

REVIEW



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THE NEW BULGARIAN ENERGY FROM RENEWABLE SOURCES ACT AND ITS PROPOSED AMENDMENT

Regional Developments

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New energy from Renewable Sources Act

On April 21, 2011, the Bulgarian Parliament approved the new Energy from Renewable Sources Act (the ERSA, or the New Law), which was promulgated in State Gazette No.35 on May 3, 2011. The ERSA was adopted in an attempt to transpose the provisions of Directive 2009/28 of the European Parliament and of the Council of April 23, 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77 and 2003/30; it lays down the framework on energy from renewable sources.

New regulation of the interconnection procedure in the ERSA

In this context, the procedure for interconnection has undergone the most drastic transformation under the New Law. The rationale behind the introduction of a new approach has improved overall coordination of interconnection to the grid. Essentially, a number of preparatory steps will precede the previous interconnection procedure. Under the new regime, transmission and distribution capacity for interconnection will be planned and investment programs for interconnection will be coordinated between the Ministry of Economy, Energy and Tourism, grid operators and the State Energy and Water Regulatory Commission (the Regulator). The maximum capacity for interconnection will be approved by the Regulator. Ultimately, the statutory obligation to interconnect producers from renewable sources has become more selective. On the other hand, this interconnection procedure does not apply to power generators which declare that recourse to the feed-in tariffs will not be sought.

The coordination and approval procedure consist of three distinct stages:

- (i) first, distribution operators shall furnish the transmission operator with a forecast of maximum capacity for interconnection providing details on designated zones of connection and voltage levels. This will be done annually by February 28;
- (ii) secondly, the transmission operator will coordinate with the Regulator and the Minister of Economy, Energy and Tourism the maximum capacity available for interconnection, designated zones of connection and permissible voltage levels. This will be done annually by April 30. The Minister will then take a position on these issues in a statement, which is sent to the Regulator; and
- (iii) on this basis, the Regulator will determine the total assigned capacity for interconnection altogether with designated zones and permissible voltage levels annually by June 30.

The parameters of the total installed capacity in designated zones and voltage levels will be announced on the Regulator's website annually for the period starting on July 1.

Power generators shall submit applications for assigned generation capacity on an annual basis in order to connect to the grid. Applications may be submitted as early as July 1, 2012. The transmission grid operator or the distribution grid operator, which applications have been filed with, shall rank the applications on a first-come, first-served basis. This shall be done within 14 days. Whenever the overall capacity applied for by power generation companies exceeds the total capacity for a designated zone and determined by the Regulator, any further applications shall be rejected. Developers of renewable energy projects having their applications approved will receive

a statement on the conditions for interconnection. The transmission and distribution grid operators shall publish information on the approved and rejected applications, as well as a notice upon the exhaustion of the available capacity.

The ERSA fixed the maximum terms of interconnection agreements. Preliminary interconnection agreements shall be valid for a term not exceeding one calendar year. A request for signing a final interconnection agreement shall be filed prior to the expiry of this term. Final interconnection agreements shall be valid for the term for putting the power plant into operation, but not exceeding two calendar years from their execution—when interconnection takes place in one stage. For interconnection of power plants in multiple stages, the interconnection of the first stage shall not extend beyond the two-year limit.

New regulation of the feed-in tariffs and the power purchase agreements in the ERSA

The ERSA prescribes that feed-in tariffs shall remain unaltered for the entire validity of the long-term power purchase agreement (the PPAs) under the New Law, except for electricity generated from biomass which is subject to indexation. The terms of the PPAs for renewable energy power plants have been set as follows: (i) 20 years for geothermal and solar power. This term is also applicable to electricity from biomass. This is a net increase for electricity from biomass as its previous term was 15 years; and (ii) 12 years for electricity from wind power. The 15-year term for electricity generated from hydro power plants with total installed capacity of up to 10MW and all other types of renewable energy sources has remained unaltered. These terms become effective from the date of putting the power plant into operation, which shall take place before December 31, 2015. After this date, the term shall be accordingly reduced by the time period from December 31, 2015 to the date of the actual putting into operation.

Under the ERSA, the specific feed-in price applied to new power generators will be the applicable feed-in price at the time of executing the act for completion of construction works. The fixing of a specific feed-in tariff at a given moment in time is an entirely new approach for the Bulgarian legislation. Tariffs will continue to be determined on an annual basis whilst the applicable tariff for a particular power plant shall be fixed as the preferential price and will apply for the entire term of the PPA without change. No further incentives shall be accorded thereafter.

