

BRIEFING

UPDATE ON THE SUPPORT MECHANISM
FOR FRENCH
ONSHORE WIND PROJECTS

JUNE 2017

- UNDER THE FRENCH ENERGY TRANSITION ACT, THE FIT HAS BEEN REPLACED BY THE CFD.
- A SPECIFIC SITUATION APPLIES FOR ONSHORE WIND PROJECTS.
- FOUR CATEGORIES OF PROJECTS NEED TO BE CONSIDERED.



The Energy Transition Act was adopted by the French Parliament on 22 July 2015 and published on 18 August 2015. In compliance with the new European guidelines on State aid for environmental protection and energy published by the European Commission on 28 June 2014 (the “European Guidelines”), the Energy Transition Act, with respect in particular to onshore wind farms and photovoltaic plants, provides for the gradual replacement of the existing support mechanism, the Feed-in-Tariff (the “FiT”), by a new support mechanism, the contract for difference (the “CFD”).

Specific situation for onshore wind projects

Initially, in compliance with the European Guidelines, the French government decided to continue to allow onshore wind projects to benefit from the FiT – which was approved by the European Commission in March 2014 – up to the end of 2018.

However, during the summer of 2016, this retaining of the FiT for onshore wind projects as of 1 January 2016 was challenged by the European Commission¹. In addition, the French Association Vent de Colère challenged Decree 2016-691 dated 28 May 2016 defining this transition regime and, in particular, the possibility for onshore wind projects to continue benefitting from the FiT.

¹ Due to the modification by the French government of the specific contribution (“*CSPÉ*”) financing this FiT as from 1 January 2016.

“THE FRENCH GOVERNMENT RECENTLY COMPLETED THE REGIME APPLICABLE TO ONSHORE WIND PROJECTS.”

In this context, and in order to avoid any uncertainty relating to the applicable support mechanism, the French government decided to speed up the replacement of the FiT by the CFD. Accordingly, a ministerial order dated 13 December 2016 providing the CFD rules for 2016 was published by the French Ministry for Energy on 14 December 2016 (the “2016 CFD Order”). The French government recently completed the regime applicable to onshore wind projects with the publication of: (i) Decree 2017-676 on 30 April 2017; (ii) the auction specifications on 5 May 2017 (the “Auction CFD”); and (iii) a new ministerial order on 10 May 2017, defining the CFD rules as from 2017 for small onshore wind projects (the “2017 CFD Order”).

Four categories of projects to be considered

As a result, the situation can be summarised as follows.

1) Projects that remain eligible for the FiT, provided that: (i) the installations benefited from a power purchase agreement (“PPA”) application *or* a power purchase certificate² *before 1 January 2016*; and that (ii) they will have been completed within the deadline defined by Decree 2016-691 dated 28 May 2016³. In this respect, please note that, on 16 December 2016, the French government also published a new decree that complements the provisions of Decree 2016-691 dated 28 May 2016.

Pursuant to these provisions, the completion deadline provided by Decree 2016-691 dated 28 May 2016 can be extended if the commissioning of the installations is delayed by: (i) the time necessary for the completion of the grid connection works; or (ii) in the event that claims against permits relating to the installations delay their completion. In such cases, an additional period of time, equivalent to the delay resulting from the grid connection works or the duration of the litigation, is granted by the French Ministry for Energy at the request of the power producer. If an event of force majeure occurs, the completion deadline provided by Decree 2016-691 dated 28 May 2016 can also be extended by decision of the French Ministry for Energy and for a period of time decided on a case-by-case basis by the Ministry.

2) Projects that were eligible for the 2016 CFD Order, i.e. projects for which:

1. a complete PPA application was filed after 1 January 2016 and the anticipated execution of the PPA occurred, at the latest, by 15 December 2016;
2. a complete PPA application was filed between 1 January 2016 and 31 December 2016, without the anticipated execution of the PPA; or
3. a complete CFD application was filed no later than 31 December 2016 and the construction works have not already started (or have not been definitively ordered rendering the investment non-reversible) before the date of such application.

The 2016 CFD Order will be abrogated on 30 July 2017 (Decree 2017-676). In practice, it means that the power producer can continue to file an application for the 2016 CFD Order until *29 July 2017* for installations in the above-mentioned categories 1 and 2. In this respect, the threshold of six WTGs of 3 MW each (see point 3 below) does not apply to those installations eligible for the 2016 CFD Order for which a CFD application was filed before 29 July 2017.

² As provided under article 4-II of Decree 2017-676 dated 28 April 2017.

³ i.e. at the later of: (i) three years following the PPA application date; and (ii) 30 November 2017.

