



Energy Newsflash 81st issue | November 2023

Headlines

Page

- | | |
|--|----|
| 1. Editor's note | 3 |
| 2. Revision of the National Energy Development Plan | 5 |
| 3. Update on Electricity Storage in Greece | 6 |
| 4. Taxation of excess profits of energy producers before Courts | 10 |
| 5. The Latest Developments of Offshore Wind Farms in Greece and the EU | 11 |

Editor's note

Dear Readers,

In the 81st issue of Rokas Energy Newsflash, we bring you concise highlights of major legal developments in Greece's energy sector:

1. Revised National Energy and Climate Plan Greece's updated NECP, initially presented in January 2023, and re-submitted to the European Commission in November 2023, intends to layout the "energy roadmap" towards 2030 and 2050 more accurately. It emphasized increased RES participation, decreased targets for new photovoltaic and offshore wind farm capacities, and a strategy for electricity price reduction and emissions reduction. Notably, the plan envisages financing investment in energy sectors for low- and middle-income households.
2. Update on Electricity Storage in Greece Greece's energy framework law has been amended to provide a legal framework for efficient renewable energy integration and curtailment reduction through electricity storage. The EU Commission has approved a state aid scheme for electricity storage facilities with standalone battery projects eligible for investment grants and contracts for difference. Upcoming tenders for standalone battery storage are expected, with reduced tariffs.
3. Taxation of Energy Producers' Excess Profits Renewable energy producers challenged the taxation of their "excess" profits in cases heard by the Hellenic Council of State on 20 September 2023. They argue that the taxation methodology, imposing a 90% capital contribution tax on gross profit margins, is flawed and does not account for market dynamics. A decision from the Council of State is anticipated in the coming months.
4. The Latest Developments of Offshore Wind Farms in Greece and the EU Greece Introduced a legislative framework for offshore wind farms in July 2022. This framework aims to accelerate renewable energy development, with HEREMA overseeing research, exploration, and project rights assignment. The European Commission's European Wind Power Package emphasizes digitalization, supporting permitting authorities, improving RES auction design, enhancing access to finance, and ensuring fair competition. HEREMA has recently submitted a Development Program for 12.4 GW capacity in 25 OWF Organized Development Areas, primarily for floating OWFs, with research licenses and tenders expected in 2027.

ROKAS

These developments underscore Greece's commitment for a sustainable and greener energy future. Stay tuned for ongoing updates on energy legal developments in Greece.

*Mira Todorovic Symeonides
Partner / Head of Energy Team
Rokas Law Firm*



Revision of the National Energy Development Plan

Greece's first National Energy and Climate Plan (NECP) was adopted in 2019 by a decision of the Government Council for Economic Politics (OJ B' 4893/2019). The revised NECP in compliance with the new energy and climate goals of the European Commission was presented to the public in January 2023 and submitted to the European Commission for review. Following the comments received the updated and revised NECP was prepared and re-submitted to the European Commission at the beginning of November 2023. The new plan intended to layout the "energy roadmap" towards 2030 and 2050 more accurately.

Specifically, the new revised Plan provides for the participation of RES by 44% in the energy mix and by 79% in electricity generation (target reduced by 1%), while the target for photovoltaics, which is estimated to be set at 13.4 Gigawatt (from 14.1 Gigawatt) and offshore wind farms is also reduced, as it is predicted that their capacity will eventually be 1.9 Gigawatt (from 2.7 Gigawatt originally).

Similarly, reductions in targets are also foreseen for electricity storage as it is estimated that by 2030 a total capacity portfolio of 5.3 Gigawatt will be in operation, while the installed capacity of batteries will be set at 3.1 Gigawatt (from 5.6 in the original plan).

The total installed capacity of gas-fired power plants is expected to increase from 7 to 7.7 Gigawatt by the end of the decade, which means that one more plant will be built by 2030, noting that all lignite plants must be retired by then. In particular, after 31 December 2028 even the new lignite plant in Ptolemaida will phase out of the system.



