

IMPLEMENTATION OF PROJECTS IN THE AREA OF RENEWABLE ENERGY SOURCES (RES)

The rapid development of the energy sector in the Republic of Kazakhstan forced the state to actively focus on creating conditions for the use of renewable energy sources. EXPO-2017 have become an additional incentive for the development of renewable energy projects. However, the renewable energy sector is, relatively young in Kazakhstan and there are a number of issues that need to be discussed. Some of them we would like to discuss below.

1. State Support to RES

One of the main legislative acts that regulate operations in the area of RES is *the Law of the Republic of Kazakhstan 'On Support of Using Renewable Energy Sources', dated 4 July 2009* (hereinafter – the '**RES Law**'). The state regulation in the area of RES is mainly focused on the development of favourable conditions for the construction and operation of RES facilities, as well as the promotion of the power production through RES. In this regard, and based on the RES Law, the following types of state support for legal entities using or intending to use RES facilities can be distinguished:

- 1) investment preferences in accordance with the business legislation (where the construction of a RES facility is an investment project within the framework of the legislation);
- 2) setting fixed tariffs for the purchase of electricity from the energy producing company for the period of 15 years after beginning of electricity supply.

In accordance with the Article 7-1 of the RES Law, the accounting and financial centre (AFC) undertakes to purchase electricity received through RES facilities at a fixed tariff established as of the date of signing the contract for the purchase of electricity or at auction price in view of the annual indexation of the tariff.

Thus, fixed tariffs are approved by the Government of the Republic of Kazakhstan for a period of 15 years. Approved fixed tariffs are subject to indexation in view of inflation and changes in the exchange rate, in the procedure established by regulatory enactments.

As of the current date, fixed tariffs are established by the *Resolution of the Government of the Republic of Kazakhstan, dated 12 June 2014*, as follows:

# #	RES Technology Used to Generate Electricity	Tariff Amount, tenge/kWh (excluding VAT)
1	Wind power stations, except for a fixed tariff for the project of a wind power station 'Astana EXPO-2017' with a capacity of 100 MW, for wind energy conversion	22.68
1-1	Wind power stations 'Astana EXPO-2017' with a capacity of 100 MW for wind energy conversion	59.7
2	Photovoltaic solar energy converters, except for a fixed tariff for solar power plant projects using photovoltaic modules based on Kazakhstani silicon (Kaz PV), for solar energy conversion	34.61
3	Small hydroelectric power stations	16.71
4	Biogas plants	32.23

Depending on the project financing structure and economic feasibility, fixed tariffs are subject to indexation taking into account the change in the exchange rate of the national currency. The law does not establish exact criteria to determine whether a project is subject to such indexation.

However, in accordance with the *Rules for Determination of Fixed Tariffs* approved by the *Resolution of the Government of the Republic of Kazakhstan* dated 27 March 2014 (hereinafter - the '**Rules**'), indexation associated with changes in the exchange rate (and additionally with inflation) is provided for the projects with credit commitments in foreign currency and, in case, the change in the exchange rate is 25% or higher compared to the previous year.

Thus, we can conclude that the indexation of fixed tariffs for a RES facility associated with a modification in the exchange rate of the national currency applies only in the certain cases established by the Rules and will not apply in other circumstances such as a foreign entity's interests in the energy producing company, purchase of equipment in foreign currency.

The newly introduced option for the sale of electricity from RES is its realization at auction prices by AFC. Auction prices are also subject to annual indexation in accordance with the established procedure, with the exception of indexation due to the change in the exchange rate of the national currency to foreign currencies.

Auction price is the price for the purchase of electric energy produced by the facility for the use of RES, determined on the results of auction sales and not exceeding the level of the corresponding marginal auction price by the calculation and financial centre. Auctions shall be carried out by a legal entity determined by the Ministry of Energy of the Republic of Kazakhstan and aimed to the selection of projects for the construction of new RES facilities taking into account the plan for placing the facilities.

At the meantime, according to Article 11-1, the provisions regulating the use of fixed tariffs apply only to contracts executed by the AFC before adoption of provisions on the application of the auction price. Changes lead to the fact that the purchase of electricity AFC from the date of the changes is supposed to be on a competitive basis (the contract for the purchase of electricity will be executed directly with the winner of the auction). Thus, the existing system of support for the use of renewable energy sources in the form of a guaranteed purchase of electricity AFC for 15 years at fixed rates is excluded and can only be applied to previously executed contracts.

