

# WATSON FARLEY & WILLIAMS

## BRIEFING

### NEW SUPPORT SCHEME FOR GREEK RENEWABLES: LAW 4414/2016 AUGUST 2016

- FEED-IN PREMIUMS
- EXEMPTIONS FROM FiP SCHEME
- NON-INTERCONNECTED ISLANDS
- REFERENCE TARIFFS
- COMPETITIVE BIDDING PROCESS FROM 2017



Law 4414/2016 (the "Law") on the new support scheme for renewable energy ("RES") and Co-generation of High-Efficiency Heat and Power ("CHP") was published on 9 August 2016.

The Law provides for the implementation of a new support structure for RES and CHP projects in Greece compatible with the EU Guidelines on State aid for environmental protection and energy 2014 – 2020. It also aims for a gradual integration and participation of RES and CHP projects in the electricity market on an optimal cost-benefit basis for society.

This Briefing outlines the key provisions of the Law applicable to RES projects. As can be seen, a number of Ministerial Decisions are expected that will add further detail on how the new regime will function in practice.

#### **Feed-in Premiums**

From 1 January 2016, the following shall apply to RES projects that enter into full or trial operation in Greece's Interconnected System or mainland Grid:

- RES projects will participate in the electricity market and be subject to settlement procedures in accordance with article 5 of the Law.
- Operating aid shall be granted in the form of a feed-in premium ("FiP") (essentially a contract for difference) or, exceptionally, feed-in tariff ("FiT")<sup>1</sup> for the

<sup>1</sup> Operating aid in the form of FiT will be granted to projects exempted from the FiP scheme: see "Exemptions from FiP scheme".

electricity generated and absorbed by the Interconnected System and mainland Grid.

- The FiP, which is calculated as the difference between the Special Market Price<sup>2</sup> and the applicable Reference Tariff ("RT")<sup>3</sup>, will be paid monthly on the basis of a Feed-in Premium operating aid Contract ("FiPC")<sup>4</sup> signed between the producer and the Hellenic Electricity Market Operator (known by its Greek initials as "LAGIE").
- Any investment aid granted to a project to cover capital expenses will be taken into account to reduce the operating aid for that project according to the methodology set out in the Law and the process to be set out in a decision of the Minister of Environment and Energy (the "Minister"), which shall be issued within three months from the Law entering into force. The reduction shall be made on the basis of the investment aid paid to the project company. Any investment aid granted to a project from a European funding programme is exempted from such process.

#### Exemptions from FiP scheme

The following projects entering into operation after 1 January 2016 are exempted from the FiP scheme and the obligation to participate in the electricity market:

1. Wind farms with an installed or maximum output capacity below 3 MW.
2. All other RES technologies with an installed or maximum output capacity below 500kW.
3. Demonstration projects installed by the Centre for Renewable Energy Sources (CRES), universities or research organisations or institutions within the framework of a programme and only for the duration of such programme<sup>5</sup>.

The operating aid will be granted to these projects on the basis of a FiT equal to the RT applicable<sup>6</sup> and the owners of such projects shall enter into a Feed-in Tariff operating aid Contract ("FiTC")<sup>7</sup> with LAGIE or the Hellenic Electricity Distribution Network Operator (which is also the market operator for Non-Interconnected Islands, known by its Greek initials as "DEDDIE"), as applicable.

By a decision of the Minister: (a) the installed or maximum output capacity limits of cases 1 and 2 above may be reduced; and (b) special limits of installed or maximum output capacity for projects on Non-Interconnected Islands may be introduced. In such case, the new reduced limits shall be taken into account for the determination of the type of operating aid contract that will be concluded after the end of one calendar year following the calendar year in which the Ministerial Decision was passed.

<sup>2</sup> The methodology for the calculation of the Special Market Price is provided in article 6 of the Law in combination with a Ministerial Decision that must be issued within three months from its entry into force. The same Ministerial Decision will set out the process for the settlement, invoicing and payment settlement relating to the FiP.

<sup>3</sup> The RT is a price on a €/MWh basis and is determined either according to table 1 of article 4.1(b) of the Law (depending on technology and/or category of the RES projects) or on a per-project basis based on a competitive bidding process.

<sup>4</sup> The type and contents of the FiPCs, as well as the conclusion procedure, will be set out in a Ministerial Decision on the proposal of LAGIE and the opinion of the Greek Regulatory Authority for Energy ("RAE").

<sup>5</sup> The inclusion of a project in this category takes place by a decision of RAE on the application of the project owner.

