

RENEWABLE ENERGY - WIND POWER

Main Regulations

- ✓ Law no. 13 of 2007
- ✓ Law no. 50 of 1991 Regarding the Authorization of Execution of Construction Works
- ✓ Law no. 220 of 2008 Regarding the Establishing of the Promotion System of the Production of Energy from Renewable Energy Sources, as amended by Law no. 139 of 2010
- ✓ Emergency Ordinance no. 54 of 2006 Regarding the Legal Regime of the Concession Agreements of Public Assets
- ✓ Government Decision no. 540 of 2004 for the Approval of the Regulations for Granting of Authorizations and Licences in the Electric Power Sector further amended
- ✓ Government Decision no. 1429 of 2004 Regarding the Approval of the Regulation of Guarantee of the Origin of Electricity Produced from Renewable Energy Sources
- ✓ Government Decision no. 1892 of 2004 Regarding the System of Promotion of Production of Electric Power from Renewable Energy Sources, as further amended
- ✓ Government Decision no. 1479 of 2009 Regarding the System of Promotion of Production of Electric Power from Renewable Energy Sources
- ✓ Government Decision no. 90 of 2008 for the Approval of the Regulation Regarding the Connection of Users to Electricity Grids of Local Interest
- ✓ Order no. 23 of 2004 of the President of RERA Regarding the Procedure for the Surveillance of the Issuance of Origin Guarantees for the Electric Power resulting from Renewable Energy Sources

Access to land

Concession/Lease/Acquisition of the Land

The land on which a wind farm can be developed can be procured by concluding agreements for concession, association by participation, or sale and purchase agreements with local authorities, i.e. Local Councils, or with private entities, i.e. individuals or legal persons.

The land owned by the Local Council may be on a public domain or on the private domain of the said authority.

A. Land of the public domain

In the case of the land of the public domain, the Local Council is entitled to decide whether it will award a concession or will conclude a lease contract based on the provisions of the Emergency Ordinance no. 54 of 2006 Regarding the Legal Regime of the Concession Agreements of Public Assets.

The land pertaining to the public domain cannot be sold.

1. Concession Agreement

The Concession Agreement of Public Assets (hereinafter referred to as "Concession Agreement") is the contract concluded in written form whereby a public authority, referred to as provider of the concession acting on its own risk and responsibility, assigns for a determined period of time, to a person, hereinafter referred to as concessionaire, the right and obligation of exploitation of a public asset in exchange for a royalty.

The Concession Agreement is concluded according to the Romanian law, for a duration which shall not exceed 49 years, starting from its signing date.

The Concession Agreement may be awarded by:

- (i) a tender; or
- (ii) direct negotiation – a procedure whereby the Local Council negotiates the contractual provisions, including the royalty, with one or several parties interested in the procedure for the award of the Concession Agreement.

The bidder has the obligation to prepare the offer according to the provisions of the tender documentation.

The Local Council has the obligation to award the Concession Agreement by a tender procedure attended by at least three bidders. If two successive tender rounds are attended by less than three offers, the Local Council has the right to initiate direct negotiations with the interested party or parties.

The Concession Agreement must be approved by a decision of the Local Council.

2. *Agreement for Association by Participation*

There are no express tender requirements regarding the Agreements for Association by Participation. Therefore, the Local Council may enter into direct negotiation with the interested party regarding such agreement.

The Agreement for Association by Participation must be approved by a Decision of the Local Council.

B. Land of the private domain

The land pertaining to the private domain of the Local Council can be leased or sold based on the decision of the Local Council.

C. Land owned by private entities

The land owned by the private entities can be acquired as follows:

- (i) by signing a sale-purchase agreement before a Romanian notary;
- (ii) by concluding a lease contract;
- (iii) by concluding an association by participation; or
- (iv) by concluding any other forms of joint venture.

Permits

The number of permits and authorizations necessary to be obtained varies subject to the location of the land where the wind farm will be developed.

