, along with the information which of the above relationships reflects the relationship between the entrepreneur and a given party and the information on what grounds the above parties are present on that list, plus a valid certificate of no criminal record from the National Criminal Register for such parties;
- a statement of the entrepreneur that not bankruptcy petition has been filed against it and that they are not in liquidation;
- a statement of the entrepreneur that it has not been deleted from the register of regulated activities in the past 3 years as a result of a decision prohibiting the entrepreneur from engaging in an activity covered by the entry in the register because it:
  a) filed a false statement on the legal compliance of such activity;
  b) failed to remedy its breach of the legal requirements for such activity by the deadline set by the authority, or
  c) committed a gross breach of the legal requirements for such activity;
- a document confirming that the entrepreneur is registered as a VAT payer;

- a certificate of excise duty identification number, where applicable, issued by the head of the tax office;
- a statement of the entrepreneur confirming there are no reasons to suspend the procedure based on Article 33(3a) of the Energy Law, whereunder the President of the URE suspends the procedure wherever the entrepreneur or the above-mentioned individuals are indicted for a crime or a tax crime related to their business activity;
- a statement of the entrepreneur that all the individuals hired to operate the systems, facilities and devices used in the performance of the licensed activity have the qualification certificates required under by the Energy Law and the qualification certificates issued based on other regulations which authorise them to operate such systems, facilities and devices;
- information provided by the entrepreneur regarding the networks, equipment, and installations specified in the Regulation of the Minister of Climate and Environment of 1 July 2022 on the detailed rules for confirming the possession of qualifications by persons engaged in the operation of equipment, installations, and networks that will be used in the activity covered by the application, as well as the number of individuals employed in their operation, including the qualification certificate numbers;
- documents confirming the entrepreneur's legal title to the facilities and systems required for the licensed activity, for example a notary deed, a copy of the title register, an extract from the land register, the lease agreements, the loan for use agreements, purchase invoices for the equipment used to generate electricity;
- description of the parameters and the technical condition of the electricity generation equipment;
- documents confirming that the devices comprising the installation meet the requirement referred to in Article 32(1a) of the Energy Law;
- location-related decisions (a Decision on Land Development Conditions or an extract and excerpt from the Local Spatial Development Plan);
- the construction permit;
- documents containing the information that the construction process has ended and the operation of the facility commences notification to the competent construction authority on the completion of the construction process submitted at least 14 days before the intended operation commencement date). if the competent construction supervision authority does not object to the project a statement with relevant information about this should be attached to case files after the expiry of 14 days after the delivery of the above notification;
- decisions of the Polish Office of Technical Inspection (Urząd Dozoru Technicznego, UDT) approving the electricity generating devices for use;
- documents confirming the installed capacity of the power-generating facility;

- the documents issued by the electrical system operator to whose grid the RES system is connected:
  a) the decision defining the technical conditions for connecting the system to the electricity grid (grid connection conditions) or the connection agreement;
  b) the report confirming the technical inspection of the power devices and their approval and acceptance for use;
  c) the report confirming the operation check of the measurement and settlement systems (known as the detailed technical service (OTS) order report);
- a power evacuation diagram highlighting the places where the quantity of the generated electricity is measured and outlining the separation of ownership of systems, devices and facilities between the entrepreneur and the DSO and highlighting all the generating devices;
- summary of the annual planned revenue and costs of the activity covered by the licence application for at least three full calendar years;
- financial statements for the last three years;
- other documents confirming that the entrepreneur has, or is able to secure, sufficient financing for proper performance of the licensed activity (e.g. bank guarantees, insurance guarantees, guarantee agreements, credit facility agreements, loan agreements etc.);
- valid certificates from the competent tax authority and customs authority, obtained not earlier than 3 months before their presentation to the licensing authority, confirming that the entrepreneur has no overdue payments towards the state budget;
- a valid certificate from the competent branch of the Polish Social Insurance Institution (ZUS), obtained not earlier than 3 months before its presentation to the licensing authority, confirming either that the entrepreneur has no overdue social security contribution payments or that it is not registered as a contribution payer;
- a valid certificate from the bank that keeps the basic account of the entrepreneur which specifies the value of the transactions, the payment capacity, the creditworthiness of the entrepreneur and contains information about the credit facilities granted to the entrepreneur and the information on whether the account is free from any enforcement orders, obtained not earlier than 3 months before its presentation to the licensing authority.

The above list of documents is indicative only and it should be each time verified with the URE.

The process



Once the application is filed, the licensing authority verifies the documentation to determine if it meets the criteria specified in Article 33 of the Energy Law and it requests an opinion from the local province executive board.

Licence grant may be contingent on the posting of a bond to satisfy any third-party claims which may arise as a result of improper performance of the licensed activity, including environmental damage.

Importantly, after obtaining the permit, the generator must pay an annual licence fee, which is calculated based on the revenue of the RES system. The RES systems up to 5 MW are exempt from the fee.

Obtaining the licence also entails a periodic reporting requirement, usually to the President of the URE.

Duration of the process

Finalizing the matter by issuing a license for electricity generation, e.g. in a photovoltaic installation, should be completed within one month. However, this is only a theoretical timeframe resulting from administrative procedures, which do not account for the specific nature of licensing proceedings, typically lasting several months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the licence

The authority responsible for issuing the licence is the President of the URE.

The licence application must be filed to the local URE branch having jurisdiction over the the applicant's registered office.

Licence validity period

The licence is granted for an indefinite term, not shorter than 10 years and not longer than 50 years, unless the entrepreneur requests a shorter term.

What is the fee for the licence?

The stamp duty for an electricity generation licence is PLN 616 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of its delivery, including delivery by public notice, to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the President of the URE. The cost of the appeal is PLN 1000.

Can the application be filed online?

The application can be filed online through the ePUAP service.

6.9.2. Register of small res electricity generators

Entry in the register of small RES electricity generators replaces the licence decision for hydropower plants of a total installed capacity above 50 kW but up to 1 MW.[139]

Purpose of the entry

The purpose of the entry in the register of small RES electricity generators is to offer a simplified and expedited approval process for a business in the energy sector.

When is the entry required?

The entry in the register should be made after the hydropower plant is built, accepted and connected to the grid.

Elements of an application for the entry

The template form for the investor is available on the URE website at:

https://bip.ure.gov.pl/bip/rejestry-i-bazy/wytworcy-energii-w-male/2138,Rejestr-wytworcow-energii-w-malej-instalacji.html

The application must be accompanied by:

- a statement of the generator that it is in no arrears with any taxes, levies and social security contributions;
- a statement of the generator that the data included in the application are correct and that the conditions referred to in Article 9(1) of the RES Act are met, with criminal liability for submitting a false statement;
- a receipt for a stamp duty for the entry;
- if the application is filed through an authorised representative, the authorisation must be attached along with a receipt for a stamp duty for the authorisation.

The process

The authority checks internally if the application is error-free. If the authority does not find any errors, the generator is entered in the register and the authority issues a certificate of entry in the register.

[139] *Article 7 of the RES Act*

06. HYDROPOWER

Duration of the process

The President of the URE is obligated to enter an entrepreneur RES in the register of small RES electricity generators within 21 days after receiving the application.

If the authority fails to make the entry within this period, and 28 days have passed since the application was received, the producer may commence operations. This does not apply if the authority has requested the producer to supplement the application, no later than within 21 days from the date of receipt. In such a case, the deadline runs from the date the supplement is received.

Authority competent for the entry

The authority responsible for making the entry in the register of small RES generators is the President of the URE. The application must be filed to the local URE branch having jurisdiction over the applicant's registered office.

Entry validity period

The entry in the register has no expiry date.

What is the fee for the entry?

The stamp duty for entry in the register is PLN 616 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days from the date of its delivery, including delivery by public notice, to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the authority that issued the decision. The cost of the appeal is PLN 1000.

Can the application be filed online?

In accordance with the practice of the URE, applications can be filed online through ePUAP.

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07. GEOTHERMAL ENERGY

7.1. TECHNOLOGY DESCRIPTION

Geothermal energy is defined in the RES Act as a type of non-anthropogenic energy accumulated in the form of heat under the earth surface and is considered a renewable energy source.

Geothermal reservoirs cover approximately 40–55% of Poland's territory. The temperature of waters occurring at depths ranging from 500 m to 4 km is generally between 20°C and 80°C, although locally resources exceeding 100°C have been identified. The greatest geothermal potential is found in the Polish Lowlands and in the Podhale region. Poland's geothermal resources are particularly suitable for use in district heating systems employing heat exchangers and circulation pumps; however, electricity generation, including cogeneration in small-scale binary cycle installations, is also possible. Furthermore, heat from subsurface rock layers or groundwater can be utilized in shallow geothermal applications through ground-source heat pumps. This chapter, however, focuses exclusively on industrial installations utilizing geothermal energy. Heat pumps are discussed in Chapter 9.

Despite the existence of significant exploitable resources of medium- and high-temperature geothermal energy in Poland, its utilization rate remains the lowest among all types of renewable energy sources. This is primarily due to the high cost and complex nature of such investments, as well as often insufficient natural conditions of geothermal deposits.

A comprehensive approach to the investment process related to the implementation of geothermal systems requires consideration of two main stages:

- *exploration and identification of thermal waters;*
- *construction of installations.*

Chapter 7 focuses on conventional deep, high-temperature geothermal energy. Ground-source heat pumps also utilize Earth's heat and are therefore a form of geothermal energy; details on these are provided in Chapter 8.

7.2. CHOOSING PROJECT LOCATION

Before the investment and construction process for a geothermal system is initiated, the potential location should be analysed. Proper location of a geothermal system is the prerequisite for the subsequent successful completion of administrative processes. The most important factors to be considered at this stage include:

- the location of deposits – thermal water resources;
- the location of the real property, which should be verified during the audit stage;
- access to the heating grid and the justification for heat supply in terms of the number of consumers served by the network and its technical parameters;
- level of available connection capacity at the planned point of connection to the electricity grid (for electricity generation);
- any forms of nature conservation which may apply to the real property;
- legal title to the real property.

Location of the real property and the deposits

An analysis of possible locations for a system using geothermal springs to generate energy must take into account primarily the presence of deposits – thermal water resources.

In order to preliminarily establish a proper location, the investor may use generally accessible geology maps which specify thermal waters. Such maps are prepared for example by the Polish Geological Institute – National Research Institute. A more precise location should be specified in the technical and economic feasibility study for the utilization of thermal waters in the given area. This study is primarily based on geological data from archival boreholes. In some cases, geophysical surveys may also be required.

Another source useful in establishing the location of thermal water deposits is the Local Spatial Development Plan for the commune, which should identify – both in the text and in the graphic section – the areas with thermal waters, if any.

These documents may help define a site suitable for the construction of a geothermal installation. In the absence of such documents or where more precise delineation of the project area is needed, the investor may commission a paid verification of resources in the selected area by a third party. This involves, among other things, obtaining the necessary decisions authorizing the exploration and identification of mineral deposits in the form of thermal water.

Thermal water used as a source for energy generation in a geothermal installation is groundwater that, at the outlet from the intake, has a temperature of not less than 20°C. However, the possibility of heat generation mainly concerns thermal waters with temperatures ranging from 30°C to 150°C. In the case of low-temperature thermal waters, depending on the technical parameters of the district heating network and energy demand, the use of heat pumps may be necessary. [141]

[141] *Geothermal and gas heating plant (cire.pl).*

07. GEOTHERMAL ENERGY

Electricity grid connection capacity

In the case of constructing a geothermal power plant, the level of available connection capacity at the selected location must be taken into account, as it is the primary determinant ensuring the possibility of connecting the installation to the grid. The absence of available connection capacity at the indicated location will result in the issuance by the relevant electricity system operator managing the grid of either a refusal to connect or connection conditions indicating the need for additional investments in network infrastructure.

Therefore, the implementation of the investment should be preceded by an analysis of the value of available connection capacity for the planned energy sources. The obligation to publish this information, updated at least quarterly, arises from Article 7(8l) of the Energy Law. Energy companies engaged in the transmission or distribution of electricity publish on their websites the total available connection capacity for sources and the planned changes to these values over the next five years from the date of publication, as well as a list of entities applying for connection of sources to the electricity grid with a nominal voltage higher than 1 kV. However, due to the lack of real-time updates of these data, verification of the availability of free connection capacity by investors remains challenging. [142]

[142] *The information is historical and the specified free connection capacity does not guarantee obtaining the expected connection conditions.*

Access to heating grid

When selecting a potential location for a geothermal installation, it is necessary to take into account the operating parameters of the local district heating network, such as supply and return temperatures, in order to assess the potential for integration of the heat source with the network, as well as the parameters of entities willing to purchase the generated heat. The distance between the installation and the district heating network is particularly critical. Details regarding the connection of the installation to the district heating network are provided in Section 7.7 of this chapter.

Distance from Nature Protection Areas

When determining the location of a future geothermal installation, it is also necessary to verify whether the site is situated within or in close proximity to an area under nature protection, as this may hinder further implementation of the investment process.

Locating the investment within a protected area may significantly impede or completely prevent the continuation of the project. In particular, attention should be paid to the fact that restrictions or a complete inability to carry out the investment may apply to areas where the following occur:

- national parks,
- nature reserves,
- landscape parks,
- protected landscape areas,
- Natura 2000 sites,
- ecological sites
- nature and landscape complexes.

The above restrictions also extend to the buffer zones of:

- national parks,
- nature reserves,
- landscape parks.

Legal title to the real property

The intention to produce electricity or heat in a geothermal system requires securing a legal title to the real property where the project is to be located.

The title that guarantees the fullest protection of the investor's interests is land ownership. From the perspective of the costs of investing in a geothermal power plant or heating plant, it seems highly risky to base the legal title to the real property on one of the possible contractual relationships. Of course, this is not impossible. In the case of a geothermal power plant or heating plant project, the investor can also secure a different kind of title to the real property as discussed in more detail as a part of other RES technologies.

Regardless of the above, at the initial investment stage (locating thermal waters), in order to reduce investment costs (particularly those related to acquiring property ownership), it appears reasonable to operate under a legal title to the property in the form of, for example, the previously described lease (see Photovoltaics – Section 1.2 "Ensuring Legal Title to the Property").

07. GEOTHERMAL ENERGY

7.3. SEARCH FOR AND STUDY OF GEOTHERMAL WATERS

The PGM Act defines the rules and terms of undertaking, performing and terminating an involving geological works and mineral extraction from deposits (Article 1(1)(1) and Article 1(1)(2) of the PGM Act).

The PGM Act defines 'search' as a geological activity undertaken in order to establish and document, in preliminary terms, mineral deposits and groundwaters (Article 6(1)(7) of the Polish PGM Act).

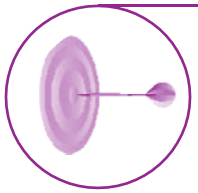
Geological activity means to design and perform tests and other tasks for the purpose of establishing the geological structure of the country, and especially to search for and identify mineral deposits and groundwaters, determine the hydrogeological conditions and the geological engineering conditions, as well as prepare geology maps and records and to design and perform tests for the purpose of utilising the heat of the earth and using groundwaters (Article 6(1)(8) of the PGM Act. Geological work means any task performed as a part of geological activities underground, also using blasting agents, as well as the clearance of excavations after those tasks (Article 6(1)(11) of the PGM Act).

So searching for or identifying thermal deposits is a geological activity. Since in practice drilling is usually needed, geological works will be applied as a part of geological activities.

7.4. PERFORMANCE OF GEOLOGICAL WORKS

The activity of searching for and identifying thermal water deposits does not require a licence (Article 21(1)(1) and Article 21(1)(2) of the PGM Act in conjunction with Article 10(1) of the PGM Act) but an approval of the design of geological works.[143]

Purpose of the approval



The purpose of the decision is for the authority to verify the geological conditions of project implementation in order to ensure the safety of the investor's works.

In accordance with the currently applicable regulations, geological works involving geological operations may only be carried out on the basis of a geological works design.

[143] *Article 79(1) of the PGM Act*

The design of geological works defines in particular:

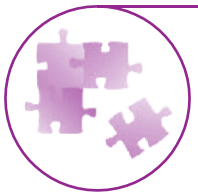
- the objective of the planned works and how it is going to be attained;
- the type of the geological records that are expected to be created as a result of the geological works;
- the schedule of geological works;
- the space where the geological works are to be performed;
- the undertakings necessary for environmental protection (including groundwater protection), the methods for refilling excavations and boreholes, land reclamation methods as well as any tasks which are intended to prevent potential damage caused by the planned works.

Data for the preparation of the geological works design may be obtained from geological information provided by the Polish Geological Institute – National Research Institute through publicly available online platforms (geologia.pgi.gov.pl; baza.pgi.gov.pl), as well as in a mobile version (geolog.pgi.gov.pl).

When is the approval required?

The decision must be secured before the commencement of geological works.

Elements of an application for the approval



The application for approval of the design of geological works must:

- identify the person filing the application and their address;
- contain the request for approval of the attached design of geological works along with the time brackets for which the approval is needed.

Furthermore, the applicant should attach the following:

- 2 copies of the geological works design, whereby the geological administration authority may require submission of an electronic copy of the design;
- details of the owners (or perpetual usufruct holders) of the property within which the works are to be carried out, along with an extract from the land and building register issued no earlier than three months prior to submission;
- a proof of stamp duty payment;
- authorisation – if the application is filed by an authorised representative together with proof of payment of the stamp duty for the power of attorney.

07. GEOTHERMAL ENERGY

The process

Once filed, the application for approval of the geological design is reviewed by the competent authority, which checks it for content-related and formal aspects. The authority consults the design of the geological works with the commune administrator (Polish: wójt) or the mayor having jurisdiction over the site of the geological works and, in specific situations, also with the minister of national defence and the minister competent for fishery.

The authority may deny the decision only if:

- the planned geological works would violate environmental protection requirements,
- the design of the geological works does not meet legal requirements;
- the types and scope of the planned geological works and their performance method are not consistent with the objective of the works.
- the planned geological works may pose a threat to the public interest, as referred to in Article 29(1)(1)(a) and (b) of the Geological and Mining Law.

After approving the design of geological works, the approving authority is obligated to promptly deliver a copy of the decision to locally competent geological administration authorities and the mining supervisory authority and the national geological service.

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation
(in the case of submitting a complete application together with all required documentation).

Authority competent for the approval

The geological administration authority of first instance competent to approve the geological works design for the purpose of exploration and identification of thermal water deposits is the province marshall.

Approval validity period

The design of geological works is approved for not more than 5 years, depending on the scope and schedule of the intended works.

What is the fee for the approval?

The stamp duty for the approval of a design of geological works is PLN 10 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

The party may appeal within 14 days of receiving the decision to the minister in charge of environmental matters. Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The applicable regulations do not provide for a possibility of applying online. However, some public administration bodies competent for the matter allow the applicants to use the ePUAP service.

This option should be checked before the submission of the application.

7.4.1. Preparation and approval of a mine operation plan

If the geological works undertaken to search for or identify mineral deposits (including thermal waters) are performed without blasting agents at a depth up to 100 m outside a mining area, the mining operations of the mine are carried out based on the terms defined in the licence or, as in the case of thermal waters, based on the decision approving the design of geological works (Article 105(2)(2) of the PGM Act).

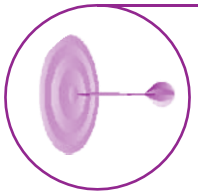
If the depth of the borehole for thermal water intake exceeds 100 m or if the borehole is made within an already designated mining area, the provisions of the PGM Act which pertain to the mine shall apply.

This means that in addition to an approved design of geological works, the commencement of the already mentioned geological activities (in practice the drilling of a borehole meeting the above parameters) will additionally require approval of the operation plan of the mine.[144]

[144] *Article 105 of the PGM Act*

07. GEOTHERMAL ENERGY

Purpose of the decision

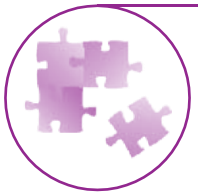


The purpose of the approval is to guarantee the performance of geological works in accordance with the pre-approved plan.

When is the decision required?

The decision is required at least of 30 days before the mine starts the geological works.

Elements of an application for the decision



The following shall be attached to the application for approval of the mine operation plan:

- 2 copies of the mine operation plan signed by the entrepreneur and by the mine operation manager who will implement the plan and – in the case of an operation plan for geological works connected with searching for and identifying a hydrocarbon deposit – also a digital copy of the plan;
- descriptions of decisions issued by other authorities which are required for the planned works, especially ones related to environmental protection;
- an opinion of the competent commune administrator or mayor or an annotation on the absence thereof and, in the case of reservations, an annotation on how they will be addressed or why they will not be addressed;
- if the decision approving the operation plan for the performance of geological works based on a licence for search for or identification of a mineral deposit is preceded by an environmental decision issued in a procedure with mandatory participation of the public – a visual appendix specifying the anticipated project implementation site and the anticipated project impact area, provided that the submission of this appendix was required by the regulations in effect on the date of applying for the environmental decision, and especially the map referred to in Article 74(1)(3a) of the EIA Act (Polish Act on Access to Information Concerning the Environment and Environmental Protection, Participation of the Public in Environmental Protection and on environmental impact assessments of 3 October 2008 (Journal of Laws of 2023 item 1094)).

Along with the application for approval of the mine operation plan, the investor produces copy of the licence for inspection and a deposit management design or, for geological activities not requiring a licence, a design of geological works.

The investor prepares the mine operation plan separately for every mine.

The mine operation plan defines:

- the organisational structure of the mine, especially the job positions of the management and the operational supervision staff;
- the boundaries of the mine;
- detailed undertakings necessary to ensure:
  a) the performance of the licensed activity;
  b) general safety;
  c) fire safety;
  d) the safety of the people in the mine, especially occupational health and safety;
  e) reasonable deposit management;
  f) protection of the elements of the environment;
  g) protection of building structures;
  h) prevention and repair of damage.

The mine operation plan is prepared in accordance with the terms defined in the licence and, as appropriate, in the deposit management design, the geological and investment documentation for a hydrocarbon deposit or the investment decision, subject to Article 34(2a) of the PGM Act, and in the case of:

- geological works not requiring a licence – in accordance with the terms defined in the design of geological activities;
- the activity defined in Article 2(1) of the PGM Act – in accordance with the local conditions of its performance.

If any works connected with searching for or identifying mineral deposits or groundwaters are planned or carried out within the mining area or if mining areas are adjacent to each other, the mine operation plan accounts for the co-dependencies and provides for appropriate measures, including organisational and technical measures, required to guarantee occupational safety, general safety and the protection of particular mineral deposits and other elements of the environment.

The mine operation plan requires an opinion of the competent commune administrator (or mayor). A criterion of the opinion is that the intended activity must not violate the intended purpose of use of the real property defined in Article 7 of the PGM Act.

07. GEOTHERMAL ENERGY

The process

The competent authority checks the application for content and for formal matters and then either issues or refuses to issue the decision.

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation (in the case of submitting a complete application together with all the required documentation).

Authority competent for the decision

The application for approval of the mine operation plan is submitted to the director of the regional mining authority having jurisdiction over the site where the works covered by the plan are to be performed, and if the works covered by the plan are to be performed within a jurisdiction of at least 2 mining supervision authorities – to the regional director of the mining authority competent for the registered office of the mine.

Decision validity period

The mine operation plan is prepared for a period of 2 to 6 years or for the whole proposed operation period, whichever is shorter.

What is the fee for the decision?

A stamp duty of PLN 805 must be paid for approval of mine operation plans for surface mines or mines extracting minerals through boreholes.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

A party may appeal against the decision to the President of the Higher Mining Authority (Wyższy Urząd Górniczy) within 14 days of receiving it. Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The applicable regulations do not provide for a possibility of applying online. However, some public administration bodies competent for the matter offer this possibility.

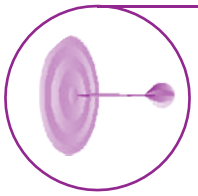
This option should be checked before the submission of the application.

7.4.2. Notification under the water legislation

In accordance with the provisions of the Water Law and its implementing regulations, if thermal waters from test borehole pumping are discharged to a watercourse or a surface water basin, a notification under the water legislation is required.[145]

At the same time, waste geothermal waters can be discharged to groundwater provided that the authority competent for permits under the water legislation decides that this does not collide with the environmental objectives for the waters or with the quality requirements for the waters (Article 76(1)(5)). It should be noted that fees for discharging hot water are relatively high, and the introduction of used geothermal waters, as mentioned above, reduces the efficiency of the installation.

Purpose of the notification

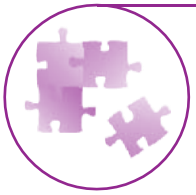


To guarantee a possibility of discharging the water from the geothermal system to a surface water body.

When is the notification required?

A notification under the water legislation must be submitted before the scheduled commencement date for the tasks, activities or water structures.

Elements of an application for the notification



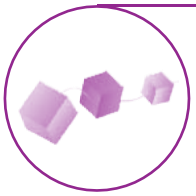
A notification under the water legislation includes:

- the name, registered office and address of the notifying plant;
- the details of:
  a) the purpose of the planned tasks, works or water structures;
  b) the legal status of the real property where the tasks, works or water structures are to be performed;
  c) the planned works in a descriptive way, the basic parameters characterising the planned;
  d) the location of the tasks, works or water structures along with the name or number of the land precinct along with the number(s) of the plots and the coordinates;
  e) the scheduled commencement date for the works or tasks.

[145] *Article 394(1)(8) of the Water Law*

07. GEOTHERMAL ENERGY

The process



The competent authority checks the application for content and for formal aspects. If it has no objections, the authority does not issue a decision, which is a sign of tacit approval of the application. This means that the investor may start the tasks, works or water structures covered by the notification if, within 30 days after receiving the notification, the authority competent for water legislation matters does no object by way of a decision but not later than 3 years after the commencement date stated in the notification.

The supervisory authority will not issue a decision approving the notification if the planned tasks:

- require a permit under the water legislation;
- violate the provisions of the documents mentioned in Article 296(1)(1) through Article 396(1)(7) of the Polish Water Law;
- fail to meet the requirements linked to the protection of human health, environmental protection and the protection of the cultural heritage listed in the register of historical monuments and any requirements arising from statutory or other regulations;
- infringe on the rights of third parties, including the owner of the water;
- threaten the environmental objectives for the waters (the objectives are defined and described in Articles 56, 57, 59 and 61 of the Water Law);
- have impacts beyond the boundaries of the real property where the project is to be implemented.

Duration of the process

The tasks commence within 30 days after the notification is delivered to the authority unless the authority objects.

Authority competent for the notification

The competent authority is the water supervision manager of Polish Waters.

07. GEOTHERMAL ENERGY

Notification validity period

The notification expires 3 years after the date specified in the notification as the task commencement date.

What is the fee for the notification?

The stamp duty for the notification under the water legislation is PLN 132.33 zł and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

The party may appeal within 14 days of receiving the decision to the Director of the Executive Board of the State Water Holding Polish Waters (Państwowe Gospodarstwo Wodne Wody Polskie). Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

7.4.3. Decision on environmental conditions

Extraction of thermal waters qualifies as a project with a potentially significant environmental impact to which the provisions of the EIA Act apply.

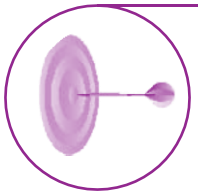
In practice, before the borehole for the intake of thermal waters is made, an environmental decision is required, which is issued by the commune administrator or by the mayor. The decision is granted based on the project data sheet or the project environmental impact report, depending on project qualification.

A detailed process of obtaining an environmental decision is described in point 7.5.

7.4.4. Notification of the commencement of geological works

The commencement of geological works must be preceded by a relevant notification.[146]

Purpose of the notification



The purpose of the notification is to inform competent authorities about the planned commencement of geological works.

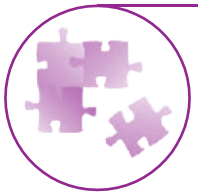
When is the notification required?

The notification should be submitted after the design of geological works is approved but before the geological works commence.

[146] *Article 81 of the PGM Act*

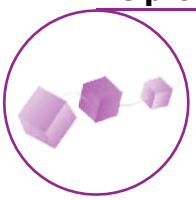
07. GEOTHERMAL ENERGY

Elements of an application for the notification



The notification must be submitted in writing not later than 14 days before the intended commencement date of geological works and it must define the planned start and end dates of the geological works, the type of geological works, the basic data regarding the geological works, the full names of the supervisory and managing staff and the number of the certificates confirming the qualifications for the performance of those tasks.

The process



The competent authority registers the notification after receiving it but the notifying party does not receive any confirmation of the registration.

Duration of the process

Registration is performed within 30 days from the date the notification is submitted. After 14 days, tacit consent applies. No confirmation of registration is provided.

Authority competent for the notification

The intention to commence geological works must be notified to: the geological administration authority and the mayor, town mayor or city president, and, in the maritime areas of the Republic of Poland, to the local maritime administration authority, as well as to the mining supervision authority if the requirements concerning the operation of a mining plant apply to the geological works.

Additionally, the applicable laws provide for a requirement of informing, in writing, the local geological administration body and the national geological service (Państwowy Instytut Geologiczny – Państwowy instytut Badawczy) about any sampling intended as a part of geological works up to 14 days before the planned sampling date.

Notification validity period

The notification is open-ended.

07. GEOTHERMAL ENERGY

What is the fee for the notification?

