5th VIENNA FORUM ON EUROPEAN ENERGY LAW

WORKSHOP ON CURRENT ISSUES OF ENERGY LAW FOR SOUTH EAST AND EASTERN EUROPE:
INVESTORS’ PERSPECTIVE ON PERMITTING REGULATION (SERBIA)

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Intro: Hurdles for Private Investments in the RES Sector in Serbia

- Structural weakness of the sector
- Risks (political, off-takers, technical)
- Deficiencies of the legal framework: regulatory risk ranked first among investors
- “Privatization” of welfare: who benefits from RES?
- Administrative hurdles
Slow Pace: Deployment of RES in Serbia

- No utility-scale IPPs in Serbia to date
- Less than 100 MW in aggregate built to date (half of which are small HPPs)
- Pipeline of approx. 800 MW of wind projects, none of the large ones under construction to date
- Complex permitting procedures affected development time and cost
- Lagging of secondary legislation: some projects feasibility jeopardized
Challenging Playground for Investors: Permitting of RES Projects when we started.

- Learning curve for both developers and administration: Did investors come too early?
- Jurisdiction split between municipalities and governmental agencies/ministries: missing coordinated permitting process
- Procedures drawn-out, confusing and contradictory requirements (e.g. Decree on conditions for delivery and supply of electricity)
- Undefined time frames causing uncertainty and higher development costs to investors
Permitting of RES Projects: What Changed?

- The majority of regulation governing licensing requirements and permitting procedures updated regularly
  - Energy permits (timing, guarantees)
  - Location and Construction permits
  - Environmental permit (EIA approval) and Water permit
  - Land usage and designation
- Average permitting time for utility-scale projects approx. 2 years (down from 4 years)
- 2014 Law on Planning and Construction: streamlining the construction permitting process, higher efficiency of permitting process (ePermit, OneStopShop)
- Specific permitting requirements defined (site or technology specific; project size; environmental constraints)
Still pending

Still pending

State-owned agricultural land cannot be used for electricity production (except for biomass and biogas)

Micrositing/Planning/Land Designation/Zoneing

Preliminary Feasibility Study & General Project

Opinion on Grid Connection (DSO/TSO)

Information on the Location

Non-binding document, validity 1 year

Preliminary Design & Feasibility Study / Revision for large projects

Validity 1 year

Validity 1 year

Validity 3 years (+1)

Validity 2 years (to start construction)

Energy Permit Above 1MW

EIA Procedure and Approval

New Rulebook on Energy Permits introduced more flexibility for Investors

Bank guarantee/deposit 0.5% of investment value

Grid Code amended in 2012 to allow connection conditions for large wind projects

Conceptual Solution/Hydraulic Study

Grid Connection Technical Conditions

Location Conditions

Validity 1 year

Preliminary Design & Feasibility Study / Revision for large projects

Still pending

Still pending

Still pending
Permitting of RES projects: Simplified Procedure (2)

1. Land ownership secured
2. Construction Permit
3. TPPP Status
4. PPA
5. Construction
6. Approval for Connection to the Grid & Connection Agreement
7. Plant Commissioning
8. As-built Design (where necessary)
9. Water Permit (for HPPs)
10. Guaranteed grid availability/ Curtailment
11. Grid Connection secured only after Construction Permit
12. Bottleneck: local licensing companies (main tech design, third-party technical supervision); professional certification requirements
13. Validity 2 yrs to start construction; 5 yrs to obtain usage permit
14. Investors can finance and build connection infrastructure, but it remains under ownership and management of TSO
15. Liability and insurance (all parties involved in project development to be legally liable)

Still pending

Positive changes

Still pending
After Construction: Simplified Procedure (3)
for small RES projects only - to date
Big Milestone: 2014 Energy Law

Positive changes:
- Introduced one-step PPA
- Construction period prolonged to three years; introduced force majeure clause during construction
- Defined permitting and construction authority and obligations for connection infrastructure; can be financed and built by private investors, but ultimately remains under the ownership and management of the TSO

Pending issues:
- Transferability of PPA, step-in rights for lenders
- Protection against change in law
- Political force majeure
- Grid constraints (deemed output, curtailment)
2016 Set of Decrees – At Last

- More favorable climate for developing/financing RES projects
- Decrees on PPP status and Incentives – *major improvements*:
  - 3 yrs TPPP status duration (1 year for PV); can be extended under specific conditions such as force majeure.
  - In the case of TPPP/PPP status termination, lenders may introduce a new privileged producer within three months (for projects > 30MW).
  - Maximum Annual Effective Operation Time for all types of plants;
  - Excess electricity produced over the “maximum produced electricity” – purchased at 35% of the corresponding FIT;
  - Electricity produced during the TPPP status – purchased at 50% of the corresponding FIT;
  - Subsequent changes in legislation which lead to an increase in producer’s expenses result in corresponding increase of FIT.
- *On the downside*: promissory notes as collaterals provided by the off-taker
PPA: The Holy Grail for Investors

• From the first draft in 2010 to the 4th version presumably bankable – 6 years later

Major improvements:
• No preliminary PPA;
• Transfer of PPA & step-in rights for lenders (> 30 MW only);
• Two possibilities for International arbitration;
• Change in law provisions: an off-taker is obliged to change the price of electricity based on new FIT pursuant to the change-in-law rules;
• Deemed output introduced.
Instead of Conclusion

While it remains to be seen whether the new regulation is enough for the RES in Serbia to bloom…

What can developers do?

- Advance planning
- Strong project management and technical support
- External (expert) supervision

to reduce development time and costs and improve projects’ quality and bankability.
Thank you for your attention