



„Fair is not always equal” – introduction to support schemes for renewable energy sources in Poland.  
Biggest challenges and case study.

May 18, 2018  
Riga, Latvia

AIJA 2017 Half-Year Conference

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SOLUTIONS DESIGNED FOR YOUR NEEDS



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS



# PLAN OF THE PRESENTATION

1. Introduction to the support schemes for RES
2. Challenges for the renewable energy market
3. Case study
4. Q&A, comments, discussion

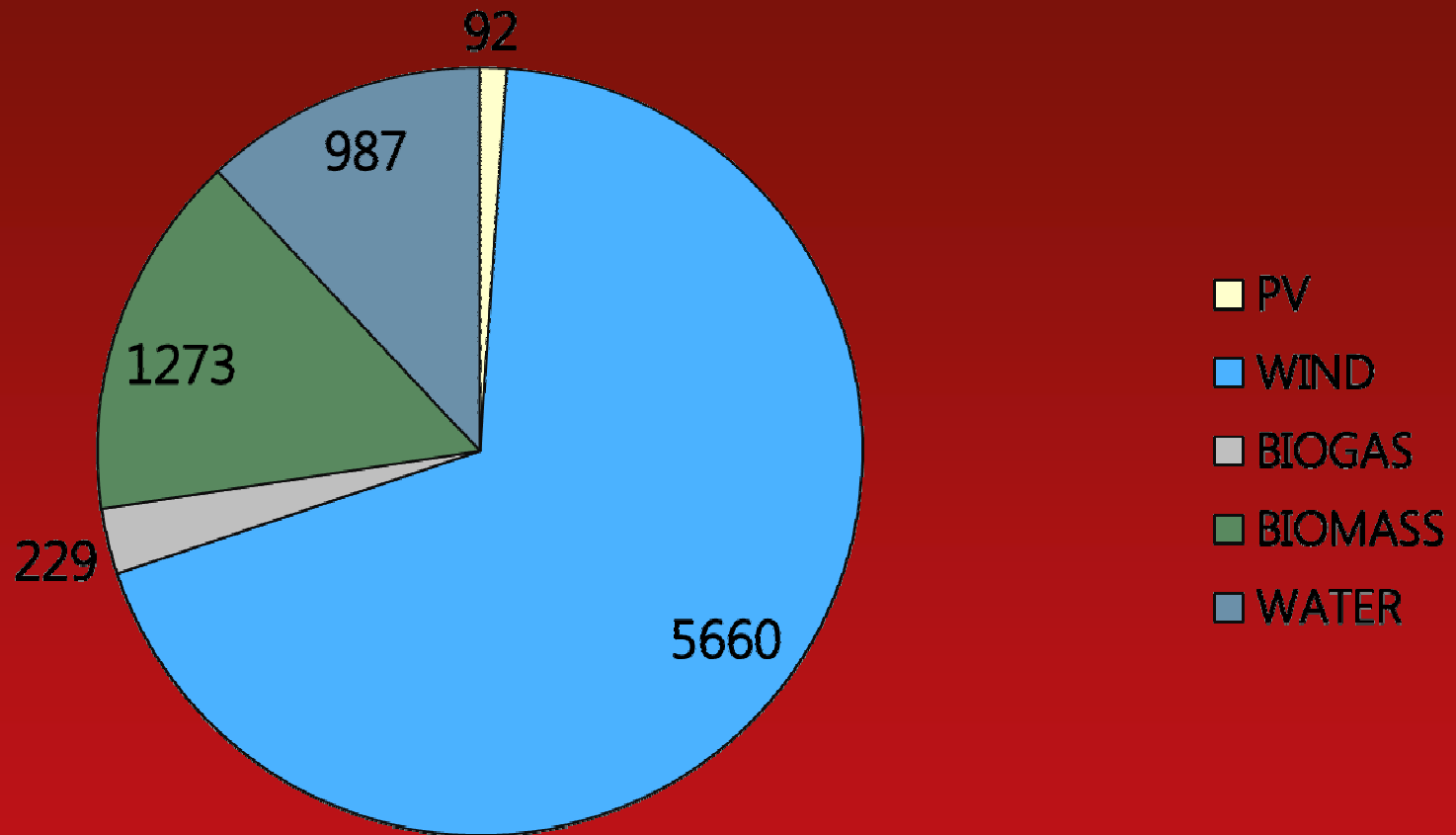
# 1. INTRODUCTION TO THE SUPPORT SCHEMES FOR RES



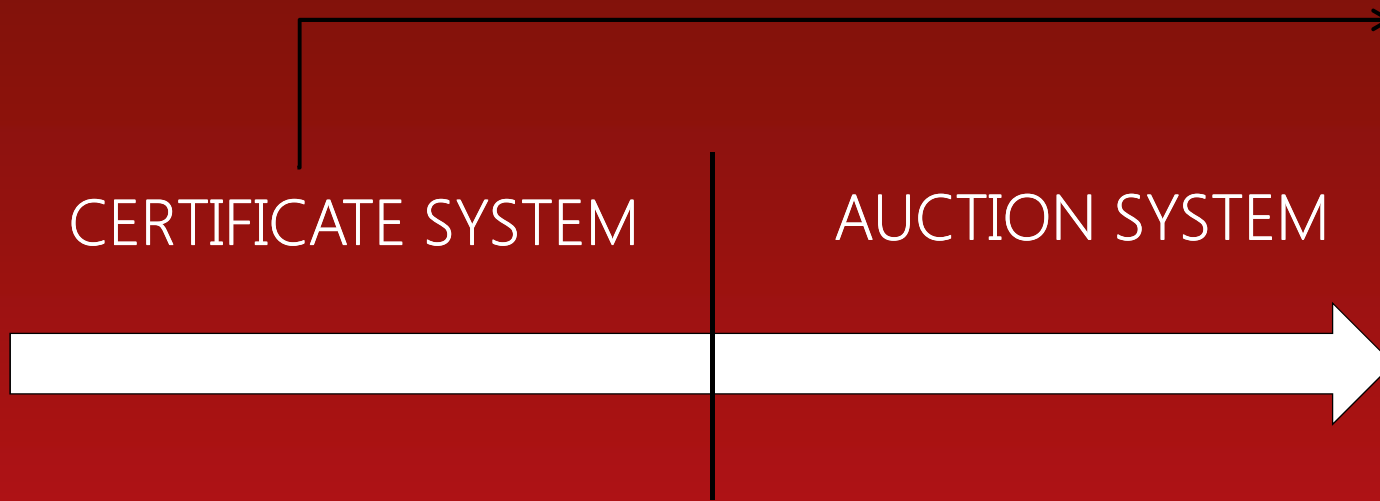
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## TOTAL VOLUME OF INSTALLED MW OF POWER AS PER JUNE 2016



15 years (max. until December 31, 2035)



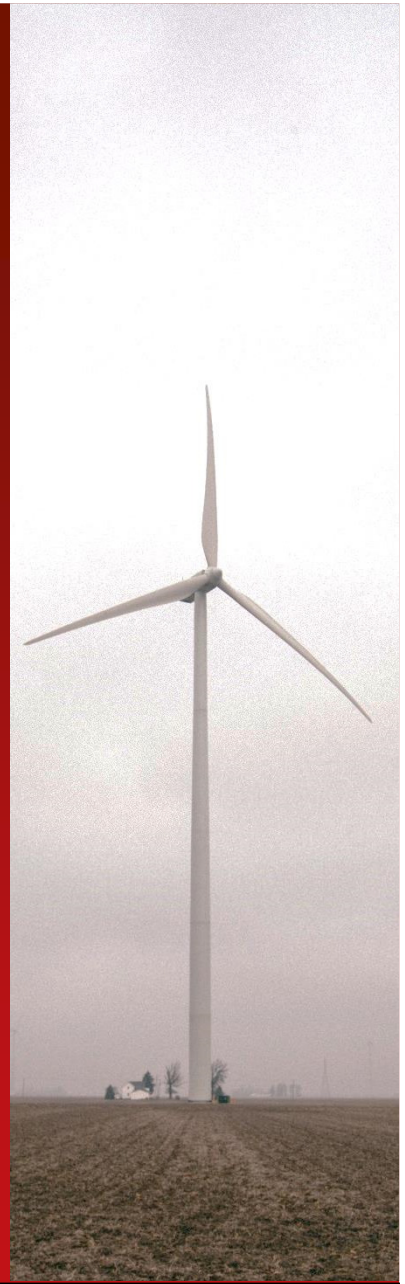
JULY 1, 2016



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# GREEN CERTIFICATES AFTER JULY 1, 2016



