

The scope of this report - provided by *IKRP i partneri d.o.o. Beograd* (member of *Rokas* international network) - is to present the legal regime framework related to the generation of electricity from wind power in the Republic of Serbia, which is as follows below...

INTRODUCTION

This paper provides chronology of steps in energy-related project that each investor is required to pass through, from obtaining a licence, construction of wind farm, to electricity generation and connection to the grid. Due to the ongoing reform of Energy Sector in Serbia, further changes and improvements in respective regulations are possible.

GENERAL OVERVIEW

By ratification of the Energy Community Treaty (*Official Gazette of the Republic of Serbia, No. 62/06*) Republic of Serbia has accepted the obligations stipulated in Directive 2001/77/EC on, among other, the promotion of electricity generated from renewable energy sources.

Therefore, as the revision of legal framework in the field of renewable energy sources in Serbia (hereinafter: RES) was required, the new Energy Law (*Official Gazette of the Republic of Serbia, No. 57/11, 80/11-amendment, 93/2012 and 124/2012*) has been adopted and entered into force on 9 August 2011. The Energy Law (hereinafter: the Law) enforces the role of Energy Agency of Republic of Serbia, intends to increase the security of supply, to simplify procedures for investment projects, to increase the energy efficiency issues and also the growth of investments into the RES. In particular, the Law provides a definition of privileged producer and regulates "take over of electricity" obligation. However, the government was in significant delay in enacting of supporting RES regulations/by-laws, for example, regardless of its obligation stipulated in Article 202 of the Law, it has not yet appointed Public Supplier, an entity to be in charge of the mandatory take-off/purchase of electricity from privileged producers under a feed-in tariff system and for a prescribed period of time (so, this is still performed by a state owned company JP EPS, pursuant to article 22 of the Decree on Incentive Measures for Electricity Production from Renewable Energy Sources and CHP (*Official Gazette of the Republic of Serbia No. 8/2013*)) (hereinafter: Feed-in Tariff).

Regardless of the aforementioned, the last few years have seen considerable effort related to improvement of Energy Sector and RES projects practices in the Republic of Serbia. At the time of this report, apart from the Methodology of public energy supply and Rules on energy market (which are in a draft form and expected to be adopted in 2013), all other requisite regulations and by-laws, rules and methodologies have been adopted. The key elements of the market reforms in Serbian Energy Sector is the separation of network of transfer and distribution of energy from production, trade and supply activities, so the formation of Distribution System Operator and of End Users Supplier is expected soon. Moreover, adoption of the new Law on Public-Private Partnerships and Concessions (*Official Gazette of the RS no. 88/2011*) (hereinafter: PPP Act) increases security for foreign investors willing to take on and handle projects jointly with the local authority. Finally, it should be noted that Serbia became a founding member of the International Renewable Energy Agency (hereinafter: IRENA).

ENERGY GENERATION ACTIVITIES IN THE REPUBLIC OF SERBIA

In spite of the fact that Article 2 of the Law on Public Companies and Performing Activities of Public Interest (*Official Gazette of the RS, no. 25/00, 25/02, 107/05, 108/05 and 123/2007*) has remained the same, amendments to the Energy Law stipulate that generation of electricity shall not be considered as activity of public interest any more. Therefore, the Public companies (or private companies previously entrusted by the competent public authority) are not any more exclusively authorized to perform such business. Therefore, the Investor may opt between four possibilities: (i) to establish a private resident company (hereinafter: Greenfield); (ii) to invest in existing resident company (hereinafter: Brownfield); (iii) to establish a Special purpose vehicle company (hereinafter: SPV) jointly with the public company (hereinafter: PPP projects); (iv) to obtain a concession (hereinafter: Concession). Adoption of the PPP Act, which regulates PPP projects and Concessions jointly, provides possibility of a number of positive developments. It seems that major improvements are: (i) efficiency, transparency, equal treatment of bidders and free access to markets (ii) Stabilisation Clause as a provision in Public Agreement (iii) extension of the period for which the concession may be granted up to 50 years.

