Tilleke & Gibbins
Vol. 11 No. 3 August 2020

Informed Counsel

Analysis of Recent Legal Developments in Southeast Asia

contents

Renewables in CLMVT and the Potential for Wind Power

With interest in renewable and sustainable energy sources rapidly increasingly worldwide, the nations of the Mekong region are beginning to incorporate innovative power generation options into their electrical grids and, more significantly, into their growth plans for the future. As a result, wind energy, formerly one of the least-utilized options in the hydro and solar dominated region, is beginning to see a considerable uptick in interest from investors and governments in the region alike. In this article, we take a country-by-country look at the renewable energy frameworks in the Mekong region, and dive into the potential for wind power in Cambodia, Laos, Myanmar, Vietnam, and Thailand.

Cambodia

Cambodia has shifted from a heavy dependence on fossil fuels to a greater reliance on hydro sources, with only 37% of the country's power now derived from fossil fuels. Approximately 33% of Cambodia's total energy produced is sourced from hydropower, 26% from imports, and the remaining 2% sourced from other renewable energies (predominantly solar). At present, there are no major large-scale wind farms in Cambodia, although they are known to be viable and there is potential for development in future.

Government target for renewables in Cambodia

Instead of hard and specific targets for renewable energy, Cambodia has set general objectives for energy sector development as a whole. These objectives include providing an adequate supply of energy to the country, encouraging environmentally and socially acceptable energy resources, and encouraging efficient use of energy.

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Tilleke & Gibbins Wins Four Awards at 2020 MIP Awards

On June 18, 2020, *Managing Intellectual Property* (MIP) revealed the winners of its annual Asia-Pacific Awards, which recognize the top IP firms in the Asia-Pacific region. Tilleke & Gibbins' leading intellectual property practice performed exceptionally well, winning four Firm of the Year Awards.

The MIP awards are well regarded in the intellectual property field for their in-depth and accurate reflection of the IP market. MIP is one of the world's top intellectual property publications, and is best known for its highly-regarded *IP Stars* firm rankings and annual awards

Tilleke & Gibbins had been shortlisted for the regional awards alongside many global firms, and although Tilleke & Gibbins' offices are in some of the Asia-Pacific's smaller legal markets, the MIP research team recognized that the quality, breadth, and consistency of the firm's work had yielded superior results for clients.

Tilleke & Gibbins' Firm of the Year awards for Thailand and Vietnam continue a run of success at the MIP Awards, marking the firm's eighth Firm of the Year award for Vietnam, and ninth for Thailand.

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To meet these goals, the country is committed to importing low-cost power from neighboring countries, attracting private investment in large-scale energy projects (both fossil fuel and renewable), and commercializing the state electricity power supplier, Electricité du Cambodge (EdC).

The key objectives of the Renewable Energy Policy, released in 2006, are to ensure all rural villages have access to electricity by 2020 and to ensure 70% of households have access to the country's electricity grid by 2030. The Rural Electrification Fund, formed in tandem with the World Bank in 2005 to facilitate access to electricity for rural households, has helped fund the distribution of solar power units to rural homes not yet on the grid.

The 2018 draft Environment and Natural Resource Code, developed by the Ministry of Environment, also outlines general energy sustainability objectives, including the eventual adoption of clear sustainable energy targets.

Potential for wind power projects

Though Cambodia's wind energy potential remains largely unexplored, EdC announced its interest in developing a wind farm project after feasibility studies revealed wind power potential in Mondulkiri and Kampot provinces. They intended to partner with a French energy firm to build 10 wind turbines (amounting to 80 MW of wind power) atop the country's Bokor Mountain. A deal was scheduled to be struck by June 2020, but news reports suggest that the EdC and the developer remain in negotiations for the power purchase agreement.

Though there are no significant wind projects currently operating in Cambodia, the government has stated in the past that wind energy has potential in the country, noting in a 2011 report by the Ministry of Industry, Mines, and Energy that wind speeds at ground level in Cambodia reached an average of five meters per second—just meeting the threshold for economic viability of standard wind turbines.