Regarding the issue of electricity prices, the estimate provided in the Plan is that it will decrease over time. Indicatively, the wholesale price is projected to decrease to 132.6 EUR/MWh by 2030 (from 187.1 EUR/MWh in 2021). The higher cost of electricity was

ROKAS

justified to be a result of the need to install new technologies in Greece as well as large investments in the electricity grid to support renewable energy sources and to maintain gas-fired power plants used as back-up units. However, it is said that due to the continuously decreasing cost of renewables the overall cost of electricity generation will decrease steadily in the future.

Another parameter of Greece's plan is energy efficiency. On this particular issue, the target is set at 5% by 2030, rising dramatically thereafter to 14% by 2035. Greenhouse gas emissions in Greece are expected to decrease by 54% by 2030, and by 57% if land use, land use change and forestry are included.

Finally, for the transition to green energy, the financing of investment expenditure in the final energy consumption sectors (expenditure for the purchase of advanced technology vehicles, etc. is also under consultation. It will be particularly important in the coming years to take action to facilitate access to finance low- and middle-income households. Programs such as "*Exoikonomo 2021*", which includes separate incentives to support poor and vulnerable households, will need to be strengthened in the future.

by Angela Moysidou | Senior Associate
ROKAS (Athens)



Update on Electricity Storage in Greece

I. Introduction

In 2022, Greece amended the law no. 4001/2011 (the Energy Framework Law) by providing of the legal framework for electricity storage particularly regarding licensing, remuneration and market participation. Thus, the law now recognizes the following types of electricity storage:

- a) Standalone electricity storage units (mainly batteries) with exclusive activity the electricity storage;
- b) RES plants with storage with no ability to charge from the grid;
- c) RES plants with storage with ability to charge from the grid;
- d) Pumped Hydro Storage Plants; and
- e) Hybrid Plants for the non-interconnected islands and Crete.

Our focus in this article is on the standalone batteries. The legal framework on electricity storage is intended to service the smooth integration of a higher share of Renewable Energy Sources (RES) in the Greek electricity system with a reduced level of curtailments,

ROKAS

particularly by storing electricity when electricity market prices are low and injecting it back into the grid when electricity market prices are high.

II. Standalone batteries

a) State aid approved by the EU Commission

In 2022, the European Commission approved to Greece Financial support in favour of electricity storage facilities (SA. 64736). The scheme provides for two forms of support to be granted cumulatively to the selected storage facilities:

- a) An investment grant - to finance capital expenditure which will be paid during the construction period of each project, i.e. until the end of 2025 in the amount which will not exceed 40-50% of a project's CAPEX (investments costs); and
- b) A two-way Contract for Difference – for a 10 -year duration to cover the balance of any residual funding gap, after payment of the investment grant (the “annual support”) to be paid from the commencement of operation of the project, i.e. by 2035 at the latest, in the amount equal to the difference between the amount of revenues tendered by each project as necessary for its financial viability ("Bid Revenues"), and the revenues that each project will earn from its participation in the various electricity markets("Market Revenues").



The scheme is included in the Greek National Recovery and Resiliency Plan (“RRP”). This investment should support the installation of the total 1,580 MW capacity of storage in the electricity system (680 MW for the Amfilochia Pump Hydro Storage Project and the remaining capacity of up to 900 MW for the standalone storage plants). The storage projects to be supported by the scheme will be selected through a tender process to be held until the end of 2023. No support will be granted in cases where the start of works on the project took place prior to the submission of the bid for granting of the state aid. The installation of the storage facilities should take place by the end of 2025. The supported projects will be legally obliged not to conclude private power purchase agreements (“PPAs”) and will have to participate in the markets on an individual basis. The total budget of the measure is estimated at € 341 million, including the investment grant (€ 200 million) and the annual support (€ 141 million). That figure has been derived assuming a total capacity of 900 MW under the scheme.

Greece's energy storage scheme allows projects from the European Economic Area (EEA) outside of Greece, provided there is an electricity interconnection and fully coupled power grids between Greece and the EEA country. Currently, only Bulgaria meets these expectations.

c) Development of Greek legislation

Law 4920/2022 amending the Energy law 4001/2011 sets the national legal basis for the grant of state aid for the establishment of electricity storage facilities. Apart from the EU Commission approval of such state aid, the following documents are required for its implementation:

- the adoption of a ministerial decision dealing with the main elements of the state aid scheme;
- a RAAEY decision laying down the detailed methodology for the determination of the amount of the approved annual support for the supported projects;
- a methodology for the allocation of the annual storage support account cost to load representatives (i.e. suppliers of electricity, which act as the aggregators to represent consumer demand in the electricity market) and
- Amendments of the Electricity Market Regulations and System Codes to implement all necessary details for the application of the scheme.