Please also note that the energy producing company may choose a different method for selling electric energy, rather than the sale thereof to the AFC established by the state. Pursuant to Article 9 of the RES Law, an energy producing company has the right to choose the method for selling electric energy to consumers at the contract prices under the concluded bilateral agreements. Thereat, the company that sells electricity to consumers cannot transfer the sale of electric energy to the AFC.

Auctions

The Rules on organization and conducting of auctions, including the qualification requirements for the auction participants, the content and procedure for filing an application, the types of financial security for the application for participation in the auction and the conditions for its payment and return, the procedure for summing up the results and determining the winners dated 21 December 2017 (the "**Auction Rules**").

According to the Auction Rules of the Ministry of Energy of the Republic of Kazakhstan, publication Schedule (the "**Schedule**") of the auctions should be placed at least three months before the auction for the current year at the website. Acceptance of documents and registration of the participants shall be carried out according to the Schedule.

The participant of the auction shall apply for registration through the website and provide the following documents in the electronic form:

- copy of the Charter
- copy of the certificate of state registration/reregistration of the legal entity
- copy of the resolution on appointment of chief executive officer
- power of attorney for representative
- bank details, address, telephone numbers, emails of the legal entity

- document, confirming payment of financial security. The financial security may be a bank guarantee or stand-by letter of credit

Foreign legal entities shall provide with the similar documents of its country with notarized translation in Kazakh and Russian. Participant of the AFC shall submit the original of the documents at least two business days before the start of the auction.

After the documents submission, within two business days organizer of the auction confirms the status of the participant and sends the identifier and password to participant for the access to the system of electronic auction.

The participant and organizer shall execute the agreement stipulating the following:

- 1) the subject of the agreement, the types of services provided by the organizer, the terms and procedure for payment;
- 2) the criteria and requirements for the applicant to participate in the auction and admission to the auction;
- 3) methods of conducting auction;
- 4) responsibility of the parties to the contract for violation of the terms of the agreement.

Auctions are carried out in the form of unilateral auction. Trading session shall be within the term established by the Schedule and last for three hours.

The procedure of trade session includes:

- 1) opening by the Organizer of the trading session;
- 2) submission by participants of applications for participation in auction in the trading system;
- 3) closing by the organizer of the trading session;
- 4) summing up the results of auction, including the determination of auction prices;
- 5) formation by the organizer of the auction winners registration and their publication on the website.

The application for auction shall specify:

- 1) the name of the participant;
- 2) the price of electricity for one kilowatt-hour without VAT, indicated in the national currency of the Republic of Kazakhstan with the number of significant digits when the dividing mark is not more than two;
- 3) the amount of installed capacity is not less than 100 kilowatts and a multiple of 1 (one) kilowatt;
- 4) the land plot planned for the construction of the facility for the use of RES, and the point of connection to the electrical network.

At the same time participants possessing a land plot and (or) a point of connection to the electric grid, in accordance with the technical specifications for connection to the electric grid the relevant data should be indicated in the application. The applications shall be submitted by the participants within trading session. Prices indicated in applications shall not exceed marginal auction price.

Pursuant the *Order of the Minister of Energy of the Republic of Kazakhstan on Approval of Auction Prices* dated 30 January 2018, the following marginal prices are established:

#	RES Technology Used to Generate Electricity	Tariff Amount, tenge/kWh (excluding VAT)
1	Wind power stations for wind energy conversion	22.68
2	Photovoltaic solar energy converters for solar energy conversion	34.61

3	Small hydroelectric power stations	16.71
4	Biogas plants	32.23

After trading session, within one hour organizer shall send electronic notification to the participants regarding the results of auction. Registration of the winners is placed on the website of the organizer with indication of auction prices and volume of capacity of RES. The information on auction shall also be sent by the organizer to the government body. Within 5 business days, the government body includes the winners in the plan of placing of RES objects and in the list of the energy producing companies using RES.

Standard Contract for the Purchase of Electricity by the Accounting and Financial Centre

Based on the documents provided by the energy producing company, the AFC drafts a contract for the purchase of electricity at the fixed tariffs in the standard form provided for by law.

The form of the standard contract for the purchase of electricity by the AFC is established by the *Order of the Minister of Energy of the Republic of Kazakhstan* dated 2 March 2015. The draft contract includes a fixed tariff established by the legislation as of the date of the contract conclusion. At the same time, when indexing tariffs as stated above in accordance with the Rules, the parties shall respectively amend the contract concluded by signing an additional agreement.