“THE FRENCH MINISTRY FOR ENERGY CAN GRANT A DEROGATION TO THIS RULE IF THE POWER PRODUCER CAN DEMONSTRATE THAT THE SPECIAL PURPOSE VEHICLES OWNING THESE INSTALLATIONS ARE COMPLETELY INDEPENDENT.”

3) Projects eligible for the 2017 CFD Order, i.e. projects: (i) comprising up to six WTGs with an installed power capacity of less than or equal to 3 MW per WTG; (ii) for which no construction work has started (or have not been definitively ordered rendering the investment non reversible); (iii) that have obtained an environmental authorization; and (iv) for which a complete 2017 CFD application was filed after 1 January 2017, bearing in mind that the threshold of six WTGs of 3 MW each should apply only to CFD applications filed after 30 April 2017.

Please note that the 2017 CFD Order defines a “1,500m” rule to determine the number of WTGs of an onshore wind farm. In this respect, to be eligible for the 2017 CFD Order, an installation has to be located, on the date of the CFD application, more than 1,500m from other installations existing or under project for which a CFD application on the basis of the 2017 CFD Order was filed within two years of the filing of the CFD application for the installation in question. The French Ministry for Energy can grant a derogation to this rule if the power producer can demonstrate that the special purpose vehicles owning these installations are completely independent.

4) Projects eligible for the Auction CFD, i.e. projects for which no construction works have started (or have not been definitively ordered rendering the investment non-reversible) before the submission of the offer, which have obtained an environmental authorisation (except for the offer submitted during the first session of the auction): and (i) with at least seven WTGs; (ii) comprising at least one WTG of higher than 3 MW; or (iii) installations for which a CFD application has been rejected by EDF on the basis of the 2016 CFD Order or the 2017 CFD Order.

Main characteristics of the 2016 CFD Order

- Sale of electricity on the wholesale market, mainly through contracts concluded with aggregators.
- CFD concluded with EDF.
- Target remuneration of the electricity equivalent to the existing FiT (i.e. €82/MWh, L and K indexations, decrease during the last five years/2,400 hours threshold rule).
- Management premium: €2.8/MWh.
- CFD duration: 15 years.
- Monthly payment.
- In the event of negative prices of more than 20 hours (consecutive or not) during a calendar year and if the installation has not produced during the period of negative prices, the power producer receives compensation (calculation formula to be reviewed).
- Completion of the projects within three years as from the PPA application (category 1 of installations) or the CFD application (categories 1 and 2 of installations)/For one month of delay, one month of reduction of the CFD duration/Possible extension of the deadline in the event of litigation, grid connection delay or force majeure event.

Main characteristics of the 2017 CFD Order

- Sale of the electricity on the wholesale market, mainly through contracts concluded with aggregators.
- CFD concluded with EDF.
- Environmental authorisation required for the filing of a CFD application.

“IN THE EVENT OF NEGATIVE PRICES OF MORE THAN 20 HOURS (CONSECUTIVE OR NOT) DURING A CALENDAR YEAR AND IF THE INSTALLATION HAS NOT PRODUCED DURING THE PERIOD OF NEGATIVE PRICES, THE POWER PRODUCER RECEIVES COMPENSATION.”

- Target remuneration of the electricity: between €72/MWh and €74/MWh depending on the rotor diameter.
- Definition of an annual production threshold (depending on the rotor diameter) above which the target remuneration is €40/MWh.
- Management premium: €2.8/MWh.
- CFD duration: 20 years.
- Monthly payment.
- In the event of negative prices of more than 20 hours (consecutive or not) during a calendar year and if the installation has not produced during the period of negative prices, the power producer receives compensation (calculation formula to be reviewed).
- Completion of the projects within three years as from the CFD application/For one month of delay, one month of reduction of the CFD duration/Possible extension of the deadline in the event of litigation, grid connection delay or force majeure event.

Main characteristics of the Auction CFD

- Six auction sessions between November 2017 and June 2020 each organised for 500 MW/Submission deadline for the first session: 1 December 2017.
- Sale of the electricity on the wholesale market, mainly through contracts concluded with aggregators.
- CFD concluded with EDF.
- Environmental authorisation needed to file an offer (except for the first session).
- Target remuneration defined in the offer/Cap of €74.8/MWh/Price is the sole notation criteria.
- Premium for crowd funding solution (between €2 and €3/MWh).
- No management premium.
- CFD duration: 20 years.
- Monthly payment.
- Construction bank guarantee to be constituted after the awarding decision for €30,000/MW.
- In the event of negative prices of more than 20 hours (consecutive or not) during a calendar year and if the installation has not produced during the period of negative prices, the power producer receives compensation (calculation formula to be reviewed).
- Completion of the projects within three years as from the awarding decision/For one month of delay, one month of reduction of the CFD duration/Possible extension of the deadline if an unforeseen event occurs.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with the author, Laurent Battoue, or your regular contact at Watson Farley & Williams.



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