



OPPORTUNITIES AND CHALLENGES IN "GAME CHANGING" TUNISIAN SOLAR AND WIND TENDERS

In an effort to meet its emissions reduction targets under the Paris climate agreement and diversify its energy mix, Tunisia has set an ambitious goal of reaching 4.7 GW of installed renewable energy generation capacity (approximately 30% of the country's power) by 2030.

In order to reach this goal, Tunisia is poised to announce the results of a 500 MW solar tender, which Energy and Mining Minister Slim Feriani described as "game changing" and which attracted bids from major European, Chinese and North American developers eager to participate in the first round of large-scale solar projects in the North African country. The pre-qualified bidders, including Masdar, EDF Renouvelables, Acciona Energy, Canadian Solar, Enel Green Power, Engie, ACWA and Scatec Solar, submitted their final bids in July and are competing for five PV projects: a 200 MW facility in Tataouine governate in southern Tunisia, two 100 MW plants near the cities of Kairouan and Gafsa, and two 50 MW plants in Sidi Bouzid and Tozeur. Pricing has been competitive, with Norway's Scatec offering a record-low bid of USD .0244 per kWh, which is the lowest solar bid recorded in Africa to date and is among the lowest worldwide, for the 200 MW Tataouine project. The Tunisian Ministry of Industry and Small and Medium Enterprises is expected to announce the winning bidders soon.

In addition to its solar tender, Tunisia is also aiming to attract international developers to exploit its promising wind resources through a 500 MW wind tender. The list of pre-qualified bidders was announced in late 2018, with several major international developers making the cut, including Acciona (in consortium with Swicorp), EDF (in consortium with Masdar and Mitsui), Enel, Globeleq Africa Holdings, ACWA, Marubeni, Engie (in consortium with Nareva Renewables), PowerChina, Total Eren and Voltalia. The tender consists of three projects: a 200 MW project at Jbel Abderrahmane in the northeastern governate of Nabeul, a 100 MW project at Jbel Tbagha in Kebili governate (south-central) and a third 200 MW project at a site to be chosen by the winning developer.

Although Tunisia has excellent potential for renewable energy, with high solar irradiation levels as well as favorable conditions for wind energy in the coastal and central regions, currently it has very little installed renewable capacity; the country's electricity mix is dominated by gas generation, with a large portion of gas imported from neighboring Algeria. The majority of renewable energy facilities built to date have been developed by the national utility, la Société Tunisienne de l'Electricité et du Gaz ("STEG"), rather than on an IPP basis.

This first round of large-scale renewable energy tenders will thus be a key milestone in boosting investor confidence in Tunisia and attracting international financiers and equity investors to help it meet its ambitious renewable energy targets.

In turn, successful development and financing of these projects may also play a role in improving the public's trust in government services as Tunisia manages its ongoing transition to democracy and works towards greater stability. Although Tunisia's democratic transition has been generally successful to date – several rounds of parliamentary and two presidential elections have occurred without any major incidents – the country has witnessed sporadic unrest, particularly in the interior, since the fall of the authoritarian Ben Ali regime in 2011.

The challenges and opportunities facing Tunisia were highlighted by this year's early presidential elections following the death of Tunisia's first freely-elected president, Béji Caïd Essibi. The first round witnessed a notable rejection of establishment candidates, with law professor Kais Saied and media mogul Nabil Karoui, both political outsiders, advancing to the runoff, in which Saied won a decisive victory last weekend. While they displayed very different personal styles and governing philosophies, both Karoui and Saied's campaigns drew upon rising dissatisfaction among struggling Tunisians who feel "left behind" by political elites, particularly in the relatively underdeveloped interior regions of the country. Development of these areas will be key to the country's continued stability.

To that end, several of the planned wind and solar projects are located in underdeveloped interior regions, such as the town of Sidi Bouzid where the 2011 "Jasmine Revolution" was sparked in part by popular frustration with high unemployment and poverty. The development gap between the interior regions and the more developed coastal cities may also play a role in the radicalization of young Tunisians who have joined the Islamic State in Iraq and Syria as foreign fighters. As a result, fostering economic development in these regions may also play a role in promoting regional security.

Regulatory Framework

The Tunisian regulations governing the development of renewable energy projects provide for a concession regime for projects over 10 MW as well as an "authorization regime" for smaller-scale projects and separate regimes for self-production and export projects.

Both the wind and solar tenders will be awarded under the concession regime on a Build-Own-Operate ("BOO") model. The land for the project sites will be provided by the Tunisian government to the winning developers. Each winning developer will enter into a concession agreement with the Tunisian government that will govern the terms of the land transfer as well as the technical specifications and timeframe for completion of each project. Each developer will also enter into a 20-year power purchase agreement with STEG, under which STEG will purchase all energy produced by the project.

As of the date of this publication, the initial form of PPA ("Form PPA") for the authorization regime has been made available, but no form of PPA for the concession regime (or form of concession agreement) has been published. However, market participants are generally assuming that the Form PPA for the authorization regime will be the starting point for the PPAs awarded under the concession regime.

Potential Bankability Issues

The Form PPA provides for a generally bankable "take-or-pay" structure, which should provide comfort to project lenders. However, there are a number of other high-level bankability issues that project developers may wish to raise in their PPA negotiations with STEG and other government parties. These issues could be addressed either through adjustments to the form of PPA for the concession regime or through the concession agreement or direct agreement with the Tunisian government.

