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ATTN:

MR. RADOSLAV RIBARSKI

CHAIRMAN OF THE ENERGY COMMISSION

REGARDING: PROPOSALS ON THE DRAFT BILL AMENDING THE ENERGY ACT, SIGNATURE 47-254-01-62

Dear Mr. Ribarski,

The Bulgarian Wind Energy Association (BGWEA) is a representative organization of the wind energy sector in the country, uniting the majority of companies engaged in the sector, including investors in projects for wind energy production. The members of BGWEA form a major share of the total wind power capacity installed in Bulgaria. The main spheres in which the association actively operates are the development of the legislative and regulatory framework, aimed at establishing a favorable business and investment environment.

BGWEA strongly opposes to the proposed Bill amending and supplementing the Energy Act, submitted by the MPs Toshko Yordanov, Aleksandar Aleksandrov and Momchil Ivanov, signature 47-254-01-62.

The repeated changes of the market model since 2010 had a truly negative impact on the operating wind farms. Investments in existing wind farms are based on the regulatory regime in force at the time of the relevant investment and ensuring predictability of the investors' income for a certain period of time. The change in the promotion directly affected the investors' expectations and their relations with the relevant

lending institutions. Over the years, producers have faced frequent inequalities in the level of profitability upon changes in the market model and the legally regulated market model at the time of making the investment. An example in this regard is the change of the regime from the Contracts for purchase of energy at a feed-in tariff to the Premium Contracts in 2018, which did not provide for a mechanism for fair compensation in cases of significant deviation between the forecast and the market price and for guaranteeing any income equivalence.

The current scheme supporting RES producers through premium contracts has exposed producers to both regulatory and market risk, which has significantly increased the unpredictability and volatility of their revenues. Wind power producers were affected by the extremely low electricity prices in 2020, caused by the emergency situation in connection with the outbreak of the COVID- 19 pandemic. The trend for a significant decrease in the market price below the estimated market price (EMP) set by the Regulator has led to a significant and lasting income reduction, and hence to a deterioration in the financial status of certain producers. At that time, as a result of the various unforeseen costs and charges introduced retroactively over the years, wind power producers did not have buffers, that could allow them to cope in such adverse circumstances. Despite that situation, the state did not take steps to compensate the producers who were adversely affected by the market conditions and their incomes were significantly lower than the feed-in tariff. As a result, a large number of producers had to switch to fixed-price contracts in order to protect themselves from possible similar risks in the future.

As a result of the change in market prices in 2021, preconditions were created for the Regulator to change the estimated market price for RES producers in the middle of the regulatory period, increasing it by 147% compared to the EMP for wind energy for the previous regulatory period. Although they are subject to the same support scheme, this change did not affect high-efficiency cogeneration power producers, which is evidence of discrimination against RES producers. The amendment of the EWRC pricing decision, affecting only RES producers with premium contracts, adopted on 01.01.2022, practically deprived wind energy producers from the premiums and subsequently their revenues were formed solely from the energy sold on the free market. However, a significant number of wind producers, in their attempts to minimize the market risk, sell their energy under long-term contracts at a fixed price close to the EMP of BGN 114.76 / MWh (determined by Decision No. C-27 of 01.07.2021). The elimination of the premiums resulted in a loss of about 40% of the income of this producer group.

As a result of the current text of the Bill amending and supplementing the Energy Act the proposed change in the support scheme will lead to yet another shock to the profitability of RES producers. First of all, producers will be deprived of the opportunity to compensate for losses on the market from previous

periods, while a number of specific points and trade commitments already made are not addressed by the proposals, namely:

- 1) The proposed text of the EA does not distinguish between producers who have signed long-term contracts for the sale of electricity at fixed prices, and accordingly, achieve a price significantly lower than that which would be achievable in future periods on the "Day Ahead" market segment. Fixed prices under long-term contracts also vary considerably depending on the time of their conclusion. The bill amending the EA does not regulate the method for calculation of the contribution to the ESSF for this group of producers. The current texts may be interpreted in a contradictory manner - either that these producers do not have to make a contribution to the ESSF because they do not sell their energy directly to the Day Ahead market segment, or that they will be obliged to make a contribution based on the theoretically achieved price on the "Day ahead" market segment, which will be too high compared to their actual income from the sale of electricity. Imposing an additional cost on this group of producers, which sells its products at a price significantly lower than the Day Ahead market segment price, would mean an avalanche of bankruptcies for such producers.

This wording of the text directs RES producers to sell electricity on the "Day Ahead" market segment, which would be detrimental to the interest of electricity users to buy electricity in the long run at more competitive prices. In addition, many producers are obliged by their financing institutions to sell electricity on a long-term basis in order to ensure predictability and manage their cash flow. In this regard, **we insist that fair treatment be provided for producers who sell their electricity under long-term contracts at fixed prices.**

- 2) The contribution to the ESSF provided for in the Bill amending the EA, does not take into account a number of costs for RES, which are not provided for in the calculations of the feed-in tariff at the time of commissioning the RES power plants.

A series of legislative and regulatory decisions following the setting of the feed-in tariff have significantly changed the economic conditions for wind energy producers – new significant costs were introduced, which could not be foreseen at the stages of planning, financing and investing, representing 20-25% of the gross revenue, which should be taken into account when determining the contributions to the ESSF under the proposed new compensation mechanism. These costs include the following:

- 5% contribution to the Electricity System Security Fund (ESSF), introduced as a temporary measure in 2016 to offset NEK's deficit;
- balancing costs, which are among the highest on an EU level and vary between BGN 20 and 40;

- access price of BGN 5.24 for wind energy producers - a controversial and discriminatory fee, the amount of which is higher for wind and solar power producers.

The cumulative effect of the introduced measures led to a significant negative impact on investments in wind power plants and a loss of income of BGN 40-50 for these producers.

In this regard, **BGWEA would like to make the following proposal: upon determining the amount of the additional contribution to the ESSF, the above-mentioned costs of the producers need to be taken into account and subtracted accordingly from the contribution due.** We believe that the guaranteed income of producers must include the historically determined feed-in tariff, as well as the retroactively introduced costs listed above.

- 3) **The text of the Bill amending the EA has to clearly state that the contribution and compensation from the ESSF are due until the determined net specific production for which a premium is due and which is specified in the individual premium contract of each producer, is achieved.**

- 4) Option for termination of the contracts with the ESSF

We believe that it would be fair, given the repeated and significant change in the support regime, and given the trade commitments already made by RES producers based on the current support regime through premium contracts, to allow producers to terminate their premium contracts and not be eligible for premium and compensation assistance. This would enable them to meet their trade commitments and manage their market risk.

The unilateral imposition of additional obligations without the option for termination of commercial contracts contradicts Art. 19 of the Constitution of the Republic of Bulgaria and Art. 10 of the Energy Charter. The state has the right to demand payments from producers, but only to the extent that they wish to receive compensation or state aid. It would be unconstitutional to limit the choice of economic operators to operate entirely on a market basis or to benefit from state aid, which in turn could entail additional costs. **In case of changes in the preferential regime, the producer should have the right to choose - to continue its contract under the new model and receive the fixed feed-in tariff or to terminate its contractual relations with the ESSF and to sell its energy on the free market, while bearing the entire market risk without seeking state support or compensation.**

We hope that our comments and suggestions will be taken into consideration and reflected in the texts of the Bill amending the Energy Act in order to ensure the fair treatment of wind power producers and their compliance with their economic realities and trade commitments.

Sincerely yours,

Miglena Stoilova

Chairperson of the Supervisory Board of BGWEA