The Joint Ministerial Decision of the Ministry of Finance, of Development and Investment, and of Environment and Energy no. 55948/1087 was published in the OJ B' 3416/2023. It regulates the regime of providing of the state aid to storage plants connected to the HV System in compliance with the above Commission's approval and particularly the time frame, number of tenders, capacities, technical characteristics, initial reference price etc. The tender procedures should be organized before the end of 2023 and the storage plants should be operational by 31 December 2025. There will be three tender procedures with total capacity of 1000 MW divided into 400, 300 and 300 MWs (the third one organized for certain regions), organized by RAAEY as single stage bidding. The minimum capacity for participation of a plant would be 1 MW and the maximum 100 MW, while the total capacity to participate in all three tenders may not exceed 250MWs per participant, the project should ensure a minimum 2-hour capacity duration and commence construction after a tender concludes. The maximum reference price in the first tender may not exceed 115,000 Euros/MW/year. All plants participating should have previously obtained the respective electricity storage license. Each tender must include a minimum of four independent participants with no business ties. Additionally, any participant in each of the three tenders cannot bid for more than 25% of the energy storage capacity offered in the auction.

The investment state aid to be provided in the first two tenders will be €200,000/MW. The operational aid is provided for 10 years from the beginning of operations calculated in compliance with methodology to be provided by RAAEY.

In August 2023, RAAEY launched public consultation on the methodology of annual state aid for electricity storage units which lasted until 13 September 2023.

d) Tenders

On 17 June 2023, RAAEY published decision no. E-45/2023 (OJ B' 3939/2023) launching the first tender for the investment and operational support to the standalone storage plants for the total capacity of 400 MWs. The application process for the first tender closed on 10 July 2023, and the list of qualified bidders was published on 10 August 2023. The tender provided for the obligation of the selected participants to provide RAAEY with three letters of guarantee from banks and financial institutions, demonstrating financial robustness: participation letter of guarantee (€35,000/MW), letter of guarantee for timely business performance (€250,000/MW), and letter of guarantee for quality operation (€200,000/MW). An application fee of €2,500 per submission to the regulator is also applicable.

A total of 12 projects were selected secured tariffs averaging 49,748 €/MWh/per year or 57% below the starting price of 115,000 €/MW/per year which was the initial auction price.

According to the official announcements, the Ministry of Environment and Energy has decided to significantly cut tariffs to be offered at the second auction for standalone batteries, prompted, in its decision, by investors' lofty expected revenues, as reflected by bidding at a first auction in August. Thus, it is expected that a ministerial decision is issued reducing the investment support from 200,000 €/MW to 100,000 €/MW. The second tender is expected to be launched in November 2023, immediately after this ministerial decision is issued, while the third one is not expected before the beginning of 2024.

III. PV with storage behind-the-meter

According to business press announcements, the Ministry for Environment and Energy is considering offering operation state aid to PV solar plants with behind-the-meter battery installations as a means of freeing up grid capacity, a solution that is expected would enable power grid operator IPTO to resume offering new connection terms, currently on hold as a result of grid-capacity restraints. According to the ministry's plan, the state aid would be offered in the form of the Contracts for Difference with reference price determined in competitive procedures. Essentially these competitive procedures would replace any other PV solar competitive procedure or in other words any PV solar plant under development would have to add storage units of this technology in order to receive the operational state aid. Further, the competitive procedures would be offered only to mature projects possessing final offer for connection to the grid. The tenders would offer higher reference prices taking into account the increase in investment cost due to adding of the storage units. Although this solution is widely discussed by the stakeholders, issuing of any official document is still pending.

by Mira Todorovic Symeonides | Partner
ROKAS (Athens / Belgrade)



Taxation of excess profits of energy producers before Courts

On 20 September 2023, the Hellenic Council of State (i.e. Greece's Supreme Administrative Court), heard the cases brought before it by RES producers against the Minister for Environment and Energy and the Hellenic Republic in regards with the issue of taxation of their "excess" profits. These RES producers appear to have been treated like regular electricity producers, upon which a 90% incidental capital contribution on their gross profit margin was imposed, not taking into consideration (according to the claimants) the inherent differences between these markets.