<sup>6</sup> The RT is determined either according to table 1 of article 4.1(b) of the Law (depending on technology and/or category of the RES projects) or on a per-project basis based on a competitive bidding process.

<sup>7</sup> The type and contents of the FiTCs, as well as the conclusion procedure, will be set out in a Ministerial Decision on the proposal of LAGIE or DEDDIE (as applicable) and the opinion of RAE.

### Non-Interconnected Islands

Until completion of the required infrastructure and the operation of intra-day electricity markets in Non-Interconnected Islands, all RES projects entering into full or trial operation after 1 January 2016 in Non-Interconnected Islands will be granted operating aid in the form of a FiT based on a FiTC concluded between the producers and DEDDIE. The projects' FiT will be equal to the RT applicable to the respective technological category according to table 1 of article 4.1(b) of the Law, or to the RT derived for that project from a competitive bidding process. The provisions on the reduction of the operating aid according to any investment aid granted to a project apply also to projects in Non-Interconnected Islands.

If a Non-Interconnected Island is connected to the mainland System and mainland Grid, all RES producers that have signed a FiTC and are not exempted from the FiP scheme (see "Exemptions from FiP scheme") as applicable to Non-Interconnected Islands will transfer to the FiP scheme and be subject to market participation obligations. For these purposes, they will enter into a FiPC for the remaining duration of their operating aid. A Ministerial Decision shall determine the transition process to the FiP scheme and any other relevant matter.

On completion of the appropriate infrastructure and the operation of the intra-day electricity market in a Non-Interconnected Island, all RES producers that have signed a FiTC – and do not meet any of the requirements for exemption from the FiP scheme as applicable to Non-Interconnected Islands – will transfer to the FiP scheme and participate in the electricity market of that Non-Interconnected Island. For these purposes, they will enter into a Non-Interconnected Islands FiPC<sup>8</sup> for the remaining duration of their operating aid. A Ministerial Decision will determine the transition process and the participation in the electricity market, the methodology for the calculation of the Special Market Price for Non-Interconnected Islands and any other relevant matter.

If a Non-Interconnected Island is connected to the mainland System and mainland Grid:

1. all RES producers that have signed a Non-Interconnected Islands FiPC and are not exempted from the FiP scheme (see "Exemptions from FiP scheme") will transfer to the FiP scheme and be subject to market participation obligations; for these purposes, they will enter into a FiPC for the remaining duration of their operating aid; and
2. all RES producers that have signed a Non-Interconnected Islands FiPC but are exempted from the FiP scheme (see "Exemptions from FiP scheme") will transfer to the FiT scheme; for these purposes, they will enter into a FiTC for the remaining duration of their operating aid.

A Ministerial Decision will determine the transition process to the FiP or FiT scheme and any other relevant matter.

<sup>8</sup> The type and contents of Non-Interconnected Islands FiPCs, as well as the conclusion procedure, will be set out in a Ministerial Decision on the proposal of DEDDIE and the opinion of RAE.

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“RES PROJECTS FOR WHICH POWER PURCHASE AGREEMENTS PROVIDED IN... LAW 3468/2006 WERE SIGNED ON OR BEFORE 31 DECEMBER 2015 WILL NOT BE SUBJECT TO THE NEW SUPPORT SCHEME AND THE OBLIGATION TO PARTICIPATE IN THE ELECTRICITY MARKET.”

The FiPCs and Non-Interconnected Island FiPCs for projects that had initially concluded a FiTC and transfer to the FiP scheme owing to the connection of the island with the mainland System or the operation of the intra-day electricity market in the island shall be subject to the RTs applicable to the FiTCs initially concluded for these projects. However, the Law provides that the RAE decision regulating a competitive bidding process may provide that the RTs of projects awarded by that tender will change on connection of the relevant Non- Interconnected Island with the mainland System.

#### **Transitional arrangements**

RES projects for which power purchase agreements provided in article 12 of Law 3468/2006 (“PPA”) were signed on or before 31 December 2015 will not be subject to the new support scheme and the obligation to participate in the electricity market, but will continue to be supported through the fixed feed-in tariff scheme set out in article 13 of Law 3468/2006, provided that these projects enter into full or trial operation by 31 December 2017 (or 30 June 2018 for wind, small hydroelectric and biomass or biogas projects). Any such project not commissioned or operating (as applicable) by the respective deadline will be remunerated under the new support system and be subject to market participation obligations (unless exempted from such obligation: see “Exemptions from FiP scheme”); any such project not commissioned or operating (as applicable) by the respective deadline will be exempted from the obligation to participate in a competitive bidding process provided that that project enters into full or trial operation by 31 December 2018. A Ministerial Decision shall determine the transition process of such projects to the new support scheme.