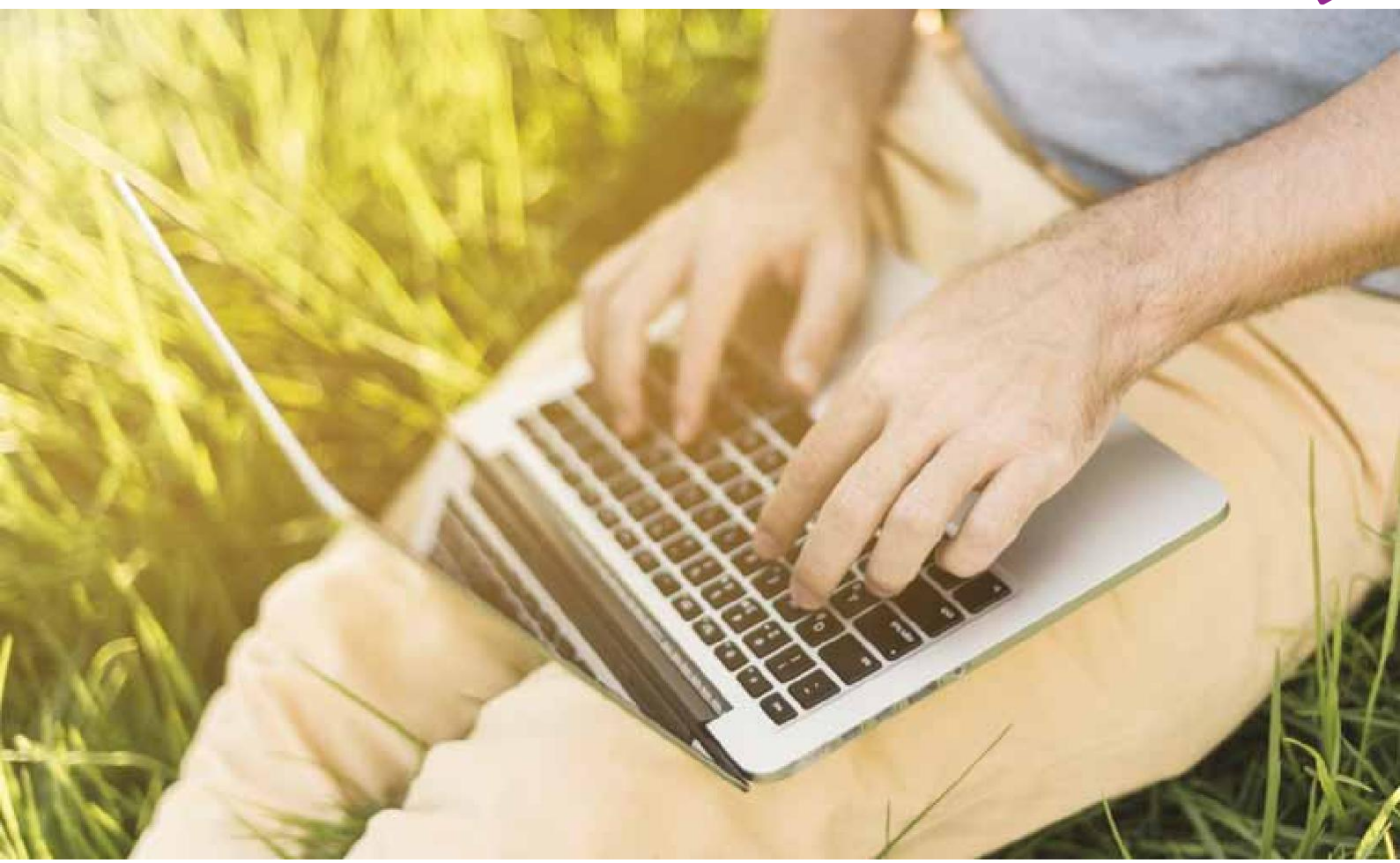
The notification is free of charge.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

There is no appeal procedure.

Can the application be filed online?

The application may be submitted electronically to the competent public administration authority via the ePUAP platform.



7.4.5. Documentation of the results of geological works

An investor carrying out geological works on the basis of a notification of a geological works design or a decision approving a geological works design is obliged to continuously document the progress of the geological works, including the geological operations themselves, as well as their results (Article 82(1) of the PGM Act).

On completion of geological works regarding groundwaters (thermal waters), the investor must prepare the hydrogeological documentation with the results of the geological works along with their interpretation and with an annotation on the extent to which the intended purpose was achieved, supported by a justification (Article 88 of the PGM Act).

The hydrological documentation defines especially:

- the geological structure and hydrogeological conditions of the studied area;
- the conditions of groundwater occurrence, including the characteristics of level-specific aquifers;
- information on the chemical composition, physical characteristics and other properties of the waters;
- water intake possibilities;
- the boundaries of the planned groundwater intake protection zones and the groundwater body protection areas;
- the undertakings required to protect the environment (also related to land properties) which are connected with the activity for which the documentation is being prepared (Article 90(2) of the PGM Act).

The detailed requirements to be met by the aforesaid hydrogeological documentation are defined in the Regulation of the Minister of the Environment of 18 November 2016 on hydrogeological documentation and geological engineering documentation (Journal of Laws of 2016 item 2033).

7.4.6. Approval of hydrological documentation

Hydrological documentation is subject to approval.[147]

The hydrogeological documentation shall be submitted to the competent geological administration authority in two paper copies and four electronic copies on digital data carriers.

Hydrological documentation is approved by way of a decision of the competent geological administration body (competent province marshal who has approved the design of geological works).

The stamp duty for issuing a decision approving the hydrogeological documentation is PLN 10. The stamp duty for a power of attorney is PLN 17.

Other geological documentation that must be prepared when carrying out geological works not resulting in the documentation of mineral deposit resources or groundwater resources does not require approval by way of an administrative decision (Article 93(7) of the Geological and Mining Law in conjunction with Article 88(2)(4) and Article 92 of the same Act).

[147] *Article 93 of the PGM Act*

The documentation must be submitted in one copy in paper format and in three copies in a digital format on electronic media 6 months after the end of the works to the competent authority which has approved the design of geological works.

Documented mineral deposits and documented groundwaters within the planned groundwater intake protection zones and the groundwater body protection areas are disclosed, for the purpose of their protection, in studies of local determinants and directions in spatial development (Polish: studium uwarunkowań i kierunków zagospodarowania przestrzennego) of communes, in Local Spatial Development Plans and in provincial spatial development plans (Article 95(1) of the PGM Act).

7.4.7. Geological disclosures

Approved geological documentation, including hydrogeological documentation, is treated as geological disclosures understood as geological data and samples along with the results of their processing and interpretation, especially presented in geological documentation and recorded on electronic media (Article 6(1)(2) of the PGM Act).

The State Treasury has the right to geological disclosures and the party who has incurred to cost of works resulting in geological disclosures (e.g. prepared the hydrogeological documentation as a result of actions based on a design of geological works approved by way of a decision) has the right to use such disclosures free of charge. On top of that, within the five years following the delivery of the decision approving the geological documentation, the party who has incurred to cost of works resulting in geological disclosures has the exclusive right to use such disclosures for the purpose of applying for an activity involving extraction of minerals from the deposit (thermal water) and, if an extraction licence is granted, retains the exclusive right to use the geological disclosures during the licence term and additionally for two years after the expiry thereof (Article 99 of the PGM Act).

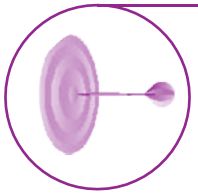
The geological disclosures in which to State Treasury holds the rights can be used for the purpose of mineral extraction activities under a contract and in return for consideration. The fee for the use of geological information is defined based on an appraisal determining the costs of designing, performing and documenting the geological works. The appraisal is financed by the entity that applies for using the geological information. The State Treasury verifies the appraisal before signing the contract. The appraisal is prepared by a person duly qualified to perform, oversee and manage geological works in the category corresponding to the type of the geological information covered by the appraisal. If the geological information is included in geological documentation, it can only be used for a fixed term (Article 100 of the PGM Act).

Details of the regulations that govern the collection and sharing of geological disclosures and the use of geological disclosures for a fee are defined in the Regulation of the Minister of the Environment of 30 October 2017 on the collection and sharing of geological disclosures (Journal of Laws of 2017 item 2075) and in the Regulation of the Minister of the Environment of 20 December 2011 on the use of geological disclosures for a fee (Journal of Laws No. 292 item 1724).

7.4.8. Thermal water extraction licence

Extraction of groundwater, which is treated as a mineral (thermal waters in this case), is an activity that requires a licence. This arises directly from the PGM Act whereunder the activity involving extraction of minerals from deposits requires a licence.[148]

Purpose of the licence

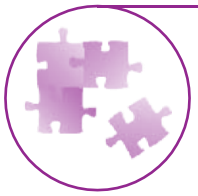


The government regulates the possibility of extracting minerals so for lawful operation of a geothermal power plant or heating plant, the investor must first secure a thermal water extraction licence.

When is the licence required?

The licence is required in any case before the geothermal power plant or heating plant starts to extract the thermal water.

Elements of a licence application



The licence application must specify:

- the owners (perpetual users) of the real properties on which the intended activity is to be performed and the references of those real properties in accordance with the register of land and buildings; this requirement does not apply to search for and identification of hydrocarbon deposits; the circumstances must be confirmed through attachment of an extract from the register of land and buildings;
- the applicant's title to the real property (space) where the activity is to be performed or the title for which the applicant is applying;
- the requested licence term and the activity start date;
- the funds the applicant has at its disposal to guarantee proper performance of the planned activity;

[148] *Article 21 of the PGM Act*

- a list of areas covered by nature conservation; this requirement does not apply to projects which require an environmental decision;
- how any negative environmental impacts of the planned activity are going to be prevented;
- the name, registered office and address of the entrepreneur or their residence address and principal place of business;
- number in the KRS register of companies, if any, and the tax identification number (NIP);
- the type and scope of the planned activity;
- the mineral deposit or the part thereof that is going to be extracted;
- the size and method of the planned mineral extraction;
- the extent of the planned utilisation of the usable resources of the intake, including the accompanying minerals and the concomitant trace elements, as well as the means to achieve this;
- the planned location of the mining area and the mining site presented in accordance with the requirements for mining maps, with outlined boundaries of the country's territorial division;
- the geological and hydrogeological conditions of the extraction or, where applicable, the conditions of water injection into the ground.

The following shall be attached to the application:

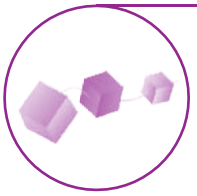
- evidence confirming the applicant's right to use geological disclosures for the planned activity and a copy of the decision approving the geological documentation;
- a deposit management design which defines the requirements of rational mineral management, especially through comprehensive and rational use of the principal mineral and the accompanying minerals,
  and the mineral extraction technology, which must limit any negative environmental impacts. This obligation does not apply to licences issued by the county administrator (Polish: starosta).

Additionally, a licence application addressed to the county administrator must also define the anticipated mine operation method, which must take into account the requirements set forth in Article 108(2) of the PGM Act, and the forecast way of shutting down the mine, taking into account the obligations laid down in Article 129(1) of the PGM Act.

On top of that, if geological documentation has already been prepared for the space covered by the application, the licensing authority may request access to that documentation.

A licence application preceded by an environmental decision issued in a procedure with mandatory participation of the public must include a visual appendix specifying the anticipated project implementation site and the anticipated project impact area, provided that the submission of this appendix was required by the regulations in effect on the date of applying for the environmental decision, and especially the map referred to in Article 74(1)(3a) of the EIA Act.

The process



The competent authority checks if the application is correct in terms of content and formal aspects and, if necessary, it seeks opinions from relevant bodies. If the verification is positive, the competent authority issues a decision which specifies:

- the type and performance method of the planned activity;
- the space within which the planned activity is to be performed;
- the licence term;
- the start date of the activity defined by the licence or, where necessary, the criteria to be met for the activity to be deemed commenced.

The licence may define other requirements for the licensed activity, especially in the area of general safety and environmental protection, such as:

- minimum deposit utilisation and the undertakings required to ensure rational deposit management;
- the conditions of water injection to the ground; in such a case, the legislation on the use of waters and on fees for use of the environment does not apply.

A licence granted by the county administrator must also define the mine operation method, which must take into account the requirements set forth in Article 108(2) of the PGM Act and the way of shutting down the mine, taking into account the obligations laid down in Article 129(1) of the PGM Act.

The licence also defines the boundaries of the mining area and site. The mining area must be entered in the register of mining areas and closed underground carbon dioxide storage spaces.

Any off-licence use of water (mineral) deposits also requires signing a contract with the State Treasury to establish the deposit mining right. The deposit mining contract for thermal water as a mineral is signed on behalf of the State Treasury by the province marshal. The mining right is in effect during the term of the extraction licence. The mining activities under the signed contract are performed in return for a charge. This means that the user is obligated to pay the fee defined in the contract.

The licensing authority denies a licence if:

- The intended activity is contrary to the public interest, particularly in relation to state security, including energy security, or the state's resource interests or environmental protection, including rational management of mineral deposits, implementation of the energy transition, including the possibility of obtaining financial resources for its implementation, or would prevent the use of real estate or maritime areas of the Republic of Poland in accordance with their designated purpose as specified in the Local Spatial Development Plan, in spatial development plans for internal maritime waters, the territorial sea and the exclusive economic zone, or in separate regulations, and in the absence of such plans – would prevent the use of real estate or maritime areas of the Republic of Poland in a manner resulting from the general municipal plan or separate regulations;
- the space and type of activity or – in the case of a licence application regarding search for or identification of a mineral deposit or a licence application regarding mineral extraction from the deposit – the type of mineral defined in the licence application is already covered by a licence granted to another entity.

The licensing authority has the right to deny a licence if a decision has been issued which prevents the rights under the entrepreneur's shares from being exercised pursuant to the Polish Act on Audit of Certain Investments of 24 July 2015 (Journal of Laws of 2023 No. 183 item 221, as amended), where this is a matter of public interest linked especially to national security or environmental protection, including rational mineral deposit management.

Duration of the process

Up to 1 month,

particularly complex cases – up to **2 months** from process initiation (in the case of submitting a complete application together with all required documentation).

07. GEOTHERMAL ENERGY

Authority competent for granting the licence

A thermal water extraction licence is in principle granted by the province marshal. However, a thermal water extraction licence is issued by the county administrator if the following requirements are jointly met:

- the documented deposit area not covered by a mining title does not exceed 2 ha;
- the extraction of the mineral from the deposit will not exceed 20,000 m^3 in the calendar year;
- the activity will rely on surface mining and will not use blasting agents.

Licence validity period

The licence is granted for an indefinite term, not shorter than 3 years and not longer than 50 years, unless the entrepreneur requests a shorter term.

What is the fee for the licence?

A stamp duty for a thermal water extraction licence is PLN 616. The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving a decision issued by the province marshal, the applicant has 14 days to appeal against the decision to the Minister competent for environmental matters. If the decision was issued by the county administrator, the applicable may appeal to the Local Appeal Body. Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The applicable regulations do not provide for a possibility of applying online. However, some public administration bodies competent for the matter allow the applicants to use the ePUAP service.

This option should be checked before the submission of the application.

7.4.9. Mine

Extraction of thermal waters requires setting up a mine.

A mine is a set of measures which are separated in technical and organisational terms and are used directly to perform activities regulated under the PGM Act involving mineral extraction from deposits, including mining excavations, buildings, structures and systems.

In order to ensure the proper operation of a mining facility, it is necessary to employ a mine operations manager who holds the qualifications required to perform the duties of such a position. These qualifications must be confirmed by a certificate issued by the director of the regional mining authority. The mine operations manager is responsible for conducting the exploitation of thermal waters in accordance with the granted concession.

Once all the operational requirements described above are met, the new mine can be started, in line with all the relevant decisions that have been issued.

Please note that the mining areas and sites covered by the licence are included in the Study of Local Determinants and Directions in Spatial Development of the commune and in the Local Spatial Development Plan.

However, if the planned activity specified in the licence is expected to have significant consequences for the environment, a Local Spatial Development Plan can be prepared for the mining site or a part thereof based on spatial development legislation. Still, even in this case the preparation of a Local Spatial Development Plan is entirely up to the commune authorities.

If the plan is prepared, the expected environmental consequences of the activity specified in the licence are defined in the ecophysiography study (Polish: opracowanie ekofizjograficzne) prepared for the purpose of the Study of Local Determinants and Directions in Spatial Development of the commune and the Local Spatial Development Plan, as well as based on the deposit management design. Notwithstanding any requirements laid down in separate legislation, the plan should ensure the integration of all the actions taken within the mining site in order to:

- pursue the activity defined in the licence;
- guarantee general safety;
- protect the environment and building structures.

The plan may additionally specify:

- facilities or areas with an established mining protection zone where mine operation can be banned or permitted only in a way that ensures proper protection of the facilities of areas;
- areas excluded from development or areas which can only be developed if appropriate requirements are met; the costs of meeting such requirements are borne by the entrepreneur.

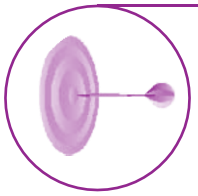
The costs of preparing a draft plan are borne by the entrepreneur.

7.5. DECISION ON ENVIRONMENTAL CONDITIONS

Having completed the above-described activities and obtained the required permits, the investor may commence project implementation.

Obtaining a decision on environmental conditions (environmental decision) is the first decision to be secured in the investment process for a geothermal system.[149] Please note that at a separate environmental decision can be required at an earlier stage, i.e. search for geothermal waters. The process for obtaining the decisions at each of these stages is in principle the same, as described below.

Purpose of the decision



As part of the environmental decision, the competent authority specifies, among other things, the environmental protection requirements and the conditions that must be met by the investor during the implementation and operation of the project. The purpose of the decision is to ensure a balance between the needs of economic development and the protection of the environment and human health.

In the environmental decision, the authority either approves or rejects the project and defines the environmental protection requirements and the conditions to be met by the investor at project implementation and operation stages. So the purpose of the decision is to balance the needs for economic growth and the protection of the environment and human health.

When is the decision required?

An environmental decision at the project implementation stage is required however the project involves:

1. construction of devices or systems allowing for the sourcing of groundwater or artificial groundwater feeding systems with the minimum water sourcing of 1,100 m^3 per hour;
2. construction of systems for transmission of steam or hot water, except for local heating grids and connections in buildings;
3. construction of devices or systems allowing for the sourcing of groundwater or artificial groundwater feeding systems other than mentioned in § 2(1)(37) of the EIR, with a minimum water sourcing capacity of 10 m^3 per hour;

[149] *Article 72(1) of the EIA Act*

4. construction of devices or systems for groundwater sourcing from the same aquifer, with a minimum water sourcing capacity of 1 m^3 per hour, other than mentioned in § 2(1)(73) of the EIR, if there is another underground water sourcing device or system for groundwater sourcing within 500 m with a minimum water sourcing capacity of 1 m^3 per hour, except for normal use of waters;
5. by underground mining methods, where the annual volume of extracted mineral is not less than 100,000 m^3;
6. extraction of minerals:
    a) by underground methods other than those specified in point 5(b), or by drilling methods other than those referred to in § 2(1)(24) of the Regulation on Projects That May Significantly Affect the Environment;
    b) in the maritime areas of the Republic of Poland, other than those specified in § 2(1)(24)(c) of the aforementioned Regulation, or from inland surface waters;

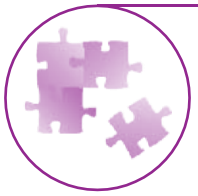
7. search for or identification of and mineral deposits:
    a) within Polish maritime areas;
    b) conducted with an underground method;
    c) conducted by drilling bore-holes more than 1000 m deep:
        - in water intake protection areas;
        - in inland water body protection areas;
        - in nature conservation areas (national parks, nature reserves, landscape parks, protected landscape areas; Natura 2000 areas, ecological sites) or in buffer zones of nature protection forms (national parks, nature reserves, landscape parks, protected landscape areas);
    d) conducted by drilling bore-holes more than 5000 m deep for zones, areas of mineral deposits other than listed in point c).

The current legal regulations recognise the activities under items 1 and 5 as activities which may always have a significant environmental impact. The activities under items 2, 3, 4, 6, 7 are recognised as potentially having an environmental impact. As a result, an environmental decision must be secured before the investor proceeds to subsequent project stages involving such activities.

The division into activities which always have and which potentially have an environmental impact is relevant for the environmental impact assessment obligation. For the former activities, the assessment must be prepared in every case, while for the latter this is largely up to the authority, as addressed in more details in the section below.

07. GEOTHERMAL ENERGY

Elements of an application for the decision



The process of issuing an environmental decision is initiated by an application of the investor. The application should:

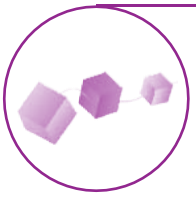
- specify the person filing the application and their address;
- include a request for an environmental decision for a specific project.

The investor should attach the following to the application:

- a project data sheet (KIP) for geothermal installations classified as projects potentially having a significant impact on the environment. If the applicant requests an environmental impact assessment pursuant to Article 59(1)(2) of the EIA Act, an environmental impact report must be submitted;
- environmental impact report for geothermal installations classified as projects always having a significant impact on the environment. However, instead of the report, the investor may submit a KIP together with a request to determine the scope of the report (Article 69 of the Environmental Protection Act);
- a copy of a cadastral map certified by a competent authority, either as a hard copy or digital, which covers the planned project site and the area on which the project, in the variant proposed by the applicant, will have an impact. This impact area is understood as:
  a) the planned project implementation site and the area up to 100 m form the boundaries of that site;
  b) the plots on which the environmental quality standards would be breached as a result of the implementation, operation or use of the project, or
  c) the plots within the range of a significant project impact which may result in restrictions on the currently intended development of the real property;
- a map, in paper and electronic form, at a sufficient scale to guarantee the legibility of the presented data, outlining the site where the project is expected to be implemented and outlining the expected project impact area within 100 m from the boundaries of the site;
- for projects requiring a concession or decision referred to in Article 72(1)(4–5) of the EIA Act, conducted within a space not constituting part of a land property, a situational and elevation map must be submitted instead of the cadastral map, prepared at a scale allowing detailed representation of the boundaries of the area concerned and the area affected by the project;
- a cost-benefit analysis (not required for installations with a nominal thermal capacity not exceeding 20 MW);

- an excerpt and extract from the Local Spatial Development Plan, or a statement confirming its absence (if the competent authority for issuing the environmental decision is the Regional Directorate for Environmental Protection);
- an excerpt from the land and building register, or another document (in paper or electronic form) issued by the authority maintaining the land and building records, allowing for the identification of parties to the proceedings. The document must include at least the cadastral parcel number and, if disclosed: the land and mortgage register number, the name and address of the registered entity, covering the planned project area and the area affected by the project. (This document is not required if the number of parties to the environmental decision proceedings exceeds 10);
- a proof of stamp duty payment;
- for applications filed by authorised representatives – the authorisation and the proof of payment of the stamp duty for the authorisation.

The process



Once the application is filed, the authority reviews it to establish if the project can be implemented in accordance with the regulations of the environmental protection law and it formulates the necessary requirements in this respect.

During the procedure, the authority may determine that an environmental impact report must be prepared. In such cases, the authority shall define the scope of the report to be submitted by the applicant. If the project is located within landscape parks or protected landscape areas, the applicant may independently request the determination of the scope of the report.

An environmental impact assessment is mandatory if:

- the possibility of implementing the project depends on the establishment of a limited use area, as defined in environmental protection regulations;
- the project data sheet (KIP) indicates that the implementation of the project may prevent the achievement of environmental objectives set out in the river basin management plan.

The regulations require the inclusion, within the report, of information enabling the assessment of the following environmental impact criteria:

- the impact of the proposed project on the environment and the population, including human health and living conditions, material assets, cultural heritage, landscape (including cultural landscape), interactions among these elements, and access to mineral deposits;
- the risk of major accidents as well as natural and construction-related disasters;
- the possibilities and methods of preventing and mitigating the negative environmental impact of the project;
- the required scope of environmental monitoring.

Furthermore, a project environmental impact report should:

- describe the planned project, especially by presenting:
  a) a description of the whole project and the site use conditions at the implementation and operation or use stages, also addressing areas at a special risk of flood within the meaning of Article 16(34) of the Water Law;
  b) the main characteristics of the production processes;
  c) the expected types and quantities of emissions, including waste, arising from the project implementation and operation or use stages;
  d) information on the biological diversity, utilisation of natural resources, including soil, water and earth surface;
  e) information on the demand for and consumption of energy;
  f) information on demolition works for projects having a potentially significant environmental impact;
  g) a risk – assessed based on scientific knowledge – of major failures, natural disasters and construction accidents, taking into consideration the substances used and the technologies applied, including the risk related to climate change;
- describe the elements of the natural environment covered by the expected environmental impact of the planned project, including:
  a) elements of the environment covered by conservation under the Nature Act and the wildlife corridors within the meaning of this Act;
  b) the hydromorphological, physicochemical, biological and chemical properties of waters;
- the results of the nature inventory, in both descriptive and cartographic form, if conducted, together with a description of the methodology, shall constitute an annex to the report;
- present other data underlying the description of natural environment elements;
- describe any historical monuments under conservation pursuant to monument conservation and care legislation which may be situated in the vicinity of or within the impact range of the project;
- describe the landscape where the project is to be located;
- present the information on ties to other projects, especially on cumulative impacts of any continuing, completed or planned projects which have an environmental decision and which are located within the planned site of the project in question and within the project impact range or which have impacts within the project impact range;

- describe the consequences expected for the environment if the project is abandoned; the description must include the available environmental information and scientific knowledge;
  a description of the project variants, taking into account its specific characteristics or environmental impacts, indicating the selected implementation variant, a reasonable alternative variant, and a reasonable variant most beneficial to the environment (the reasonable variant most beneficial to the environment may be identical to either the selected implementation variant or the reasonable alternative variant);
- describe the expected impact of the analysed variants on the environment (also in the case of a serious industrial accident, natural disaster or construction accident), on the climate (including greenhouse gas emissions and impacts important from the perspective of adapting to climate changes), as well as the possible cross-border environmental impact;
- compare the impacts of the analysed variants on:
  a) people, plants, animals, fungi, natural habitats, water and air;
  b) the earth surface (taking into account soil mass movements) and the landscape;
  c) physical property;
  d) historical monuments and cultural landscape covered by the existing documentation especially entered in the register of historical monuments;
  e) the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites;
  f) the elements referred to in Article 68(2)(2)(b) of the EIA Act, if they have been included in the environmental impact report or if they are required by the competent authority;
  g) mutual interactions between the elements listed in items (a) through (f) above;
- justify the variant proposed by the applicant, taking into account the information regarding the determination of the expected environmental impacts of the analysed variants and the comparison of their impacts referred to above;
- describe the forecasting methods used by the applicant and the expected significant environmental impacts of the planned project, including direct, indirect, secondary, cumulative, short, medium- and long-term, permanent and temporary environmental impacts from:
  a) the existence of the project;
  b) the utilisation of natural resources;
  c) emissions;

- describe the anticipated actions to avoid, prevent, limit or offset any negative environmental impacts, especially impacts on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites, along with the assessment of their effectiveness at the stages of project implementation, operation, use or shutdown;
- address the environmental objectives arising from strategic documents important from the perspective of project implementation;
- present the issues in a graphic version;
- include a cartographic presentation of the issues at a scale as required by the subject matter and level of detail of the issues analysed in the report for comprehensive presentation of the completed environmental impact analyses;
- analyse the possible social conflicts related to the planned project;
- present the proposed monitoring of project environmental impacts at the project implementation and operation or use stages, especially the impact on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and on the continuity of the wildlife corridors that connect those sites, and present the information on the results of other monitoring which may be relevant for establishing the responsibilities in this respect;
- specify any difficulties resulting from technological shortcomings or gaps in the state of the art which were encountered during report preparation works;
- summarise the information included in the report using non-specialist language by addressing every element of the report;
- specify the report date, the first name, last name and signature of the author or, if the report was prepared by a team of authors, specify the first name, last name and signature of the team leader and the first names, last names and signatures of the team members;
- contain, as an appendix to the report, a statement of the author or, if the report was prepared by a team of authors, a statement of the team leader, on compliance with the requirements laid down in Article 74a(2) of the EIA Act;
- provide the sources of the information underlying the report.

Subsequently, the report is reviewed by the authority in terms of the criteria specified for the applicant and is subject to consultation with the relevant institutions. The authority may then issue an environmental decision.

If the report is positively assessed, the authority may proceed to issue an environmental decision. It should be noted that, pursuant to Article 63(5–6) of the EIA Act, the authority responsible for issuing the environmental decision suspends the proceedings for the duration of the report preparation, for which the investor has no more than three years. Upon expiry of this period, the request to initiate the proceedings is deemed withdrawn.

It is also worth noting that the authority may determine that there is no need to conduct an environmental impact assessment and, in such cases, may proceed directly to issuing the environmental decision.

Any potential refusal to issue an environmental decision is not discretionary as the authority may only refuse to grant the approval in specific, statutory cases, i.e. if:

- the location of the project is incompatible with the Local Spatial Development Plan, if any;
- a cooperating authority refuses to approve the implementation conditions for the RES project;
- the environmental impact assessment for the project suggests that the project cannot be implemented in the variant proposed by the applicant and the applicant rejects the project variant suggested by the authority;
- the environmental impact assessment for the project suggests that the project may have a significant negative impact on a Natura 2000 site;
- the environmental impact assessment for the project suggests that the project adversely affects the possibility of attaining the environmental objectives referred to in Article 56, Article 57, Article 59 and Article 61 of the Water Law.