In more detail, several RES producers (among which stood "Heron II Viotias S.A.", "MYTILINEOS S.A." and "Korinthos Power S.A.") filed petitions for judicial review (annulment) before the Council of State, concerning the methodology used for the taxation of their excess profits. The producers claimed that the methodology used by RAEWW (Regulatory Authority for Energy, Waste and Water), later adopted by the Ministry for Environment, was incorrect, since it concluded that the tax imposed on the excess profits should be based on the comparison between the profits achieved in 2022 and those achieved in 2021. According to the producers, the main problem with the methodology is the year used as a basis for the comparison, i.e. the year of 2021, since it constituted the first year of the target model operation, a year during which the market was trying to adapt to the new mechanism. They further claim that the methodology includes aspects which contradict certain provisions of EU Regulation 2022/1854 on an emergency intervention to address high energy prices.



Contrary to the methodology in question, they claim that a more comprehensive assessment could be achieved by the examination of profits over a more extended period of time and that the natural gas units had to be excluded from the methodology for those hours, during which the prices are set. According to them, the natural gas units do not generate excess profits, since their operational costs increase steadily due to the fuel they use. Thus, they could generate increased profits, only when the prices are set by the imports, i.e., when a neighbouring market is more expensive than the Greek one. The Council of State is anticipated to render its decision within the following months.

by Andriani Kantilieraki
Senior Associate | ROKAS (Athens)



The Latest Developments of Offshore Wind Farms in Greece and the EU

Introduction

In July 2022, the Greek regime in force regarding the Offshore Wind Farms (OWFs) was established by the enactment of Law no. 4964/2022 (the “Law”) which promoted a specific legislative framework for the OWFs development. The Law is considered as a landmark for the installation, development, and operation of OWFs which is expected to significantly contribute to development of RES in compliance with the objectives set by the new Greek NECP¹ and by the European Commission (the “EC”) in terms of exploitation of the offshore RES.

The Greek legal framework

Pursuant to this framework, the state-owned Hellenic Hydrocarbon and Energy Resources Management Company (HEREMA) is authorized to perform the research, exploring and determination of the OWF Organized Development Areas and of the OWF Installation Areas, as well as for the assignment of the research and exploitation rights of OWF Projects within the OWF Organized Development Areas. HEREMA is also responsible for the drafting of the National OWF Development

¹ The National Energy and Climate Plan, which has been submitted to the European Commission

ROKAS

Program (the “Development Program”) that sets the main guidelines for the planning, development, siting, installation, and exploitation of OWFs and includes the potential OWF Organized Development Areas. The Development Program is subject to a Strategic Environmental Assessment procedure (the “SEA” procedure) conducted by HEREMA.

The technical studies undertaken by HEREMA should determine the terms for project development within the OWF Organized Development Areas and propose the OWF Installation Areas within them. Each technical study shall be subject to a SEA procedure. Following the respective public consultations, the OWF Organized Development Areas are approved by presidential decrees. Two months after issuing of each presidential decree, HEREMA should organize the submission of applications for the granting of research license to interested parties. Within two years from the expiration of the first submission cycle with respect to the above applications, HEREMA should launch public consultations regarding the OWF Installation Areas of each OWF Organized Development Area. The Regulatory Authority for Waste, Energy and Water (RAAEY) should organize competitive tendering procedures for the granting of operating aid to OWF Projects developing into the OWF Organized Development Areas within four months from the issuance of a decision by the Environment and Energy Ministry determining the distribution of the OWF Installation Areas. Each OWF investor, holding a research license regarding an OWF Organized Development Area, will be entitled to submit an offer for any OWF Installation Area within such Development Area. The successful bidder for the licensing, development and exploitation will be determined by the lowest bid price (in €/MWh) for the compensation of the energy produced by such OWF Project. Subsequently, the OWF investors submit to RAAEY the application for the granting of the Special Projects Producer Certificate with duration of 30 years with possibility of an equal extension.