Regulatory framework

In Cambodia, the main energy players are EdC, which is owned jointly by the Ministry of Mines and Energy and the Ministry of Economy and Finance), and the Electricity Authority of Cambodia (EAC), the sector regulator responsible for granting licenses and setting electricity rates.

While there are no regulations specifically targeting wind power in the country, some current regulations—especially those already tested in the solar sector—are expected to apply equally to the wind energy sector.

Under Cambodia's Electricity Law, power may not be generated for sale without a license. All generated power for sale under such a license must typically be sold to EdC and distributed through the EdC network. Generation of power for one's own consumption must be done completely off-grid.

Another potential regulatory limitation imposed on wind energy is Cambodia's legal provisions against nuisance, outlined in the Civil Code. As wind turbines cause noise pollution, there may be grounds for suits against wind farms that are seen as a nuisance to neighbors. While no such case has been filed in Cambodia, similar arguments have been made against wind energy projects in other jurisdictions.

Laos

Laos has significant potential for renewable energy, although the government has primarily focused on hydropower to help realize their vision of making Laos the "battery of Southeast Asia," along with biomass energy, which was a significant topic of focus in the 2011 Renewable Energy Development Strategy in Lao PDR.

Solar and wind energy are considered to have less slightly less potential in Laos than other ASEAN members due partly to the country's geography. However, the country's sun-filled dry season has encouraged the public and private sectors to explore solar energy over hydropower energy, and there is an even stronger push for growth in wind energy to take advantage of the country's mountainous highlands.

Government target for renewables in Lao

The 2011 renewable energy strategy aims for 30% of energy consumption to be sourced from renewables (excluding large hydropower plants) by 2025. During the 2020–2030 period, the country is also expected to be a significant exporter of renewable energy—mainly to Thailand, Cambodia, and Vietnam, with smaller amounts to Myanmar and Malaysia. Singapore has also expressed interest in buying energy from Laos.

The Ministry of Energy and Mines' official development plan and vision targets hydropower plants producing 10,000 MW by 2020, 12,000 MW by 2025, and 20,000 MW by 2030, with the aim of high regional exports. To counteract the loss of production during the dry season, the solar power targets are for 100 MW by 2020, 300 MW by 2025, and 600 MW by 2030, while the wind power targets are substantially higher, at 250 MW by 2020, 600 MW by 2025, and 1,500 MW by 2030.

Potential for wind power projects

Detailed assessments have yet to be conducted, but the Asian Development Bank has noted estimates for potential wind power production of 3,000–3,500 MW in Laos. Laos' 2011 renewable energy strategy states that the country's central provinces—particularly the high mountainous areas along the Lao-Vietnam border in Khammouane and Savannakhet provinces—may be well suited for wind energy production.

For this reason, private companies have started to invest heavily in wind power projects in Laos. The biggest, which has attracted investment of USD 840 million, is scheduled to be operational by 2023, with a capacity of 600 megawatts.

Regulatory framework

In the absence of a framework for public-private partnership, the local authorities have devised a concessionary model whereby local authorities grant land for a project. Although not required by law, it is common for the government to hold some equity. Important concession projects are based on build-operate-transfer and build-own-operate-transfer schemes. As the current concessionary framework—which has proven effective for hydropower projects—does not specifically address wind projects, a regulation concerning wind projects is being drafted.

The Law on Investment Promotion No. 14/NA, dated November 17, 2016, is the main regulation for energy field investment in Laos, and it includes a list of investment incentives that vary based on the zone where the investment is made—for instance, investment in remote areas with relatively undeveloped infrastructure may be granted more incentives. There are also special economic zones, which have their own incentive frameworks.

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Myanmar

With the lowest electrification rates in the region—50% as of December 2019—Myanmar's renewables landscape is indelibly tied to its goal for complete electrification, which is set to be complete by 2030. The Myanmar Energy Master Plan of 2016 looks to build and strengthen the renewables sector while pursuing that goal, making projections for Myanmar's long-term energy demand, and corresponding potential for renewable energy production, up to 2035.