Duration of the process

Finalizing the case in the form of issuing an environmental decision — for example, in the case of a photovoltaic installation — should be completed within one month. However, this is only a theoretical timeframe resulting from administrative procedures, which do not account for the specific nature of the proceedings, typically lasting several months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or public participation in the procedure, or for any process suspension periods. Furthermore, the permit may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

07. GEOTHERMAL ENERGY

Authority competent for the decision

The authority competent to issue the environmental decision is typically the municipal authority — the commune administrator (wójt), town mayor (burmistrz), or city president (prezydent miasta) — or, in certain cases, the Regional Directorate for Environmental Protection (RDOŚ). During the procedure, the authority consults cooperating bodies, including the Regional Director for Environmental Protection, the State Sanitary Inspection (as per Article 78 of the Environmental Protection Act), the authority responsible for water law assessments, and — for marine projects — the Director of the Maritime Office. Where an environmental impact assessment is required, the locally competent Regional Director for Environmental Protection plays a decisive role

Decision validity period

An environmental decision remains valid and binding until it is removed from legal circulation and may be used in subsequent stages of the investment process. However, within 6 years from the date on which the decision became final or within 10 years if the deadline has been extended (provided that the party who submitted the application for the environmental decision, or the entity to which the decision was transferred, received confirmation from the authority that issued the decision in the first instance, before the 6-year period expired, stating that the conditions for project implementation specified in the environmental decision remain valid), it is possible to submit an application for a subsequent decision.

What is the fee for the decision?

The stamp duty for an environmental decision is PLN 205 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

An appeal against the environmental decision may be lodged within 14 days from the date of its delivery including delivery by public notice, to the competent Self-Government Appeals Board (Samorządowe Kolegium Odwoławcze). Subsequently, a complaint may be filed with the Voivodeship Administrative Court, and further with the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP, however, some of the attachments to the application must be submitted in paper form.

7.6. PLANNING

A geothermal project must be implemented based on a planning legal act. The type of this act depends primarily on the site where the system is to be erected and on the function of the system.

The investor should first verify if the site where the geothermal system is to be erected is covered by a Local Spatial Development Plan.

If the area is not covered by a Local Spatial Development Plan, the investor should consult the municipal master plan (or the Study of Local Determinants and Directions in Spatial Development during the transitional period following the entry into force of the spatial planning reform — i.e. the Act of 7 July 2023 amending the SP&M Act and certain other acts, Journal of Laws 2023, item 1688). According to Article 7 of the PGM Act, in the absence of a Local Spatial Development Plan, undertaking and carrying out activities specified in the Act is permissible only if such activities do not violate the land use designation set out in the municipal master plan (or in the Study of Local Determinants and Directions in Spatial Development during the transitional period).

If the investor determines that the intended project is consistent with the municipal master plan (or the study during the transitional period), depending on the nature of the investment, they should apply for:

- a decision on location of a public utility project or
- a Decision on Land Development Conditions.

7.6.1. Local Spatial Development Plan

A Local Spatial Development Plan is a local law established by the commune council. The plan defines the intended purpose, management rules, infrastructure service rules and, where appropriate, the local conditions, rules and standards for land development, as well as any other special planning conditions required for the areas covered by the plan.

A visual annex presenting the boundaries of the site to be covered by the draft plan forms an integral part of the resolution.

07. GEOTHERMAL ENERGY

In order to start a geothermal power plant or heating plant construction project, the investor must first verify the intended purpose of the areas covered by the Local Spatial Development Plan to check if the planned project is allowed.

If there is no Local Spatial Development Plan, a Decision on Land Development Conditions or a decision on location of a public utility project may have to be obtained.

Rules of locating geothermal power plants based on a Local Spatial Development Plan

Activities involving search for and identification of thermal waters are only allowed if this does not affect the intended purpose of the real property defined in the Local Spatial Development Plan and in separate legislation.

Pursuant to the current wording of the SP&M Act, the location of geothermal installations with an installed electrical capacity exceeding 1000 kW is permitted only on the basis of a Local Spatial Development Plan (Article 14(6a)(2) of the Act).

The location of renewable energy sources (RES) under Local Spatial Development Plans adopted during the transitional period (i.e. not based on the municipal master plan) requires explicit inclusion of RES installations in the plan.

Rules for locating geothermal installations under Local Spatial Development Plans adopted after 30 October 2021 and before 24 September 2023 [150]

Pursuant to the current SP&M Act, if the project site is covered by a Local Spatial Development Plan, a geothermal power plant or heating plant of a capacity above 500 kW can only be located also in areas explicitly designated in the commune's Study of Local Determinants and Directions in Spatial Development (Polish: studium uwarunkowań i kierunków zagospodarowania przestrzennego) In practice, this means that if the designated use of a site in the Local Spatial Development Plan is other than a geothermal power plant or heating plant, the construction authority will most likely deny a construction permit.

Proceedings initiated but not concluded before 24 September 2023 are subject to the previously applicable provisions of the SP&M Act, including Article 10(2a).

For Local Spatial Development Plans established before 30 October 2021, the location rules are different:

- if the Local Spatial Development Plan was established after 25 September 2010 a geothermal power plant or heating plant above 100 kW is only permitted if the Local Spatial Development Plan directly provides for a system of this type;
- for Local Spatial Development Plans established before 25 September 2010, geothermal power plants or heating plants may also be located on real properties which were not directly intended for RES systems, regardless of capacity.

Please note that interpretation of the SP&M Act, especially in terms of Local Spatial Development Plans established before 30 October 2021, is approached by the judicature inconsistently and as such it requires a case-by-case legal assessment to account for the specificities of a particular Local Spatial Development Plan.

[150] *Information notice of the President of the URE no. 8/2023.*

Amendment/adoption of a Local Spatial Development Plan

If the project site is covered by a Local Spatial Development Plan which does not permit the planned RES system or if the area is not covered by a Local Spatial Development Plan and the investment may only be located on its basis, the investor has the right to apply for amendment of the Local Spatial Development Plan.

An application for the amendment or adoption of a Local Spatial Development Plan is submitted to the commune administrator, town mayor, or city president and registered in the register of applications for the preparation or amendment of a Local Spatial Development Plan. The authority assesses the application's compliance with the municipal master plan and reviews its justification.

The municipal master plan is a new amndatory planning instrument for the entire municipality (excluding restricted areas), has the status of a local law, and is intended to replace the Study of Local Determinants and Directions in Spatial Development. The provisions of the master plan are binding for both Local Spatial Development Plans and Decision on Land Development Conditions.

If an application to amend/adopt a Local Spatial Development Plan conflicts with the master plan, the applicant must first request a master plan amendment, then the Local Spatial Development Plan change. If the authority supports the request, it may refer it to the municipal council, which adopts a resolution to start preparing the Local Spatial Development Plan.

Pursuant to Article 58 of the amendment to the SP&M Act, until municipalities adopt their municipal master plans — no later than 30 June 2026, as required by the amended Act — the inclusion of RES installations in a newly adopted Local Spatial Development Plan does not need to be consistent with the study.

An application to amend/adopt a Local Spatial Development Plan constitutes merely a proposal. The legislation does not provide for any specific procedures or deadlines for its consideration, nor does it allow for an appeal against the authority's decision. As a result, the process may be lengthy and offers no guarantee of project approval.

A facilitation introduced by the recent amendment to the SP&M Act is the possibility of adopting or amending Local Spatial Development Plans through a simplified procedure (Article 27b(1)(1) of the Act). This procedure may be applied if the adoption/amendment of the plan concerns exclusively the location of RES systems other than wind farms. The simplified procedure allows omission of certain obligations and the shortening of timeframes for specific procedural steps.

The amendment introduces a special form of Local Spatial Development Plan — the Integrated Investment Plan (ZPI), available to investors when no Local Spatial Development Plan exists or the current one needs amendment. The municipal council adopts the ZPI at the investor's request via the commune administrator, town mayor, or city president. It must include the main investment area (e.g., RES system or residential development) and a complementary investment (e.g., public road, green space, or utility facilities). Once adopted, the ZPI overrides any existing Local Spatial Development Plans within its area.

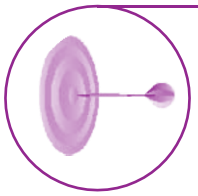
Importantly, if the ZPI concerns exclusively the location of RES systems other than wind farms and does not involve conditions specified in Article 27b(2) of the Act, the procedure for its adoption will also be simplified (Article 27b(1)(1)).

More details on the ZPI procedure and the simplified process for Local Spatial Development Plans concerning certain RES installations (Article 27b(1)(1)) are available on the NCP-RES website.

Confirmation of project compliance with the Local Spatial Development Plan

The investor may seek confirmation of project compliance with the Local Spatial Development Plan in order to verify if it is possible to obtain a construction permit.

Purpose of the confirmation



The purpose of the confirmation is to verify if the planned project will comply with the Local Spatial Development Plan.

When is the confirmation required?

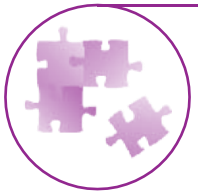
Obtaining the confirmation is not mandatory; this is just to confirm that the planned project complies with the Local Spatial Development Plan.

The local community of the commune also contributes to the final structure of the Local Spatial Development Plan through public consultations carried out in the process of drafting the final text of the Local Spatial Development Plan.

Comments from the community may actually influence the location of particular sites on the plan including sites intended for the construction of geothermal power plants.

USEFUL NOTE

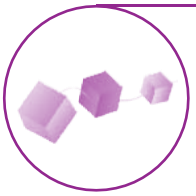
Elements of a confirmation application



An application for a certificate confirming project compliance should also include:

- proof of payment of the stamp duty for the application;
- authorisation, if the application is submitted by an authorised representative;
- receipt for the stamp duty on the authorisation, if the application is submitted by an authorised representative.

The process



Project compliance with the Local Spatial Development Plan is confirmed by a certificate issued by the locally competent commune administrator or mayor upon the investor's request.

Obtaining the certificate is not mandatory and its content is not binding upon the construction authorities at the stage of applying for the construction permit.

07. GEOTHERMAL ENERGY

Duration of the process

Up to 7 days following the filing of the application.

Authority competent for granting the confirmation

The commune administrator or mayor having jurisdiction over the project site.

Confirmation validity period

The certificate is issued for an indefinite period but becomes invalid if the Local Spatial Development Plan is amended.Local Spatial Development Plan

What is the stamp duty for the certificate?

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

An applicant who was denied a certificate has 7 days to appeal to the Local Appeal Body.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

7.6.2. Decision on location of a public utility project

If the project site is not covered by a Local Spatial Development Plan, the construction process may be based on a decision on location of a public utility project. This is because search for, identification and extraction of mineral deposits covered by a mining title can be a public utility purpose within the meaning of the Polish Public Procurement Law.

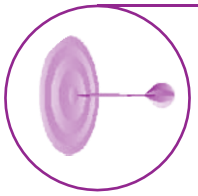
The above decision applies to public utility projects, understood as local (commune-level), supralocal (county- and provincial level), national-level (also including international and regional projects and metropolitan (covering a metropolitan area) projects, notwithstanding the status of the entity undertaking such activities and the sources of their funding.

As s result, if a geothermal power plant or heating plant meets the criteria of a public utility project, e.g. by supplying heat to the nearby houses or apartments, it can be located based on a decision on location of a public utility project. However, every project should be considered on a case-by-case basis, depending on individual project specificities.

If it turns out that a geothermal power plant or heating plant is not public utility project, it should be possible to build it based on a Decision on Land Development Conditions, provided that the relevant conditions are met.

It is worth noting that the Act of 7 July 2023 amending the SP&M Act and certain other acts introduced a change consisting in the requirement for decisions on the location of public purpose investments to be consistent with the municipality's general plan.

Purpose of the decision



The main purpose of a decision on location of a public utility project is to establish the conditions linked to site development and management for a geothermal power plant or heating plant qualified as a public utility project to integrate the project with the local spatial development.[151]

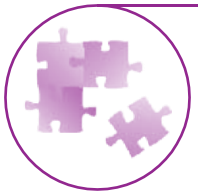
When is the decision required?

In a typical course of the investment and construction process, a decision on location of a public utility project is usually obtained after the investor receives the environmental decision but before the application for grid connection conditions is filed.

[151] *Article 50 of the SP&M Act*

07. GEOTHERMAL ENERGY

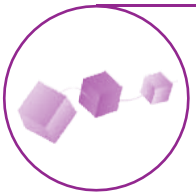
Elements of an application for the decision



The decision on location of a public utility project is issued at the request of the investor. The application for a decision on establishing the location of a public utility project should include:

- a base map or, if there is none, a cadastral map from the national survey and cartographic resource for the site to which the application pertains and for the project impact area, at a 1:500 or 1:1000 scale, and for linear infrastructure projects also at a 1:2000 scale, in: an electronic format – in the applicable National Spatial Reference System or as hard copy;
- outline of the boundaries of the site covered by the application;
- project description including:
  a) the demand for water and energy; the wastewater discharge or treatment methods; other technical infrastructure needs and, where necessary, waste neutralisation methods;
  b) the planned land development and the characteristics of the land use and development, including the intended purpose and dimensions of proposed building structures and the land surface to be transformed, presented in the form of text and visual materials;
  c) the characteristic technical parameters of the project and the data characterising the environmental impact of the project;
- a proof of payment of the stamp duty for the application;
- a proof of stamp duty payment;
- authorisation, if the application is submitted by an authorised representative.

The process



The parties are informed that a process for issuing a decision on location of a public utility project has been initiated and about the interim decisions and the final decision by means of an announcement and any method customary for a given locality. The investor and the owners and perpetual users of the real properties where public utility projects will be located are informed in writing.

In the process for issuing a decision on location of a public utility project, the competent authority analyses:

- the site management and development conditions and rules arising from separate legislation;
- the actual and legal status of the site where the project is to be implemented.

The decision is issued upon consultations with other authorities, including without limitation the competent geology administration body, i.e. the director of the regional mining authorities. Additionally, before the decision is issued, the authority competent for issuing the decision on location of a public utility project requests other bodies for opinions.

After the process is completed, the authority issues the decision.

Duration of the process

The decision should be issued within 65 days (Article 51(2) of the Polish Public Procurement Law). If the authority competent for issuing the decision on location of a public utility project fails to issue the decision within 65 days of the submission of the application, the higher-level authority fines this authority with PLN 500 for every day of delay. The authority can appeal against the fine.

Authority competent for the decision

For matters regarding the location of a public utility project, decisions are issued by:

- the commune administrator or the mayor in consultation with the province marshal – for public utility projects of commune, county, national and provincial significance;
- the voivode (Polish: wojewoda) – for public utility projects in restricted areas.

Decision validity period

A decision on location of a public utility project is valid for an indefinite period.

07. GEOTHERMAL ENERGY

What is the fee for the decision?

A fee for a decision on location of a public utility project is PLN 598 (unless the application is filed by the owner of the real property, an organisation pursuing an activity of public interest, a budgetary unit or a local government unit – in such a case, the application is exempted from the fee) and it is required at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving a decision issued by a commune administrator or mayor, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze).

After receiving a decision issued by the voivode, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the Minister of Development and Technology.

Subsequent available remedies include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

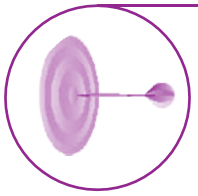
Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

7.6.3. Decision on Land Development Conditions

The Decision on Land Development Conditions is a legal measure related to planning which serves as the basis for the investment process wherever the planned project site is not covered by a Local Spatial Development Plan and the project itself is not going to be a public utility project.[152]

Purpose of a Decision on Land Development Conditions

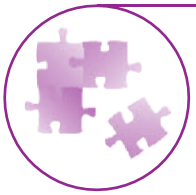


The main purpose of a Decision on Land Development Conditions is to establish the construction and land development conditions related to a geothermal power plant which are necessary to integrate the investment with the local spatial development.

When is a Decision on Land Development Conditions required?

In a typical course of the investment and construction process, a Decision on Land Development Conditions is usually obtained after the investor receives the environmental decision but before the application for grid connection conditions is filed. It is obtained only if the project site is not covered by a Local Spatial Development Plan.

Elements of a Decision on Land Development Conditions application



The process of issuing a Decision on Land Development Conditions is initiated by an application of the investor. The application should:

- identify the person filing the application and their address;
- contain the request for a Decision on Land Development Conditions for a specific project;

Furthermore, the investor should attach the following:

- a base map or, if there is none, a cadastral map – from the national survey and cartographic resource for the site to which the application pertains and for the project impact area, at a 1:500 or 1:1000 scale, either in an electronic format – in the applicable National Spatial Reference System – or as a hard copy;

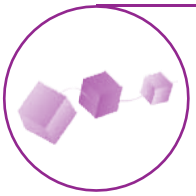
[152] *Article 59(1) of the SP&M Act*

- outline of the boundaries of the site covered by the application;
- project description including:
  a) the demand for water and energy; the wastewater discharge or treatment methods; other technical infrastructure needs and, where necessary, waste neutralisation methods,
  b) the planned land development and the characteristics of the land use and development, including the intended purpose and dimensions of proposed building structures and the land surface to be transformed, presented in the form of text and visual materials,
  c) the characteristic technical parameters of the project and the data characterising the environmental impact of the project;
- a copy of the environmental decision;
- a proof of stamp duty payment;
- authorisation, if the application is submitted by an authorised representative.

Anyone can apply for a Decision on Land Development Conditions, regardless of their title to the property.

Importantly, more than one decision can be issued, provided that they are issued for different applicants.

The process



Once the application for a Decision on Land Development Conditions is filed, the authority analyses the actual condition and legal status of the site where the project is to be implemented and it sends inquiries to the cooperating authorities about site development and construction conditions which arise from separate regulations.

For a Decision on Land Development Conditions to be issued, the following conditions must be met:

- the existing or planned service infrastructure on the site is sufficient for the construction project;
- the site does not require a permission to change the designated purpose of agricultural and forest land to non-agricultural and non-forestry purposes or it is covered by a permission obtained during the establishment of Local Spatial Development Plans which expired based on Article 67 of the SP&M Act;
- the decision complies with other regulations;

- the construction project is not situated within:
  a) in relation to a property for which, by virtue of a decision establishing the location of a strategic investment in the transmission network referred to in Article 5(1) of the STG Act of 24 July 2015 (Journal of Laws 2023, item 273, as amended), a prohibition referred to in Article 22(2)(1) of the aforementioned Act has been established.;
  b) the control zone established on both sides of a gas pipeline;
  c) the security zone established on both sides of a pipeline.

It must be noted that with regard to the RES systems, the legislator has waived the "good neighbours" principle, which used to entail the obligation to demonstrate that a project would follow the existing building pattern. The requirement to secure access to a public road was also waived.

A construction permit must be preceded by a Decision on Land Development Conditions.

Duration of the process

Up to **90 days**, from the date of submission of the application for the issuance of the decision.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the permit may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the Decision on Land Development Conditions

The authority competent for issuing a Decision on Land Development Conditions is the commune (Polish: gmina) authority, i.e. either the commune administrator (Polish: wójt) or the mayor. There is an exception for Decision on Land Development Conditionss regarding restricted areas. For such areas, the Decision on Land Development Conditions is issued by the competent voivode (Polish:

Decision on Land Development Conditions validity period

A Decision on Land Development Conditions issued during the transitional period (after the entry into force of the amendment to the SP&M Act, i.e. no later than by the end of 2025 or until the municipality adopts a general plan) shall remain valid indefinitely.

What is the fee for the Decision on Land Development Conditions?

The fee for a Decision on Land Development Conditions is PLN 598 (unless the application is filed by the owner of the real property, an organisation pursuing an activity of public interest, a budgetary unit or a local government unit – in such a case, the application is exempted from the fee) and it is required at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving a decision issued by a commune administrator or mayor, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze).

After receiving a decision issued by the voivode, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice to appeal against the decision to the Minister of Development and Technology.

Subsequent available remedies include a complaint to the Provincial Administrative Court and to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

Legislative changes resulting from the amendment to the SP&M Act

The Act of 7 July 2023 amending the Spatial Planning and Management Act and certain other acts (as subsequently modified by the Act of 4 April 2025 amending the SP&M Act and certain other acts) introduced the following changes:

- the validity period of a Decision on Land Development Conditions is limited to five years- for permissions issued from 1 January 2026 (any permissions issued before that are open-ended);
- to require compliance of the Decision on Land Development Conditions with the general plan of the commune (the view prevailing until now was that a Decision on Land Development Conditions does not have to be consistent with the Study of Local Determinants and Directions in Spatial Development as the requirement applies only to Local Spatial Development Plans).

It is important to note that, starting from the adoption of general plans or from 1 July 2026, the possibility of locating RES systems based on Decision on Land Development Conditions will be limited.

7.7. CONNECTION TO THE HEATING GRID

The main energy product of geothermal plants is heat, often generated in combination with electricity. The combined heat and power production process is called cogeneration.

Securing a connection to the heating grid is the stage of the investment and construction process which usually directly precedes the construction permit acquisition stage. Grid connection makes it possible to supply the thermal energy produced by a geothermal system to its recipients and thus to sell it.

However, please note that an investor may apply for grid connection conditions and for a construction permit concurrently. In the case of a building where heat is expected to be used for heating purposes or to heat utility water, the construction permit application may include, as an attachment, a statement of an engineer duly qualified in the construction area referred to in Article 14(1)(4)(b) of the Construction Law where the engineer confirms that it is possible to connect the planned building to the existing heating grid in accordance with the terms laid down in Article 7b of the Construction Law. The content of the statement is provided in the legislation. Consequently, the investor should, before submitting a construction permit application, verify the technical conditions of heat supply from the system in the area where the geothermal power plant or heating plant is to be located.

Ensuring a connection to a heating grid is an investment and construction process stage consisting of the following steps:

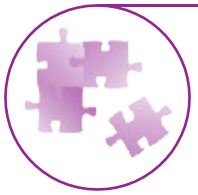
- the investor obtains the heating grid connection conditions;
- the connection agreement is signed;
- the contract for heat distribution and sale is signed.

7.7.1. Heating grid connection conditions

The heating grid connection conditions are a document issued by the distribution system operator or the transmission system operator to define the technical details of connecting a biogas plant and they obligate the operator to sign a biogas plant grid connection agreement with the investor. The connection conditions "temporarily book the grid space" for a specific geothermal project.

If the producer fails to conclude a connection agreement within 24 months from the date of receipt of the connection conditions, the connection conditions shall expire and shall not constitute an obligation to conclude a connection agreement.

Elements of an application for grid connection conditions



An application for grid connection conditions is submitted to the heating grid operator that owns the grid to which the investor intends to connect the plant.

The application must specify:

- the person filing the application and their address;
- the request for network connection conditions for a specific geothermal plant project;
- the type and the attainable parameters of the heating medium, including the pressure, temperature and physicochemical properties of the medium conveying the heat to be fed to the heating grid and the permissible contaminants of the heating medium conveyed back from this grid to the heat source;
- the maximum and minimum thermal input that can be supplied fed the heat source to the heating grid and, if this input is to be achieved in stages, the schedule of implementing subsequent stages and the maximum and minimum thermal input for these stages;
- the technical data for the heat source, including the data regarding the subsequent development stages for this source
  a) the heat source process system and the efficiency of the equipment producing the heat;
  b) the system to adjust the quantity of the heat fed to the heating grid and the characteristics of the equipment adjusting the intensity of the flow and the temperature of the heating medium;
  c) the measurement & settlement system and the characteristics of the equipment used to measure the quantity and the parameters of the heating medium conveying the heat fed from the heat source to the heating grid;
  d) the maximum and minimum efficiency of the water treatment system for the water supplied to the heating company or to the heat distributor to fill the heating grid and the receiving systems and to replenish any losses of the heating medium);
- the proposed starting date and conditions of heat supply;
- the document confirming the legal title to the facility;
- a development plan or a site plan presenting the location of the plant in relation to the existing heating grid and other structures and land infrastructure;
- assessment of the impact of the source to be connected on the functioning of the heating system.

Operator's process for issuing the grid connection conditions

Once the investor files an application for grid connection conditions, the operator analyses the technical and economic possibilities of connecting the generating facility.

According to the Regulation of the Minister of Energy of 18 May 2017 on the detailed scope of duty and the technical conditions for purchasing heat from renewable energy sources and on grid connection conditions (Journal of Laws of 2017 item 1084 as amended), the system may be connected to the grid provided that:

- there is guaranteed reasonable heat utilisation and reasonable impact on the operating conditions of the heating grid and the grid operation is properly controlled by the technological system of the plant and of the heating grid;
- the conditions defined in regulatory tables and reflecting the nature of operation of a given plant and other sources cooperating with the heating grid are met;
- an appropriate capacity of the water treatment system has been secured and the quality requirements for the water treated to fill the heating grid and to replenish any heating medium losses are met, if the heat is conveyed by the flow of a heating medium;
- the heating medium parameters and the quantity of the heat supplied to the heating grid are recorded and monitored, the parameters are remotely recorded and monitored and the plant operation is remotely controlled – if the heat is supplied through flow of a heating medium;
- there is a guarantee of appropriate technical parameters of the heat exchanger through which the heat is transmitted from the plant to the grid and appropriate places and methods of feeding this heat to the heating grid – if the heat is supplied from the plant through a heat exchanger;
- appropriate requirements are met with regard to the measurement and settlement system, the system adjusting the quantity of the heat supplied to the heating gird, especially the system adjusting the flow intensity and temperature of the heating medium, and with regard to their installation sites.

Duration of the process for issuing the grid connection conditions

The processing time of a heating grid connection conditions application is 3 months (Article 7(8g[3])(2) of the Energy Law).

Grid connection conditions validity period

Grid connection conditions are valid for 2 years after their delivery date.

During the validity period, the connection conditions represent a conditional commitment of the heat transmission or distribution company to enter into a connection agreement.

What is the fee for grid connection conditions?

The connection cost is established based on the actual expenses incurred by the energy company to connect the RES system. There is an exception for geothermal plants functioning as cogeneration facilities of an installed capacity below 1 MW – they pay a half of the payment established based on the actual expenses.

Unlike in the case of connections to an electricity grid, the investor does not have to pay an advance for grid connection conditions.

How to appeal?

If the operator rejects the application the investor has the right to appeal to the President of the URE who, may obligate the operator to sign a connection agreement pursuant to Article 8 of the Energy Law.

Can the application be filed online?

Grid operators decide how and in what form the application is to be submitted. This information is usually posted on websites so the applicant should first verify if the application can be filed online.

7.7.2. Heating grid connection agreement

The connection agreement serves as the legal ground for connecting a project to the heating grid. It is a contract signed between the heating system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the connection conditions.

In order to complete this task, both parties undertake to perform works to connect the generation source to the heat distribution system. In practice, the crucial element of a connection agreement is the modification of the local grid and the construction of a connection to make it possible to receive the energy generated by the RES system. The main obligation of the producer is to build the generation source and cooperate with the operator in the performance of the connection tasks.

7.7.3. Obligation to purchase the heat

An investor benefits from the obligation to purchase the heat produced by the RES systems described in Article 116 of the Polish Renewable Energy Sources Act. There is an exception for cases where there is already an efficient heating system within the meaning of Article 7b(4) of the Energy Law functioning across the whole area of a given heating grid.

The obligation to purchase the heat is performed by the company that distributes or produces heat and sells it to the end recipients within the range of a given heating grid.

With the heat purchase obligation an, investor who produces heat at a geothermal plant does not have to search for a buyer for the heat. The heat purchase obligation imposed on the heating company releases the investor from this requirement, although the investor may also sell the heat to another party of their choice.

7.8. CONNECTION TO THE ELECTRICITY GRID

In addition to producing heat, geothermal plants may also generate electricity. Sometimes electricity generation is combined with heat production in a cogeneration process. The technical prerequisite for receiving electricity from a geothermal plant is that the plant must be connected to the electricity grid.

The process of connecting a geothermal plant to the electricity grid is analogical to the connection to the heating grid and it is based on the following elements:

- the investor obtains the grid connection conditions;
- the connection agreement is signed;
- the electricity distribution agreement is signed.

7.8.1. Electricity grid connection conditions

Connection conditions to the power grid are a type of document issued by a distribution or transmission system operator, specifying the technical details related to the connection of the investment and constituting the operator's obligation to conclude a connection agreement with the investor, under which the project will be connected to the grid. The connection conditions "temporarily book the grid space" for a specific project.[153]

If the generator does not sign a connection agreement within 24 months, the connection conditions expire and they do not obligate the grid operator to sign the connection agreement.

Elements of an application for grid connection conditions

An application for the issuance of connection conditions shall be submitted to the distribution system operator or transmission system operator that owns the network to which the investor intends to connect the installation.

The application must specify:

- the person filing the application and their address;
- the request for network connection conditions for a specific geothermal plant project;
- the maximum annual capacity of the produced electricity and the quantity of electricity fed to the grid;
- the installed capacity, generation capacity, available capacity, apparent power of generators and the maximum capacity referred to in Article 2(16) of Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators;
- the range of the permissible changes to the loads of the generators or their groups;
- the number of the energy generation modules to be connected;
- the size of the planned demand for capacity and electricity to cover the generator's own needs;
- the degree of compensation of the reactive power linked to the receipt electric power for the electricity generator's internal needs;
- the degree of compensation of the reactive power linked to the feeding of the generated electricity to the grid;

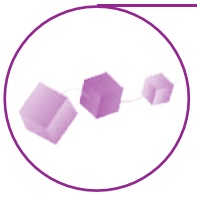
[153] *Article 7(3a) of the Energy Law*

- the anticipated values of the electric parameters of the grid and the transformers forming a part of the plant system and the devices;
- the minimum import capacity to guarantee the safety of people and property based on Article 11(6) of the Energy Law if electricity supply and consumption restrictions are imposed;
- the technical information regarding the interferences caused by the devices, systems and grids of the applicant and the characteristics of the loads as required to determine the connection conditions for entities from connection groups I to IV.

The investor should also attach the following:

- an extract and excerpt from the Local Spatial Development Plan or, if there is none, the Decision on Land Development Conditions for the real property specified in the application;
- a document confirming the investor's title to use the real property where the geothermal plant specified in the application is to be located;
- the development plan on a land survey and height map to show the positioning of the facility to be connected in relation to the existing grid;
- the certification confirming the technical parameters, operational and performance characteristics of the connected equipment, installations or networks;
- a single-line electrical diagram of the devices, systems or grids to be connected along with their description.