The contract also provides that conditions thereof can only be changed by the agreement between the parties, which allow suggesting that the standard form of the contract, although being obligatory, can nevertheless be supplemented and amended by the parties upon their agreement.

The winners of the auction shall apply to AFC for contract execution within 60 calendar days from the date of inclusion to the list of energy producing companies using RES according to Paragraph 8 of the *Rules for the Centralised Purchase and Sale by the Accounting and Financial Centre of Electric Energy Produced by the Renewable Energy Sources Facilities* dated 2 March 2015 (hereinafter - the '**Purchase Rules**').

2. Obligations Connected with the Conclusion of the Contract for the Purchase of Electric Energy with the AFC

Obligations of the energy producing company related to the conclusion of the contract for the purchase of electric energy by the AFS are established by the Purchase Rules.

In this case, the purchase procedure and obligations of the energy producing company are established depending on the status of the RES facility:

1. For newly commissioned (new) RES facilities - RES facilities commissioned after 21 July 2013, for which no feasibility study on the construction of the RES facility was approved and agreed with the competent authority for the implementation of the state policy in the area of RES use support or a local executive authority before 21 July 2013.
2. For existing RES facilities - RES facilities commissioned during the period July 2009 through 21 July 2013, for which there are contracts for the purchase and sale of electric energy signed with regional electric grid companies and/or a system operator and for which a feasibility study on the construction of the RES facility was approved and agreed with the competent authority for the implementation of the state policy in the area of RES use support or a local executive authority before 21 July 2013.
3. For RES facilities having feasibility study - RES facilities, for which a feasibility study on the construction of the RES facility was approved and agreed with the competent authority for the implementation of the state policy in the area of RES use support or a local executive authority before 21 July 2013 and which were commissioned after 21 July 2013.
4. For reconstructed RES facilities - RES facilities reconstructed after 21 July 2013 with replacement of the existing main generating equipment, provided that the cost of the new equipment introduced at the reconstructed facility is not less than fifty percent of the book value of the reconstruction object as of the commencement of the facility reconstruction as confirmed by the audit organisation.

5. For new RES facilities at the auction prices.

For new RES facilities and non-commissioned RES facilities supported with the feasibility study, the following obligations are stipulated. Upon signing the contracts, the energy producing company undertakes to provide:

- 1) a copy of the notice of the commencement of construction and installation works on the RES facilities, in which respect the purchase contract is signed, which was sent to the state authority exercising state architectural and construction control - within 18 (eighteen) months after signing the purchase contract;
- 2) a copy of the act of acceptance of the RES facility approved in accordance with the legislation of the Republic of Kazakhstan in the area of architectural, town-planning and construction operations, in which respect the purchase contract is concluded - within 36 (thirty six) months after signing the purchase contract;
- 3) a copy of the statement of delineation of balance sheet attribution and operational responsibility of the parties signed between the energy transferring company and the applicant for the RES facility, in which respect the purchase contract is signed - within 10 (ten) business days after signing the statement of delineation of balance sheet attribution and operational responsibility of the parties and before commencement of the complex testing of the RES facility;
- 4) a copy of the act of acceptance of the commercial electricity metering scheme, including the layout of devices for commercial and technical accounting at the RES facility, signed between the energy transferring company and the energy producing company on the RES facility, in which respect the purchase contract is concluded - within 10 (ten) business days after signing the act of acceptance of the commercial electricity metering scheme and before commencement of the complex testing of the RES facility;
- 5) a copy of the technical passport of the RES facility, in which respect the purchase contract is concluded - within 42 (forty two) months after signing the purchase contract.

For new RES facilities at the auction prices Purchase Rules specify that the following documents shall be provided:

- 1) a copy of the notice of the commencement of construction and installation works on the RES facilities – 12 months from the date of the agreement execution;
- 2) a copy of the act of acceptance of the RES facility – within 24 month for solar objects, 36 months for wind and biogas plants, 48 months for hydroelectric stations;
- 3) a copy of the statement of delineation of balance sheet attribution and operational responsibility of the parties signed between the energy transferring company and the applicant for the RES facility, in which respect the purchase contract is signed - within 10 (ten) business days after signing the act;
- 4) a copy of the act of acceptance of the commercial electricity metering scheme, including the layout of devices for commercial and technical accounting at the RES facility, signed between the energy transferring company and the energy producing company on the RES facility, in which respect the purchase contract is concluded - within 10 (ten) business days after signing the act

Thereat, in case of violation of any of the above terms for more than 6 months, the purchase contract ceases to exist and the law does not provide the option for its renewal. The standard contract, however, provides for the option of amending the contract upon agreement of the parties, which we believe will allow the energy producing company to propound the issue of extending the deadlines due to objective circumstances with the AFC. In addition, the legislation does not establish restrictions on the possibility of concluding a new contract for the purchase of electricity in case of termination of the previous one, except for the case of termination thereof upon expiry of 15 years.