The Law also contains provisions entitling RES projects in the Interconnected System or mainland Grid with PPAs signed on or before 31 December 2015 and an installed capacity exceeding 5 MW to move to the market-based system and the FiP scheme by terminating their PPA and entering into a FiPC; the PPA term elapsed by the time of the PPA's termination will be deducted from the FiPC basic term (25 years for solar thermal, 20 years for all other projects). Their RT will be equal to the amount of the feed-in tariff received under the terminated PPA and they will be subject to the obligation of direct participation in the electricity market and all other relevant obligations set out in article 5 of the Law. A Ministerial Decision will determine the transition process of such projects to the new support scheme.

#### **Reference Tariffs**

The RTs, on the basis of which the operating aid in the form of FiP or FiT is calculated under the new support scheme, are set out in table 1 of article 4.1(b) of the Law for each type of technology and category (as an example, €98/MWh for wind farms, €278/MWh for solar thermal projects with at least two hours' storage capacity). These RTs do not apply to projects which have entered into a FiPC or FiTC on the basis of a competitive bidding process of article 7 of the Law; the RT for such projects, on the basis of which their FiP or FiT is determined, is the RT which derived from that competitive bidding process on a per-project basis.

The RTs set out in table 1 of article 4.1(b) can be amended by Ministerial Decision following an opinion of RAE in the first quarter of a calendar year; any new RT will apply to projects entering into full or trial operation after the end of one calendar year following the calendar year in which the Ministerial Decision was passed.

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“THE OPERATING AID FOR A RES PROJECT IS CALCULATED ON THE BASIS OF THE RT THAT APPLIES WHEN THE PROJECT ENTERS INTO FULL OR TRIAL OPERATION.”

The RTs may be increased for RES projects on Non-Interconnected Islands, offshore wind farms or onshore wind farms on rocky islets that include the installation of an undersea cable at the producer’s own cost, unless such projects are subject to a competitive bidding process. The Law sets certain limits for such increase.

The operating aid for a RES project is calculated on the basis of the RT that applies when the project enters into full or trial operation.

#### **Participation in the electricity market – balancing and other market obligations**

RES producers that have signed FiPCs will also apply to be registered with the Register of Participants kept with the Market Operator and to enter into: (a) a contract for Transactions relating to the Day-Ahead Schedule with LAGIE; and (b) a contract for Transmission Operator Transactions with the System Operator. Alternatively, they may elect to participate in the Day-Ahead Schedule Transactions and the Transmission Operator Transaction Systems through RES ‘aggregator’ service companies (known by the Greek initials as “FOSEs”) pursuant to a Representation Contract, in which case they shall notify their FOSE to LAGIE and the System Operator by means of a Representation Declaration. The entry into the Register of Participants or the entry into a Representation Contract with a FOSE and the submission of the Representation Declaration to LAGIE and the System Operator is a prerequisite for the payment of the operating aid in the form of a FiP. The Law provides the right to turn to a “last resort” FOSE (known by the Greek initials as “FOSETEK”) when FOSEs are unable to render their services; a Ministerial Decision will appoint the last resort FOSE and determine its obligations and operation regime.

**Balancing responsibilities.** RES producers with a FiPC registered with the Register of Participants or the FOSEs representing RES producers with a FiPC will undertake balancing responsibilities on the implementation of the electricity market reform according to the EU electricity target model (the “New Electricity Market”); such obligation will commence on the development and operation of an Intra-day Electricity Market of adequate flow within the framework of the New Electricity Market.

**Transitional phase.** In the transitional phase before the New Electricity Market has been completed, RES producers registered with the Register of Participants or FOSEs representing RES producers with a FiPC will be subject to separate obligations under the Generation-Demand Deviations Settlement as set out in the Hellenic Electricity Transmission System Administration Code (“System Administration Code”) and the applicable Manual; for RES producers represented by the FOSETEK, the settlement of deviations will be as set out in the Ministerial Decision appointing the FOSETEK.

During the transitional phase and until their balancing responsibilities have been implemented, RES producers registered with the Register of Participants or the FOSEs representing RES producers (with the exception of RES producers represented by the FOSETEK) will be subject to obligations relating to the optimal accuracy of their dispatch forecasts in the day-ahead market; the Law calls this process “Transitional Mechanism for Forecasts with Optimal Accuracy”. The operating details of the Mechanism will be set out in the System Administration Code.