The process



Once the investor files an application for grid connection conditions, the operator analyses the technical and economic possibilities of connecting the generating facility. Technical reasons are usually associated with the availability of connection capacity at the point of connection – the operator checks if it is possible to safely supply power through the grid even in the case of extreme loads.

In the case of a geothermal installation with a capacity exceeding 2 MW, the operator is required to prepare an expert assessment of the impact of the examined facility on the power system.

In terms of economic criteria, the operator analyses if it has the funds to develop the grid to the extent required to connect the geothermal plant.

07. GEOTHERMAL ENERGY

Duration of the process

The grid connection conditions application processing time for geothermal power plants is:

- up to 120 days after the application filing date for applicants from connection group III or VI – where the facility is to be connected to a grid above 1 kV and equipped with a source or energy storage;
- up to 150 days after the application filing date for applicants from connection group I or II, in accordance with Article 7(8g) of the Energy Law.

Please note that if the operator refuses to issue the grid connection conditions, the Energy Law creates the terms and conditions for the relations between the operator and the investor.

If the operator refuses to connect the facility because of:

- lack of the technical conditions for the connection arising from lack of the required grid transmission capacity at the time proposed by the entity applying for the connection of a RES system – the energy company shall define the planned time limit for and the conditions of the necessary grid development or modernisation and specify when the connection will be made;
- lack of economic possibilities, the energy company may sign a grid connection agreement establishing a connection fee in an amount agreed with the grid connection applicant;
- lack of both technical and economic conditions – the grid sections to be used to connect the system owned by the grid connection applicant may be built and developed by the grid connection applicant in coordination with the energy company.

Grid connection conditions validity period

Grid connection conditions are valid for 2 years after their delivery date.

During the validity period, the grid connection conditions represent a conditional commitment of the electricity transmission or distribution company to enter into a connection agreement.

What is the fee for the grid connection conditions?

Not later than 14 days after filing the application to the operator, the investor must pay the advance for the grid connection conditions, which is PLN 30 gross for every kW of the connection capacity requested by the investor (applicable to networks with a voltage higher than 1 kV).

The advance must not be higher than PLN 3,000,000. If the operator refuses to issue the grid connection conditions, the advance is returned to the account of the investor. If the grid connection conditions are issued the advance is credited against the connection fee.[154]

After the conclusion of the connection agreement, the connection costs borne by the investor, in the case of RES installations with an installed electrical capacity not exceeding 5 MW, shall amount to half of the expenditures for the implementation of the connection. For installations exceeding 5 MW, the investor is obliged to bear 100% of the expenditures for the implementation of the connection.

How to appeal?

An investor whose application for grid connection conditions has been rejected may file a complaint to the President of the URE based on Article 8 of the Energy Law. Decisions of the President of the URE can be challenged before the Warsaw Regional Court's Competition and Consumer Protection Court based on Article 30(2) of the Energy Law.

Can the application be filed online?

Grid operators decide how and in what form the application is to be submitted. This information is usually posted on websites so the applicant should first verify if the application can be filed online.

7.8.2. Electricity grid connection agreement

The connection agreement is the basis for connecting a project to the electricity grid. It is a contract signed between the distribution system operator or the transmission system operator and the investor and it is a commitment to perform the connection works for the generation source in accordance with the technical specifications detailed in the grid connection conditions.

[154] *Please note that some operators follow a practice of collecting the advance for grid connection conditions only after they obtain a reasonable confirmation that it is possible to connect the generating facility.*

For the purpose of performing this task, both parties undertake to carry out works aimed at connecting the generating source to the power grid. Any requirements concerning the reconstruction or replacement of network elements shall be carried out in accordance with the provisions specified in the connection conditions.

The RES systems are privileged in terms of grid access. As long as there are technical and economic possibilities for that, the grid operator is obligated to sign a connection agreement first with an RES facility. Another sign of the legislator's preferential treatment of RES systems in terms of grid connection is the reduction of the connection fee for the RES sources to only a half of the actual connection costs incurred by the operator.

Deadline for the obligations under the grid connection agreement

In the case of agreements for connecting an investment to the grid, the deadline for the first delivery of energy from the connected generating source should not exceed 48 months. Failure to deliver energy for the first time within this period may result in termination of the connection agreement in accordance with the provisions of the Energy Law

Securing the connection route

One of the most important elements of the connection agreement is identification of the grid connection point, i.e. the point where the electricity generated by the geothermal plant will be fed to the distribution or transmission grid.

If the grid connection point is situated outside the investor's land (most cases), the investor is responsible for building a link between the geothermal plant and the grid connection point. In such a case, it is necessary to secure the titles to the real properties situated on the route of the electric power link.

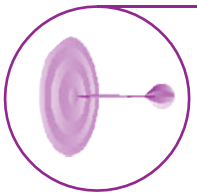
How the titles to the real properties situated along the cable route should be secured depends on whether the link is to run across plots consisting of a road (whether or not having the status of a public road) or across privately owned properties.

For more details on this matter, go to section 1.5.1. of the Photovoltaic chapter.

7.9. CONSTRUCTION PERMIT

Construction permit is an element of the investment process that constitutes the basis for commencing construction works on geothermal installation. Without this decision, it is not permitted to carry out construction works or to operate the installation[155].

Purpose of the permit



A construction permit verifies the compliance of the planned investment with the law and with the interests of entities whose rights may be affected by the investment. From the investor's perspective, the main purpose of obtaining a construction permit is to commence construction works involving the construction of a photovoltaic power plant. The construction permit defines the investor's rights and obligations related to the implementation of the investment project.

Pursuant to Article 3(7) of the Construction Law, construction works are also understood as alteration, assembly, renovation or demolition of a building structure.

USEFUL NOTE

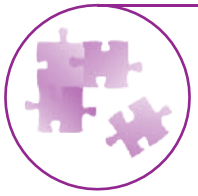
When is the permit required?

Obtaining a construction permit is required after securing an environmental decision, confirming the compliance of the investment with the planning act, and obtaining a decision authorizing the exclusion from agricultural production in the case of properties including:

- agricultural land created from mineral and organic soils classified as classes I, II, III, IIIa, IIIb;
- agricultural land of classes IV, IVa, IVb, V and VI created from organic soils;
- other agricultural land indicated by the Agricultural Land Protection Act.

The construction permit precedes the occupancy permit and the concession stage. Obtaining the permit and grid connection conditions may be carried out simultaneously, which can accelerate the investment process.

Elements of an application for the permit



The mandatory elements of the construction permit application are specified in the Construction Law. They are:

- identify the person filing the application and their address;

[155] *Article 28 of the Construction Law*

- the request for a construction permit decision for a specific construction project (importantly, the construction law states that for a construction project covering more than one facility, a construction , permit may, at the investor's request, pertain to selected facilities or to a complex of facilities able function on their own in accordance with their intended purpose).

Furthermore, the investor should attach the following:

- a plot or land development design and an architectural construction design – along with the opinions, approvals, permits and other documents as required under separate legal acts or copies of the same (in paper format – 3 copies, or in an electronic format);
- a declaration on having the right to use the real property for construction purposes;
- the Decision on Land Development Conditions, where required under the planning and spatial development legislation, or the decision on location of a public utility project;
- for mines and facilities situated in restricted areas and sites referred to in Article 82(3)(1) of the Construction Law, the decision to consult the following planned solutions with the architecture and construction administration body referred to in Article 82(2) of the Construction Law:
  a) the skyline and elevations of building structures designed on the site of roads, streets, yards and other public places,
  b) the route and technical characteristics of roads, transport connections and utilities taken outside a restricted area, sea ports and sea harbours, as well as the connections of those structures to public utility grids;
- for construction projects preceded by an environmental decision issued in a process requiring the participation of the public – a visual appendix specifying the anticipated project implementation site and the anticipated project impact area, provided that the submission of this appendix was required by the regulations in effect on the date of applying for the environmental decision, and especially the map referred to in Article 74(1)(3a) of the EIA Act;
- in the case of a building where heat is expected to be used for heating purposes or to heat utility water, a statement of an engineer duly qualified in the construction area referred to in Article 14(1)(4)(b) of the Construction Law where the engineer confirms that it is possible to connect the planned building to the existing heating grid in accordance with the terms laid down in Article 7b of the Construction Law; the person submitting the declaration must include the following statement therein: "I am aware of the criminal liability for false statements;" the statement replaces the warning of the authority about the criminal liability for false statements;
- a proof of payment of the stamp duty for the construction permit application;
- for applications filed by authorised representatives, the authorisation and the receipt for the stamp duty.

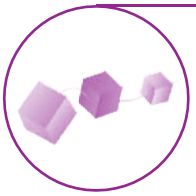
The crucial appendix to the construction permit application is the construction design. Construction design requirements are laid down in the Construction Law. A construction design must include:

- a plot or land development design prepared on an up-to-date map for design purposes or on a copy thereof, presenting:
  a) the plot or land boundaries;
  b) the location, outline and arrangement of the existing and planned building structures, including the utilities on the plot and any building facilities located outside the building structure;
  c) the sewage discharge or treatment method;
  d) the traffic system and the arrangement of vegetation, with specification of the characteristic elements, dimensions, ordinates and mutual distances between objects – in relation to the existing and planned buildings in the neighbouring areas;
  e) information about the project impact area;
- an architectural and construction design which covers:
  a) the spatial arrangement and the architectural form of the existing and planned building structures;
  b) the intended use of the building structures;
  c) the characteristic technical parameters of the building structures;
  d) a geotechnical opinion and the information on how the building structure is attached to the ground;
  e) the planned material-related and technical solutions which influence the surroundings, including the environment;
  f) ecology characteristics;
- a technical design including:
  a) the planned structural solutions of the facility along with the results of static strength calculations;
  b) the planned necessary technical and material-related solutions;
  c) as needed – the geology engineering report or the geotechnical conditions for laying the building foundations;
  d) other design records;
- opinions, approvals, permits and other documents referred to in Article 33(2)(1) of the Construction Law.

Furthermore, the following must be attached to the construction design:

- a statement that the design author has the qualifications to hold an independent technical function in the construction industry;
- a statement of the engineer that the design was prepared in accordance with the applicable laws and the construction principles.

The process



Once the construction permit application is filed, the authorities make the preliminary determinations and give approvals or seek the opinions of other authorities.

Parties to the construction permit acquisition process: the investor, owners of the real properties, perpetual users of the real properties or administrators of the real properties within the project impact range.

Duration of the process

A construction permit should be issued within 65 days following the submission of the application (Article 35(6)(1) of the Construction Law). If this deadline is not observed, the higher-level authority fines the architectural and construction authority with PLN 500 for every day of delay.

Authority competent for the permit

As a rule, the authority competent to issue a construction permit is the county administrator (starosta). However, in cases specified in Article 82 of the Construction Law, the first-instance authority is the voivode.

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Permit validity period

The works under a construction permit must commence not later than 3 years following the date when the construction permit decision became final and binding. Any suspension of construction works must not be longer than 3 years. This means that if the construction works do not commence within 3 years after a final construction permit is obtained or if works are suspended for more than 3 years, the construction permit expires.

What is the fee for the permit?

The stamp duty for a construction permit is PLN 155 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the local voivode through the county administrator who issued the challenged decision. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

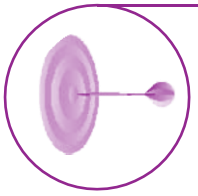
Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on e-Budownictwo.

7.10. OPERATIONAL NOTIFICATION

On completion of the construction of a geothermal system, in order to use it and thus start electricity and/or heat production, the investor must first obtain an operational notification. The notification confirms that the plant can be lawfully used as intended, in accordance with the already issued construction permit.

Purpose of the notification



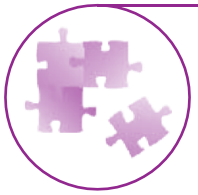
The basic purpose of the permit is to verify if the erected geothermal plant has been completed in accordance with the basic design and if it is fit for use. This entails a mandatory inspection of the project after the end of the construction process.

When is the notification required?

An operational notification is required after the construction works covered by the construction permit end but before the operation of the geothermal plant starts.

An operational notification is still required even if the investor intends to commence the operation of only a part of the project covered by the construction permit.

Elements of an application for the notification



An application shall include:

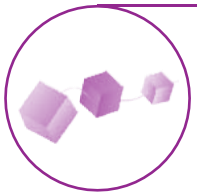
- details of the investor, including a correspondence address;
- identification of the construction supervision authority;
- identification of the construction permit decision underlying the implementation of the project;
- identification of the real property where the facility is located.

Furthermore, the investor should attach the following:

- original construction daily log in paper format or, if the log is digital, the number of the log referred to in Article 47h(2) of the Construction Law;
- the technical design;
- a statement of the construction manager that the building structure complies with the construction design or the conditions of the construction permit and with the applicable laws and that the construction site has been brought to a proper condition and cleaned up;
- a statement that appropriate land management of adjacent areas has been secured wherever the operation of the facility depends on appropriate management of such areas;
- reports concluding the inspections and checks of the connections, systems and technical devices guaranteeing the use of the structure as intended; the reports must be prepared by individuals having construction qualifications in the required specialities, including those referred to in Article 14 of the Act on Technical Inspection of 21 December 2000 (Journal of Laws 2024 item 1194 as amended);
- the decision authorising the operation of a technical device, referred to in Article 14 of the Act on Technical Inspection of 21 December 2000 (Journal of Laws 2024 item 1194 as amended);
- surveyor documentation with results of the as-built site survey;
- confirmation, in accordance with separate regulations, of the acceptance of the completed connections;
- copies of the drawings forming a part of the approved design, including the changes made and, where appropriate, a supplementary description of the changes where the changes do not significantly deviate from the approved design;
- receipt for a stamp duty for the permit;
- for applications filed by authorised representatives – the authorisation and the proof of payment of the stamp duty for the authorisation.

An operational notification is not just an official permission for the investor to use a building but it also defines the conditions of using the building at its operation stage.

The process



An investor who should obtain an operational notification for a facility is required to report the completion of the construction process for the geothermal power plant or heating plant and the intention to commence the operation of the geothermal plant, as required by specific legislation, to the local:

- State Sanitary Inspectorate (Państwowa Inspekcja Sanitarna) and
- State Fire Service (Państwowa Straż Pożarna).

The authorities determine if the building structure has been erected in accordance with the construction design. They should issue opinions on the compliance of the structure with the construction design within 14 days of receiving the notification and if they fail to do so, they are deemed to have no objections.

Once the operational notification application is filed, the construction supervision authority is required to inspect the construction site compliance with the determinants and conditions specified in the prior construction permit and conformity with the construction design. The inspection precedes the grant of an operational notification.

The construction supervision authority conducts a mandatory inspection before the expiry of 21 days following the delivery of the request, i.e. the submission of the application of an operational notification. The authority notifies the investor about the mandatory inspection within 7 days following the delivery of the notice. Importantly the investor is required to participate in the mandatory inspection at the set time.

The inspection includes checking:

- the compliance of the building structure with the plot or land development design;
- the compliance of the building structure with the architectural and building design and the technical design in terms of:
  a) the characteristic technical parameters as regards the footprint area, height, length, width,
  b) the workmanship of the visible load-bearing elements of the building structural system,
  c) the workmanship of construction works,
  d) the workmanship of the systems ensuring the use of the building structure as intended;
- compliance with the conditions specified in Article 55(1b) of the Construction Law if the operation of the building structure is to commence before the completion of all construction works;
- the construction products particularly important for structural safety and fire safety;
- if the construction permit provides for an obligation to demolish any existing building structures not expected to be used any more or any temporary building structures – the compliance with this obligation, provided that the time limit for the demolition specified in the permit has expired;
- if the construction site has been cleaned up.

After the mandatory inspection the construction authority prepares a report in three copies. One copy is delivered to the investor promptly after the inspection, the second one is delivered to a higher-level authority and the third one is retained by the construction supervision authority.

If the inspection result is positive, the authority issues an operational notification for the geothermal plant. In the operational notification, the construction supervision authority may determine the conditions of using the geothermal plant or may make the operation of the plant contingent upon the completion of specific construction works within a specified time limit.

Duration of the process

Up to 1 month,
particularly complex cases – up to **2 months** from process initiation.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the permit may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the notification

An operational notification for a geothermal plant is issued by the County Construction Supervision Inspector (Powiatowy Inspektor Nadzoru Budowlanego).

Notification validity period

The notification is open-ended.

What is the fee for the notification?

The stamp duty for an operational notification is in principle PLN 38.75 (the actual amount depends on the facility) and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the local Provincial Construction Supervision Inspectorate (Wojewódzki Inspektorat Nadzoru Budowlanego). Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on e-Budownictwo.

7.11. LICENCE AND OTHER BUSINESS PERMITS

7.11.1. Heat production licence

A business activity involving heat production from a geothermal system of a total installed capacity up to 5 MW requires a heat production licence.[156]

Purpose of the licence

The purpose of the licence is to allow an entrepreneur who is planning to produce to heat run a business activity because heat production is an area regulated by the government.

When is the licence required?

The licence is required whenever the investor is planning a business that involves heat production in a geothermal power plant or heating plant. This makes it the last decision to be obtained in the investment and construction process for a geothermal plant.

Elements of an application for the licence

The list of the documents required with an application for a heat production licence is provided by the President of the URE, who initiates the procedure of reviewing the licence issue criteria defined in the Energy Law.

The list of the documents is available on:

https://www.ure.gov.pl/pl/biznes/jak-uzyskac-koncesje/cieplo/4054,Wytwarzanie-ciepla.html

[156] *Article 32 of the Energy Law*

In accordance with the current list, a basic licence application should include:

- name of the applicant, its registered office, the registered office of its branch in Poland or the applicant's place of residence and address; and if authorised representatives are appointed to carry out legal activities on behalf of the applicant – also their full names (is several representatives are appointed, one process agent needs to be designated);
- the object and scope of the activity for which the license/licence commitment is to be issued;
- information on the applicant's activity to date, including the applicant's financial statements for the past 3 years if the entity runs a business;
- the term for which the licence/licence commitment is to be granted along with the activity start date. The licence is granted for an indefinite term, not shorter than 10 years and not longer than 50 years, unless the entrepreneur requests a shorter term (Article 36 of the Energy Law). The licence commitment is granted for an indefinite term, not shorter than 6 months (Article 43(3) of the Energy Law).
- the funds the licence/licence commitment applicant has at its disposal to ensure proper performance of the activity covered by the application;
- number in the KRS register of companies, if any, or an equivalent register in member states of the European Union, the Swiss Confederation, the European Free Trade Association (EFTA) – the parties to the European Economic Area agreement or Turkey and the tax identification number (NIP);
- appendices according to the list presented further in this Handbook.

The above list of documentation is provided as an example and should be verified with the Energy Regulatory Office (URE) in each individual case.

The process

The competent authority reviews the formal aspects of the application and notifies all the parties that the procedure has started. Afterwards, after the formal activities, the authority checks if a licence can be issued in this specific case.

Before issuing a licence, the authority may require the applicant to post a bond to secure any third-party claims which may arise as a result of improper performance of the business activity, including potential environmental losses.

The bond cannot be lower than 1/12 of the highest annual revenue from the business activity for which the licence is to be granted as expected by the applicant in the next consecutive 3 years.

Once the procedure is completed and all the requirements provided for by the law are met, the authority issues the licence.

The licence should specify:

- the entity, its registered office or residence and their address;
- the object and scope of the licensed activity;
- the start date of the licensed activity and the conditions for the performance of the activity;
- licence term;
- detailed performance conditions of the licensed economic activity which are to ensure proper services for the recipients in terms of:
  a) the capacity necessary to supply fuel or energy in a continuous and reliable way and in compliance with the quality requirements defined in the legislation issued under Article 9(1) through Article 9(4), Article 9(7) and Article 9(8) of the Energy Law,
  b) notifying the President of the URE if the licensed activity has failed to be commenced or has been terminated during the licence term;
- securing the environment in the course of and after the termination of the licensed activity;
- the detailed rules of renewing the bond, where applicable;
- the number in the KRS register of companies, where applicable, or the number in an equivalent register in European Union member states, the Swiss Confederation, the European Free Trade Association (EFTA) – a party to the European Economic Area agreement or Turkey and the tax identification number (NIP).

Please note that the competent authority may order the energy company to continue the licensed activity even if the license has expired, for a period not longer than 2 years if the public interest so requires. If an activity pursued following such an order brings losses, the energy company is entitled to have loss covered by the State Treasury in an amount limited to reasonable business costs defined in the licence, on a due diligence basis.

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Duration of the process

Heat production licence grant is a process that should be completed within a month. However, this is just a theory based on the administrative procedure and it does not account for the specificities of the licensing process, which usually takes a few months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the licence

The authority responsible for issuing the licence is the President of the URE.

The application must be filed to the local URE branch having jurisdiction over the plant.

Licence validity period

The licence is granted for an indefinite term, not shorter than 10 years and not longer than 50 years, unless the entrepreneur requests a shorter term.

What is the fee for the licence?

The stamp duty for an energy generation licence is PLN 616 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the President of the URE. The cost of the appeal is PLN 1000.

Can the application be filed online?

In accordance with the practice of the URE, applications can be filed online through ePUAP. However, since this is not regulated in the applicable laws, this option should be first checked with the competent URE unit.

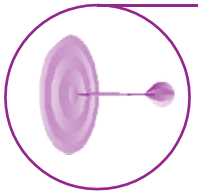
7.11.2. RES electricity generation licence

Obtaining a licence is the last step to be completed before the sale of electricity from a geothermal plant can commence.[158]

For a geothermal plant:

- of a total installed capacity above 50 kW but up to 1 MW that is connected to an electricity grid of a rated voltage lower than 110 kV or of a heat generating capacity in cogeneration above 150 kW but up to 3 MW, where the total installed electricity capacity is above 50 kW and up to 1 MW (a small system) and
- of a total installed electricity capacity up to 50 kW connected to an electricity grid of a rated voltage below 110 kV or a heat generating capacity in the cogeneration process up to 150 kW where the total installed electricity capacity does not exceed 50 kW (micro-system), no licence is needed.

Purpose of the licence



The purpose of the licence is for the government to authorise an activity in a branch of the economy that is particularly important from the perspective of public interest, i.e. the energy sector. The licence decision defines the conditions and the duration of this activity.

When is the licence required?

The concession decision must be obtained prior to commencing business activity in the field of electricity generation from renewable energy sources. It is therefore the final decision issued in the investment and construction process of a geothermal power plant (except for the cases described above).

[158] *Article 32 of the Energy Law*

Elements of an application for the licence

The list of the documents required with an application for a geothermal electricity generation licence is provided by the President of the URE, who initiates the procedure of reviewing the licence issue criteria defined in the Energy Law.

The list of the documents is available on:

www.ure.gov.pl/pl/biznes/jak-uzyskac-koncesje/energia-elektryczna/784,odnawialne-zrodla-energii.html

In accordance with the current list, a basic licence application should include:

- details of the person filing the application and their address;
- a request for a licence to generate energy from renewable sources;
- an extract from the KRS register of companies obtained not earlier than 3 months before the submission of the application to the authority in charge of issuing the licence;
- a list of all entities that have a significant influence over the applicant or exercise control or joint control over them, together with a current certificate of no criminal record from the National Criminal Register for each of these entities;
- a statement of the entrepreneur that not bankruptcy petition has been filed against it and that they are not in liquidation;
- a statement of the entrepreneur that it has not been deleted from the register of regulated activities in the past 3 years as a result of a decision prohibiting the entrepreneur from engaging in an activity covered by the entry in the register, because it:
  a) filed a false statement on the legal compliance of such activity,
  b) failed to remedy its breach of the legal requirements for such activity by the deadline set by the authority or
  c) committed a gross breach of the legal requirements for such activity;

- a document confirming that the entrepreneur is registered as a VAT payer;
- a certificate of excise duty identification number, where applicable, issued by the head of the tax office;
- a statement of the entrepreneur confirming there are no reasons to suspend the procedure based on Article 33(3a) of the Energy Law, whereunder the President of the URE suspends the procedure wherever the entrepreneur or the above-mentioned individuals are indicted for a crime or a tax crime related to their business activity;
- a statement of the entrepreneur that all the individuals hired to operate the systems, facilities and devices used in the performance of the licensed activity have the qualification certificates required under by the Energy Law and the qualification certificates issued based on other regulations which authorise them to operate such systems, facilities and devices;
- information provided by the entrepreneur regarding the networks, equipment, and installations specified in the Regulation of the Minister of Climate and Environment of 1 July 2022 on the detailed rules for confirming the possession of qualifications by persons engaged in the operation of equipment, installations, and networks that will be used in the activity covered by the application, as well as the number of individuals employed in their operation, including the qualification certificate numbers;
- documents confirming the entrepreneur's legal title to the facilities and systems required for the licensed activity, for example a notary deed, a copy of the title register, an extract from the land register, the lease agreements, the loan for use agreements, purchase invoices for the equipment used to generate electricity;
- description of the parameters and the technical condition of the electricity generation equipment;
- documents confirming that the devices comprising the installation meet the requirement referred to in Article 32(1a) of the Energy Law;
- location-related decisions (a Decision on Land Development Conditions, decision on location of a public utility project or an extract and excerpt from the Local Spatial Development Plan);
- the construction permit,
- documents containing the information that the construction process has ended and the operation of the facility commences (notification to the competent construction authority on the completion of the construction process submitted at least 14 days before the intended operation commencement date). If the competent construction supervision authority does not object to the project a statement with relevant information about this should be attached to case files after the expiry of 14 days after the delivery of the above notification;
- decisions of the Polish Office of Technical Inspection (Urząd Dozoru Technicznego, UDT) approving the electricity generating devices for use;

- the documents issued by the electrical system operator to whose grid the RES system is connected:
  a) the decision defining the technical conditions for connecting the system to the electricity grid (grid connection conditions) or the connection agreement,
  b) the report confirming the technical inspection of the power devices and their approval and acceptance for use;
  c) the report confirming the operation check of the measurement and settlement systems (known as the detailed technical service (OTS) order report);
- a power evacuation diagram highlighting the places where the quantity of the generated electricity is measured and outlining the separation of ownership of systems, devices and facilities between the entrepreneur and the electricity system operator and highlighting all the generation equipment;
- summary of the annual planned revenue and costs of the activity covered by the licence application for at least three full calendar years;
- financial statements for the last three years;
- other documents confirming that the entrepreneur has, or is able to secure, sufficient financing for proper performance of the licensed activity (e.g. bank guarantees, insurance guarantees, guarantee agreements, credit facility agreements, loan agreements etc.);
- valid certificates from the competent tax and customs authority, obtained not earlier than 3 months before their presentation to the licensing authority, confirming that the entrepreneur has of no overdue payments towards the state budget;
- a valid certificate from the competent branch of the Polish Social Insurance Institution (ZUS), obtained not earlier than 3 months before its presentation to the licensing authority, confirming either that the entrepreneur has no overdue social security contribution payments or that it is not registered as a contribution payer;
- a valid certificate from the bank that keeps the basic account of the entrepreneur which specifies the value of the transactions, the payment capacity, the creditworthiness of the entrepreneur and contains information about the credit facilities granted to the entrepreneur and the information on whether the account is free from any enforcement orders, obtained not earlier than 3 months before its presentation to the licensing authority.

The above list of documents is indicative only and it should be each time verified with the URE.

07. GEOTHERMAL ENERGY

The process

Once the application is filed, the licensing authority verifies the documentation to determine if it meets the criteria specified in Article 33 of the Energy Law and it requests an opinion from the local province executive board.

Licence grant may be contingent on the posting of a bond to satisfy any third-party claims which may arise as a result of improper performance of the licensed activity, including environmental damage.

Importantly, after obtaining the permit, the generator must pay an annual licence fee, which is calculated based on the revenue of the RES system. The RES systems up to 5 MW are exempt from the fee.

Obtaining the licence also entails a periodic reporting requirement, usually to the President of the URE.

Duration of the process

Electricity generation licensing is a process that should be completed within a month. However, this is just a theory based on the administrative procedure and it does not account for the specificities of the licensing process, which usually takes a few months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the permit may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the licence

The authority responsible for issuing the licence is the President of the URE.

The licence application must be filed to the local URE branch having jurisdiction over the applicant's registered office.

Licence validity period

The licence is granted for an indefinite term, not shorter than 10 years and not longer than 50 years, unless the entrepreneur requests a shorter term.

07. GEOTHERMAL ENERGY

What is the fee for the licence?

The stamp duty for an energy generation licence is PLN 616 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the President of the URE. The cost of the appeal is PLN 1000.

Can the application be filed online?

In accordance with the practice of the URE, applications can be filed online through ePUAP. However, since this is not regulated in the applicable laws, this option should be first checked with the competent URE unit.

08. SMALL-SCALE HEAT PUMPS

08. **Small-scale heat pumps** 460

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08. SMALL-SCALE HEAT PUMPS

8.1. TECHNOLOGY DESCRIPTION

Small-scale heat pumps are heating devices with capacities from a few to several dozen kilowatts, are used to heat homes, offices, and industrial facilities. Their operation is based on energy obtained from an external source, referred to as the low-temperature energy source. The first step in extracting energy from a heat pump involves collecting it from the low-temperature source (air or ground). Energy is transferred from the low-temperature source when the working fluid, in the form of a liquid-gas mixture and it evaporates in the evaporator. The working fluid is then drawn in as vapor by the compressor, where its temperature and pressure increase due to compression. Next, the vapor enters the condenser and releases energy to the high-temperature source, i.e., the heating system responsible for distributing heat throughout the building. At this stage, the working fluid condenses. Finally, the expansion valve lowers its pressure and temperature, completing the cycle.

The heat pump cycle can be reversed, allowing the same device to be used for both heating and cooling. During heating, the low-temperature source is located outside the building (heat from air/ ground). In cooling mode, the cycle is reversed: the building itself becomes the heat source, while the air or ground absorbs the heat from the building.