High-level bankability issues based on the Form PPA for the authorization regime include the following:

- Offtaker Risk: The Form PPA does not contemplate any government support of STEG's obligations under the PPA, nor does the Form PPA provide for any type of liquidity support for the same.
- Termination Compensation: The Form PPA does not provide for a clear mechanism to determine the compensation to be paid by STEG in the event of a termination of the PPA, but instead refers to an amount to be negotiated among the parties. However, if the PPA is terminated for default by STEG the termination compensation will cover, at a minimum, the outstanding debt payable by the project company to its lenders for financing of the construction of the plant.
- Force Majeure: No compensation is available under the Form PPA if either party is affected by an extended force majeure event; further, STEG is entitled to suspend performance for political force majeure events, including "governmental restrictions".
- Dispute Resolution: With respect to non-Tunisian (more than 50% foreign-owned) project companies, the Form PPA provides for ICC arbitration under Tunisian law. International lenders will likely prefer arbitration with English or New York governing law.

It is possible that these issues will be addressed or mitigated in the concession agreement or the PPAs negotiated with the project companies for projects granted under the concession regime.

Political Risk

The 2019 presidential election represented a repudiation of the post-revolution political elite and has the potential to fundamentally reshape Tunisian politics. However, because recent Tunisian politics have tended to be driven more by personality and cultural issues rather than ideology, it is difficult to predict how Saied's election will directly influence economic policy. Further, the president's role in energy policy is somewhat limited, as Tunisia's post-revolution constitution delegates this portfolio to the parliament.

Tunisia has also struggled economically since 2011, and its sovereign credit was recently downgraded by Fitch to B+ (with a negative outlook), raising concerns about the solvency of STEG, which relies on yearly subsidies from the central government to preserve its balance sheet, and the strength of any credit support provided by the Tunisian government.

Terrorism is also a concern following attacks targeting police and security forces in June 2019.

Lessons from Other Jurisdictions

Project participants in the upcoming Tunisian wind and solar tenders can draw upon the recent experiences of neighboring North African jurisdictions in structuring bankable renewable projects.

Morocco

Morocco's current renewable energy procurement program launched in 2009 with the creation of the Moroccan Renewable Energy Agency ("MASEN"). Since that time, several rounds of solar and wind projects have been successfully developed and financed, including the huge Nour concentrated solar power ("CSP") facility near the city of Ouarzazate, which is the largest CSP facility in the world. Moroccan law also allows renewable energy producers to sell electricity directly to offtakers through the use of the national grid.

Bankable features of the Moroccan IPP framework for renewable energy projects include long term PPAs with deemed commissioning and a non-delivered energy regime, a take-or-pay mechanism, robust change in law and force majeure protections and a termination payment covering in all cases the full projected amount of the debt owed to project lenders (with shortfalls covered by the contractor or insurance indemnities). Furthermore, the Moroccan government issues government support letters backstopping the termination payment obligations under the PPA.

Clifford Chance has advised project sponsors and lenders in connection with several projects developed under Morocco's renewables program. The firm advised EDF Renouvelables and Meridiam Africa on the 100 MW CSP tower project forming part of the second phase of the Nour Ouarzazate solar complex. Clifford Chance also advised Nareva Holding SA and Enel Green Power on the financing of the 180 MW wind farm located in Midelt in the Middle Atlas region of Morocco, as well as the lenders on the financing of the 300MW Tarfaya wind IPP project developed by Nareva Holding and Engie, and is currently advising the lenders and ECAs on the financing of the 150MW Taza wind farm developed by EDF Renouvelables and Mitsui & Co. and the lenders in connection with the 400MW Masen Noor Midelt Phase I combined PV and CSP project being developed by EDF Renouvelables, Masdar and Green of Africa.

Egypt

Egypt faces many of the same challenges as Tunisia, with similar security concerns and economic difficulties. Despite this fact, it has closed two successful rounds of financing for renewable energy projects, with the second round alone achieving between 1.4 GW and 1.8 GW of additional renewable generation capacity at competitive tariffs.

Egypt's renewable energy procurement program is structured as a feed-in tariff ("FIT"). Round 2 of the Egyptian FIT program, which launched in 2016, resulted in a substantial increase in the number of projects reaching financial close due to the improved bankability of the project agreements.

The government support agreements entered into in connection with Round 2 of the Egyptian FIT program featured a sovereign guaranty by the Egyptian Ministry of Finance of the offtaker's obligations under the PPA (included in the PPA direct agreement) as well as resolution of disputes through international

arbitration and the payment of a termination payment sized to cover project lenders' outstanding debt, including hedge close-out amounts.

Clifford Chance advised project financiers European Bank for Reconstruction and Development ("EBRD"), Islamic Development Bank ("IsDB") and Islamic Corporation for the Development of the Private Sector ("ICD") on six projects in Egypt's FIT Round 2 (and separately advised EBRD on two additional projects in this program).

Conclusion

The projects developed under the current tender processes will diversify Tunisia's electricity mix and help it to achieve its 30% target for renewable energy generation as well as its emissions reduction targets under the Paris climate agreement. A successful launch of Tunisia's renewable energy program may also pave the way for future "mega-projects" such as the proposed 1 GW solar complex to be developed in the Tataouine governate in the Tunisian Sahara, the first phase of which will be a 200 MW plant tendered through the current solar auction. The successful development and financing of the first round of projects will be an important step towards attracting the level of international investment that is needed to support Tunisia's ambitious renewable energy goals.



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