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Producer  
generates  
ee from  
RES and  
applies for  
GC

Producer  
offers GC  
for sale  
(e.g. on  
PPE  
[PL:TGE])

Obliged  
entities  
present the  
President of  
ERO GC to  
be redeemed

President  
of ERO  
issues GC

Obliged entities  
(art. 52 of the  
Act on RES) buy  
GC or pay the  
subsidiary fee



# OTHER IMPORTANT ELEMENTS

## PROTECTION OF TRADE IN CERTIFICATES

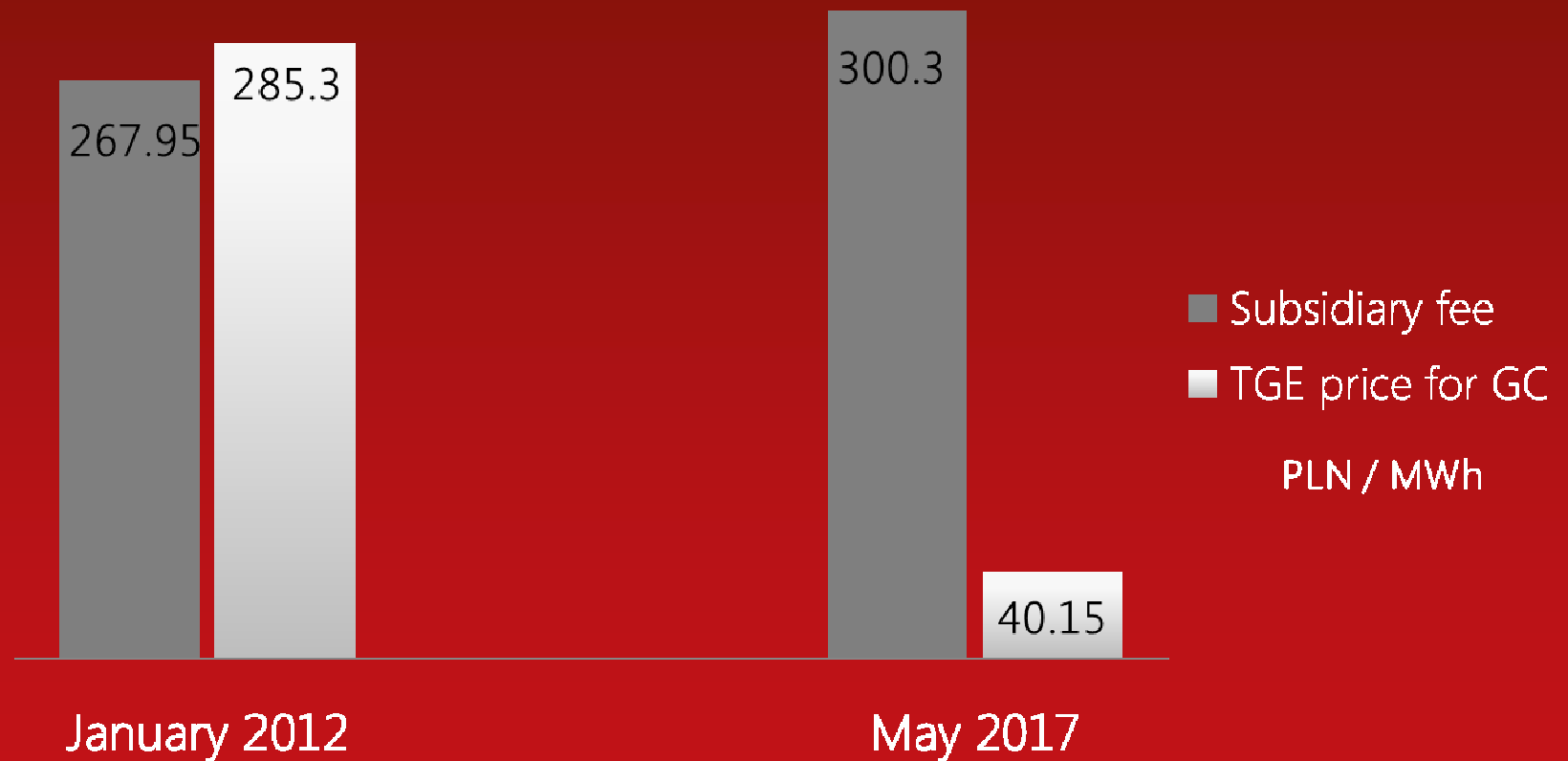
- art. 47 item 1 of the Act on RES

GC price is lower  
than the subsidiary  
fee



obliged entities  
have to buy GC

# PRICE FOR GREEN CERTIFICATES



# OBLIGATION TO PURCHASE ENERGY

art. 42 item 1-2 of the Act on RES

Producer offers the whole volume of energy generated in its RES facility and introduced to the grid, for the period not shorter than 90 subsequent calendar days

Producer  
offers

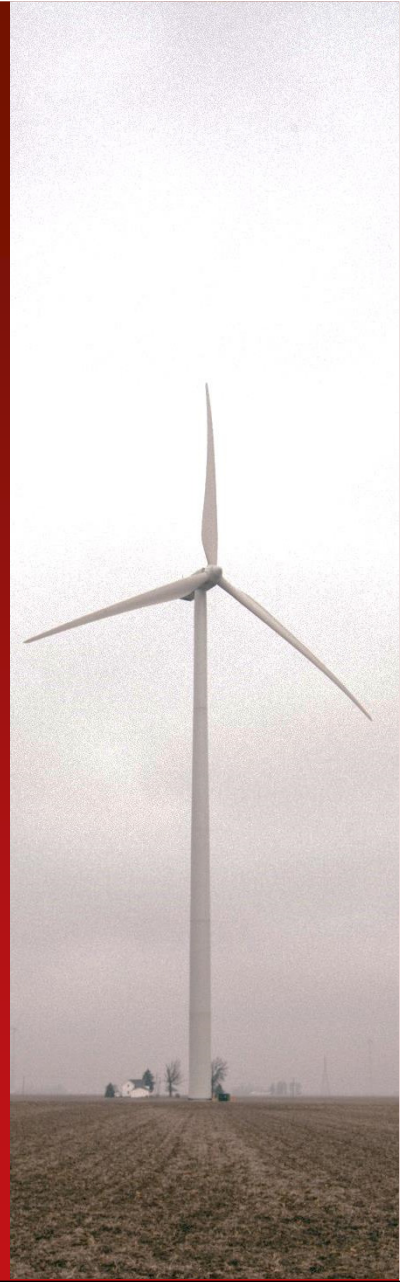
**THEN**

Obligated Seller should buy the offered volume of energy generated in the RES facility launched before July 1, 2016 for the ERO's average quarterly price (art. 23 item 2 point 18a) of the Energy Law Act)

Obligated Seller  
buys

**IF**

# AUCTION SYSTEM



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# STRUCTURE OF THE SYSTEM

THE PRESIDENT OF ERO announces and conducts auctions  