Heat pumps have become very popular in recent years — it is estimated that in 2021 their sales in Poland increased by 80% compared to the previous year, and in 2022, sales rose by 120% compared to 2021. Currently, heat pumps are present in several hundred thousand households, and this number is expected to grow rapidly in the coming years[159].

[159] *Polska Organizacja Rozwoju Technologii Pomp Ciepła (Polish Organisation for Development of Heat Pump Technology) PORT PC, access: https://portpc.pl/port-pc-2022-rok-pomp-ciepla-w-polsce/*

8.2. TYPES OF HEAT PUMPS

How do we divide heat pumps?

Electric compressor heat pumps are divided depending on the lower energy source, i.e. the source from which the energy is sourced, and the area to which it is transferred.

Depending on the lower energy source is concerned, we can identify:

- air-to-water heat pumps;
- air-to-air heat pumps (commonly referred to as air conditioners);
- ground-source heat pumps;
- heat pumps operating in a two-well system or utilizing waste heat;
- chiller units.

Among the types of heat pumps, the following are primarily distinguished:

- compressor heat pumps;
- sorption pumps

How does an air-to-water or air-to-air heat pump work?

Air-source heat pumps use air as the low-temperature heat source. Their operation is based on phase transitions of the refrigerant.

The refrigerant is an anti-freeze liquid which receives the heat from the air sucked into the outdoor pump unit. Once heated, the refrigerant evaporates and, as gas, it enters the compressor. Afterwards, due to high pressure, it increases its temperature.

Subsequently, it is pressed into the indoor unit and the heat is transferred to the heating system. Ultimately, it expands, cools down, turns into a liquid and returns to the beginning of the cycle.

What are the types of air-source heat pumps?

There are two types of air-source heat pumps – split and monobloc pumps. Although the principles of their operations are the same, they differ as to structure.

A monobloc heat pump consists of one module that is closed hermetically in the manufacturing process. It contains all the elements of the heat pump, i.e. the fan, compressor, evaporator, expansion valve, circulating pump and condenser. Monobloc heat pumps are fully made in the factory, where the cooling system is filled with the refrigerant. The manufacturer is also responsible for making the unit air-tight and for performing appropriate tests for this purpose.

A split heat pump consists of two separate units which are connected with cooling wires. It is divided into:

- an outdoor unit which contains such elements as compressor, evaporator, expansion valve and fan;
- an indoor unit which consists of a condenser and circulating pump

For split heat pumps, the installation method of great importance. First of all, they must be installed by someone with gas handling qualifications. An appropriate distance must be ensured between the units, as specified by the manufacturer, because this influences the efficiency of the pump. A product data sheet must also be kept and regular air-tightness checks must be performed by a certified professional.

The advantages of air-source heat pumps include easy installation, a relatively low investment cost and a wide range of models available in the market.

How does a ground-source heat pump work?

A ground-source heat pump is a highly efficient device due to the stable temperature of the low-temperature source; however, it is by far the most expensive of the three main types of heat pumps. The first step involves placing a ground heat exchanger beneath the surface at an appropriate depth. These exchangers can be either vertical or horizontal, and require drilling into the ground. Horizontal exchangers are typically installed at depths ranging from 0.2 m to 2 m below the frost line. Vertical exchanger pipes, on the other hand, are placed in boreholes that can reach depths of up to 300 m. Below 10 m, the ground temperature remains stable and above freezing throughout the year, ensuring economical operation of the heat pump.

It may happen that the drilling takes place in the bedrock rather than directly in soil. A ground exchanger consists of plastic pipes. The exchanger is filled with a mixture of water with an anti-freeze liquid, such as glycol.

The liquid flows through the pipes and heats up by absorbing thermal energy from the ground, then enters the heat exchanger in the heat pump. The energy from the ground is transferred to the refrigerant, which heats up and changes from liquid to vapor. It then enters the compressor, where it is compressed, resulting in an increase in pressure and temperature. The final stage of the process takes place in the heat exchanger known as the condenser. There, the hot vapor releases heat to the central heating and domestic hot water systems via underfloor or radiator heating. Additionally, heat is transferred to the domestic hot water tank to enable water heating.

Can a heat pump be combined with another RES installation?

Hybrid systems, in which heat pump operation is combined with photovoltaic installations, are gaining significant popularity. In such configurations, the electricity required to operate the heat pump is generated by photovoltaic modules, which can substantially reduce operating costs. Increasingly popular are also hybrid sets consisting of a heat pump, photovoltaic panels, and a pellet-fired heating boiler. These systems can also work in conjunction with, for example, a battery energy storage unit.

How can the purchase and installation of a heat pump be financed?

Other programmes that enable co-financing of heat pump installation include "Czyste Powietrze", "Moje Ciepło", and "STOP SMOG".

Under the "Czyste Powietrze" programme, co-financing is available for investments involving the purchase and installation of new heat pumps (air-source and ground-source) used for space heating or for space heating and domestic hot water in existing single-family residential buildings, and only when an inefficient solid fuel heat source is being replaced. To ensure that heat pumps meet the parameters declared in the product sheet and energy label, the National Fund for Environmental Protection and Water Management, in cooperation with representatives of the heat pump manufacturing and distribution industry, has developed additional requirements. These changes aim to protect beneficiaries and ensure that funding under the programme is granted only for devices with verified quality.

The National Fund for Environmental Protection and Water Management (NFOŚiGW) has developed an electronic list of devices and materials — the list of green devices and materials (ZUM) — which includes key materials and devices verified for compliance with the technical requirements of the "Czyste Powietrze" programme. The ZUM list is available at: lista-zum.ios.edu.pl.

The "Moje Ciepło" programme, on the other hand, addresses the current needs of individual investors (natural persons), offering support for the purchase and installation of heat pumps in new single-family buildings.

8.3. HEAT DEMAND OF A HOUSE

What is the heat demand of a house?

To determine which heat pump is suitable for a given application, it is necessary to assess the building's heat demand. Due to the specific operating characteristics of heat pumps, a building and central heating system audit must be carried out prior to any investment. The audit should be performed by a certified professional listed in the register maintained by the Ministry of Infrastructure.

What is an energy performance certificate?

An energy performance certificate is a document that defines the energy amount required to satisfy the demand for energy related to the use of the building or a part thereof, i.e. the energy needed for heating and ventilation purposes, for hot utility water, for cooling and, in the case of non-residential buildings, illumination.

The certificate must be given to the buyer or tenant the moment the building or a part thereof or an apartment is:

- sold under a sales contract;
- sold under a contract for sale of cooperative ownership of the apartment;
- provided for lease.

How can we check the heat demand of a house if we do not have an energy performance certificate?

The heat demand of our house depends on a number of factors, such as the technology according to which it was built, the floor area, the thermal insulation.

The common heat demand of a house is as follows:

- **170 - 200 kWh/m²/year** of heated building space, for older, non-insulated buildings;
- **140 - 160 kWh/m²/year** for older but insulated houses;
- **80 - 120 kWh/m²/year** for currently built houses;
- **50 - 70 kWh/m²/year** for houses with an increased energy standard (energy-efficient houses);
- **10 - 15 kWh/m²/year** for passive houses.

The building's heat demand should always be determined based on an audit, together with the operating parameters of the central heating system. The results of this assessment will determine the selection of the most appropriate heat source with suitable heating capacity.

08. SMALL-SCALE HEAT PUMPS

How do we establish the capacity of a heat pump?

One of the most important parameters that determine the thermal comfort of household members and the savings which can be gained as a result of reduced heating costs is proper choice of heat pump capacity. The type of heat pump we are going to use depends on the following variables:

- the heat demand of a building;
- the surface area of the house;
- the number of household members;
- the temperature characteristics of the neighbourhood;
- the type of heating system in the building.

Where should a heat pump be located?

Once the type of heat pump has been selected, its location must be carefully considered. The appropriate placement depends on several factors, particularly the type of pump.

Heat pumps designed for outdoor installation include air-source models and certain ground-source units. In the case of air-source split or monoblock heat pumps, one of the units must also be installed outside.

The pump should ideally be placed next to an external wall to ensure optimal connection with the low-temperature source system. According to manufacturer recommendations, the minimum distance from the building typically ranges from 30 cm to 1.5 m. This allows the device to draw in the air necessary for proper operation of the air-source pump.

Models intended for indoor installation resemble medium-sized refrigerators. However, it is strongly recommended to allocate a dedicated space for such a unit, as each installation of this type requires a comparable amount of auxiliary equipment.

08. SMALL-SCALE HEAT PUMPS

On which side of the building should a heat pump be installed?

In the case of solar collectors or photovoltaic panels, the best solution is to install the devices on the southern side as this is where they are the most efficient. For heat pumps, the situation is different because it all depends on the intended task of the pump. If the only task is to heat the building, it is a good idea to install the pump on the southern side. But if it is additionally intended to prepare hot utility water, it is better to position it on the northern side.

Heat pumps rely on the air and not the sun as the source of energy. If the pump was placed on the southern side, the sunlight would fall directly on it and the sensors could misread the temperatures, resulting in incorrect functioning of the pump.

8.4. ADMINISTRATIVE REQUIREMENTS

8.4.1. Administrative requirements of the construction law

Is a construction permit or notification required for a heat pump?

According to Article 29(4)(3)(c) of the Construction Law, no construction permit or notification is required to install a heat pump. The whole procedure is deformalised, which most certainly contributes the popularity of such systems.

What happens if we install a heat pump within a Natura 2000 site?

According to Article 29(6) of the Construction Law, a construction permit is required for projects with a mandatory environmental impact assessment and projects with a mandatory assessment of impact on a Natura 2000 site.

What happens if we install a heat pump within a monument conservation site?

If construction works are carried out near a building from the register of historical monuments, they require a construction permit.

Construction works that are carried out within an area registered as a historical site require a notification.

Additionally, a permit of the competent provincial monument conservation officer must be attached to the construction permit application and to the notification.

8.4.2. Administrative requirements of the water legislation

Is a permit under the water legislation required for a heat pump?

If groundwater is used as the lower heat source, the water legislation must be followed. Pursuant to Article 395(7), the intake of surface waters or groundwaters up to 5 m^3 a day calculated on a per-annum basis or discharge of sewage to water or to the ground up to a total of 5 m^3 a day for the purpose of ordinary use of waters requires neither the permit nor the notification under the water legislation.

8.4.3. Requirements of the geology and mining law

Is it necessary to notify the county administrator (Polish: starosta) about the installation heat pump?

For certain types of heat pumps, it is necessary to carry out earthworks and/or drilling operations.

When performing excavations or boreholes up to 30 meters deep to utilize geothermal energy, outside mining areas, the detailed provisions of the Geological and Mining Law do not apply.

For works involving excavations or boreholes deeper than 30 meters and up to 100 meters, outside mining areas, a geological work project must be prepared in accordance with the Regulation of the Minister of the Environment of 20 December 2011 on detailed requirements for geological work projects, including those requiring a concession (as amended in 2015 and currently in the form of a consolidated act). To prepare the geological work project, geological data made available by the Polish Geological Institute – National Research Institute can be used via public online platforms (geologia.pgi.gov.pl; baza.pgi.gov.pl), including mobile versions (geolog.pgi.gov.pl).

This project is not subject to approval but must be submitted to the competent county administrator (starosta). Geological works may commence if, within 30 days of submitting the project, the county administrator does not issue a decision of objection. According to the aforementioned regulation, the geological documentation referred to in Article 88(2)(4) of the Geological and Mining Law must be submitted to the authority that approved or received the geological work project within 6 months of completing the works.

For works involving excavations or boreholes deeper than 100 meters, in addition to submitting the geological work project, it is also necessary to obtain approval of the mining operation plan (see section 7.4.1 for more information on the approval of the mining operation plan).

It should be noted that if the works are carried out within a designated mining area, regardless of the depth, a geological work project must always be prepared and the mining operation plan must be approved.

8.5. PROTECTION AGAINST NOISE

What are the regulations related to noise standards?

Pursuant to the Regulation of the Minister of the Environment of 14 June 2007 on permissible noise levels in the environment, the permissible noise level for areas with detached houses is 50 dB during the day and 40 dB at night.

Every heat pump has a product data sheet which defines its sound.

Many split units emit a noise of 55 to 60 dB and as such they must be installed at a certain distance from the boundary of the plot so that the neighbours cannot hear the sounds. However, modern and optimised fans in heat pumps do not emit deep sounds but the sound they make resembles that of a ticking clock which we can hear from about 3 m (35 dB). In the case of lower-grade devices, the sound level of external units can be around 42 dB, which can be compared for example with the sound of a dishwasher.

How can I limit the nuisance related to the noise emitted by the heat pump?

For the outdoor unit:

- put it close to the house (the minimum space between the pump and the building is 30 cm);
- leave free space in front of the fan;
- do not place the pump next to windows;
- provide the pump with a soundproof enclosure;
- avoid installation of heat pumps in narrow alleys.

In the case of the indoor unit – locate it far from the bedroom.

8.6. HEAT PUMP NOTIFICATION IN THE REGISTER

Does having a heat pump have to be reported?

In certain cases, a heat pump must be recorded in the **central register of operators (CRO)**.

What is the CRO?

The CRO is an electronic register of devices which are subject to mandatory and timely air-tightness checks. The requirement of record-keeping in the CRO for heat pumps applies to the operators, i.e. the owners of the devices.

USEFUL NOTE

What heat pumps must be recorded in the CRO?

This obligation applies to heat pumps containing at least:

- **5 tonnes of CO_2 equivalent** for devices which are not hermetically closed (split pumps);
- **10 tonnes of CO_2 equivalent** for devices which are hermetically closed (monobloc pumps);

Who has to file the application and where?

The application must be filed by the device operator in the CRO electronic system.

Who is an operator?

An operator is the user or, alternatively, owner of the device or the manager of the building where the device is situated. The operator must exercise actual control over the technical operation of the device.

08. SMALL-SCALE HEAT PUMPS

When is the notification required?

The operator must create a card in the CRO within the 15 days following the delivery date (for a monobloc device) or 15 days following the start-up date (for split heat pumps).

Does the installation of a heat pump have to be reported?

The fact of having a heat pump should be reported through an appropriate declaration regarding heat sources or sources of fuel combustion by the owner or manager of the building or apartment to the commune administrator (Polish: wójt) or mayor (CEEB declaration).

What is the CEEB?

The Central Register of Building Emissions (CEEB) is kept by the minister competent for construction, planning, spatial development and residential housing and it is an ICT system where data regarding heat sources – including feed of the heating system – used in the building or apartment are gathered based on Article 27a of the Polish Act on Supporting Thermal Modernisation and Renovations and on the Central Register of Building Emissions of 21 November 2008.

When should the declaration be submitted?

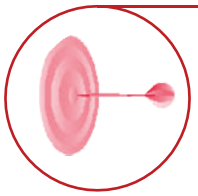
The declaration must be submitted within 14 days of the start-up of this heat source or fuel combustion source. And if the operation of the heat source started before 1 July 2021, the declaration had to be submitted by 30 June 2022.

In what form does the declaration have to be submitted?

The declaration is submitted:

- in an electronic format through means of electronic communications on the terms defined in the Polish Act on Informatisation of the Activity of Entities Pursing Public Task of 17 February 2005, using the ICT system created for this purpose;
- in writing.

What must be included in the declaration?



- The full name or business name or the owner or manager of the building or apartment and the address of residence or registered office;
- address of the real property using the heat source or fuel combustion source referred to in Article 27a(2)(1)(a) and 27a(2)(1)(c), respectively, of the Polish Act on Supporting Thermal Modernisation and Renovations and on the Central Register of Building Emissions of 21 November 2008;
- the phone number of the owner or manager of the building or apartment, if any;
- the e-mail address, if any, of the owner or manager of the building or apartment;
- information on the number and type of the heat sources or fuel combustion sources referred to in Article 27a(2)(1)(a) and 27a(2)(1)(c), respectively, of the Polish Act on Supporting Thermal Modernisation and Renovations and on the Central Register of Building Emissions of 21 November 2008 which are used within the real property - as well as their purpose and the fuels they use.

8.7. INDUSTRIAL HEAT PUMPS

Can a heat pump heat more than one detached house?

Heat pumps are solutions that can serve not only individual residential buildings. The use of large-scale heat pumps in industry is becoming increasingly common. In Poland, the first such project is planned in Krakow and will involve the design, construction, and operation of an installation consisting of a heat pump using wastewater as a low-temperature heat source, along with optional cogeneration units to supply the district heating network in Krakow.

Currently, the legal framework does not distinguish procedures specific to large-scale heat pump investments. However, the growing popularity of such solutions may lead to regulatory changes in this area.

Large-scale heat pumps gain popularity in other countries. Last year a German grid heat supplier MVV Energie AG started the construction of a heat pump that is going to draw energy from the Rhine in Mannheim. The device is expected to have a capacity of 20 MW and provide 100% ecological municipal heat for the region.

The heat pump is also being built on the premises of the coal Grosskraftwerk Mannheim AG power plant. Starting from 2023, the facility is to supply heating to 3,500 households. MVV Energie claims that the construction of the system will reduce carbon dioxide emissions by 10,000 tonnes a year.

09. SOLAR COLLECTORS

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09. SOLAR COLLECTORS

9.1. TECHNOLOGY DESCRIPTION

Solar collectors are devices which are used to convert the energy from solar radiation to thermal energy. The operation of solar collectors relies on the interception of sunlight by the absorber inside the collector which absorbs it and transforms it into heat.

The liquid substance serving as the medium (usually anti-freeze propylene glycol solution) heats up and flows through the absorber to be then directed to a special tank with utility water, which is heated by the heat carried by the heating medium. The heating medium subsequently cools down and returns to the solar collector.

Solar collectors are used for instance in households for internal needs. Thus generated energy is applied primarily to heat utility water but it can also heat water in swimming pools or temporarily support the heating of rooms.

However, these are not the only applications. Solar collectors are also used by hotels, guest houses, spas, swimming pools, as well as in agriculture and at manufacturing plants.

Solar collectors can be used all year round but they are the most efficient from spring to autumn – during months with the most sunlight.

Average prices of solar collectors range from PLN 1000 to 2000 per collector.

Collectors can also be bought in sets. The price of a collector depends on its type (flat-plate collectors are cheaper). The price of a collector is increased by the installation cost – depending on space and the number of collectors, this can be PLN 1500 to 3000.

9.2. TYPES OF SOLAR COLLECTORS

What are the types of solar collectors for private use?

There are two types of solar collectors for private use:

- flat-plate collectors,
- evacuated tube collectors.

Flat-plate collectors

A flat-plate collector is a monobloc non-dismantlable structure. Its most important element is a flat-plate absorber, i.e. the element responsible for absorbing solar energy, transforming it into heat and feeding that heat into the circulating medium. An absorber is usually made of aluminium or copper sheets. It is covered with a solar glass casing with anti-reflective properties.

This protects the absorber from weather phenomena such as rain or wind. Furthermore, the collector is protected against excessive heat loss due to the glass layer which protects the absorber from the conditions outdoor and the collector against excessive heat losses. The glass is surrounded with a frame, which also secures the collector against heat losses. Under the absorber, there are pipes with the heating medium. The flow of glycol is forced by the circulation pump. Heat is usually transferred in the utility water heater through a coil (on a meander basis).

Evacuated tube collectors

These collectors consist of individual glass tubes arranged in parallel, each containing an absorber surrounded by a vacuum. Several tubes, connected in series or more commonly via a manifold, form a solar collector. Thanks to the vacuum insulation, this type of collector experiences no heat loss.

The captured solar radiation is transferred to a heat transfer fluid flowing through a manifold that connects all the tubes.

09. SOLAR COLLECTORS

What is the efficiency of solar collectors?

Flat-plate collectors are the most efficient when the sunlight falls on their surface directly at an appropriate angle, i.e. in the summer months. In the winter months they, are much less efficient.

It takes longer for a tube collector to achieve its target performance level than for a flat-plate collector, where the sunlight falls directly on the absorber. However, due to the possibility of "capturing" the sunlight falling at various angles, it has the capacity to work efficiently also in periods with less sun, resulting in higher annual efficiency compared to flat-plate collectors. A major advantage of evaporated tube collectors is the high temperate achieved by the heating medium.

9.3. LOCATION OF SOLAR COLLECTORS

Where solar collectors should be installed?

The most popular place to install solar collectors is a rooftop – of either a house or an outbuilding. When installing solar collectors, make sure they are positioned in a place with good sun exposure, i.e. on the southern side.

Deviations of a few degrees to the east or west are insignificant but installation on a different side of the roof will substantially compromise performance. Importantly, evacuated tube collectors may have a higher acceptable deviation from the south than flat-plate collectors since the absorber inclination angle is regulated in every tube separately.

The recommended angle of a collector is 45 degrees. Of course, the area should have no shade from trees or other buildings because this would affect the performance of the collectors.

Both flat-plate and evacuated tube collectors are installed on rooftops using special attach handles or, for flat roofs, on dedicated supporting structures. The installation of rooftop collectors is highly popular because a roof is an area that is not utilised otherwise.

Solar collectors can also be installed on the ground as free-standing installations. This solution is much less popular since it occupies much more usable space.

9.4. INSTALLATION

Is a construction permit or a notification required for installation of free-standing solar collectors?

According to Article 29(4)(3)(c) of the Construction Law, no construction permit or notification is necessary for free-standing solar collectors.

Free-standing solar collectors are understood as collectors made in a comprehensive way, from scratch and with no functional attachment to an existing facility, for example a building; this applies to installation of a whole structure consisting of solar collectors both on the ground and on a building structure.

Importantly, the Act explicitly provides for a deformalised process not requiring a construction permit or a notification for solar collectors, which is why solar collectors do not require any additional approvals even if they are installed on a supporting structure permanently attached to the ground.

Is a construction permit or a notification required for installation of rooftop solar collectors?

Pursuant to Article 29(4)(3)(a) of the Construction Law, installation of devices such as for instance antenna support structures and radio communication systems higher than 3 m on building structures, whether or not the structure forms a technical and functional whole, requires neither a construction permit nor a notification. The installation of solar collectors on buildings that constitute or do not constitute a complete technical and functional unit requires a construction permit if the structure built to support the installation exceeds 50 m² in area.

Does the installation of solar collectors have to be reported?

As specified above, the installation of solar collectors does not require a notification. However, the fact of having solar collectors should be reported through an appropriate declaration (CEEB declaration) regarding heat sources or sources of fuel combustion by the owner or manager of the building or apartment to the commune administrator (Polish: wójt) or mayor.

What is the CEEB?

The Central Register of Building Emissions (CEEB) is kept by the minister competent for construction, planning, spatial development and residential housing and it is an ICT system where data regarding heat sources – including feed of the heating system – used in the building or apartment are gathered based on Article 27a of the Polish Act on Supporting Thermal Modernisation and Renovations and on the Central Register of Building Emissions of 21 November 2008.

09. SOLAR COLLECTORS

When should the declaration be submitted?

The declaration must be submitted within 14 days of the start-up of this heat source or fuel combustion source. And if the operation of the heat source started before 1 July 2021, the declaration had to be submitted by 30 June 2022.

In what form does the declaration have to be submitted?

The declaration is submitted:

- in an electronic format through means of electronic communications on the terms defined in the Polish Act on Informatisation of the Activity of Entities Performing Public Tasks of 17 February 2005 by using the ICT system created for that purpose;
- in writing,

What must be included in the declaration?

- the full name or business name or the owner or manager of the building or apartment and the address of residence or registered office;
- address of the real property using the heat source or fuel combustion source referred to in Article 27a(2)(1)(a) and 27a(2)(1)(c), respectively, of the Polish Act on Supporting Thermal Modernisation and Renovations and on the Central Register of Building Emissions of 21 November 2008;
- the phone number of the owner or manager of the building or apartment, if any;
- the e-mail address, if any, of the owner or manager of the building or apartment;
- information on the number and type of the heat sources or fuel combustion sources referred to in Article 27a(2)(1)(a) and 27a(2)(1)(c), respectively, of the Polish Act on Supporting Thermal Modernisation and Renovations and on the Central Register of Building Emissions of 21 November 2008 – and on their intended purpose and the fuels used therein.

The declaration is made with the awareness of criminal liability for false statements. The party submitting the declaration must include the following statement:

"I am aware of the criminal liability for false statements."

The statement replaces the warning of the authority about the criminal liability for false statements.

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How are the declaration data entered?

Within 30 days of receiving a written declaration, the commune administrator or the mayor enters the data from the declaration in the register using the ICT system set up to manage the register.

Can a submitted declaration be checked?

Yes, a functionality of the following website makes it possible to check a submitted declaration.

https://zone.gunb.gov.pl/pl

What are the consequences of failing to submit the declaration when due?

Whoever is required to submit a declaration and fails to do so within the time limit is fined.

9.5. LARGE-SCALE SYSTEMS

Can solar collectors be used at a large scale?

Among the technologies of using sunlight, we can also mention CSP, i.e. **Concentrated Solar Power**. The system uses lens or mirrors to focus solar power in the receiver. Electricity is generated when the concentrated radiation is transformed into thermal energy, which powers the heat engine (usually a steam turbine) connected to the electricity generator.

The solar concentrators used in the CSP systems can often also be used to provide heating or cooling for industrial processes, for example in solar air conditioning.

Concentrating technologies exist in four optical types, namely parabolic trough, dish, concentrating linear Fresnel reflector and solar power tower. The most commonly used types as parabolic trough and solar power tower.

A parabolic trough consists of a linear parabolic reflector that concentrates radiation onto a receiver positioned along the reflector's focal line. The receiver is a tube positioned at the longitudinal focal line of the parabolic mirror and filled with a working fluid. The reflector follows the sun during the daytime hours by tracking along a single axis. A working fluid is heated as it flows through the receiver and is then used as a heat source for a power generation system.

A solar power tower consists of an array of dual-axis tracking reflectors (heliostats) that concentrate radiation on a central receiver on top of the tower. The receiver contains a heat-transfer fluid, which can consist of water-steam or molten salt.

The working fluid in the receiver is heated to 500–1000 °C and then used as a heat source for a power generation or energy storage system.

Linear Fresnel reflectors consist of collectors positioned in rows. The mirrors lie flat on the ground and they reflect the sunlight into the tubes of the receiver above. Just like the trough and tower systems, Fresnel reflectors can integrate storage in an energy bloc or directly generate steam.

A parabolic dish system is a system where the parabolic dish acts as a concentrator that reflects solar energy onto a receiver positioned on a structure with a system tracking the sun. The collected heat is then generated by a heat engine. The dish can achieve very high temperatures, which makes the system a potentially good option for solar reactors.

What is the efficiency of large-scale solutions?

The efficiency of large-scale solutions concentrating solar power will depend on the technology used to convert solar energy to electricity, on the working temperature of the receiver and on the heat rejection, thermal losses in the system and the presence or absence of other system losses. In addition to the conversion efficiency, the optical system which concentrates radiation will also add additional losses.

Real-world systems claim a maximum conversion efficiency of 23-35% for "power tower" type systems, operating at temperatures from 250 to 565 °C.

Where are CSP systems located?

The biggest large-scale CSP system is located in Dubai (United Arab Emirates). The systems are popular in the United States, Spain, Israel or South Africa. Similar types of solutions are also installed in climate conditions similar to Poland's, e.g. in Denmark, where they also prove viable.

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10. ELECTRICAL ENERGY STORAGES

10.1. TECHNOLOGY DESCRIPTION

Electricity storage is a system for storing electricity and feeding it into the electricity grid.

An electricity storage is a container facility erected on the ground or on a structure driven into the ground to store the produced electricity. Energy storages are especially useful for systems that use renewable energy sources so an investor who wants to build energy storages usually takes into consideration the accompanying RES system. Renewable energy production level depends on the time of the day and on the weather, which makes its performance highly variable. Energy storages are used to balance out these fluctuations for stable and efficient electricity production and distribution models based on renewable sources. By storing energy during periods of overproduction, it can be utilized at a later time, during peak demand periods. Additionally, it should be noted that electricity storage systems also serve to improve the quality of electrical energy.

In cases where energy production from RES installations exceeds consumption, or when feeding the generated energy into the grid is not economically justified, energy storage systems enable load balancing by shifting energy use over time. Thanks to the ability to control and manage the processes of energy accumulation and release, energy storage systems can provide a wide range of functionalities, adapting to user needs and grid conditions.. It should be noted that energy storage systems support efficient energy management in industrial installations, which contributes to a faster return on investment in the installation itself, as well as a quicker payback from the RES system.

Please note that heat accumulation and storage is also a form of energy storage. Heat storage is a device which makes it possible to accumulate and store heat in the form of a storage medium such as hot water, the ground or gravel. Heat storage is an additional form of increasing the self-consumption of the energy generated from photovoltaic panels or solar collectors.

Thermal storage systems are categorized by the method used: specific heat capacity, phase change, or chemical reactions. Systems using specific heat, such as water-based storage, allow long-term heat retention (several days/months), while other methods typically store energy for shorter periods (from a few hours to several days).

10. ELECTRICAL ENERGY STORAGES

In conlusion, modern energy storage technologies are heat storages and technologies that make use of:

- *electrochemical changes (batteries, storage cells);*
- *mechanical processes (e.g. pumped storage plants);*
- *chemical changes (fuel cells);*
- *electrical processes (supercapacitors), and also:*
- *flywheel, compressed air;*
- *the formation of hydrogen, ammonia or methane;*
- *geological storage facilities.*

Nevertheless, the investment procedures described in this chapter refer specifically to battery energy storage systems used for storing electrical energy.