CONSTRUCTION OF WIND FARMS IN SERBIA

In order to become a producer of electricity by wind power in the Republic of Serbia, the Investor is obliged to acquire the right to construct wind farms and afterwards the right to generate electricity in accordance with the Serbian energy market rules. The construction of a wind farm consists of planning, project making, construction and fulfilment of the requirements for obtaining respective permits and approvals. It is important to mention that regardless of the deadlines mentioned in this paper, prescribed by respective laws and by-laws, the expected time for obtaining certain permits and other required documents might be extended in practice. Therefore, it should be noted that the new amendments of the Law on Planning and Construction (*Official Gazette RS no. no. 72/2009, 81/2009 - correction, 64/2010 – decision of IC and 24/2011*) (hereinafter: Construction Law) are expected in the first half of 2013, which should accelerate the procedures related to construction of the RES objects.

Obtaining of Energy permit

The Investor willing to construct a wind farm of a rated capacity exceeding 1 MW shall be required to obtain Energy permit in accordance with the Regulation on criteria for issuing Energy permit (*Official Gazette RS", no. 23/2006, 113/2008 and 50/2011*) (hereinafter: EP Regulation). In view of the fact that issuing of Energy Permit is very accurately defined procedure in the competence of the Ministry of Energy, the applicant is obliged to prepare the following documentation before submission of the application: (i) Information on the location (ii) Feasibility Study on construction of the wind farm/s; (iii) Analysis of possible impacts on the environment (with proposals of protection measures); (iv) Bank Statement confirming readiness of the bank to support financing of the construction; (v) Opinion of the energy system operator on the possibility for connection to the grid.

Obtaining of Location Information

The first step of Investor concerning the construction of a wind farm is certainly selection of the micro-location. The Wind Atlas with locations and wind speed may be obtained from the Ministry of Energy, Development and Environmental Protection of the Republic of Serbia upon request. Obtaining information on location is one of the major requirements in a process of obtaining of Energy permit in accordance with EP Regulation. Namely, the chosen location has to be defined as suitable for construction of energy-related objects in the Planning act. If, aforementioned act does not envision construction of an energy-related facility at the respective location, the applicant is entitled to launch an initiative to amend the Planning Document. The request for issuing Information on location shall be submitted to the local self-government units (hereinafter: LSGU) with the exceptions regulated by the law. The applicant is obliged to enclose Lot Plan to the request.

Feasibility Study

Feasibility Study on construction of the wind farm contains the general project and preliminary design project. The Feasibility Study and aforementioned project have to meet requirements prescribed in Articles 113-118 of the Construction Law and in Article 8 of the EP Regulation.

Analysis of possible impacts on the environment

In accordance with the Decree on the lists of projects where analysis of possible impacts on the environment are mandatory (*Official Gazette RS no. 114/2008*), the owners and/or users of the certain energy-related facilities are obliged to conduct the analysis. Namely, the conducting of the analysis is mandatory when an installed capacity in all such facility stipulated in project is going to exceed 50 MW. However, pursuant to the List 2 of the same Decree, the wind farm with installed capacity over 10 MW may also be obliged to conduct the analysis in which case the opinion from LSGU environment protection department is required.

Statement confirming readiness of the commercial bank to support financing of the construction

This statement might be in the form of letter of intent, and in case that Investor has already signed the project financing loan agreement with commercial bank, the additional letter of intent shall not be required.

Opinion of the energy system operator on the possibilities for connection to the grid

The request for Opinion shall be submitted to the Public Enterprise for electric energy transmission and transmission system control "Elektromreža Srbije", the Serbian Transmission System and Market Operator (hereinafter: EMS), and shall contain certain data prescribed in internal EMS acts.

The Energy permit is to be issued within a time period of 30 days from the date of the application submission and is to be issued for a time period of up to 3 years from the date of issuance. However, the validity of Energy permit may be extended upon the applicant's request for another year.

Obtaining of location permit

The second step required for construction of wind farm is obtaining Location permit in accordance with Construction Law. If the wind farm is to be of the installed capacity of 10 and more MW (for which, according to the Construction Law, the Ministry competent for Civil Engineering and Construction issues construction permits), the investor has to also obtain a Location Permit from the Ministry competent for Civil Engineering and Construction. If the installed capacity is lower than the said, this permit is issued by LSGU. The competent authority issues the Location permit within 15 days from receipt of complete documentation.

The request for Location Permit must have information on type and purpose of the object to be built, all urbanistic and technical conditions and data necessary for creation of the preliminary design and/or main project, and in particular: information on investor, number of lots and relevant area size; reference to the relevant Planning act and/or Urbanistic project based on which the Location permit is issued and rules for construction in the zone in which the lots are situated; conditions for connection to communal, traffic and other networks; approval of the Civil Aviation Directorate, etc.