at least once a year

AUCTIONS FOR entrepreneurs producing ee from RES:  
microinstallations and others, including  
installations located out of Poland  
(exemptions: art. 71 item 2 of the Act on RES)

AUCTIONS + SUPPLEMENTARY AUCTIONS

PREQUALIFICATION

BANK GUARANTEE / DEPOSIT

REFERENCE PRICE

REPOWERING BAN

## SEPARATE AUCTIONS

POWER PLANTS WITH TOTAL CAPACITY INSTALLED  $\leq 1\text{MW}$   
(25% no longer guaranteed by law – art. 73 item 7 of the Act on RES)

POWER PLANTS WITH TOTAL CAPACITY INSTALLED  $> 1\text{MW}$

POWER PLANTS OPERATING UNDER THE CERTIFICATE SYSTEM  
AND VOLUNTARILY JOINING THE AUCTION SYSTEM

## SEPARATE AUCTIONS FOR:

POWER PLANTS WITH TOTAL CAPACITY INSTALLED  $\leq 1\text{MW}$  /  $> 1\text{MW}$  :

- with productivity exceeding 3,504 MWh/MW/year;
- using the biodegradable part of industrial and municipal waste of plant and animal;
- using specific origin (including waste from waste processing installations, water and sewage treatment of waste, in particular, sludge sediments) for the production of electric energy;
- in which CO<sub>2</sub> emission does not exceed 100 kg/MWh, and productivity exceeds 3,504 MWh/MW/year;
- owned by members of an energy cluster;
- using only agricultural biogas for production of electric energy;
- for other installations.