10.2. CHOOSING PROJECT LOCATION

Before the investment and construction process for an energy storage is initiated, the potential location should be analysed. Finding an appropriate location for the energy storage is the preliminary, necessary and essential prerequisite for successful completion of the subsequent administrative procedures. The most important factors to be considered at this stage include:

- the location of the real property, which should be checked at the technical audit stage (class IV to VI land, near a medium- or high-voltage grid without any shading objects);
- the level of available connection capacity at the planned grid connection point;
- the distance any forms of nature conservation which may apply to the real property;
- the possibility of obtaining legal title to the real property.

Natural conditions

Unlike for most RES systems, the impact of natural conditions on the location of an energy storage systems described here is marginal. The basic criteria taken into account in the construction of an energy storage are related mainly to distance from the nearest generating facility and the development level of the electricity grid.

Electricity grid connection capacity and access

An investor who intends to feed the electricity accumulated in the storage to the electricity grid must take into consideration the connection capacity at the point of connection while planning their energy storage.

A potential lack of available connection capacity at the indicated location results in the issuance of either a refusal to connect or connection conditions indicating the need for additional investments in grid infrastructure, as determined by the relevant power system operator managing the network. Therefore, the implementation of the investment should be preceded by an analysis of the available connection capacity. The obligation to publish this information, updated at least quarterly, arises from Article 7(8l) of the Energy Law. Energy companies engaged in the transmission or distribution of electricity are required to publish on their websites the total available connection capacity for energy sources, planned changes to these values over the next five years from the date of publication, and a list of entities applying for connection of sources to the power grid with a nominal voltage exceeding 1 kV.

However, due to the lack of real-time updates, verifying the availability of free connection capacity remains challenging for investors[160].

In the process of reviewing the applications for grid connection conditions, energy storages are treated by electricity system operators as generating facilities. The main criterion analysed in expert opinions regarding the grid impact of an energy storage, which may lead to refusal to establish the connection, is the impact of the storage on grid operation when completely discharged.

[160] *The information is historical and the specified free connection capacity does not guarantee obtaining the expected connection conditions.*

Forms of nature conservation which may apply to the real property

When determining the location of a future energy storage facility, the investor should also verify whether the site is situated within or in close proximity to a legally protected natural area. If even part of the land designated for the investment falls under such a form of nature protection, it must be taken into account that the project may be classified as potentially having an impact on the environment. In such cases, the competent authority may impose the obligation to carry out an environmental impact assessment. More information on this subject is provided in section 10.3 of this chapter.

Storage developments with a building footprint of no less than 0.5 hectares are classified as projects likely to have a significant impact on the environment within the following forms of nature protection:

- national parks,
- nature reserves,
- landscape parks,
- protected landscape areas,
- Natura 2000 sites,
- ecological sites
- nature and landscape complexes.

The above restrictions also extend to the buffers zones of:

- national parks,
- nature reserves,
- landscape parks.

Legal title to the real property

The key matter preceding the commencement of the administrative processes related to the construction of an energy storage is to secure the title to the real property where the storage is to be located. To hold a title means to have the right to use the property. So the first step to be taken by an investor planning a project is to audit the legal status of the land especially to review the title register for the property.

The title that guarantees the fullest protection of the investor's interests is land ownership.

However, RES system projects often rely on lease contracts between the investor as the lessee and the property owner as the lessor. A major element of the contract is the lessor's commitment to allow the lessee to use and derive benefits from the property and the lessee's commitment to pay the agreed rent. This type of contract is used because Polish legislation does not provide for any other specifically named contract which would effectively secure the title to a real property. The agreement should also specify an appropriate duration that allows for construction, operation, and, most importantly, restoration of the site to its original condition.

Pursuant to the Polish Civil Code, a lease contract may be either open-ended or fixed-term. From the point of view of the investor, open-ended contracts are highly risky because this kind of legal relationship could be terminated at any time with either contractual or statutory notice periods. It makes much more sense to sign a fixed-term contract for up to thirty years.

The law does not require a lease contract to have any specific form in order to be deemed valid. An ordinary written form of the contract may be recognised as sufficient to secure the title to a real property. However, an investor may find themselves at a major disadvantage if the real property is sold by the owner to a third party because if this happens, the buyer of the real property acquires the right to terminate the lease. An investor may seek protection against this risk by using a special contract form, i.e. written form with certified date (Polish: 'data pewna'). Moreover, for the investor to be able to use this protection, the contract must be a fixed-term contract and the real property must be handed over to the lessee. Another solution to reduce the risk is to disclose the rights of the lessee in the title register kept for the real property; this requires signing a written contract with signatures certified by a notary public..

A major aspect which an investor should pay attention to in the lease contract is the ownership of the energy storage system built on the leased land. In accordance with the Polish Civil Code, structures erected on a real property share its legal status, which entails the risk that the ownership of the system installed on the real property will pass to the land owner. To minimise the risk, the lease contract should include a clear, unconditional provision that the energy storage system elements brought by the lessee are not a part of the real property but have been positioned there for temporary use and are owned exclusively by the lessee.

Please note that the surface area needed for the construction of an energy storage is much smaller than for a photovoltaic/wind farm, the size of an energy storage rarely exceeding 0.5 ha.

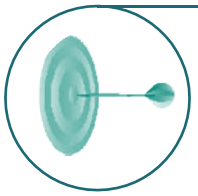
Securing the connection route

It should be emphasised that in addition to securing the title to the land property where the energy storage is to be located, the investor must secure the title to the electricity link connecting the energy storage system with the grid connection point. For more details on this matter, go to section 10.5.2. of this chapter.

10.3. DECISION ON ENVIRONMENTAL CONDITIONS

Obtaining a decision on environmental conditions (environmental decision) in most cases constitutes the first stage in the investment and construction process of an energy storage facility.[161]

Purpose of the decision



The basic purpose of the environmental decision is to assess the impact of the planned project on the environment and to determine the conditions to be met by the investor in order to minimise the negative consequences for nature and human health.

As part of the environmental decision, the authority specifies, among other things, the environmental protection requirements and the conditions that must be met by the investor during the implementation and operation of the projectSo the purpose of the decision is to balance the needs for economic growth and the protection of the environment and human health.

When is the decision required?

The requirement to obtain an environmental decision for an energy storage project depends primarily on:

- the planned surface area of the energy storage;
- the location of the planned energy storage.

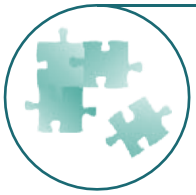
An environmental decision is always required for energy storages above 1 ha.

Energy storages planned by the investor as systems up to 1 ha are treated as projects with no (even potential) environmental impact and as such are exempted from the requirement to obtain an environmental decision. The investor may then skip the step of applying for an environmental decision and move right to the process of obtaining the location permit. Please note the above does not apply to energy storages to be located on a site covered by any form of nature conservation or in buffer zones of the nature conservation forms defined in the Nature Act. If this is the case and the surface area of the energy storage is 0.5 ha or more, an environmental decision is mandatory.

[161] *Article 71(1) of the EIA Act*

If an energy storage is designed as an element to be added to existing power infrastructure to optimise energy consumption, the public administration body reviewing the application may decide that an environmental decision is required because in this case we are dealing with already built and functioning infrastructure.

Elements of an application for the decision



The procedure for obtaining an environmental decision is initiated upon the investor's request. The application should include the following elements:

- details of the person filing the application and their address;
- a request for an environmental decision for a specific endeavour.

The investor should attach the following to the application:

- a project data sheet (KIP) for a project that involves building an energy storage;
- a copy of a cadastral map certified by a competent authority, either as a hard copy or digital, which covers the planned project site and the area on which the project, in the variant proposed by the applicant, will have an impact. This impact area is understood as:
  a) the planned project implementation site and the area up to 100 m form the boundaries of that site;
  b) the plots on which the environmental quality standards would be breached as a result of the implementation, operation or use of the project, or
  c) the plots within the range of a significant project impact which may result in restrictions on the currently intended development of the real property;

- a map, in paper and electronic form, at a sufficient scale to guarantee the legibility of the presented data, outlining the site where the project is expected to be implemented and outlining the expected project impact area within 100 m from the boundaries of the site;
- extract and excerpt from the Local Spatial Development Plan or an annotation that there is no Local Spatial Development Plan (if the competent authority for issuing the environmental decision is the Regional Director for Environmental Protection);
- an extract from the register of land or any other paper or digital document issued by the authority keeping the register of land and buildings which makes it possible to establish the parties to the procedure and which specifies at least the reference number of the plot and, if disclosed, the title register number for the plot, the first and last name or the business name and the address of the registered party – for the expected project site and for the project impact area (it is not required to attach if the number of parties to the environmental decision procedure exceeds 10);
- a proof of stamp duty payment;
- for applications filed by authorised representatives – the authorisation and the receipt for the stamp duty for the authorisation.

Despite the submission of a project data sheet (KIP) by the investor, during the procedure the authority may determine the obligation to carry out an environmental impact assessment, which requires the investor to prepare a report. In such cases, the investor is required to conduct in-depth studies concerning the environmental conditions for the implementation of the investment.

USEFUL NOTE

The process

Once the application is filed, the authority reviews it to establish if the energy storage project can be implemented in accordance with the regulations of the environmental protection law and it formulates the necessary opinions/requirements in this respect.

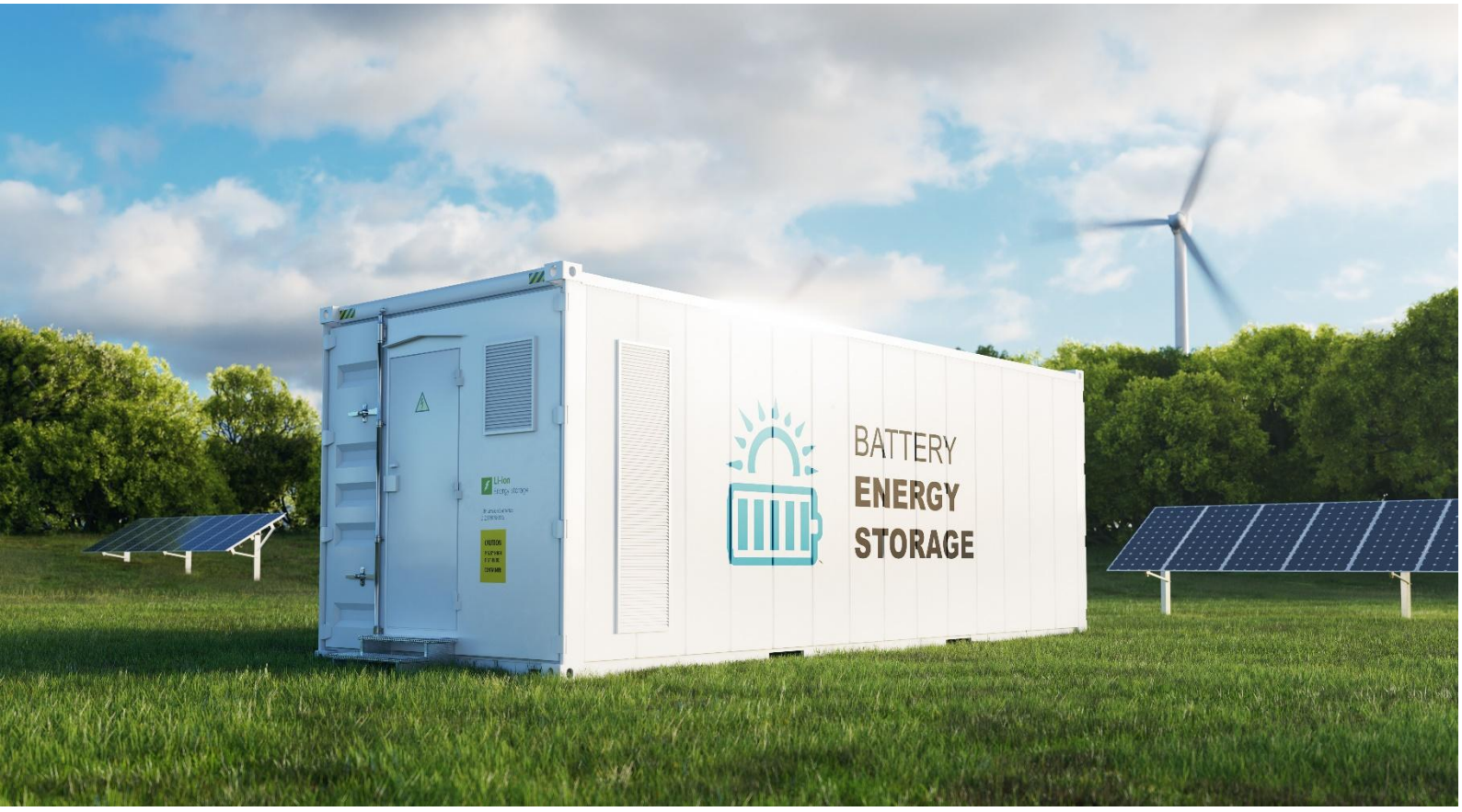
During the procedure, the authority may determine the obligation to prepare an environmental impact assessment. In such a case, it should specify the scope of the report to be submitted by the applicant. If the investment is to be located within landscape parks or areas of protected landscape, the applicant may independently request the determination of the report's scope.

The environmental impact assessment is mandatory if:

- project implementation depends on the establishment of an area of limited use referred to in the Environmental Law;
- the project data sheet suggests that the implementation of the project may prevent the environmental objectives laid down in the waste management plan for the catchment area from being achieved.

The regulations require that the report include information allowing for the assessment of the following environmental impact criteria:

- the impact of the given project on the environment and the population, including human health and living conditions, material assets, cultural heritage, landscape (including cultural landscape), interactions between these elements, and access to mineral deposits;
- risk of major failures, natural disasters and construction accidents;
- the options and ways of preventing and reducing negative environmental impacts;
- the required scope of monitoring.



Furthermore, a project environmental impact report should:

- describe the planned project, especially by presenting:
  a) a description of the whole project and the site use conditions at the implementation and operation or use stages, also addressing areas at a special risk of flood within the meaning of Article 16(34) of the Water Law;
  b) the main characteristics of the production processes;
  c) the expected types and quantities of emissions, including waste, arising from the project implementation and operation or use stages;
  d) information on the biological diversity, utilisation of natural resources, including soil, water and earth surface;
  e) information on the demand for and consumption of energy;
  f) information on demolition works for projects having a potentially significant environmental impact;
  g) a risk – assessed based on scientific knowledge – of major failures, natural disasters and construction accidents, taking into consideration the substances used and the technologies applied, including the risk related to climate change;
- describe the elements of the natural environment covered by the expected environmental impact of the planned project, including:
  a) elements of the environment covered by conservation under the Nature Act and the wildlife corridors within the meaning of this Act;
  b) the hydromorphological, physicochemical, biological and chemical properties of waters;
- present results of the nature inventory in descriptive and cartographic form, if conducted, along with a description of the methodology, attached as an annex to the report;
- present other data underlying the description of natural environment elements;
- describe any historical monuments under conservation pursuant to monument conservation and care legislation which may be situated in the vicinity of or within the impact range of the project;
- describe the landscape where the project is to be located;

- present the information on ties to other projects, especially on cumulative impacts of any continuing, completed or planned projects which have an environmental decision and which are located within the planned site of the project in question and within the project impact range or which have impacts within the project impact range;
- describe the consequences expected for the environment if the project is abandoned; the description must include the available environmental information and scientific knowledge;
- describe the project variants, taking into account its specific characteristics or environmental impacts, indicating the selected implementation variant, a reasonable alternative variant, and a reasonable variant most beneficial to the environment (the reasonable environmentally beneficial variant may be identical to either the selected implementation variant or the reasonable alternative variant);
- describe the expected impact of the analysed variants on the environment (also in the case of a serious industrial accident, natural disaster or construction accident), on the climate (including greenhouse gas emissions and impacts important from the perspective of adapting to climate changes), as well as the possible cross-border environmental impact;
- compare the impacts of the analysed variants on:
  a) people, plants, animals, fungi, natural habitats, water and air;
  b) the earth surface (taking into account soil mass movements) and the landscape;
  c) physical property;
  d) historical monuments and cultural landscape covered by the existing documentation especially entered in the register of historical monuments;
  e) the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites;
  f) elements listed in Article 68(2)(2)(b) of the EIA Act, if they have been included in the environmental impact report or if required by the competent authority;
  g) mutual interactions between the elements listed in items (a) through (f) above;
- justify the variant proposed by the applicant taking into account the information regarding the determination of the expected environmental impacts of the analysed variants and the comparison of their impacts mentioned to above;

- describe the forecasting methods used by the applicant and the expected significant environmental impacts of the planned project, including direct, indirect, secondary, cumulative, short, medium- and long-term, permanent and temporary environmental impacts from:
  a) the existence of the project,
  b) the utilisation of natural resources,
  c) emissions;
- describe the anticipated actions to avoid, prevent, limit or offset any negative environmental impacts, especially impacts on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and the continuity of the wildlife corridors connecting those sites, along with the assessment of their effectiveness at the stages of project implementation, operation, use or shutdown;
- address the environmental objectives arising from strategic documents important from the perspective of project implementation;
- present the issues in a graphic version;
- include a cartographic presentation of the issues at a scale as required by the subject matter and level of detail of the issues analysed in the report for comprehensive presentation of the completed environmental impact analyses;
- analyse the possible social conflicts related to the planned project;
- present the proposed monitoring of project environmental impacts at the project implementation and operation or use stages, especially the impact on the nature conservation forms referred to in Article 6(1) of the Nature Act, including the objectives and the subject matter of the conservation of Natura 2000 sites and on the continuity of the wildlife corridors that connect those sites, and present the information on the results of other monitoring which may be relevant for establishing the responsibilities in this respect;
- specify any difficulties resulting from technological shortcomings or gaps in the state of the art which were encountered during report preparation works;
- summarise the information included in the report using non-specialist language by addressing every element of the report;
- specify the report date, the first name, last name and signature of the author or, if the report was prepared by a team of authors, specify the first name, last name and signature of the team leader and the first names, last names and signatures of the team of authors;
- ontain, as an appendix to the report, a statement of the author or, if the report was prepared by a team of authors, a statement of the team leader, on compliance with the requirements laid down in Article 74a(2) of the EIA Act;
- provide the sources of the information underlying the report.

Subsequently, the report is reviewed by the authority in terms of the criteria set for the applicant and is subject to consultation with the relevant institutions. The authority may then issue an environmental decision.

It should be noted that, pursuant to Article 63(5–6) of the EIA Act, the authority responsible for issuing the environmental decision suspends the proceedings for the duration of the report preparation, which must be completed by the investor within no more than 3 years. After this period, the request to initiate the procedure is considered withdrawn.

It is also worth noting that the authority may determine that there is no need to conduct an environmental impact assessment and, in such cases, may issue the environmental decision immediately.

A potential refusal to issue the environmental decision is not discretionary, and the authority may deny consent for the implementation of the project in the following cases:

- the location of the energy storage is incompatible with the Local Spatial Development Plan, if any;
- a cooperating authority refuses to approve the implementation conditions for the RES project;
- the environmental impact assessment for the project suggests that the project cannot be implemented in the variant proposed by the applicant and the applicant rejects the project variant suggested by the authority;
- the environmental impact assessment for the project suggests that the project may have a significant negative impact on a Natura 2000 site;
- the environmental impact assessment for the project suggests that the project adversely affects the possibility of attaining the environmental objectives referred to in Article 56, Article 57, Article 59 and Article 61 of the Water Law.

Duration of the process

Finalizing the matter by issuing an environmental decision — for example, for a photovoltaic installation — should, in theory, be completed within one month. However, this is only a theoretical timeframe resulting from administrative procedure, which does not account for the specific nature of the process, which typically lasts several months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals, opinions, public participation in the procedure, for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

10. ELECTRICAL ENERGY STORAGES

Authority competent for the decision

The Authority competent for the environmental decision for energy storage construction is, in principle the commune (Polish: gmina) authority, i.e. either the commune administrator (Polish: wójt) or the mayor or city president — and, in certain cases, the Regional Director for Environmental Protection (RDOŚ). In the process, the competent authority seeks the opinions of the cooperating authorities, i.e. the Regional Director for Environmental Protection (RDOŚ), authorities of the Polish State Sanitary Inspectorate (Państwowa Inspekcja Sanitarna) (in accordance with the division specified in Article 78 of the EIA Act), the authority competent for the assessments required under the water legislation and the head of the Maritime Office – only for offshore projects. Where an environmental impact assessment is required, the locally competent RDOŚ plays a decisive role in the course of the procedure.

Decision validity period

The environmental decision remains valid and in force until it is removed from legal circulation and may be used in subsequent stages of the investment process. Within 6 years from the date it becomes final, or within 10 years if the deadline is extended — provided that the party who submitted the application for the environmental decision, or the entity to whom the decision was transferred, received confirmation from the authority that issued the decision in the first instance, within the initial 6-year period, that the conditions for project implementation specified in the environmental decision remain valid — it is possible to submit an application for a subsequent decision.

What is the fee for the decision?

The stamp duty for an environmental decision is PLN 205 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice to appeal against it to the Local Appeal Body (Samorządowe Kolegium Odwoławcze). Subsequent available remedies include a complaint to the Provincial Administrative Court, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

10.4. PLANNING

This subsection on spatial planning discusses the legal basis for locating electricity storage facilities. In the Polish legal framework, the most important instruments are Local Spatial Development Plans. In areas not covered by such plans, during the transitional period following the entry into force of the spatial planning reform (Act of 7 July 2023 amending the SP&M Act and certain other acts – Journal of Laws 2023, item 1688, subsequently amended by the Act of 4 April 2025 amending the SP&M Act and certain other acts – Journal of Laws 2025, item 527) - decision on Land Development Conditionss apply. An additional instrument introduced by the reform is the Integrated Investment Plan (ZPI), discussed later in this chapter.

10.4.1. Local Spatial Development Plan

The Local Spatial Development Plan is the primary planning document used to determine the location of energy storage facilities. Therefore, before initiating the investment and construction process, it is necessary to verify whether the project site is covered by such plan.

If no Local Spatial Development Plan is in place for the area, a Decision on Land Development Conditions must be obtained. Only compliance with the provisions of the Local Spatial Development Plan or the Decision on Land Development Conditions determines whether the investment can be implemented on the given site. This stage precedes the issuance of a construction permit.

Rules of locating energy storages based on the Local Spatial Development Plan

With respect to energy storages, the SP&M Act does not include such comprehensive location regulations as it does for photovoltaic farm projects.

Local Spatial Development Plans tend to become problems for investors who want to build energy storages. In many cases, they contain no provisions regarding those types of projects, which may be an obstacle to locating energy storages in areas covered by the plan.

Currently, two distinct interpretations are in use. If the Local Spatial Development Plan was adopted under the SP&M Act of 7 July 1994 on, it may be interpreted that the construction of an energy storage facility is permissible. In such cases, energy storage facilities may be classified as industrial development. However, if the Local Spatial Development Plan was adopted under new regulations — i.e., the amended SP&M Act — the construction of energy storage facilities on a given site is only permitted if this type of investment is explicitly provided for the plan's provisions.

10. ELECTRICAL ENERGY STORAGES

Please note that interpretation of the SP&M Act, especially in terms of Local Spatial Development Plans established before 30 October 2021, is approached by the judicature inconsistently and requires a case-by-case legal assessment to account for the specificities of a particular Local Spatial Development Plan.

Amendment/adoption of a Local Spatial Development Plan

If the investment site is covered by a Local Spatial Development Plan whose provisions do not allow for the intended RES installation, or if the site is not covered by a Local Spatial Development Plan and the investment may only be located on the basis of such a plan, the investor is entitled to submit an application for the amendment or adoption of a Local Spatial Development Plan.

The application for the amendment or adoption of a Local Spatial Development Plan is submitted to the commune administrator, mayor, or city president and is registered in the register of applications for the adoption or amendment of the Local Spatial Development Plan. The authority then assesses the application's compliance with the binding general plan and analyzes its justification.

The municipal general plan is a new mandatory planning instrument for the entire municipality (excluding closed areas), adopted as local law and intended to replace the Study of Local Determinants and Directions in Spatial Development. Its provisions are binding for Local Spatial Development Plans and Decisions on Land Development Conditions.

If the application to amend or adopt the Local Spatial Development Plan is not compliant with the general plan, the investor must first request amendments to the general plan, followed by the request to adopt or amend the Local Spatial Development Plan. If accepted, the authority may refer it to the municipal council, which adopts a resolution to initiate preparation of the plan.

The application for the amendment or adoption of the Local Spatial Development Plan constitutes merely a proposal. The regulations do not provide for any specific procedures or deadlines for its consideration. **The decision on the application is not subject to appeal.** Therefore, it should be noted that the procedure for amending or adopting the Local Spatial Development Plan may be very lengthy and does not guarantee the success of the intended project.

It is worth noting that the amendment to the SP&M Act introduces a special form of Local Spatial Development Plan that may be used by investors in cases where no Local Spatial Development Plan is in place or where the existing plan would require amendment — the **Integrated Investment Plan** (ZPI). The ZPI is adopted by the municipal council upon the investor's request submitted via the commune administrator, mayor, or city president. It covers both the main investment (e.g. RES installation or residential development) and complementary infrastructure (e.g. public roads, green areas, or utility facilities). Once adopted, the ZPI repeals any existing Local Spatial Development Plans or their parts applicable to the area it covers.

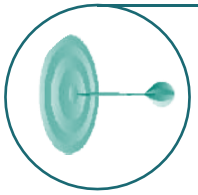
Further details on the procedure for adopting a ZPI (Article 27b(1)(1) of the SP&M Act) and the procedure for adopting a Local Spatial Development Plan are available on the **NCP-RES** website.

Confirmation of project compliance with the Local Spatial Development Plan

An investor may obtain a certificate confirming that the planned project complies with the Local Spatial Development Plan.

10. ELECTRICAL ENERGY STORAGES

The purpose of the confirmation



The purpose of the confirmation is to verify if the planned project will comply with the Local Spatial Development Plan.

When is the confirmation required?

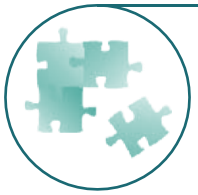
Obtaining the confirmation is not mandatory; this is just to confirm that the planned project complies with the Local Spatial Development Plan.

The local community of the commune also contributes to the final structure of the Local Spatial Development Plan through public consultations carried out in the process of drafting the final text of the Local Spatial Development Plan.

Comments from the community may actually influence the location of particular sites on the plan including sites intended for the construction of energy storages.

USEFUL NOTE

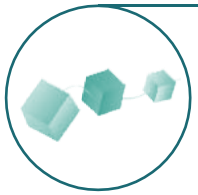
Elements of a confirmation application



An application for a certificate confirming project compliance should also include:

- a proof of payment of the stamp duty for the application;
- authorisation, if the application is submitted by an authorised representative;
- proof of payment of the stamp duty for the authorisation if the application is submitted by an authorised representative.

The process



Project compliance with the Local Spatial Development Plan is confirmed by a certificate issued by the locally competent commune administrator or mayor upon the investor's request.

Obtaining the certificate is not mandatory and its content is not binding upon the construction authorities at the stage of applying for the construction permit.

10. ELECTRICAL ENERGY STORAGES

Duration of the process

Up to 7 days following the filing of the application.

Authority competent for the confirmation

The commune administrator or mayor having jurisdiction over the project site.

Confirmation validity period

The certificate is open-ended but it expires if the Local Spatial Development Plan is amended.

What is the stamp duty for the certificate?

The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.

The stamp duty for an authorisation is PLN 17.

How to appeal?

An applicant who was denied a certificate has 7 days to appeal to the Local Appeal Body.

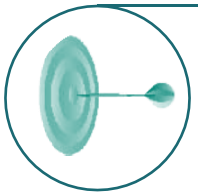
Can the application be filed online?

You can apply for the certificate on compliance with the Local Spatial Development Plan online using the ePUAP service.

10.4.2. Decision on Land Development Conditions

Decision on Land Development Conditions (Polish: decyzja o warunkach zabudowy), during the transitional period following the entry into force of the spatial planning reform (applicable until 30 June 2026 or until the municipality adopts a general plan), remains the most commonly used document for locating energy storage facilities. In areas not covered by a Local Spatial Development Plan, the Decision on Land Development Conditions serves as the basis for project location, and its issuance enables the investor to apply for a construction permit.[162]

Purpose of a Decision on Land Development Conditions



The main purpose of a Decision on Land Development Conditions is to establish the construction and land development conditions related to an energy storage which are necessary to integrate the investment with the local spatial development.

When is a Decision on Land Development Conditions required?

In a typical course of the investment and construction process, a Decision on Land Development Conditions is usually obtained after the investor receives the environmental decision (if required) but before the application for grid connection conditions is filed. It is obtained only if the project site is not covered by a Local Spatial Development Plan.

No Decision on Land Development Conditions can be obtained for an energy storage if the real property consists of class I to III agricultural land (in such a case, a Local Spatial Development Plan must be established and the minister in charge of rural development must grant permission to use the real property for non-farming purposes).

[162] *Article 59(1) of the SP&M Act*

Elements of a Decision on Land Development Conditions application

The process of issuing a Decision on Land Development Conditions is initiated by an application of the investor. The application shall:

- specify the person filing the application and their address;
- contain the request for a Decision on Land Development Conditions for a specific project.

Furthermore, the investor should attach the following:

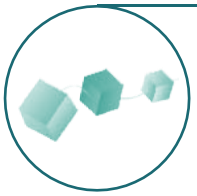
- a base map or, if there is none, a cadastral map from the national survey and cartographic resource for the site to which the application pertains and for the project impact area, at a 1:500 or 1:1000 scale, either in an electronic format – in the applicable National Spatial Reference System – or as a hard copy;
- outline of the boundaries of the site covered by the application;
- project description including:
  a) the demand for water and energy; the wastewater discharge or treatment methods; other technical infrastructure needs and, where necessary, waste neutralisation methods;
  b) the planned land development and a description of building structures and land development, including the intended purpose and dimensions of the proposed building structures and the land surface to be transformed, presented in the form of text and visual materials;
  c) the characteristic technical parameters of the project and the data characterising the environmental impact of the project;
- a copy of the environmental decision;
- a proof of stamp duty payment;
- authorisation, if the application is submitted by an authorised representative.