If within 2 years from issue of the Location permit, the investor does not submit the request for Construction permit, the Location permit expires.

Land-related issues

In relation to the land on which the plant is to be constructed, the Investor may either acquire ownership, or in case of agricultural land, a right of long term lease, for a term of up to 20 years. It may be necessary in a process to rearrange the subject lots (to partition or group the allotments), in which case the relevant authority the LSGU for provision of the requisite opinion and the Republic Geodetic Authority (hereinafter: RGA).

Obtaining planning document's conditions and possibilities for connection of the wind farm to the infrastructure

If the planning documents do not include all the conditions and possibilities for connection of the wind farm to the infrastructure, the competent authority will acquire them ex officio, at the expense of the Investor. Competent authorities, authorized to issue such conditions, are obliged to act within 30 days following the request of the responsible competent authority.

Approval obtained from Civil Aviation Directorate

Article 55 of the Construction Law prescribes that Location Permit might contain other data and conditions in compliance with other special laws. The obligation of obtaining Civil Aviation Directorate Approval (hereinafter: CAD Approval) is stipulated in Article 113 of the Law on Air Traffic (*Official Gazette RS no. 73/2010, 57/2011 and 93/2012*). Namely, certain object may be detected as a threat to public air safety. Therefore, obtaining of CAD Approval is strongly advisable for Investor willing to construct wind farms with regular or higher mills.

The competent authority is obliged to issue a Location permit within 15 days from the day of submission of a regular application. However, the validity of the resolution on the location permit expires if the Investor fails to submit a request for the issuing of a construction permit within two years from the commencement day of validity of the Location permit. Location permit shall not be considered permit given for: (i) location under the water areas or bordering the same; (ii) location covering the national park or area of specific interest; (iii) location situated in Free Zone or Industrial Park.

Obtaining of construction permit

Third step in respective project is to obtain construction permit. In accordance with Article 133 of the Construction Law, jointly with the request for issuing of the construction permit, the Investor willing to construct wind farms, is required to submit the following: (i) Location permit; (ii) main project with the Report about the performed technical inspection; (iii) evidence on resolved property-rights relations; (iv) proof of settlement of relations concerning the payment of the construction land development fee; (v) Energy permit. Furthermore, for energy objects exceeding prescribed capacity prescribed in Article 133 of the Construction Law, auditing of Commission Report on Technical documentation is required.

Obtaining of Operational permit

Obtaining of the operational permit is the final step in construction of the wind farm. After obtaining it, Investor may acquire status of privileged producer. Obtaining of the respective permit, shall be performed in two steps.

First step is obligatory Technical Inspection of the object. The technical inspection of the facilities for which the construction permit was issued by the competent authority is carried out by a Technical Inspection Commission

(hereinafter: Commission) which is appointed by the minister authorized for tasks in construction or other legal entity to which execution of these tasks is entrusted. The Investor ensures the technical inspection of facility in accordance with Construction Law.

Second step is issuance of the Operational permit within seven days from receiving positive Report of the Commission. The positive Report shall be issued in particular if the construction of the wind farm has been performed in the line with Main Design and As – Built Design.

It should be noted that electricity generation might be banned if the Operational permit has not been issued properly. On the other hand, the Law provides possibility on acquiring status of temporary privileged producer prior to obtaining of the respective permit.

OBTAINING OF ENERGY LICENSE

This license, allowing the company to start operations i.e. production of electricity, is issued by the Energy Agency. Condition precedent for issuing license is meeting the requirements regarding professional staff capabilities and knowledge stipulated in Rulebook on Requirements Regarding Professional Staff and Terms of Issuing and Revoking of Energy Licenses (*Official Gazette of the RS no.117/05, 40/06 and 44/06 corr. 2010*) (hereinafter: License Rulebook). For acquiring energy license for electricity generation, the energy entity shall have at least two persons employed for carrying out technical operation over work process with a university degree from the corresponding technological field with at least three years of work experience on technical operation activities.

The performance of each energy activity requires a separate license. The licenses are issued for a time period of 10 years and might be extended upon request of the applicant. The License Rulebook relating to issuing of licenses for generation of electricity, prescribes the documents that should be submitted for issuing of this license. Agency should make a decision on the requested license, no later than 30 days from the submission date of request. The license fee shall be paid on an annual basis, the first time when the license resolution is passed and thereupon for each year of the license validity period.