Government target for renewables in Myanmar

Myanmar had a total primary energy supply of 23 million tons of oil equivalent in 2018. To promote renewable energy and support nationwide electrification, the National Renewable Energy Committee, (consisting of nine ministries, one regional council, two city development committees, and five organizations) was formed on February 6, 2019, to implement renewable energy projects in Myanmar. At present, there are a number of proposed renewable energy projects under consideration of the Ministry of Electricity and Energy (MOEE), including 61 solar power projects in eight regions and states with a total capacity of 5,746.37 MW, seven wind power projects in four regions with a total capacity of 1,163 MW, and six biomass projects for 200 MW in four regions and states.

Potential for wind power projects

It is anticipated that the theoretical generation potential of wind power could be in the order of 365.1 terawatt-hours per year, and wind power projects can potentially be developed in Chin, Kayah, Kayin, Mon, Rakhine, and Shan States, as well as Ayeyerawady, Tanintharyi, and Yangon Regions. As of November 2018, there were ongoing wind energy feasibility studies in three regions and six states.

The MOEE has conducted feasibility studies in Tanintharyi Region and Mon, Kayah, Kayin, and Shan States in cooperation with Thailand-based company Gunkul Engineering Public Co., Ltd., and in Rakhine State and Ayeyawady and Yangon Regions with Singapore-based Asia Ecoenergy Development and a locally owned company, Primus Advanced Technologies Ltd.

In addition, feasibility studies were conducted in Chin and Rakhine States and Ayeyawady Region with China Three Gorges Corporation.

Regulatory framework

Despite attempts to promote this sector, Myanmar still lacks regulations on renewable energy. The Electricity Law (Pyidaungsu Hluttaw Law No. 44), which was enacted in 2014, governs overall principles of electricity operations in Myanmar and does not provide any specific provisions on renewable energy. In Myanmar, the operation of medium and small power projects with a capacity of less than 30 MW requires permission from state and regional governments, while large-scale power projects require approval from the MOEE and the Myanmar Investment Commission.

However, in a recent interview, a chief engineer from the Department of Renewable Energy and Hydropower Plants under the MOEE reported that Myanmar is currently drafting a renewable energy law to develop the renewable energy sector.

Thailand

Government target for renewables in Thailand

On March 19, 2020, the National Energy Policy Council approved a number of revisions and draft plans regarding power production, development, and efficiency goals for Thailand. The draft plans will next go before the cabinet for further consideration before they are implemented.

One of these is the revised 2018 power development plan for 2018 to 2037 (PDP2018 Rev. 1), which maintains its target for power production capacity of 77,211 MW in 2037, of which 21% of the country's power production is expected to come from renewable energy. The other sources include natural gas (53%), coal and lignite (11%), and hydropower (9%), plus a 6% savings from energy conservation. Notably, the PDP2018 Rev. 1 also accelerates the planned purchase of power from wind energy to 2022 from the previous schedule of 2034.

Potential for wind power projects

The Energy Regulatory Commission (ERC) regularly releases data on the status of wind power projects in Thailand. As of July 2020, a total of 32 wind power projects have begun commercial operations, with a total selling capacity of about 1,460 MW. Of these, 22 "small power producers" (SPPs; referring to a 10–90 MW generation capacity) have signed wind Power Purchase Agreements (PPAs) with the Electricity Generation Authority of Thailand, with a total selling capacity of 1,421 MW. Eight "very small power producers" (VSPPs) have signed wind PPAs with the Provincial Electricity Authority (PEA) or Metropolitan Electricity Authority (MEA), with a total selling capacity of 36.86 MW; two wind farm projects developed and operated by the Department of Alternative Energy Development and Efficiency have a total selling capacity of 1.75 MW; and two VSPPs have signed PPAs with the PEA, with a total selling capacity of 16 MW.