Please note that after conclusion of the purchase contract, the following changes are not allowed:

- 1) change of the RES facility, in which respect the purchase contract was concluded, by increasing the total installed capacity of the generating equipment provided for by the purchase contract;
- 2) sale to the AFC of the electric energy generated not through the use of RES;
- 3) sale to the AFC of the electric energy generated not at the RES facility specified in the purchase contract, except for the sale of electricity thereto under another purchase contract.

Besides, one of the requirements for concluding a contract for the electricity purchase by the AFC is inclusion of the company in the list of energy producing companies using RES (hereinafter - the '**List**').

3. List of Energy Producing Companies Using RES

The list of energy producing companies using RES is determined in accordance with the Rules for the *Formation of the List of Energy Producing Companies Using Renewable Energy Sources* approved by the *Order of the Minister of Energy of the Republic of Kazakhstan* dated 9 November 2016 (hereinafter - the '**List Formation Rules**').

Pursuant to the List Formation Rules, an energy producing company to be included into the List shall provide the following documents:

- 1) an application for inclusion of the energy producing company into the List;
- 2) a copy of the decision by the local executive authority on the provision of a land plot for the construction of the RES facility;
- 3) a copy of the positive opinion on the comprehensive non-departmental examination of feasibility studies or design estimates for the construction of a new RES facility;
- 4) a copy of specifications for connecting the RES facility to electric grids;
- 5) a copy of the letter of approval from the system operator to the 'Power Distribution Scheme' with a declared capacity of 5 MW or more;
- 6) a copy of specifications for the connection of the automated electricity metering system (hereinafter - the 'AEMS') of the RES facility to the integrated AEMS of the system operator;
- 7) copies of the foundation documents of the energy producing company;
- 8) a copy of the signed contract for connecting RES facilities.

The ground for inclusion of a company into the List shall be the availability of a project for the RES facility construction in the Layout plan of RES facilities. The application for inclusion into the List is considered within 15 business days after submission of the required documents.

Thereat, the List of energy producing companies using RES includes facilities (projects) that were included into the list of energy producing companies before the entry into force of the List Formation Rules, in accordance with the *Rules for Monitoring the Use of Renewable Energy Sources*, dated 5 October 2009 (repealed by the *Resolution of the Government of the Republic of Kazakhstan*, dated 23 June 2015). The new legislation does not contain conditions for excluding and including such companies from and into the List, in accordance with the adopted List Formation Rules. Since these facilities were included into the List in accordance with the previous legislation, we believe that such facilities cannot be excluded from the List in view of the changes in legislation, and the List of Formation Rules do not apply to them.

In this regard, energy producing companies that have RES facilities (are planning to build) and included in the List before the entry into force of the List Formation Rules may file an application for concluding a contract for the purchase of electricity with the AFC on equal terms with the companies included in the List in accordance with the new legislation.

The winners of auction shall be included into the List based on the results of the auction by the Ministry of Energy of the Republic of Kazakhstan.

4. Conclusion of the Lease Agreement for a Land Plot Intended for the Construction of a RES Facility

A land plot is granted to a legal entity for the purpose of constructing a RES facility in accordance with the *Land Code of the Republic of Kazakhstan*, dated 20 June 2003 (hereinafter - the '**Land Code**').

The Land Code provides for the certain benefits for obtaining a land plot for the construction of a RES facility. Thus, in accordance with Article 90 of the Land Code, in exceptional cases, the seizure of irrigated agricultural lands, experimental fields of scientific and research and educational institutions of agricultural, biological and irrigation-reclamation, fishery profiles, forestry and water funds shall be allowed, if such land plots are required for construction of RES facilities.

Provision of land plots under the land use right for the purposes of construction of a RES facility is based on the decision of the competent authority (local executive authority - Akimat). The land use rights can be granted to a lessee for up to 49 years. Such time limit is established at the request of the lessee based on the purposes of future use of the land plot.

At the same time, with proper performance of its obligations under the lease agreement, the lessee has the pre-emptive right to the others to conclude the lease agreement for a new period, unless otherwise specified by the agreement. Besides, the lessee has the pre-emptive right to purchase a land plot when it is sold by the state.