# REGULATIONS OF THE MINISTER OF ENERGY

The Minister of Energy has to announce:

- reference prices for each technology
  - support period guaranteed in particular auction (max. 15 years)
- in resolutions (PL: *rozporządzenie*) at least 60 days before the first auction.

Until October 31 each year, the Council of Ministers has to announce the **amount of energy** to be offered in auctions for particular baskets in the following calendar year.



WHAT DO WE WIN IN AUCTIONS?



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# SUPPORT FOR THE WINNER

## INSTALLATIONS WITH TCI

< 500 kW

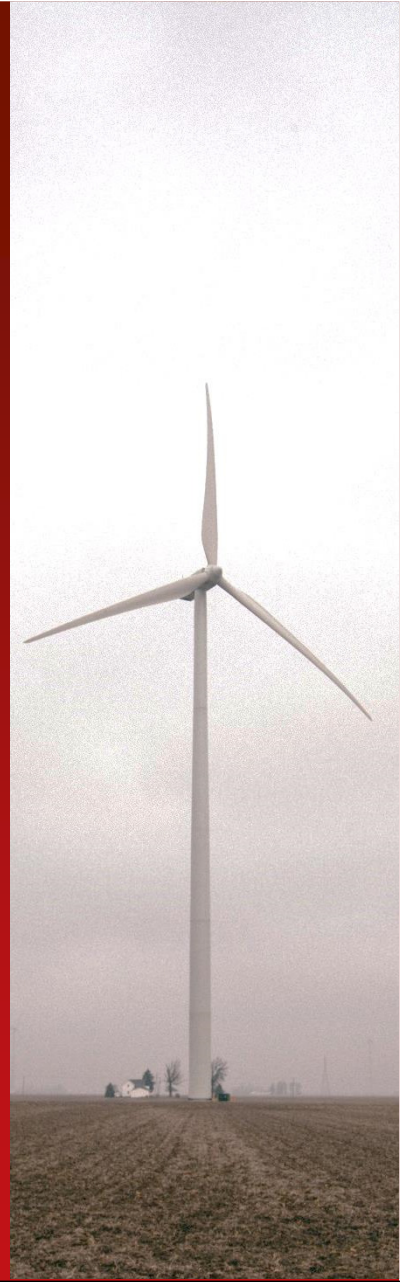
Obligated Seller shall buy generated ee for the price established in the auction  
(no balancing costs)

## INSTALLATIONS WITH TCI

≥ 500 kW

Producer sells energy on the market and is entitled to have the negative balance covered with the RES fee