According to the Law², an OWF can either be stably linked to the seabed, or floating. It is known though that the bottom-fixed OWFs are not always feasible, so the latter mechanism is preferable for the greatest possible exploitation of the Greek rich wind potential. However, since complications, including but not limited to the premature level of this technology and of the market conditions, characterize the OWF development, a fact that does not invalidate the pivotal position they possess in the country’s energy objectives, the Greek authorities intend to develop such projects under a pilot form at first. On the contrary, the pilot fix-based OWFs in the area of Alexandroupoli with 600MW capacity³ follow a different pilot procedure according to the plan of European Union regarding the called “go-to-areas”. The amendments proposed under the REPowerEU plan for the Renewable Energy Directive⁴, included, except for the renewable energy target increase up to 45% by 2030, the introduction of the “go-to-areas”, that is areas with lower environmental risks suggested by the member states as areas appropriate for the development of RES projects using relevant technologies and contributing to the respective target of 2030 and per consequence areas following simplified licensing procedures.

² Article 65 par.11

³ Article 174 of the Law, as amended

⁴ Directive EU 2018/2001



The European Wind Power Package

On 24 October 2023, the EC issued a draft of the European Wind Power Package (the “Wind Package”)⁵ including a European Wind Power Action Plan and a Communication to deliver on the EU's offshore renewable energy goals and proposed its enshrinement by means of the drawing up of a Wind Energy Charter to be signed by the end of 2023.

In particular, the first pillar of the proposed Action Plan consists of the digitalization of the permitting process across all the member states as well as the respective support of the national permitting authorities through the Recovery and Resilience Facility, by launching the initiative “Accele-RES”. Another relevant action corresponding to this pillar is the increase of predictability of wind projects for the reinforcement of the investment planning. Such a measure includes the creation of an EU digital platform for the publication of the auctions planning, the encouragement of the member states for concrete pledges on wind energy deployment volumes for at least the period 2024-2026.

The next pillar consists of the launching of a dialog with the member states for the improvement and consistency in the RES auctions design and the subsequent adoption by the EC of a recommendation aiming at the formation of auction standards in compliance with the Net-Zero Industry Act.

The pillar related to the access to finance recognizes the crucial need for private investments into manufacturing capacity, thus the EU Innovation Fund plays a key role in this venture, as it is going to finance clean technology manufacturing projects, innovative wind energy production and pilot projects in the upcoming call for proposals on 23 November 2023 by means of doubling its budget. Further financing measures in this category consist of the revised Strategic Energy Technology Plan, the provision of key wind industry suppliers with counter-guarantee as a tool against

⁵ COM(2023) 669 final/24.10.2023

banks' credits exposures and the promotion of the Investors Dialogue including a series of meetings with long-term investors.

Last but not least, regarding the fair competition pillar, the EC expressed its intention to intensify negotiating of trade agreements and to protect the internal market and undistorted access to foreign markets.

The latest developments in Greece

On 31 October 2023, HEREMA announced that the draft Development Program has already been submitted to the Environment and Energy Ministry, and that it includes 25 OWF Organized Development Areas of an estimated minimum capacity of 12.4 GW. The majority of these areas will be recommended for floating offshore wind technology. It is expected that HEREMA submits the Strategic Environmental Consequences Study of the Development Program within November. A further step will be the approval of the Development Program and the above Study by a Joint Ministerial Decision. In addition, the issuance of the respective presidential decrees for the determination of the OWF Organized Development Areas is expected within a year, a step considered crucial for the granting of the research licenses of the OWF Organized Development Areas to the interested investors. However, there is a thought for the conduct of the necessary research, initially financed by national resources, on behalf of HEREMA, and the subsequent sale of the extracted data to investors, setting this procedure as a participation term in the following tender process for the state aid scheme and the subsequent investor selection for each OWF Project. The first cycle of the above competitive procedure for the concession of the OWF Installation Areas to the successful bidders is expected in 2027.

by Penny Maragkozoglou
Associate | ROKAS (Athens)