A. Construction Authorization

According to the provisions of Art. 2 (1) of Law no. 50 of 1991 Regarding the Authorization of Execution of Construction Works (“the Construction Law”), the procedure regarding the issuance of a valid construction authorization consists of the following steps:

- a. issuance of the Urbanism (zoning) Certificate;
- b. issuance of the competent environment protection authority’s opinion regarding the investments which are not subject to the assessment procedures regarding the impact on the environment;

- c. notification of maintaining the application for a construction authorization, in case of a project for which the competent environment protection authority requires the assessment regarding the impact on the environment;
- d. issuance of the permits, authorizations, and of the decision of the competent environment protection authority regarding the investments whose impact on the environment was subject to review;
- e. drafting the technical documentation required for the authorization of the construction works;
- f. filing the application together with the necessary documentation;
- g. issuance of the valid construction authorisation.

According to the provisions of Art. 7 (1) of the Construction Law, the construction of the wind farm can proceed only after the issuance of a valid construction authorization, issued by the competent Municipality on the basis of the following documents:

- a. Urbanism Certificate which is issued by the Municipality and covers such issues as zoning, degree of occupancy of the land, height regime, etc, and lists of the permits that must be appended to the application for the issuance of the construction authorization, e.g. environment, water, fire, sanitary, etc.;
- b. the certified copy of the proof of title over land and/or construction and, where applicable, the up to date survey plan excerpt and the up to date Property Registry excerpt, unless the law provides otherwise;
- c. related technical documentation;
- d. permits and authorizations, as provided by the Urbanism Certificate, the point of view of the environment protection competent authority and, where applicable, the related administrative decision; and
- e. proof of payment of the town planning certificate and of the construction authorization.

The Municipality must issue the Construction Authorization within 30 days from the filing of the application and related documentation.

B. Environmental Permits

1. Project stage

During the project stage, the following permits must be obtained:

- (i) Environmental Permit - in case such permit is expressly requested according to the Zoning Certificate;

- (ii) Environmental Approval for the construction of the wind farm.

The above-mentioned permit and approval are to be issued by the Territorial Environmental Protection Agency following the review of the documentation submitted by the applicant, including the technical sheet.

Depending on the activity carried out and on the number of installed turbines, and also, in case the area where the wind farm will be located is a protected area, the Territorial Environment Agency may request the conduct of a survey regarding the impact of such activity upon the environment.

2. *Operational stage*

Further to the obtaining of the environmental permit, in order for the wind farm to become operational, it is necessary to obtain the Environmental Authorization, which will also be issued by the Territorial Environmental Protection Agency.

Grid Access and Environmental Requirements are the key elements that require approvals.

C. Authorization of the incorporation, i.e. the registration of a special purpose vehicle (“SPV”)

The criteria and the documentation necessary in order to obtain the authorization of registration of the SPV is regulated by Government Decision no. 540 of 2004 for the Approval of the Regulations for Granting of Authorizations and Licences in the Electric Power Sector as amended and supplemented by Government Decision no. 553 of 2007 (the “Regulations”).

The competent authority in respect of the issuance of the authorizations in the electric power sector is the Romanian Energy Regulatory Authority (“ANRE”).

The applicant must file a set of documents in respect of the issuance of the authorization of registration of the SPV unit with ANRE which analyses the documentation and may request further information, or clarifications.

ANRE will issue a decision in respect of granting or the refusal of granting of the authorization within 30 days from the payment of the specific tariff, and submission of the above-mentioned documentation.

The granting or the refusal to grant the authorization may be appealed before ANRE within 15 days from notification in respect thereof, and further on before the Court of Appeals of Bucharest – the Administrative Litigation Section within 30 days from the receipt of the decision of ANRE, or the publication of the respective decision on ANRE’s website.

D. Licence for the commercial operation of electric power capacities

Further to obtaining the authorization of incorporation of the new unit, the SPV must apply with ANRE for obtaining the licence for the commercial operation of the electric power resources. Such licence is obtained by submitting to ANRE the documentation mentioned by the Regulations.

Moreover, in order to be licensed as a producer of renewable energy, the applicant must submit to RERA the information regarding the production capacity, as well as the source of energy, as described in Annex 1 to the Order no. 23 of 2004 of the President of RERA on the Procedure for the Surveillance of the Issuance of Guarantees of Origin for the Electric Power resulting from Renewable Energy Sources.

The conditions associated with the license will be provided in the Report issued by ANRE regarding the respective license.

ANRE will issue a decision in respect of granting or refusal to grant the licence within 60 days from the payment of the specific tariff and annual contribution, and submission of the specific documentation.