Anyone can apply for a Decision on Land Development Conditions, regardless of their title to the property.

Importantly, more than one decision can be issued, provided that they are issued for different applicants.

10. ELECTRICAL ENERGY STORAGES

The process



Once the application for a Decision on Land Development Conditions is filed, the authority analyses the actual condition and legal status of the site where the project is to be implemented and it sends inquiries to the cooperating authorities about site development and construction conditions which arise from separate regulations.

For a Decision on Land Development Conditions to be issued, the following conditions must be met:

- the existing or planned service infrastructure on the site is sufficient for the construction project;
- the site does not require a permission to change the designated purpose of agricultural and forest land to non-agricultural and non-forestry purposes or it is covered by a permission obtained during the establishment of Local Spatial Development Plans which expired based on Article 67 of the SP&M Act referred to in Article 88(1) of the SP&M Act;
- the decision complies with other regulations;
- the construction project is not situated within:
  a) an area covered by the restriction referred to in Article 22(2)(1) of the STG Act introduced by a decision establishing the location of a strategic transmission system project, the decision as specified in Article 5(1) of the same Act;
  b) the control zone established on both sides of a gas pipeline;
  c) the security zone established on both sides of a pipeline.

A construction permit must be preceded by a Decision on Land Development Conditions.

Duration of the process

Up to **90 days**, from the date of submission of the application for the decision.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

10. ELECTRICAL ENERGY STORAGES

Authority competent for the Decision on Land Development Conditions

The authority competent for issuing a Decision on Land Development Conditions is the commune (Polish: gmina) authority, i.e. either the commune administrator (Polish: wójt) or the mayor. There is an exception for Decision on Land Development Conditionss regarding restricted areas. For such areas, the Decision on Land Development Conditions is issued by the competent voivode (Polish: wojewoda).

Decision on Land Development Conditions validity period

During the transitional period (following the entry into force of the amendment to the SP&M Act, i.e. until the end of 2025 or until the municipality adopts a general plan), the Decision on Land Development Conditions remains valid indefinitely.

What is the fee for the Decision on Land Development Conditions?

The stamp duty for a Decision on Land Development Conditions is PLN 598 (unless the application is filed by the owner of the real property, an organisation pursuing an activity of public interest, a budgetary unit or a local government unit – in such a case, the application is exempt from the fee) and it is required at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving a decision issued by a commune administrator or mayor, the applicant has 14 days, from the date of delivery of the decision, including delivery by public notice to appeal against the decision to the Local Appeal Body (Samorządowe Kolegium Odwoławcze).

After receiving a decision issued by the voivode, the applicant has 14 days, from the date of delivery of the decision, including delivery by public notice to appeal against the decision to the Minister of Development and Technology.

Subsequent available remedies include a complaint to the Provincial Administrative Court and to the Supreme Administrative Court.

Can the application be filed online?

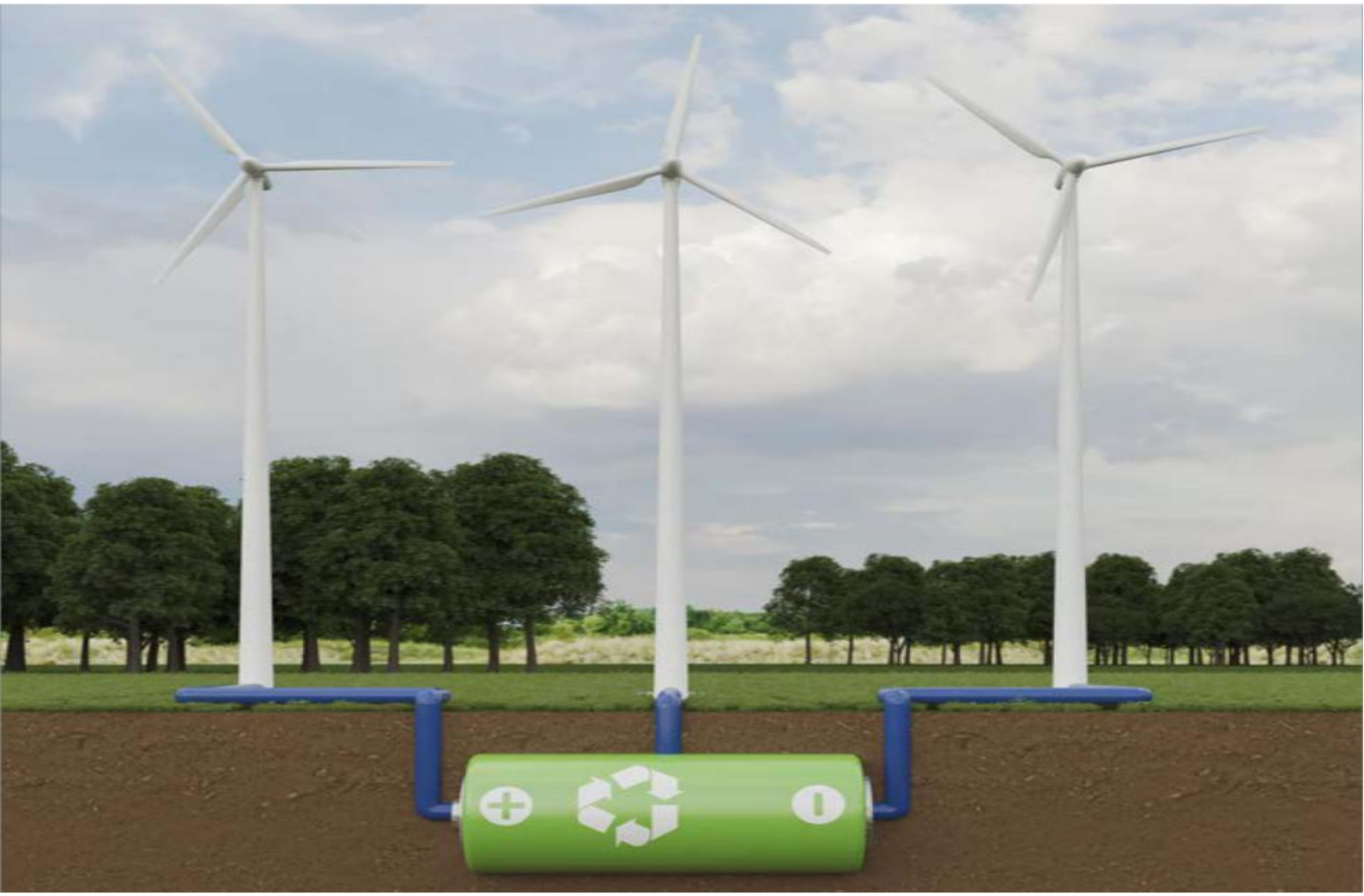
The application can be submitted online to the public administration body having jurisdiction over the matter on ePUAP.

Legislative changes resulting from the revision of the SP&M Act

The Polish Act Amending the Spatial Planning and Management Act and Some Other Acts (whose scope was subsequently modified by the Act of 4 April 2025 amending the SP&M Act and certain other acts) introduces the following changes:

- the validity period of a Decision on Land Development Conditions is limited to 5 years – for permissions issued from 1 January 2026 (any permissions issued before that are open-ended);
- to require compliance of the Decision on Land Development Conditions with the general plan of the commune (the view prevailing until now was that a Decision on Land Development Conditions does not have to be consistent with the Study of Local Determinants and Directions in Spatial Development as the requirement applies only to Local Spatial Development Plans).

It should be noted that from the date of adoption of general plans or from 1 July 2026, the possibility of locating RES installations based on the Decision on Land Development Conditions will be limited.



10.5. CONNECTION TO THE ELECTRICITY GRID

Securing a connection to the electricity grid is the stage of the investment and construction process which directly precedes the construction permit acquisition stage. In the current legal environment, connection to the grid is a prerequisite not only for the sale and supply of electricity from the RES systems to the recipients but also for electricity storage.

Ensuring a grid connection is an investment and construction process stage consisting of the following steps:

- the investor obtains the grid connection conditions;
- the connection agreement is signed;
- the electricity distribution agreement is signed.

10.5.1. Electricity grid connection conditions

The grid connection conditions are a document issued by the distribution system operator or the transmission system operator to define the technical details of connecting an energy storage and they obligate the operator to sign an energy storage grid connection- with the investor. The connection conditions "temporarily book the grid space" for a specific project, in this case an energy storage.

If the producer does not conclude a connection agreement within 24 months from the date of receipt of the connection conditions, the connection conditions expire and no longer constitute an obligation for the grid operator to conclude the connection agreement

Elements of an application for grid connection conditions

An application for grid connection conditions is submitted to the distribution system operator or to the transmission system operator that owns the grid to which the investor intends to connect the system.

The application must specify:

- the person filing the application and their address;
- the request for network connection conditions for a specific energy storage project;

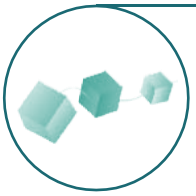
- the maximum annual capacity of the produced electricity and the quantity of electricity fed to the grid;
- the installed capacity, generation capacity, available capacity, apparent power of generators and the maximum capacity referred to in Article 2(16) of Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators;
- the range of the permissible changes to the loads of the generators or their groups;
- the number of the electricity generation modules to be connected;
- the size of the planned demand for capacity and electricity to cover the generator's own needs;
- the degree of compensation of the reactive power linked to the receipt electric power for the electricity generator's internal needs;
- the degree of compensation of the reactive power linked to the feeding of the generated electricity to the grid;
- the anticipated values of the electric parameters of the grid and the transformers forming a part of the energy storage system and devices;
- the minimum import capacity to guarantee the safety of people and property based on Article 11(6) of the Energy Law if electricity supply and consumption restrictions are imposed;
- the technical information regarding the interferences caused by the devices, systems and grids of the applicant and the characteristics of the loads as required to determine the connection conditions for entities from connection groups I to IV.

The investor should also attach the following:

- an extract and excerpt from the Local Spatial Development Plan or, if there is none, the Decision on Land Development Conditions for the real property specified in the application;
- a document confirming the investor's title to use the real property where the energy storage specified in the application is to be located;
- the development plan on a land survey and height map to show the positioning of the facility to be connected in relation to the existing grid;
- the certification confirming the technical parameters, operational and performance characteristics of the connected devices, installations, or networks, including the technical data sheet of the relevant energy storage system;
- a single-line electrical diagram of the devices systems or grids to be connected along with their description.

10. ELECTRICAL ENERGY STORAGES

The process



After the investor submits an application for the issuance of grid connection conditions, the operator analyzes whether there are technical and economic possibilities for connecting the energy storage facility to the power grid. Technical reasons are most often associated with the availability of connection capacity at the point of connection — the operator examines whether safe energy intake by the grid is possible, even under extreme load conditions.

In the case of an energy storage facility with a capacity exceeding 2 MW, the operator ensures the preparation of an expert analysis of the facility's impact on the power system.

As part of the economic criteria, the operator examines whether sufficient financial resources are available for the grid expansion required to connect the energy storage facility.

Duration of the process

The grid connection conditions application processing time for energy storages is:

- up to 120 days after the application filing date for applicants from connection group III or VI – where the facility is to be connected to a grid above 1 kV and has an energy source or energy storage;
- up to 150 days after the application filing date for applicants classified in connection group I or II, in accordance with Article 7(8g) of the Energy Law;
- within 45 days from the date of submission of the application by an entity applying for the connection of an electricity storage system that is part of a photovoltaic installation mounted on a building, with a total installed capacity not exceeding 2 MW, connected to the electricity distribution grid.

Please note that if the operator refuses to issue the grid connection conditions, the Energy Law creates the terms and conditions for the relations between the operator and the investor. If the operator refuses to connect the facility because of:

- lack of the technical conditions for the connection arising from lack of the required grid transmission capacity at the time proposed by the entity applying for the connection of an RES system – the energy company shall define the planned time limit for and the conditions of the necessary grid development or modernisation and specify when the connection will be made;
- lack of economic possibilities, the energy company may sign a grid connection agreement establishing a connection fee in an amount agreed with the grid connection applicant;

- in the absence of technical and economic conditions, the construction and expansion of grid sections required to connect the installations belonging to the entity applying for connection may, in agreement with the energy company, be carried out by the applicant.

Grid connection conditions validity period

Grid connection conditions are valid for 2 years after their delivery date.

During the validity period, the grid connection conditions represent a conditional commitment of the electricity transmission or distribution company to enter into a connection agreement.

What is the fee for grid connection conditions?

Not later than 14 days after filing the application to the operator, the investor must pay the advance for the grid connection conditions, which is PLN 30 gross for every kW of the connection capacity requested by the investor (applicable to grids with a voltage higher than 1 kV).

The advance must not be higher than PLN 3 000 000. If the operator refuses to issue the grid connection conditions the advance is returned to the account of the investor. If the grid connection conditions are issued, the advance is credited against the connection fee.[163]

Once the connection agreement is signed the investor is responsible for a half of the expenses required to build the connection. The other half is covered by the operator.

How to appeal?

An investor whose application for grid connection conditions has been rejected may file a complaint to the President of the URE based on Article 8 of the Energy Law. Decisions of the President of the URE can be challenged before the Warsaw Regional Court's Competition and Consumer Protection Court, based on Article 30(2) of the Energy Law.

Can the application be filed online?

Grid operators decide how and in what form an application must be submitted. This information is usually posted on websites so it is advisable to first verify if the application can be filed online.

[163] *Please note that some operators follow a practice of collecting the advance for grid connection conditions only after they obtain a reasonable confirmation that it is possible to connect the generating facility.*

10.5.2. Electricity grid connection agreement

The connection agreement is the basis for connecting an energy storage to the operator's electricity grid. It is a contract signed between the distribution system operator or the transmission system operator and the investor and it is a commitment to perform the connection works for the energy storage in accordance with the technical specifications detailed in the grid connection conditions.

In order to complete this task, both parties undertake to perform works to connect the energy storage to the distribution system. Any requirements related to the reconstruction or replacement of grid components are carried out in accordance with the provisions specified in the grid connection conditions.

Deadline for the obligations under the electricity grid connection agreement

Electricity can be supplied only once the connection agreement terms and performed and after subsequent contracts are signed, i.e. contracts regarding the supply and transfer of electricity to the electricity storage.

Electricity can be supplied only once the provisions of the connection agreement have been fulfilled and subsequent contracts have been signed, i.e. a contract governing the supply and return (feed-in) of electricity to the electricity storage facility.

Securing the connection route

One of the most important elements of the connection agreement is identification of the grid connection point i.e. the point where the electricity stored in the energy storages will be fed to the distribution or transmission grid.

If the grid connection point is situated outside the investor's land (most cases), the investor is responsible for building a link between the energy storage and the grid connection point. In such a case, it is necessary to secure the titles to the real properties situated on the route of the electric power link.

How the titles to the real properties situated along the cable route should be secured depends on whether the link is to run across plots consisting of a road (whether or not having the status of a public road) or across privately owned properties.

Private property

The most common way to secure the legal right to use a private property across which a cable route is expected to run is utility easement. This solution authorises the owner of transmission facilities – the investor developing an energy storage project who intends to build, or has already built, transmission facilities – to use a real property to the extent required to install, and to subsequently use, transmission facilities on the property. Utility easement is a limited real right effective with regard to each successive owner of the real property across which the transmission facilities are to run. It is established in a notary deed and it is disclosed in the title register. It can be either fee-based or free of charge (in accordance with the provisions of the Civil Code).

Real property with a public road status

For properties with a public road status, the title to use the property is governed by the Roads Act – especially by Article 39 and Article 40 of the Roads Act. Securing the legal right to use a real property with a public road status is a multistep process. The first step is to obtain a decision issued under Article 39(3) and Article 39(3a) of the Poultry- Act by the road administrator to authorise to location of building structures or facilities within the roadway which are not related to road management needs or road traffic needs.

This step is followed by a decision issued under Article 40(1) and Article 40(2) of the Roads Act, which permits occupying the roadway space in order to perform construction works or install technical infrastructure facilities within the roadway which are not related to road management needs or road traffic needs. The decision permitting the occupation of the roadway for the purpose of performing the works is issued for up to ten plus days and it authorises the holder to physically enter the property in order to perform construction works.

The decision which permits installing facilities within the roadway is issued for a period of a few to a few dozen years and it grants the holder a legal right to install the facilities. Importantly, there are fees charged for both the occupation of the roadway and the installation of technical infrastructure facilities in the roadway. In the former case, it is a one-off fee and in the latter case, it is an annual fee.

Real property without a public road status

In the case of internal commune roads without a public road status, there is no single systematised procedure for securing the cable routing. Usually, communes issue informal permits for this purpose, which do not have the status of administrative decisions, where they authorise the installation of the facilities – this is equivalent to a decision issued under Article 39(3) and Article 39(3a) of the Roads Act. Subsequently, they sign an agreement with the investor whereunder the real property is provided for use in return for an annual fee – this is equivalent to a decision issued under Article 40(1) and Article 40(2) of the Roads Act.

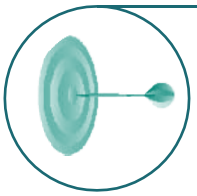
Another possibility of securing the right to the land property is the already mentioned utility easement.

The above-mentioned titles securing the cable routing are not the only available legal options. There are also lease agreements or unnamed contracts which are structured similarly to a lease agreement. Unfortunately the rights they grant to the real properties are not as lasting as the ones described above.

10.6. CONSTRUCTION PERMIT

Construction permit is the element of the investment process which is the starting point for the construction of an energy storage. Without this permit, an investor cannot commence construction works or, subsequently, operate the facility.[164]

Purpose of the permit



A construction permit verifies if the planned project complies with the law and respects the interests of the parties whose rights it is not allowed to violate. From the investor's perspective, the main purpose of obtaining a construction permit is to start the construction works to build an energy storage. A construction permit defines the rights and responsibilities of the investor related to project implementation.

Pursuant to Article 3(7) of the Construction Law, construction works are understood as alteration, assembly, renovation or demolition of a building structure.

USEFUL NOTE

When is the permit required?

A construction permit for an electrical energy storage facility is required outside buildings when the capacity exceeds 2,000 kWh, and inside buildings when the capacity exceeds 300 kWh. Considering the typical course of the investment and construction process, the investor obtains the construction permit decision after first securing:

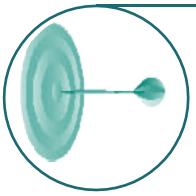
- the environmental decision (where applicable);
- the Decision on Land Development Conditions (unless a Local Spatial Development Plan applies);
- a decision authorizing exclusion from agricultural production, in the case of properties compromising:
  a) agricultural land formed from mineral and organic soils classified as classes I, II, III, IIIa, IIIb;
  b) agricultural land of classes IV, IVa, IVb, V and VI formed from organic soils;
  c) other agricultural land indicated by the Act on the Protection of Agricultural and Forest Land;
- the electricity grid connection conditions.[165]

The electricity link that is the cable line connecting the energy storage with the grid connection point is usually built based on pre-construction notification which replaces a construction permit in the case of simpler construction projects.

[164] *Article 28 of the Construction Law*

[165] *It can be processed concurrently with the construction permit.*

Elements of the permit application



The mandatory elements of the construction permit application are specified in the Construction Law. They are:

- details of the person filing the application and their address;
- the request for a construction permit decision for a specific construction project (importantly, the construction law states that for a construction project covering more than one facility, a construction permit may, at the investor's request, pertain to selected facilities or to a complex of facilities able function on their own in accordance with their intended purpose).

Furthermore, the investor should attach the following:

- a plot or land development design and an architectural construction design – along with the opinions, approvals, permits and other documents as required under separate legal acts or copies of the same (in paper format: 3 copies , or in an electronic format);
- a declaration on having the right to use the real property for construction purposes;
- for construction projects preceded by an environmental decision issued in a process requiring the participation of the public – a visual appendix specifying the anticipated project implementation site and the anticipated project impact area, provided that the submission of this appendix was required by the regulations in effect on the date of applying for the environmental decision, and especially the map referred to in Article 74(1)(3a) of the EIA Act;
- the Decision on Land Development Conditions, where required under the spatial planning and development laws;
- a proof of payment of the stamp duty for the construction permit application;
- for applications filed by authorised representatives – the authorisation and the receipt for the stamp duty.

The crucial appendix to the construction permit application is the construction design. Construction design requirements are laid down in the Construction Law. A construction design must include:

- a plot or land development design prepared on an up-to-date map for design purposes or on a copy thereof, presenting:
  a) the plot or land boundaries;
  b) the location, outline and arrangement of the existing and planned building structures, including the utilities on the plot and any building facilities located outside the building structure;

c) the sewage discharge or treatment method;
d) the traffic system and the arrangement of vegetation, with specification of the characteristic elements, dimensions, ordinates and mutual distances between objects – in relation to the existing and planned buildings in the neighbouring areas;
e) information about the project impact area;

- an architectural and construction design which covers:
  a) the spatial arrangement and the architectural form of the existing and planned building structures;
  b) the intended use of the building structures;
  c) the characteristic technical parameters of the building structures;
  d) a geotechnical opinion and the information on how the building structure is attached to the ground;
  e) the planned material-related and technical solutions which influence the surroundings, including the environment;
  f) ecology characteristics;

- a technical design including:
  a) the planned structural solutions of the facility along with the results of static strength calculations;
  b) the planned necessary technical and material-related solutions;
  c) as needed – the geology engineering report or the geotechnical conditions for laying the building foundations;
  d) the electrical design for connecting the energy storage facility to the power grid, along with other design documentation.

- opinions, approvals, permits and other documents referred to in Article 33(2)(1) of the Construction Law.

Furthermore, the following must be attached to the construction design:

- a statement that the design author has the qualifications to hold an independent technical function in the construction industry;
- a statement of the engineer that the design was prepared in accordance with the applicable laws and the construction principles.

10. ELECTRICAL ENERGY STORAGES

The process

Once the construction permit application is filed the authorities make the preliminary determinations and give approvals or seek the opinions of other authorities.

Parties to the construction permit acquisition process: the investor, owners of the real properties (perpetual users of the real properties) or administrators of the real properties within the project impact range.

Duration of the process

The construction permit should be issued within 65 days from the date of submission of the application (Article 35(6)(1) of the Construction Law). An exception applies to energy storage facilities that form part of a photovoltaic installation mounted on a building, for which the deadline is 30 days (Article 35(6)(3)(b) of the Construction Law). In the event of exceeding this deadline, the higher-level authority may impose a fine of PLN 500 for each day of delay on the architectural and construction authority.

Authority competent for the permit

The authority in charge of issuing a construction permit is the county administrator. However, there are cases specified in Article 82 of the Construction Law Act in which the competent authority of first instance is the voivode.

Permit validity period

The works under a construction permit must commence not later than 3 years following the date when the construction permit decision became final and binding. Any suspension of construction works must not be longer than 3 years. This means that if the construction works do not commence within 3 years after a final construction permit is obtained or if works are suspended for more than 3 years, the construction permit expires.

What is the fee for the permit?

The stamp duty for a construction permit is PLN 155 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal against the decision to the local voivode through the county administrator who issued the challenged decision. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and to the Supreme Administrative Court.

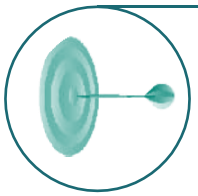
Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on e-Budownictwo.

10.7. NOTIFICATION ON COMPLETION OF CONSTRUCTION WORKS

Energy storages are not recognised as facilities requiring an operational notification. As a result, the operation of an energy storage can commence once the construction supervision authority is notified that the construction works are completed, provided that this authority does not object by way of a decision within 14 days of receiving the notification.[166]

Purpose of the notification

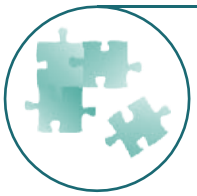


The purpose of the notification is to commence the operation of energy storages after the construction works are completed for projects were no construction permit is required.

When is the notification required?

The notification should precede the commencement of electricity storage and so it should be issued before the electricity storage licence. Therefore, it must be submitted after the completion of construction works and prior to obtaining a license for electricity storage, if such a license is required.

Elements of the notification



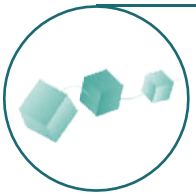
The notification on the completion of construction works should contain the following elements:

- details of the investor, including a correspondence address;
- identification of the construction supervision authority;
- identification of the construction permit decision underlying the implementation of the project;
- identification of the real property where the facility is located;
- original construction daily log in the paper format or, if the log is digital, the number of the log;
- the technical design;
- a statement of the construction manager that the building structure complies with the construction design or the conditions of the construction permit and with the applicable laws and that the construction site has been brought to cleaned up; where appropriate the same applies to roads, streets, adjacent properties, buildings or premises;

[166] *Article 54(1) of the Construction Law*

- a statement that appropriate land management of adjacent areas has been secured wherever the operation of the facility depends on appropriate management of such areas;
- reports concluding the inspections and checks of the connections, systems and technical devices guaranteeing the use of the structure as intended; the reports must be prepared by individuals having construction qualifications in the required specialities;
- decision permitting the operation of a technical device (where required);
- surveyor documentation with results of the as-built site survey;
- confirmation, in accordance with separate regulations, of the acceptance of the completed connections;
- certificate of the commune administrator or mayor confirming compliance with the requirement to implement a supplementary project (where required);
- copies of the drawings forming a part of the approved design, including the changes made and, where appropriate, a supplementary description of the changes where the changes do not significantly deviate from the approved design;
- authorisation to represent the investor (if the application is submitted by an authorised representative) along with a proof of payment of the stamp duty for the authorisation.

The process



The authority reviews the application for formal matters and checks if the facility was built in accordance with the construction permit.

The authority may object to the notification on completion of construction works especially if the authority establishes that the building structure covered by the investor's notification was built in violation of the conditions defined in the construction permit and, as a consequence, an operational notification is required.

Before the 14-day time limit for the objection expires, the construction supervision authority may, ex officio, issue a statement that there are no grounds for an objection. With the statement, the authority waives the right to object and the investor may start to operate the facility covered by the notification.

10. ELECTRICAL ENERGY STORAGES

Duration of the process

The operation of an energy storage can start 14 days after the date of the notification if the authority does not raise an objection within this period, or before the expiry of the 14-day period if the building supervision authority issues a certificate confirming that there are no grounds for raising an objection.

Authority competent for the notification

The authority issuing the decision is the County Construction Supervision Inspectorate (Polish: Powiatowy Inspektorat Nadzoru Budowlanego).

What is the fee for the notification?

The notification is exempt from a stamp duty.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice to appeal against the decision to the local Provincial Construction Supervision Inspectorate (Wojewódzki Inspektorat Nadzoru Budowlanego). Appeals should be reviewed within 60 days of their delivery. Subsequent remedies available to the investor include a complaint to the Provincial Administrative Court and, as the next step, to the Supreme Administrative Court.

Can the application be filed online?

The application can be submitted online to the public administration body having jurisdiction over the matter on e-Budownictwo.

10.8. RES energy storage licence

Pursuant to Article 32(1)(2)(a) of the Energy Law, an activity of storing electricity in electricity storages of a total installed electrical power above 10 MW requires a licence.

For energy storages above 50 kW but up to 10 MW, the licence requirement has been replaced with entry in the register of electricity storages.

Purpose of the licence

The purpose of the licence is for the government to authorise an activity in a branch of the economy that is particularly important from the perspective of public interest, i.e. the energy sector.[167] The licence decision defines the conditions and the duration of this activity.

When is a licence required?

The licence decision is the last decision in the investment and construction process for energy storage. A licence is required for an activity of storing electricity in electricity storages of a total installed electrical power up to 10 MW. The above provision was introduced based on the Polish Act Amending the Energy Law and Some Other Acts of 20 May 2021, enacted in order to comprehensively regulate the functioning and development of energy storages. The legislator has decided to introduce a separate licence for electricity storage, different from the generation licence.

Elements of a licence application

The list of the documents required with an application for an energy storage licence is provided by the President of the URE, who initiates the procedure of reviewing the licence issue criteria defined in the Energy Law.

The list of the documents is available on:

www.ure.gov.pl/pl/biznes/jak-uzyskac-koncesje/energia-elektryczna/784,odnawialne-zrodla-energii.html

[167] *Article 32(1) of the Energy Law*

Furthermore, pursuant to Article 35(1) of the Energy Law, the licence application should include in particular:

- the name of the applicant, its registered office, the registered office of its branch in Poland or the applicant's place of residence and address plus the full names of the authorised representatives appointed to handle legal matters on behalf of the applicant;
- the subject matter and scope of the activity to be licensed and the draft development plan referred to in Article 16 of Energy Law (if applicable);
- information on the applicant's activity to date, including the applicant's financial statements for the past 3 years if the entity runs a business;
- the term for which the licence is to be granted along with the activity start date;
- the funds the licence applicant has at its disposal to ensure proper performance of the activity covered by the application;
- number in the KRS register of companies, if any, or an equivalent register in member states of the European Union, the Swiss Confederation, the European Free Trade Association (EFTA) – the parties to the European Economic Area agreement or Turkey and the tax identification number (NIP).

An electricity storage licence application should also include the additional information defined in Article 43g(6)(2) of the Energy Law, i.e. the following details of the electricity storage:

- the technology used to store electricity;
- the total installed capacity of the electricity storage defined in kW;
- the volume of the electricity storage defined in kWh;
- the performance of the electricity storage;
- the maximum charge capacity expressed in kW;
- the maximum discharge capacity expressed in kW;
- the connection point of the electricity storage;
- information on whether the electricity storage is a part of a generating facility or a system of the end recipient.

The above list of documents is indicative only and it should be each time verified with the URE.