Henceforth, feed-in tariffs shall be determined annually by June 30. With respect to the formation of the feed-in tariffs, the ERSA has also modified the rules on tariffs formation. Preferential tariffs shall be at least 70 per cent of the average sale tariff of the end suppliers for the previous calendar year plus a premium determined by the Regulator on the basis of the type of the primary energy source for power generation (i.e. wind, solar, biomass, etc). No minimum thresholds for the premium are specified. By contrast to the old regime, detailed provisions on tariffs' economic base have been enacted. Different feed-in tariffs shall reflect the following cost factors: (i) the type of renewable energy source, type of technology, installed capacity, location and assembly; (ii) investment costs; (iii) rate of return on investments; (iv) structure of the venture capital and the investment; (v) productivity of the power plant differentiated for each source; (vi) costs related to environmental protection; (vii) costs for feedstock for power generation; (viii) costs for transportation fuels; (ix) remuneration costs; and (x) other operational costs.

New regulation of the guarantees of origin in the ERSA

Guarantees of origin (previously certificates of origin) shall be issued by the newly established Agency for Sustainable Energy Development (the ASED), which took over the powers of the Regulator. The ASED shall keep and maintain an electronic register for the certificates of origin. The register is also accessible online. The procedure for guarantees of certificates of origin is further specified in a secondary regulation implementing the provisions of the ERSA—the Regulation on Guarantees of Origin, which entered into force on January 1, 2012.

A guarantee of origin is an electronic document evidencing that a power generator has produced a certain quantity of electricity from renewable energy sources. A certificate shall be issued for a standard quantity of electricity of 1 MW generated in a calendar month, and is valid for a term of 12 months after the month, in which the respective quantity of electricity is produced.

Guarantees of origin are issued upon application referring to quantities of electricity generated within one or more calendar months. The application shall be filed not before the end of the month, and not later than 10 calendar months, from the month it refers to.

The feed-in tariff applicable to a given power generator is due and payable from the date of transferring a certificate of origin to the public/ end supplier. Mechanisms for the adjustment of payments shall be incorporated into the power purchase agreements.

Transitional provisions of the ERSA

The ERSA provides for transitional arrangements for power plant which are still being commissioned at the time of its entry into force. The arrangements vary depending on the stage of project development.

Power plants, which had already executed a preliminary interconnection agreement as of the ERSA's entry into force, shall apply the feed-in tariff applicable at the time of executing the act for completion of construction works. The feed-in tariff for power plants, which had executed a final interconnection agreement as of the ERSA's entry into force, shall be the tariff determined by the Regulator at the time of executing the act for completion of construction works.

Proposed amendments of the ERSA

Less than a year as of the approval of the ERSA, on December 7, 2011 several members of the Bulgarian Parliament proposed the adoption of a Bill for the Amendment of the ERSA (the Bill). The Bill was approved by the reporting committees of the Bulgarian Parliament and at first plenary session. The final approval of the Bill at second plenary session is expected in the early days of March 2012.

The Bill envisages amendments with regard to the terms and procedure for interconnection of power generators from renewable sources to the transmission or the respective distribution grids which have executed preliminary interconnection agreements. The interconnection of such power generators shall be secured only after completion of the coordination and approval procedure specified hereinabove. Pursuant to the transitional provisions of the ERSA currently in force, such power generators had to comply with several requirements, including to provide a guarantee deposit for the interconnection. Having complied with such requirements, the power generators with preliminary interconnection agreements felt that the capacity allocated to their projects was secured. The key argument for the proposed amendment is the great number of preliminary interconnection agreements accounting for the planned capacity of 4,700MWs, whereas the current actual capacity of the grid in Bulgaria is estimated to be about 2,300MWs.

The rationale behind the amendment is to “cool down” the development of new power generators from renewable sources and at the same time to speed up the process of completion and commencement of operation of the projects of power generators with executed final interconnection agreements.

Another key amendment relates to the preferential tariff for the power generators from renewable energy sources. Pursuant to the proposed amendment, the preferential tariff shall be fixed at the time of issuance of permit for operation and not at the time of completion of the construction. The argument in support of the latter amendment is the fact that operational permits are issued by the State Construction Supervision Directorate which is a state authority, whereas the protocols for completion of construction are not under the direct supervision of any state authority. It is claimed that this amendment shall provide clearer criteria for the application of the feed-in tariff.

The proposed amendments have been adversely evaluated by investors in the power generation from renewable sources sector. Some are concerned that the proposed amendments would lead to a withdrawal of investments in the sector, whereas supporters of the amendments see the Bill as an attempt to strengthen the interest of investors in projects with final interconnection agreements and secured capacity and to speed up the completion of such projects.

Anton N. Krustev
Senior Associate, Djingov, Gouginski, Kyuchukov & Velichkov