# ENERGY CLUSTERS



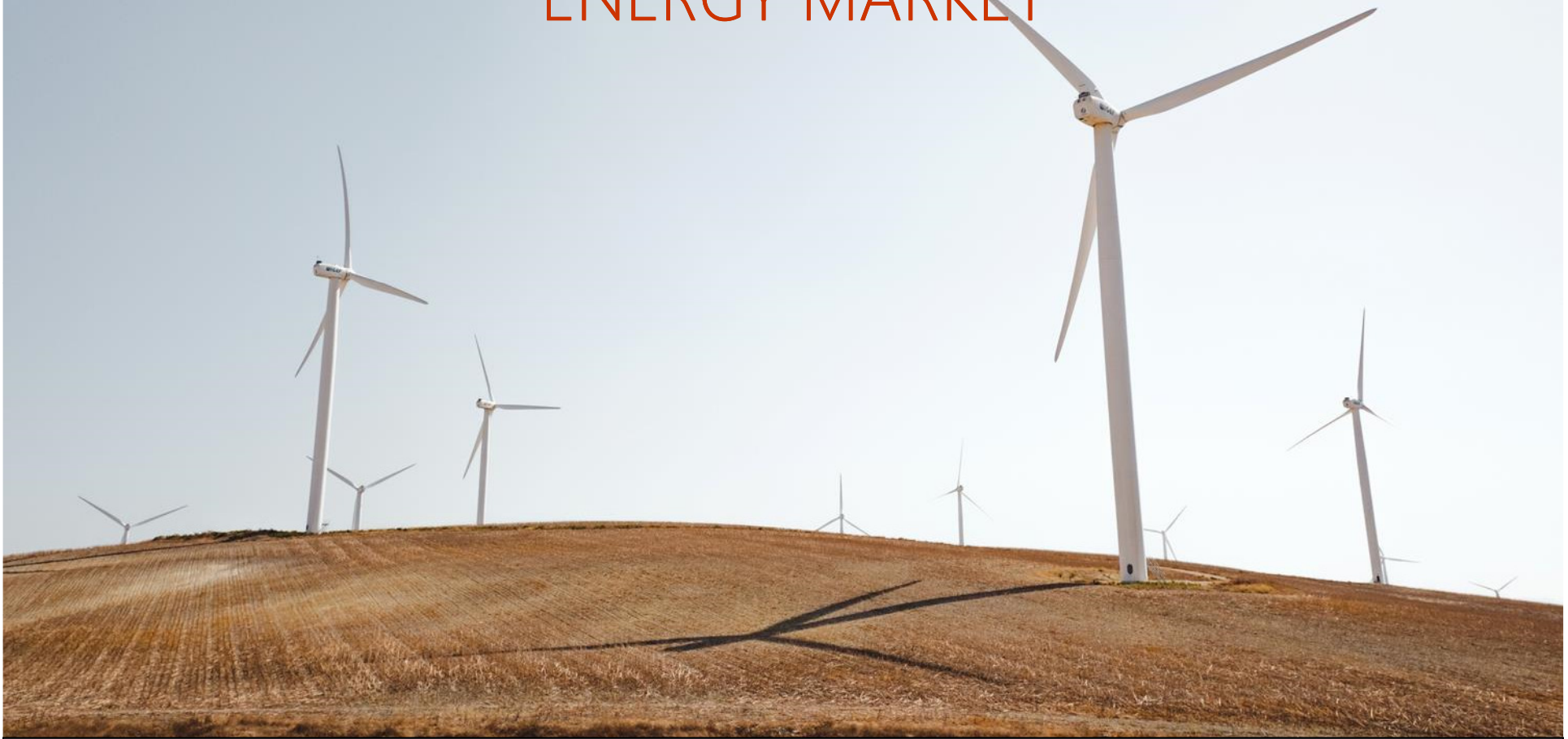
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# ENERGY CLUSTERS

- civil law agreements on generating and balancing the demand for, or trade in energy from RES, and other sources or fuels within the distribution grid, with a voltage not exceeding 110 kV
- concluded between civil law entities, i.a. natural and legal persons, entities without legal personality, scientific units, research and development units, or local governmental units
- energy cluster covers either one district (PL: *powiat*) or five municipalities (PL: *gmina*)
- separate auctions for members of energy clusters

## 2. CHALLENGES FOR THE RENEWABLE ENERGY MARKET



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# LEGAL OBSTACLES

- frequently amended law (first wording – May 4, 2015)  
amendments:

	2015-12-31	2016-07-01
2016-08-31	2016-10-07	2017-01-01
2017-07-01	2017-09-01	2018-01-01
- theoretical law vs. practice and technology
- lack of official interpretation of law, views of legal academics and commentators and judicial decisions
- lack of European Commission's acceptance for the current support system

# OTHER CHALLENGES

- decentralization of the public authority – different decisions and interpretation of law
- strong lobbying of anti-RES groups
- poor society's knowledge regarding RES and its influence
- strong position of large energy companies (mostly state-owned)
- oversupply of green certificates