10. ELECTRICAL ENERGY STORAGES

The process

Once the application is filed, the licensing authority verifies the documentation to determine if it meets the criteria specified in Article 33 of the Energy Law and it requests an opinion from the local provincial administration.

Licence grant may be contingent on the posting of a bond to satisfy any third-party claims which may arise as a result of improper performance of the licensed activity, including environmental damage.

Importantly, having received the licence, the generator is required to pay an annual licence fee, which is calculated based on the energy company's revenue from the sale of goods or services as a part of the licensed activity earned in the year when the fee payment obligation started and the appropriate coefficients out of those defined in the Regulation on licence fees.

Obtaining the licence also entails a periodic reporting requirement, usually to the President of the URE.

Duration of the process

The handling of the matter in the form of issuing a licence for electricity storage should be completed within one month.[168] However, this is just a theory arising from the administrative procedure and it does not account for the specificities of the licensing process, which usually takes a few months.

In practice, it can take longer because this does not account for the legal time limits for obtaining approvals or opinions or for any process suspension periods. Furthermore, the decision may be delayed for other reasons, for example for reasons attributable to the party or reasons beyond the control of the authority, such as the need to supplement the documentation.

Authority competent for the licence

The authority responsible for issuing the licence is the President of the URE.
The licence application must be filed to the local URE branch having jurisdiction over the applicant's registered office.

Licence validity period

The licence is granted for an indefinite term, not shorter than 10 years and not longer than 50 years, unless the entrepreneur requests a shorter term.

[168] *Article 35 CAP*

10. ELECTRICAL ENERGY STORAGES

What is the fee for the licence?

The stamp duty for an energy storage licence is PLN 616 and it must be paid at the submission of the application.
The stamp duty for the certificate is PLN 17 and it must be paid at the submission of the application.
The stamp duty for an authorisation is PLN 17.

How to appeal?

After receiving the decision, the applicant has 14 days from the date of delivery of the decision, including delivery by public notice, to appeal to the Warsaw Regional Court's Competition and Consumer Protection Court via the President of the URE. The cost of the appeal is PLN 1000.

Can the application be filed online?

You can file the application online through the ePUAP service.

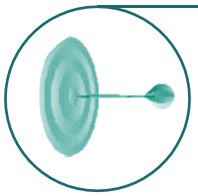
10.9. REGISTER OF ENERGY STORAGES

Article 43g(1) of the Energy Law requires electricity system operators to keep registers of the energy storages connected to their grid.

The register is generally accessible and it is shared by the electricity system operator on its website, with the exception of the trade secrets restricted by the holder of electricity storage or the information subject to personal data protection legislation. The record is digital.

The obligation to enter an energy storage in the register to the extent provided for in the Energy Law was imposed on holders of the energy storage connected to the grid of a given operator. A holder means either a dependent holder or an autonomous (owner-like) holder, i.e. an entity actually holding and controlling the operation of the energy storage. The requirement of entry in the register of electricity storages and the classification as a generating facility applies to energy storages of an installed capacity above 50 kW.

Purpose of the entry into the register of electricity storage facilities



The purpose of the entry is to enter the energy storage in the register.

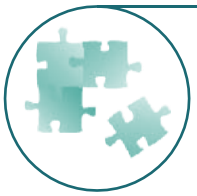
When is the entry required?

Entry in the register of electricity storages is not a prerequisite for starting an activity of storing electricity. The Energy Law does not define any time limit for the holder to record their storage in the register of electricity storages. Nor does the Energy Law provide for any negative consequences for an electricity holder for failure to comply with the obligation to enter electricity storages in the register and to subsequently revise the submitted data. In accordance with Article 43g(5) of the Energy Law, if an electricity storage forms a part of a generating facility or an end-recipient system connected to the grid of an electricity operator, the storage holder must communicate the data defined in detail in Article 43u(6) of the Energy Law to the grid operator within 7 days of the commissioning of the storage.

In the above case, the legislator also fails to provide for any sanctions is the data are not communicated within that time limit.

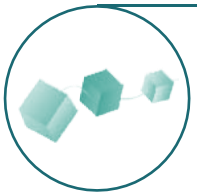
10. ELECTRICAL ENERGY STORAGES

Elements of an application for the entry



The template form for the notice referred to in Article 43g(5) of the Energy Law is specified in Annex 2 to the Regulation of the Minister of Climate and Environment of 21 October 2021 on the register of energy storages.

The process



The electricity grid operator checks if the application is correct and if it is, the operator makes the entry.

Duration of the process

The electricity system operator should make the entry within 14 days after the commissioning of the energy storage and after receiving the information referred to in Article 43g(5) of the Energy Law.[169]

Authority competent for the entry

The party competent for making the entry is the electricity company, i.e. the operator of the electricity grid.

Entry validity period

The entry in the register has no expiry date.

[169] *Article 43g of the Energy Law*

10. ELECTRICAL ENERGY STORAGES

What is the fee for the entry?

The existence of potential fees on the application for entry in the register of electricity storages must be verified with the competent operator of the electricity grid.

Can the application be filed online?

You can file the application online through the ePUAP service.

11. HYBRID SYSTEMS

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11.1. Technology description 532

11. HYBRID SYSTEMS

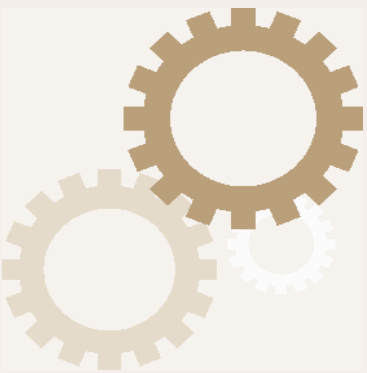
11.1. TECHNOLOGY DESCRIPTION

Ensuring more stable production of energy from renewable sources requires not only building energy storages but also developing hybrid systems i.e. energy sources which are mutually complementary in terms of the generation profile, for fuller and more predictable utilisation of the electricity connection.

A hybrid RES system is a separated equipment set characterised by specific technical and commercial data where the annual utilisation of the installed capacity is the ratio of the number of MWh of the produced electricity per 1 MW of the connection capacity and which is connected to the electricity grid in one connection point and produces electricity exclusively from renewable energy sources differing as to the type and availability of the generated electricity and meets the following criteria:

- *none of the generating facilities has an installed capacity above 80% of the total installed capacity of that set;*
- *the power is transferred from the equipment forming that set to the electricity grid by a device which connects this set to the electricity grid and transforms energy to the condition required to feed it to the grid,*
- *the set includes an energy storage which is used to storage electricity from the generating devices forming a part of that set, where the share of the energy produced by such devices and fed to the electricity grid through the electricity storage in the total volume of the energy fed to the electricity grid is below 5% a year, which figure does not include the electricity received from the grid.*

In simplified terms, a hybrid installation is therefore a distinct set of devices comprising renewable energy installations that differ in terms of production dispatchability and energy characteristics, with none of the devices having an installed capacity exceeding 80% of the total capacity of the hybrid installation.

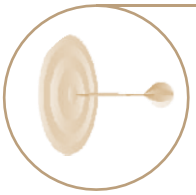


The devices forming the hybrid RES installation must be connected to the grid via a single connection to a common connection point and must be equipped with an energy storage facility.

A hybrid RES installation should not be confused with a hybrid system, which uses both RES installations and conventional power plants to generate energy.

11. HYBRID SYSTEMS

What is the purpose of building a hybrid RES system?



The purpose of building hybrid RES systems is to ensure more stable energy production by using systems with mutually complementary generation profiles. Due to the variability of weather conditions, energy production by single-type RES systems often results in a situation where the assumed energy volume is not attained and as a result the connection is not fully utilised.

The main advantages of investing in hybrid RES systems are in particular: reduced average electricity cost, fuller utilisation of the connection capacity, the possibility of handling some formalities for every RES project type simultaneously and security in the event of breakdown. Other factors which may potentially advance the development of hybrid systems is the RES Act regulations which single out hybrid systems as a separate energy production technology in the auction system with beneficial reference selling prices.

Typical hybrid RES systems

The law does not precisely list the RES power plants that can form a part of a hybrid system so it is up to the investor which of the RES systems presented in this Handbook to choose. Please note that the maximum number of the RES systems which may form a hybrid RES system has not been specified either but the very specificity of such projects requires at least two different systems and an energy storage. The key criterion is the capacity – none of the power plants co-creating a hybrid RES system can have an installed capacity exceeding 80% of the total capacity of the whole complex.

The most common practice is to create hybrid RES systems that integrate power plants with mutually complementary profiles of energy production in various weather conditions.

Typical combinations for hybrid RES systems are:

- photovoltaic power plants and wind farms;
- photovoltaic power plants and biomass or biogas plants.

For the first combination, the energy production by a photovoltaic farm drops in autumn and winter, when access to solar radiation is limited, while this is the time with the strongest and most frequent winds, which can increase energy production by a wind farm. The situation is the opposite in spring and summer.

The concept behind the second combination is to stabilise the energy production of the photovoltaic power plant through the application of a biomass or biogas plant, which have a stable production profile regardless of the weather. Energy production by a biomass or biogas plant can successfully complement the production when the limited access to solar radiation makes it impossible to make a full use of the photovoltaic power plant.

Investment and construction process

The investment and construction process for hybrid RES systems depends on the type of the generating devices. Importantly, a part of the investment and construction process for a hybrid system can be handled jointly, based on collective administrative decisions encompassing different generating devices. This possibility applies in particular to the environmental decision, the Decision on Land Development Conditions, the construction permit and the operational notification.

Please note that an investor planning a hybrid RES system will be obligated to obtain only one grid connection conditions document.

The above simplification will only apply if the equipment forming the hybrid RES system is to be built simultaneously. If new equipment is to be added to an existing system, it may be necessary to obtain all the decisions separately or to request an amending permit.

12. PRE-QUALIFICATION FOR AUCTION

Auctions for RES electricity sale are the most popular system of supporting renewable energies in Poland. Micro systems are an exception as they usually use prosumer settlement mechanisms.

The auctions encompass a vast majority of the technologies for energy production from renewable sources available in Poland, with solar energy and wind energy as the leading types. The auction system takes the form of a contract for difference, providing—over a period of 15 years from the date of the first sale of electricity following the auction win—the possibility to settle a negative or positive balance, representing the difference between the net value of energy calculated based on the TGeBase index and the value calculated based on the bid price of the given producer.

To join the auction, in the case of existing installations, the investor must first obtain an action eligibility certificate as a part of the pre-qualification process described in the chapter below.

At which stage of the investment process should the investor submit an application for an auction eligibility certificate ?

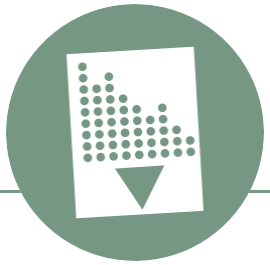
Auctions are usually held for new systems, i.e. ones at the planning stage. The projects submitted for auctions are usually at the stage of: obtained grid connection conditions and final constriction permit. Auction participation does not require an energy production licence.

What must be included in an application for an auction eligibility certificate?

According to the RES Act, an application for an auction eligibility certificate should include:

- first and last name and home address or business name and registered office address of the generator;
- the location and installed capacity of the RES system;
- signature of the generator or its authorised representative, with attached original or certified copy of the document confirming the authority of that person to act on behalf of the generator;
- for a system using biomass, biogas, agricultural biogas or bioliquids to generate electricity – the following statement of the generator or its authorised representative:

"Aware of the criminal liability for false statements under Article 233(6) of the Polish Criminal Code of 6 June 1997, I hereby represent that:



- the electricity in the RES system will not be produced using:
  a) any wood other than energy wood and full-value grain in the case of:
     - renewable energy source systems – other than micro-systems and small systems – which produce electricity using a biogas other than agricultural biogas;
     - renewable energy source systems – other than micro-systems and small systems – which produce electricity using a biomass incinerated in a dedicated biomass incinerator;
     - multi-fuel incinerators, dedicated multi-fuel incinerators and hybrid systems which produce electricity using biomass, biogas or agricultural biogas;
     - waste incinerators;
  b) wood other than energy wood in the case of multi-fuel incinerators, dedicated multi-fuel incinerators and hybrid systems which produce electricity using bioliquids;
  c) fossil fuels or fuels obtained from their processing in the case of renewable energy source systems which produce electricity using biomass incinerated in a dedicated biomass incinerator;
  d) biomass contaminated for the purpose of increasing its net calorific value – for dedicated biomass incinerators, hybrid RES systems, dedicated multi-fuel incinerators or a hybrid system which produce electricity using biomass, bioliquids, biogas or agricultural biogas;
  e) substrates other than listed in Article 2(2) of the RES Act – for electricity production from agricultural biogas;
  f) substrates other than listed in Article 2(4) of the RES Act – for electricity production from bioliquids;
  g) bioliquids which fail to meet the sustainability criteria defined in Articles 28b through Article 28bc of the Polish Biocomponent and Liquid Biofuel Act;
- the requirement that the share of biomass of agricultural origin in the total biomass defined in Article 60a(2) or in secondary legislation issued under Article 60a(3) of the RES Act will be complied with – for the RES systems referred to in Article 60a(2).”

Furthermore an application for an auction eligibility certificate should include the following appendices:

- grid connection conditions or an agreement for the RES system connection to a transmission or distribution grid, the validity period of which, on the date of submission, must not be shorter than 6 months;
- a final and binding construction permit issued for the planned RES system or for its modernisation (where required under the applicable construction law regulations); the validity period on the submission date cannot be shorter than 6 months;
- the schedule of works & expenses for the construction or modernisation of the RES system or a statement on project completion;
- a plan of the RES system which specifies the system devices used to generate electricity and the devices used to transfer the power, with marked location of measurement and settlement devices and marked grid connection point for that system – on a site map featuring the land plot and precinct numbers.

Who issues the auction eligibility certificate?

The certificate is issued by the President of the URE.

How many days does the President of the URE have to issue the auction eligibility certificate?

The President of the URE issues or denies an auction eligibility certificate within 30 days after the submission of the complete application for the certificate.

In what form does the President of the URE deny an auction eligibility certificate?

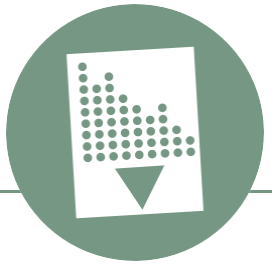
The President of the URE denies an auction eligibility certificate by way of a relevant decision.

Can a decision denying an auction eligibility certificate be challenged?

Yes, the decision can be challenged to the Warsaw Regional Court's Competition and Consumer Protection Court within 7 days of service of the decision.

How long is an auction eligibility certificate valid?

An auction eligibility certificate is valid for 12 months after the issue date. At the same time, the deadline may not exceed the validity period of the grid connection conditions or the connection agreement to the transmission or distribution network, or the legally binding construction permit.



How are the auctions managed by the President of the URE?

The President of the URE posts a notice regarding an auction in the Public Information Bulletin gazette (BIP) of the URE not later than 30 days before the auction start date.

The auction notice includes:

- auction reference;
- date of the auction session;
- opening and closing hours of the auction session;
- the maximum quantity and value of electricity from renewable energy sources which can be sold at the auction, including the maximum quantity and value of the electricity from renewable energy source which can be sold at the auction by entities generating electricity from renewable energy sources in an RES system situated outside Poland and outside the Exclusive Economic Zone;
- the types of the RES systems covered by the auction.

Auctions are held at least once a year. The prerequisites for joining the auction include an auction eligibility certificate and a bank guarantee or a bond posted to the bank account specified by the President of the URE, the value of the bond being PLN 60 per 1 kW of the installed capacity of the RES system participating in the auction.

How are auctions decided?

Auctions are decided based on the criterion of the lowest price offered for the electricity on sale. The maximum electricity selling price cannot exceed the reference price published in the Regulation of the Minister of Climate and Environment on the selling prices of electricity from renewable energy sources and on the time limits for generators who have won the auctions in a given year. Whenever several auction participants offer the same lowest selling price for electricity produced from renewable energy sources, electricity sale is awarded to the one who was the first to submit the bid.

An auction is decided if at least three valid bids have been submitted which meet statutory requirements. Importantly, bids submitted by a generator for the RES systems it owns cannot exceed in total 100% of the value or volume of electricity from renewable energy sources defined in the auction notice and 80% of the electricity covered by all the bids.

The details are defined in the auction terms and conditions provided by the URE.

What are auction baskets?

Renewable energy source technologies differ as to electricity production costs. This is why auctions are not held collectively within one session – this would result in a situation where support would be granted only to systems representing technologies with the lowest energy production price, which could limit the development of other RES types. As a result, auctions are held in sessions, inviting bids for systems which represent technologies that are similar in terms of the energy production cost – for a capacity of up to 1 MW and above 1 MW. So auction baskets are combinations of the RES system types with internal bidding.

The following auction baskets can be identified:

Auction basket	RES system capacity threshold for a given auction basket (under Article 73(4) of the RES Act)	RES system type (under Article 77(5) of the RES Act)
1.	Up to 1 MW	- of a total installed electricity capacity below 500 kW, using exclusively biogas sourced from landfills to generate electricity; - of a total installed electricity capacity below 500 kW, using exclusively biogas sourced from landfills to generate electricity in high-efficiency cogeneration; - of a total installed electricity capacity below 500 kW, using exclusively biogas sourced from wastewater treatment plants to generate electricity; - of a total installed electricity capacity below 500 kW, using exclusively biogas sourced from wastewater treatment plants to generate electricity in high-efficiency cogeneration; - of a total installed electricity capacity below 500 kW, using exclusively biogas (other than agricultural biogas sourced from landfills and wastewater treatment plants) to generate electricity; - of a total installed electricity capacity below 500 kW, using exclusively biogas (other than agricultural biogas sourced from landfills and wastewater treatment plants) to generate electricity in high-efficiency cogeneration; - of a total installed electricity capacity of at least 500 kW, using exclusively biogas sourced from landfills to generate electricity; - of a total installed electricity capacity of at least 500 kW, using exclusively biogas sourced from landfills to generate electricity in high-efficiency cogeneration; - of a total installed electricity capacity of at least 500 kW, using exclusively biogas sourced from wastewater treatment plants to generate electricity; - of a total installed electricity capacity of at least 500 kW, using exclusively biogas sourced from wastewater treatment plants to generate electricity in high-efficiency cogeneration;

		- of a total installed electricity capacity of at least 500 kW, using exclusively biogas (other than agricultural biogas sourced from landfills and wastewater treatment plants) to generate electricity; - of a total installed electricity capacity of at least 500 kW, using exclusively biogas (other than agricultural biogas sourced from landfills and wastewater treatment plants) to generate electricity in high-efficiency cogeneration; - in a dedicated biomass incinerator or in hybrid systems; - in a thermal waste treatment plant or a dedicated multi-fuel incinerator; - of a total installed electricity capacity not higher than 50 MW, in a thermal waste treatment plant, in a dedicated biomass incinerator or hybrid systems, in high-efficiency cogeneration.
2.	Above 1 MW	- of a total installed electricity capacity of at least 500 kW, using exclusively biogas sourced from landfills to generate electricity; - of a total installed electricity capacity of at least 500 kW, using exclusively biogas sourced from landfills to generate electricity in high-efficiency cogeneration; - of a total installed electricity capacity of at least 500 kW, using exclusively biogas sourced from wastewater treatment plants to generate electricity; - of a total installed electricity capacity of at least 500 kW, using exclusively biogas sourced from wastewater treatment plants to generate electricity in high-efficiency cogeneration; - of a total installed electricity capacity below 500 kW, using exclusively biogas other than specified in items 7, 8 and 9 to generate electricity; - of a total installed electricity capacity not lower than 500 kW, using exclusively biogas other than specified in 7a, 8a and 9a to generate electricity from high-efficiency cogeneration; - in a dedicated biomass incinerator or in hybrid systems; - in a thermal waste treatment plant or a dedicated multi-fuel incinerator; - of a total installed electricity capacity not higher than 50 MW, in a thermal waste treatment plant, in a dedicated biomass incinerator or hybrid systems, in high-efficiency cogeneration; - of a total installed electricity capacity above 50 MW, in a thermal waste treatment plant, in a dedicated biomass incinerator or hybrid systems, in high-efficiency cogeneration.
3.	Up to 1 MW	- of a total installed electricity capacity below 500 kW, using exclusively agricultural biogas to generate electricity; - of a total installed electricity capacity below 500 kW, using exclusively agricultural biogas to generate electricity in high-efficiency cogeneration.
4.	Above 1 MW	- of a total installed electricity capacity above 1 MW, using exclusively agricultural biogas to generate electricity; - of a total installed electricity capacity above 1 MW, using exclusively agricultural biogas to generate electricity in high-efficiency cogeneration.
5.	Up to 1 MW	- of a total installed electricity capacity above 500 kW, using exclusively hydropower to generate electricity;

		- using exclusively biofluids to generate electricity; - of a total installed electricity capacity not lower than 500 kW and not higher than 1 MW, using exclusively hydropower to generate electricity; - using exclusively geothermal power to generate electricity.
6.	Above 1 MW	- using exclusively biofluids to generate electricity; - of a total installed electricity capacity above 1 MW, using exclusively hydropower to generate electricity; - using exclusively geothermal power to generate electricity.
7.	Up to 1 MW	- of a total installed electricity capacity not higher than 1 MW, using exclusively onshore wind power to generate electricity; - of a total installed electricity capacity not higher than 1 MW, using exclusively solar power to generate.
8.	Above 1 MW	- of a total installed electricity capacity above 1 MW, using exclusively onshore wind power to generate electricity; - of a total installed electricity capacity above 1 MW, using exclusively solar power to generate electricity.
9.	Up to 1 MW*	- exclusively a renewable energy source hybrid plant of a total installed capacity not higher than 1 MW.
10.	Above 1 MW*	- exclusively a renewable energy source hybrid plant of a total installed capacity above 1 MW.

* Despite the existence of the regulatory framework, auctions for hybrid RES systems have not been held yet. The European Commission is yet to approve the State aid mechanism for this technology.

How to bid at the auction?

Bids are submitted via the Online Auction Platform provided by the URE. Given the electronic auction form, it is important for the individuals representing the generators to have a qualified electronic signature or a trusted signature or a personal signature. At the same time, it should be noted that the bid must not be signed by an attorney-in-fact or a commercial proxy.

13 PROSUMERS

PROSUMERS

Prosumers are one of the most important groups determining the nature of the Polish renewable energy industry. Prosumers are energy recipients who produce energy for their private needs in the RES micro-systems. It is a wide group that includes but is not limited to households and entrepreneurs; however, in the case of entrepreneurs, energy production cannot be their primary object of business as determined in accordance with the legislation enacted pursuant to Article 40(2) of the Polish Public Statistics Act of 29 June 1995 (Journal of Laws of 2023 item 773).[170]

Prosumers are usually associated with energy production from photovoltaic micro-systems. However, this group of recipients can also use other RES system types, provided that their total installed capacity is up 50 kV to and that they are connected to an electricity grid of a rated voltage below 110 kV.

Prosumer activity is particularly noteworthy due to the beneficial system of settling energy overproduction as a way of reducing electricity bills for the smallest entities in the market. The details are presented below.

Net-billing, i.e. the current settlement system for prosumers

Net-billing is a system intended for new prosumers. It covers all prosumers who submitted requests to the distribution system operator for micro-system connection to the grid not earlier than on 1 April 2022.

The basic purpose of net-billing is to reduce electricity bills for the prosumer. As a part of this mechanism, a prosumer may sell the excess energy produced in their micro-system and feed to the grid. The excess must be purchased by the obliged seller designated for a given area by the President of the URE. The value of the energy to be purchased is established based on the monthly electricity market prices defined in the next-day single market price system. As of 1 July 2024, the value of electricity fed into the grid will be determined based on the hourly exchange price on the day-ahead market.

The remuneration of the prosumer for the sale of excess energy accrues in the prosumer deposit. The funds accumulated in the prosumer deposit are used to settle (reduce) the amounts owed by the prosumer for electricity bills for a period of 12 months after the assignment of a given amount of money to the prosumer deposit.

[170] *'Renewable energy prosumer' is a term defined in Article 2(27a)*

If the prosumer does not use the funds obtained from the sale of excess energy within 12 months, the funds become an overpayment which is returned to the prosumer not later than by the end of the 13th months following the month for which the overpayment was recorded. The overpayment amount to be returned cannot be higher than 20% of the value of the electricity fed into the grid in the calendar month to which the return of the overpayment applies.

Prosumer settlements are handled through a prosumer account. A prosumer account is kept by the above-mentioned obligated seller and it is used to record the quantity and value of the energy fed to and received from the grid. This way, the prosumer may keep track of the funds accumulated in the prosumer deposit and verify the scale of bill reductions.

The right to settlements within the prosumer system emerges on the date when electricity is first generated in the micro-system and fed into the distribution and electricity grid and it continues for 15 consecutive years.

To sum up, prosumer activity offers two major advantages. First of all, by producing energy for their private needs, a prosumer substantially reduces the energy quantity they need to buy and receive from the grid. So it becomes highly profitable to increase energy consumption whenever the weather conditions are conducive to energy generation from renewable sources. Secondly, in the case of energy overproduction, the prosumer may sell the energy and then use the funds accumulated in that account to reduce the bills in the months when the energy production in the micro-system is not enough to cover their energy needs.

USEFUL NOTE

The settlements within the net-billing system that reduce the amounts owed by the prosumer for electricity purchase do not include distribution fees and related fees, whether fixed or variable. These costs must be paid fully by the prosumer.

Collective prosumer

Prosumer activity is not limited to individuals. The RES Act also mentions a collective prosumer, i.e. a party engaged in prosumer activity in multi-apartment buildings. This means that renewable energy production by prosumers also applies to inhabitants of blocks of flats or other multi-family buildings. At this point, it should be emphasised that collective prosumers are not only apartment owners but also their tenants, including entrepreneurs – the key criterion is to be a party to a comprehensive contract or to an electricity sale and distribution contract.

The important thing is that unlike individual prosumers, collective prosumers are not limited to the RES micro-systems but they can also use small systems up to 1 MW. Still, we must remember that the installed capacity of an RES system assigned to one electricity delivery point must not exceed the contractual capacity established for that delivery point and must be up to 50 kW.

Please note that building an RES system on a multi-apartment building requires a formal permission to use the rooftop or another part of the common area as the location for an RES system. Depending on the legal status, this is:

- in the case of homeowner associations – permission of apartment owners, with resolutions of owners adopted at a meeting or by the executive board walking door to door or in a process combining both options;
- if shares in the common area are owned exclusively by a housing cooperative – permission to use the rooftop;
- if the cooperative is not the only owner of the common area – permission to use the common area (usually the rooftop) to install a RES system, which should have the form of a resolution of the co-owners of the common area, i.e. the cooperative and the other co-owners.

Furthermore, pursuant to Article 4a(1) of the RES Act, collective prosumers[171] should enter in a prosumer contract which defines at least:

- the renewable energy percentage share of particular collective prosumers in electricity generation from a renewable source and the maximum installed capacity expressed in the units of the energy to which this share corresponds;
- the legal title of collective prosumers of renewable energy to the RES micro-system or small system;
- the representative of the prosumers;
- the RES system management rules and the responsibility for safe functioning, operation, maintenance and renovations of the RES system;
- the location and the technical details of the RES system, especially the type and total installed capacity of the system;
- the location and the identification data of the electricity delivery points of particular collective prosumers of renewable energy;
- the rules of amending the contract, especially of changing the shares in the electricity produced by the renewable energy source which are attributable to particular prosumers, and the contract termination terms.

[171] *It is legally acceptable that the collective prosumer function can be performed by a single entity – in such a case, the requirement of signing a prosumer contract does not apply.*

The subsequent steps of the investment process depend on the type of the RES system used by the collective prosumers.

The settlements of collective prosumers take place based on the net-billing system proportionately to their shares in the collective system.

Tenant prosumer

The Act of 17 August 2023 amending the Renewable Energy Sources Act and certain other acts introduced, among other things, provisions concerning the so-called tenant prosumer. Pursuant to Article 4c(11–16) of the Renewable Energy Sources Act, it is possible for renewable energy prosumers generating electricity for the needs of the common areas of multi-unit residential buildings, such as homeowner associations or cooperatives to produce energy for the common areas of the building. The new legal regulations introduce a non-compulsory option of changing the remuneration – from electricity bill reduction to the payment of the value of electricity to a specified bank account at the end of the settlement period. This is to help save money, which can be spent on energy purchase or on the bills connected with the apartments in the managed buildings.

Net-metering, i.e. the previous settlement system for prosumers

Prosumers who requested the distribution system operator to connect the micro-system to the grid before 1 April 2022 and have not decided to migrate to the net-billing system, are subject to the previous prosumer settlement system, i.e. net-metering.

Please note that the net-metering right is assigned to a specific micro-system. As a result, if the owner of the micro-system changes or the real property with the micro-system is sold, in situations where the micro-system connection application was submitted before 1 April 2022, the net-metering system continues to apply.

Unlike net-billing, which settles the values of the energy sold to and purchased from the obliged seller, net-metering pertains to settlement of the energy quantity fed to and received from the grid by the prosumer in accordance with the following:

Micro-system capacity	Settlement ratio
Systems up to 10 kW	For every 1 kW of excess energy fed to the grid, the prosumer may receive 0.8 kW over 12 months.
Systems above 10 kW but up to 50 kW	For every 1 kW of excess energy fed to the grid, the prosumer may receive 0.7 kW over 12 months.

Settlements within the net-metering system apply as of the date when electricity is first generated in the micro-system and fed into the distribution and electricity grid and they continue for 15 consecutive years.

Administrative processes for building a micro-system

A detailed description of the administrative processes related to the construction of a micro-system is presented in the following sub-chapters:

- 1.10.1 – photovoltaic micro-systems
- 2.11.1 – wind micro-systems.

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