

CURRENT REPORT FILED WITH THE POLISH FINANCIAL SUPERVISION AUTHORITY IN WARSAW

DATE: December 2nd 2021

Subject: [Execution of settlement agreement and annexes with Nowe Jaworzno Grupa TAURON Sp. z o.o. \[Current Report No. 45/2021\]](#)

Text of the report:

Further to Current Report No. 41/2021 of November 3rd 2021 announcing that an agreement on the terms of settlement with Nowe Jaworzno Grupa TAURON sp. z o.o. (“**NJGT**”) had been reached, the Management Board of RAFAKO S.A. of Racibórz (the “**Company**”) announces that on December 2nd 2021 the Company, its wholly-owned subsidiary E003B7 sp. z o.o., Mostostal Warszawa S.A. (“**Mostostal**”; the Company and Mostostal are jointly referred to as the “**Contractor**”) and NJGT executed a settlement agreement concerning Contract No. 2013/0928/Ri for ‘Development of new coal-fired generation capacities at TAURON Wytwarzanie S.A. – Construction of a 910 MW supercritical power generation unit at the Jaworzno III Power Plant – Power Plant II: Steam boiler, turbine generator set, main building, electrical and I&C systems’ (the “**Contract**” and the “**Settlement Agreement**”), and the Contractor and NJGT signed Annexes 13 and 14 to the Contract, relating to the execution of the Settlement Agreement (“**Annex 13**” and “**Annex 14**”).

The most significant provisions of the Settlement Agreement, Annex 13 and Annex 14 (the “**Settlement Documentation**”) concern:

1. Amendment of the Schedule of Works and Expenditures (the “**SWE**”) and the Framework Contract Timetable (“**FCT**”), including change of the date for re-synchronisation of the unit covered by the Contract (the “**Unit**”) to April 29th 2022 and change of the date of expiry of the Transition Period to October 30th 2022;
2. Ordering additional services and works from the Contractor the performance of which by the Contractor will bring technical, technological and economic benefits to NJGT, such as reduction of the Unit’s operating costs, and acquisition by NJGT from the Company of the licence for the workshop documentation of the Unit’s boiler components;
3. Ordering further additional services and works from the Contractor, provided that the Contract performance phase defined in the SWE as “Post-Shutdown Unit Synchronization” is completed within the time limit specified in the amended SWE and FCT and statements by the financial institutions providing financial security for the performance of the Contract, required by the Settlement Documentation, are submitted;
4. NJGT’s agreement – on condition that a Transition Period Expiry Report is executed by November 15th 2022 and the investor acquisition process, understood as the effective and unconditional acquisition of control (directly or indirectly) by the entities specified in the letter of intent referred to in the Company’s Current Report No. 38/2021 of October 7th 2021 over the equity interest in the Company currently held, directly and indirectly, by PBG S.A. w restrukturyzacji (under restructuring) is successfully completed – to not charge the contractual penalties that are in dispute between the Parties to the Contract for the period before the Settlement Documentation;
5. The Contract Parties’ agreement to refrain from asserting against each other any other claims that have arisen or may arise from events occurring prior to the date of the

Settlement Agreement, excluding any claims under the warranty and liability for defects, any claims under the joint and several liability for payment of amounts due to the subcontractors or further subcontractors, and any claims the Contractor may have against NJGT in respect of remuneration for works duly completed prior to the date of the Settlement Agreement;

6. Sharing of costs of the Unit's repair, i.e., repair of damage to the tubes of the combustion chamber funnel, as well as repair of the switchgear station indicated in the Settlement Documentation;
7. Granting NJGT an additional 12-month warranty period for the Unit components and equipment specified in the Settlement Documentation;
8. Non-imputation, at the stage of execution of Settlement Documentation, of liability for the Unit failure which occurred on June 11th 2021 and for defects detected while the Unit was shut down;
9. Declaration by the Company to the effect that it would investigate the circumstances and take relevant measures in connection with the matter reported by the Company in Current Report No. 30/2021 of September 8th 2021;
10. Providing for contractual penalties under the Contract:
 - i. in case of failure to sign the report confirming expiry of the Contract performance phase defined in the SWE as "Post-Shutdown Unit Synchronization" within the period specified therein – in the amount of 0.02% of the Contract Price for each commenced day of delay;
 - ii. in case of failure to sign the report confirming expiry of the Contract performance phase defined in the SWE as "Performance of PSE Acceptance Tests group II part 3" within the period specified therein – in the amount of 0.01% of the Contract Price for each commenced day of delay;with the proviso that NJGT will be entitled to charge such contractual penalties on or after the first day following a period of 45 days from the expiry of completion deadlines for the phases referred to in subsections i. and ii. above, as set forth in the SWE;
11. Granting NJGT the right to submit, as of March 31st 2023, a notice of withdrawal from the Contract with regard to the non-performed part if the Contractor, for reasons for which it is liable under the Contract, causes a delay in the Contract performance phase defined in the SWE as "Post-Shutdown Unit Synchronization" of more than 60 days from the deadline specified in the SWE, as well as the right to assume the rights and obligations of the Contractor under contracts with key subcontractors in the event of withdrawal from the Contract;
12. Agreeing that (i) the remuneration for the additional services and works and licence acquisition referred to in Section 2 above and the Unit repair referred to in Section 6 above is approximately PLN 91,000,000.00, VAT exclusive, and (ii) the remuneration for the further additional services and works referred to in Section 3 above is approximately PLN 23,000,000.00, VAT exclusive.

The entry into force of the Settlement Agreement and Annex 14 is conditional on:

1. Submission by the Contractor to NJGT of extended or new performance bonds in respect of the Contract and of new or extended advance payment guarantees, consistent with the provisions of the Settlement Agreement;
2. The Parties to the Settlement Agreement obtaining corporate approvals necessary to execute the Settlement Agreement;

3. The Contractor obtaining consents to the execution of Annex 14 from the financial institutions which provided financial security for the Contract;
4. Final approval of the Settlement Agreement by the competent court of general jurisdiction.

The entry into force of Annex 13 is conditional on:

1. The Parties to the Settlement Agreement obtaining corporate approvals necessary to execute Annex 13;
2. The Contractor obtaining consents to the execution of Annex 13 from the financial institutions which provided financial security for the Contract;

Legal basis:

Article 17(1) of the Market Abuse Regulation – inside information.

Radosław Domagalski-Łabędzki, President of the Management Board

Maciej Stańczuk, Vice President of the Management Board