### 3. CASE STUDY

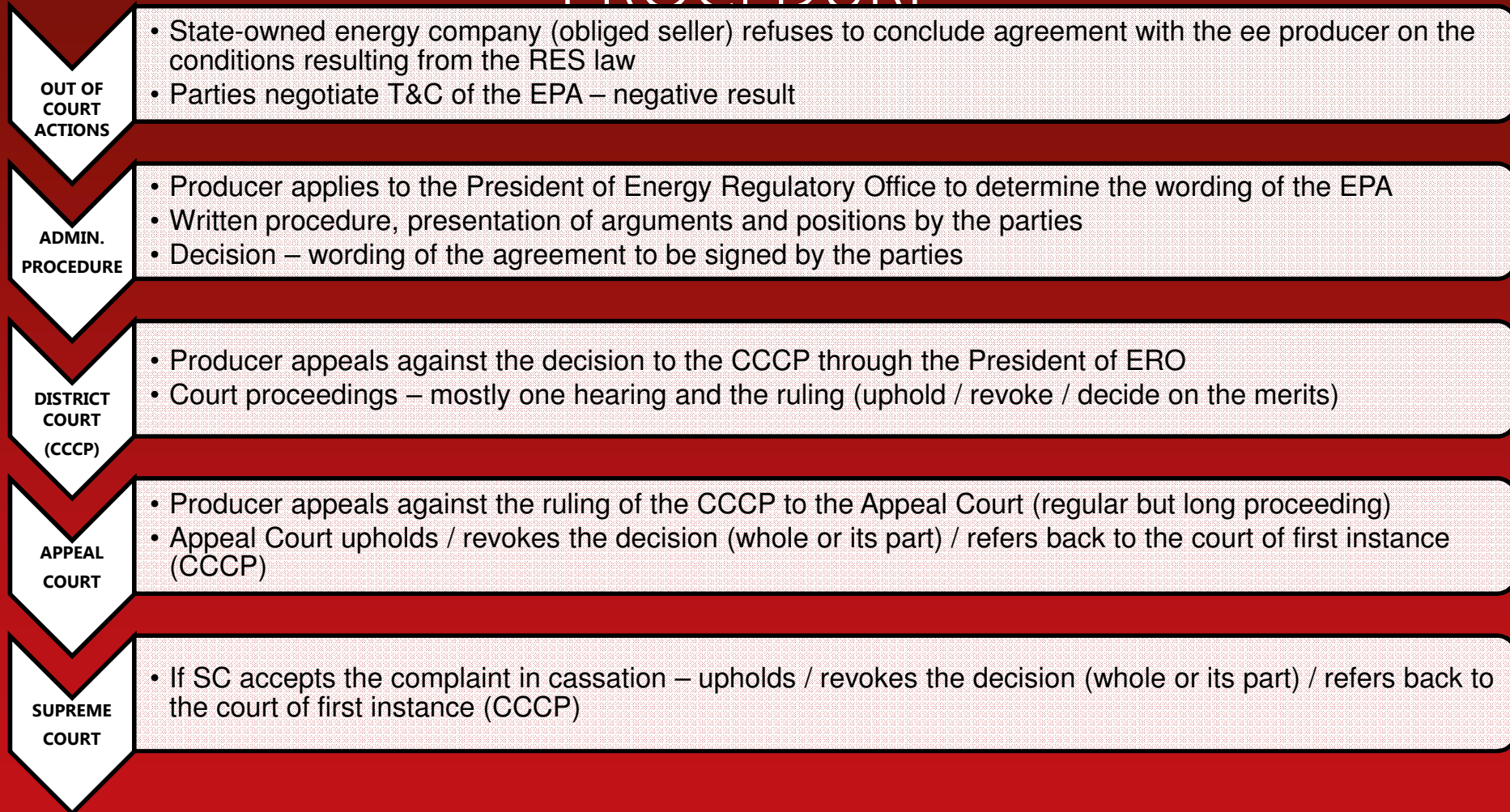


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# MIXED ADMINISTRATIVE AND CIVIL PROCEDURE



# CASES

## CASE 1

E. S.A.

big energy compnay, obliged seller

E. sp. z o.o.

producer of ee from landfill gas

Regional Branch of ERO in Gdańsk

## CASE 2

P. S.A.

big energy compnay, obliged seller

E. sp. z o.o.

producer of ee from landfill gas

Regional Branch of ERO in Łódź

# FAIR IS NOT ALWAYS EQUAL

guarantee function of the support scheme

VS.

contractual equilibrium

literal wording of binding legal rules and official information

VS.

diversity in administrative decisions of the same public authority



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# THANK YOU

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