E. The Registry of the Origin Guarantees (the “OG Registry”)

Further to obtaining the licence for the commercial exploitation of electric power capacities, the producer must register with the OG Registry in order to obtain an account as a producer of energy resulting from renewable sources. This is a condition precedent to the obtaining of the OG Certificates necessary for the exploitation of energy resulting from renewable sources.

The OG Certificate is a document whereby the renewable energy source is mentioned, together with the date, place of production and the power of the producing capacity, and it allows the producers of energy from renewable sources to prove that the energy they sell results from a renewable source of energy.

The application for the issuance of the OG Certificate for the energy generated from renewable energy sources is mandatory. In this respect, the producer must apply for the issuance of the OG Certificate within 30 days at the most from the end of the period for which the OG Certificate is requested.

In order to obtain the OG Certificate, the producer must comply with the following requirements:

- a. the energy must result from a renewable energy source;
- b. the information provided to the competent authority together with the application for the issuance of the OG is in compliance with the Rules for the Surveillance of the Issuance of OG (“Surveillance Rules”), as approved by the competent authority – according to the Surveillance Rules, the competent authority may verify the information submitted by a producer, selected on a random basis;

- c. the metering of the energy resulting from renewable energy sources is measured by an adequate metering system.

The OG Certificate is issued within 10 working days from the date of the filing of the complete documentation with the competent authority, and is valid for one (1) year from the date of issuance. The OG Certificate is recorded in the OG Registry under an unique identification code.

F. Other permits/authorization

With regard to the wind farms located in Dobrogea area, official confirmations that the turbines are not in the path of migration of the birds are also requested. Other approvals must be also obtained from the aeronautical authorities.

Grid Access

This is a process that should be initiated early by contacting RERA and the transmission company to which the wind farm will be connected.

According to a press release, dated August 3, 2010, the applications for connection filed with Transelectrica, the transmission system operator (“TSO”) by the investors, refer to a power exceeding 11,000 megawatts (MW), and, currently, the national energy system can take over approximately 3,000 MW of installed power. According to TSO, efforts are made for the increase of the electricity transmission capacity.

According to ANRE regulations, in addition to the Construction Authorization, and the License, the wind farm operator:

1. must obtain from TSO:
 - a. Location Authorization – issued according to the Methodology Regarding the Issuance of Location Authorizations approved by the ANRE Order no. 48 of 2008;
 - b. Technical Connection Authorization – issued according to the Regulation Regarding the Connection of Users to Electric Grids of Local Interest, approved by the Government Decision no. 90 of 2008.
2. must obtain from ANRE:

A Qualification re the Electricity Priority Production – according to the Regulation regarding the Qualification of the Electricity Priority Production from Recoverable Electricity Sources, approved by the ANRE Order no. 39 of 2006.
3. must register with the TSO to obtain green certificates.

4. must register with the operator of the market energy (OPCOM) in order to sell renewable energy on the day-ahead market;
5. must register with the operator of the green certificates market (OPCV) in order to sell green certificates.

Green Certificates Market

According to the provisions of Law no. 139 of 2010 (“Law 139”) which amended Law no. 220 of 2008 Regarding the Establishing of the Promotion System of the Production of Energy from Renewable Energy Sources (“Law 220”), the Green Certificates are documents which certify the production of a certain quantity of energy from renewable sources.

Green Certificates are issued by the TSO, according to a procedure approved by ANRE. All Renewable Energy Sources (“RES”) power producers receive annually a certain number of green certificates according to the quantity of power they provide.

The RES power producers may sell the Green Certificates on the Green Certificates Market, which is currently regulated by Order no. 22 of 2006 of the President of ANRE Regarding the Approval of the Regulation for Organizing and Operating of the Green Certificates Market, which entered into effect on December 1, 2006.

All RES power producers must be in possession of a certificate of origin, a document indicating the renewable energy source, from which the power was produced, and showing the date, production place and installed power of the production capacity.

The Government Decision no. 1892 of 2004 regarding the System of Promotion of Production of Electric Power from Renewable Energy Sources (“Decision no. 1892”) as further amended, sets a system of mandatory quotas of energy resulting from renewable sources, which the suppliers of energy must acquire. Decision no. 1892 was repealed by the Government Decision no. 1479 of 2009 (Decision no. 1479), which establishes a new system. The system provided by Decision no. 1892 will still be in force until the new one, provided by Decision no. 1479, is authorised by the European Commission.

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