CONNECTION TO THE GRID

The energy entity on whose system the connection is to be performed and the system operator have to approve the connection of a facility to the transmission, i.e. transportation or distribution system, upon the request of the physical person or legal entity whose facility is to be connected. The energy entity (EMS) is obliged to decide upon the said request within a period of 60 days from the date of submission. The decision on connection may be challenged before Agency. The Law and Decree on Conditions of Electricity Delivery (*Official Gazette of the RS, no. 107/2005*), prescribes which documents should be submitted with the application.

After obtaining positive opinion, the applicant is entitled to request connection to the grid. The condition precedent is entering into power sale - purchase agreement (hereinafter: PSPA) with Electric Power Industry of Serbia (hereinafter EPS). The applicant is obliged to enclose decision on allowance, PSPA and previously obtained Operating permit.

The connection costs are to be paid by the applicant. The costs are determined by the EMS, i.e. transportation or distribution system, but in accordance with the methodology for defining connection charges rendered by the Agency.

ACQUIRING STATUS OF PRIVILEGED PRODUCER AND CONDITIONS FOR SALE OF ELECTRICITY

Pursuant to Article 59 of the Law, privileged producer may acquire four major benefits as follows: (i) certainty that electricity will be purchased by public supplier; (ii) feed-in tariffs for purchasing that energy; (iii) period of validity of the obligation to purchase electric energy and taking over balance liability (which currently is 12 years); (iv) custom and tax incentives.

Acquiring status of privileged producer

In accordance with Law, RES Strategy and PEP Decree, the Investor may acquire status of privileged producer for generating energy from RES. Pursuant to the Article 59 of the Law, public supplier shall be obliged to purchase electricity from a privileged producer based on a PSPA. Bearing in mind that Ministry of Energy has not appointed public supplier so far, it shall be deemed that public supplier is EPS.

Pursuant to the PEP Decree, a legal entity or entrepreneur shall be eligible to acquire the privileged producer status for a power plant that produces electric power from renewable energy sources (except for biomass), provided that in the production process the energy value of the used renewable energy sources makes up at least 90% of the total primary energy at annual level. The application for acquiring the status of the privileged producer shall be submitted to the Ministry of Energy. Along with request form, the applicant shall submit proof that the requirements for

acquiring such a status have been met, in particular the evidences and documents prescribed in Article 11 of the PEP Decree. Pursuant to the Article 56 of the Law, Investor may acquire preceding status of privileged producer if certain criteria are met.

The status of temporary privileged producer may also be acquired under the certain conditions prescribed by Law and PEP Decree. The duration of the said status is 3 years. Namely, pursuant to the Article 56 of the Law if the Investor acquires the status of privileged producer in the prescribed time limit (3 years), it shall be entitled to incentive measures that were valid on the day of promulgation of the decision determining the temporary status of a privileged producer. However, pursuant to the PEP decree, status of temporary privileged producer may only be acquired for installed capacities that are available on the date of application. Therefore, for the exceeding installed capacities the Investor shall not be considered as privileged. Finally, in accordance with Feed in Tariff, EMS is obliged to enter into framework agreement with Investor with temporary status.

Guarantee of origin

Further to incentives, the Law envisages guarantees of origin that EMS is obliged to issue for electricity generated from RES. The respective guarantees shall be issued for a period of one year and represent assignable certificate under the provisions of the Law. The aim of the certificate is predominantly to be used as evidence in cross-border allocations of the capacity.

Conditions for sale of electricity (under Feed-in Tariffs)

Pursuant to the PEP Decree, for electrical energy produced in power plants using wind energy under the Feed-in Tariff, the sum of installed capacities has been increased to the 500MW. However, for the Investors willing to acquire status of privileged producer till the end of 2015, total installed capacity shall be limited to 300MW. Therefore, once this capacity is exceeded, the producer shall not be considered as privileged and will be part of the energy market and conditions. Rights and obligations of the EPS and a privileged producer shall be defined in a written power purchase agreement, for the period of 12 years and in accordance with the Law and Feed in Tariffs. Along with the request for the conclusion of the power purchase agreement, a privileged producer shall submit to the EPS the Decision of the Ministry of Energy on acquisition of the privileged producer status. Further, Feed in Tariffs accurately prescribe basic elements of PSPA including rights and obligations of the EPS and privileged producer followed by conditions precedent that have to be met. Moreover, new tariff defines major force in details, putting liability issues on regulatory level. Current feed-in tariff for wind power generation is EUR/c 9.20 per kWh.

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