A supplemental premium will be paid on a transitional basis to RES producers that have signed a FiPC in addition to the RTs of table 1 of article 4.1(b), depending on the operation of their projects within the framework of the Transitional Mechanism for Forecasts with Optimal Accuracy. Such supplemental premium (initially €3/MWh for

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“AS FROM 1 JANUARY 2017, OPERATING AID WILL BE GRANTED TO RES PROJECTS ON THE BASIS OF COMPETITIVE BIDDING PROCESSES.”

wind farms with installed nominal capacity below or equal to 10 MW, and €2/MWh for all other technologies) will be reviewed and may be reduced or withdrawn. Such premium will not be paid for: (a) projects that have transferred from the previous feed-in tariff system to the FiP system on their owners' application (please see "Transitional Arrangements"); (b) projects that have been selected through a competitive bidding process; and (c) projects that are represented by the FOSETEK. A Ministerial Decision – which will be issued within three months from the Law entering into force – will set out the criteria, limitations and any other matter in relation to the payment of this supplemental premium.

#### Photovoltaic (PV) projects

The RT for PV projects entering into operation on or after 1 January 2016 with an installed capacity below 500kW will be calculated according to the provisions of article 27A.3 of Law 3734/2009, as in force<sup>9</sup>, unless they participate in competitive bidding processes. PV projects with an installed capacity equal to or higher than 500kW can obtain operating aid only if they are selected through a competitive bidding process. Owners of PV rooftop projects of the Special Programme for the Development of Photovoltaic Systems on buildings continue to be governed by and remunerated according to the provisions of this Special Programme.

#### Competitive bidding process from 2017

As from 1 January 2017, operating aid will be granted to RES projects on the basis of competitive bidding processes. A Ministerial Decision, following an opinion of RAE, will determine the technologies and/or categories of RES projects that will be supported through competitive bidding processes and other details relating to the tender process. RAE is required to present its proposals to the Minister by 30 November 2016. RAE will conduct the tender process.

**PV projects – pilot tender process.** Within three months from the Law entering into force, RAE will initiate a pilot tender for new PV projects, intended to take place by the end of 2016. According to the Law, the pilot tender will be for at least 40 MW of capacity; the tendered capacity will be divided and allocated to PV projects subject to the obligation to obtain a Production Licence and small PVs exempted from such obligation<sup>10</sup>; however, the tendered capacity for such small PVs shall not exceed 20% of the total tendered capacity. The Law provides for a maximum tender price of €94/MWh for PVs with Production Licences and €104/MWh for PVs exempted from the obligation to obtain a Production Licence. The maximum capacity of each offer has been set to 10 MW. The producers participating in the pilot tender are required to have either a Grid Connection Agreement in force or a Final Grid Connection Offer in force (and have submitted the letter of guarantee provided in Law 4152/2013 or Law 4062/2012) by the time of submitting their application to take part in the pilot tender process. The Law includes transitional provisions regulating the validity and term of final grid connection offers issued for PV stations participating in the pilot tender. Specific time limits<sup>11</sup> are set within which PV stations

<sup>9</sup> Article 27A.3 of Law 3734/2009, as in force, currently provides the following tariffs: (a) PVs in the Interconnected System with a capacity higher than 100kW obtain a tariff equal to 1.3 multiplied by the average System Marginal Price of the previous year; and (b) PVs in the Interconnected System with a capacity equal to or lower than 100kW and PVs on Non-Interconnected Islands obtain a tariff equal to 1.4 multiplied by the average System Marginal Price of the previous year.

<sup>10</sup> PVs with an installed capacity equal to or lower than 1MWp.

<sup>11</sup> Eighteen months from the final award decision for PV stations with a capacity equal to or lower than 1MWp and 24 months from the final award decision for PV stations with a capacity above 1MWp. In the event that the validity of a permit necessary for the development of the project is suspended by court decision after the issue of the final award decision, these time limits will be extended for the duration of such suspension.

selected through the pilot tender process shall enter into full or trial operation (as applicable).

PV stations that have been included in the fast-track procedures of Law 3775/2009 and PV stations that have been included in the Strategic Investments Process of Law 3894/2010 will be subject to a special framework for their participation in competitive bidding processes that will refer to a maximum tendered capacity of 300 MW until 2020. Such special framework will be determined by a Ministerial Decision on the opinion of RAE.

#### Duration

Operating aid will be granted for the same period as the previous scheme, namely 25 years for solar thermal plants and 20 years for all other technologies.

## FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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