Investors can secure a wind PPA in one of two ways—by acquiring shares in a company that is a party to a wind PPA; or by a PPA novation, which means accepting rights and assuming obligations from an existing party to the PPA. Under the share acquisition scenario, acquiring 100% of the shares in an existing party to a wind PPA is normally possible, though sometimes the ERC restricts or limits such transfers within a certain period after the signing of the PPA. A PPA novation, on the other hand, requires written consent from the relevant government offtaker. There is also a specific requirement regarding assignment of PPAs, as stipulated in the relevant ERC regulations and notifications.

Regulatory framework

The three government "offtakers" (that is, purchasers of electricity from power plants) in Thailand are the Electricity Generating Authority of Thailand, the MEA, and the PEA. Power producers are not entitled to sell electricity generated by their plants to the government offtakers unless the two parties have entered into a PPA that follows the form and substance prescribed by the respective government offtaker and the ERC.

Each government offtaker will solicit applications for new PPAs from time to time, based on government policies and current demand. While there are currently no outstanding solicitations for new wind PPA applications, as noted above, it seems likely that the ERC will announce new solicitations of wind PPA applications in the near future.

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Vietnam

Wind energy accounts for a very small share of Vietnam's total electricity output. Nevertheless, the government of Vietnam has set specific targets to promote it, and has issued a number of regulations aimed at clarifying the legal framework and incentives for the development of wind projects, including a competitive feed-in tariff (FIT).

Government target for renewables in Vietnam

The country's Power Development Plan VII, covering the 2011–2020 period and looking ahead to 2030, includes plans to prioritize renewable sources for electricity production. For wind energy, the government targeted a total installed capacity of 800 MW by 2020 and 6000 MW by 2030, accounting for a 0.8% share of produced electricity in 2020, 1% in 2025, and 2.1% in 2030. The next power development plan, which is currently being developed, will cover 2021–2030, looking ahead toward 2045.

Potential for wind power projects

Vietnam's potential for wind power projects is substantial, with natural conditions suitable for wind power, particularly in the south and south-central regions. In addition, the country's long coastline, much of which has a relatively shallow seabed, is conducive to offshore wind installations. However, despite promising resources, the renewable energy market is still very limited, with few wind power projects in operation. The government hopes to change this situation with a legal framework encouraging and supporting the development of wind power projects in Vietnam.

Key regulatory framework

Under the laws of Vietnam, a wind power project can only be developed if it has been included in the master power plan. Under the new Law on Planning, which governs planning from January 1, 2019, there is to be a national power plan and provincial master plans (mandatory for all provinces) with sections on power in line with the national power plan—all of which are subject to the final approval of the prime minister. The national power plan is developed by the Ministry of Industry and Trade, while the provincial plans are developed by each province and appraised by the Ministry of Planning and Investment.

Currently, Vietnam Electricity (EVN) and its subsidiaries have a monopoly over the transmission and distribution of electricity in Vietnam, and act as the only wholesale purchasers of electricity from generators. Investors are required to sign power purchase agreements (PPAs) with EVN to sell electricity. From November 1, 2018, the FIT for utility wind power projects is USD .098 per kWh for offshore projects and USD .085 per kWh for onshore projects. For new wind power plants (or the relevant parts of them) that achieve a commercial operation date (COD) before November 1, 2021, these FIT rates will stand for 20 years from the COD. For existing wind power plants that were generating power before September 10, 2018, the FIT rates will stand for the remaining term of the PPA.

The development of a wind power project follows a four stage process. The first stage entails project preparation, such as obtaining a decision on inclusion in the master power plan, an investment registration certificate, and an enterprise registration certificate. Stage two involves construction preparations, such as obtaining land use rights and securing environmental impact assessment approval, construction permits, and PPA. The next stage is the actual construction of the project, and the final stage is operation (which also means obtaining a license for electricity generation).

There is no generally applicable limitation on foreign ownership in the renewable energy sector. At present, foreign investors can own up to 100% of equity in power projects in Vietnam.

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