

THE ONGOING REFORM OF THE IPP REGIME IN RENEWABLE ENERGY IN MOROCCO

In January 2020, MASEN launched a call for expression of interest for the realisation of multiple projects for the production of electricity from photo-voltaic solar energy.

One may wonder about MASEN's role in an operation that it intends to place under the regime of Law No 13-09 *relating to renewable energies*.

This regulation allows a producer holding an authorisation from the Moroccan Ministry of Energy to build a production unit from renewable energy on a site of its choice, to connect this production site to the transport grid of *Office National de l'Electricité et de l'eau potable*¹, and to sell the production to connected clients.

In no way the current version of Law No 13-09 includes calls for expression of interest. More so, it does not apply to the photo-voltaic production. It seems that MASEN anticipates the enactment of the draft law No 40-19 which should deeply amend the regime of the IPP² in renewable energy.

1. MASEN'S EXCLUSIVITY IN RENEWABLE ENERGY IN MOROCCO

MASEN was created by Law No 57-09 as a state-controlled stock company. Initially dedicated to solar energy, it was entrusted in August 2016 under the terms of Law No. 38-16 with the task of leading all the development of renewable energy in Morocco detrimental to ONEE, which had until then retained wind and hydroelectric power. This transfer should be completed in 2021.

MASEN's objective is to develop 6,000 MW of production from renewable energy by 2030, which should be easily achievable.

Until now, MASEN has been launching calls for tenders for the construction of solar PV or CSP plants, the production of which MASEN buys in full and then resells to ONEE to meet the office's needs.

The selected bidders entered into a Power Purchase Agreement (PPA) with MASEN and built the plant on a site provided by MASEN.

Now, it seems that MASEN is seeing itself intervening in the IPP market of renewable energy governed by Law No 13-09, which until now was supposed to be free.

¹ "ONEE", the National Office for Electricity and Potable Water.

² Independent Power Producer.

2. THE CURRENT INDEPENDENT PRODUCTION PROJECTS (IPP) REGIME FOR RENEWABLE ENERGY

2.1 The mechanism of Law No 13-09

So far, the provisions of Law No 13-09 are as follows:

The developer finds a site, builds a wind power plant, injects electricity at the point of connection to the national high-voltage grid, which is transported by ONEE to the delivery point of the client connected to the high-voltage grid. The client reserves a monthly and annual quantity of electricity from the developer. The developer supplies this electricity, which is metered by ONEE, to the wind farm's grid connection point. This electricity is transported by ONEE to the delivery point. At the end of the month, the energy booked at the connection point allocated by the developer to the client and the energy called by the client at the delivery point are balanced, with the customer paying ONEE for the surplus of the energy called at the delivery point in comparison to the quantity allocated at the connection point.

The installation is free for the set-up, operation and modification of installations for the production of electrical energy when the maximum cumulative rated capacity, per site or group of sites belonging to the same operator, is less than 20 kW.

Beyond this capacity, the investor must file a prior declaration with the Ministry of Energy and Mines accompanied by an administrative file and a technical file.

If the projected installed power exceeds 2 MW, a provisional authorisation (soon to be in the draft law No 40-19) issued by the Ministry of Energy is necessary in view of a dossier called completion authorization including the exact coordinates of the site, the investor's rights on the site, the technical specifications of the project, the measures in terms of environmental protection, etc...

The authorisation is issued by the Ministry after the latter receives ONEE's opinion, the operator of the national transmission system.

This authorisation is valid for a period of three years during which the project must be completed. At the end of the project and before the production site can be operated, the developer must apply to the Ministry of Energy for a definitive authorisation (soon to be called an operation authorization) for a period of 25 years, renewable once.

2.2 A regime not applicable to solar projects

As previously stated, the Moroccan administration has only defined by decree six areas for the development of wind energy projects. Outside these areas, no authorisation can be granted³. This regime cannot therefore concern solar energy.

³ Decree of the Minister of Energy and Mines No 2657-11 of 19 September 2011.

2.3 A scheme reserved for projects connected to high and extra-high voltage networks

Law No 13-09 normally applies to the medium voltage network provided that a decree defines the terms and conditions. It took five years for the Decree No 2-15-772 of 28 October 2015 to implement this possibility. This decree requires electricity distributors to propose a 10-year integration trajectory for the distribution network of electricity produced from renewable energy, which has to be validated by the Ministry of Energy and published on its website. This gives developers a degree of predictability about available capacity. However, the distributors did not submit trajectories as they were legally obliged to do from 2016. These provisions have so far remained unheeded.

2.4 Opaque conditions for granting authorisations

The process of applications for provisional authorisation has always been uncertain and sometimes extremely lengthy.

It requires an environmental impact study, land tenure security and, above all, an opinion from ONEE on the project and its compatibility with the national transport grid.

On this last point, developers appear to be powerless. They do not have precise information on the grid's capacity to absorb new renewable energy projects at the time they apply for authorisation.

For the grid's reception capacity that is obviously thought to be limited, they do not know the selection criteria between two projects that meet the conditions for granting authorisation to carry out the project.

Law No 48-15 of 24 May 2016 establishing the *Autorité nationale de Régulation de l'Electricité*⁴ requires ONEE and each of the distributors to draw up a 5-year multiannual program of investments in the national transport system or the distribution system "*taking into account the planned investments in production capacity*". This program should take into account any planned new interconnection, including new renewable energy production projects. These programs have to be submitted for approval to the ANRE. Likewise, the ANRE is to give its opinion on applications for provisional authorisation from developers for their new wind or solar power plant projects.

One might have hoped that the appearance of the ANRE would bring an outside point of view to this granting process. However, the ANRE has only just seen its first members appointed.

⁴ "ANRE", the National Electricity Regulatory Authority.

3. THE DEVELOPMENTS ENVISAGED IN THE DRAFT LAW No 40-19

3.1 An opening to solar projects

It is no longer question in the draft law No 40-19 to include solar projects to development areas for the production of electricity from solar energy sources. This provision is deleted. It will only concern wind energy production.

3.2 An extension of the scheme to customers connected to the medium-voltage grid or to energy distribution customers

Article 26 as proposed in the draft law No 40-19 will allow developers to conclude electricity sales contracts not only with customers connected to the high or very high voltage network but also with clients connected to the medium voltage distribution network or even distributors.

The excess energy can always be bought back by ONEE for operators connected to the high voltage and very high voltage network and by the distributor for operators connected to the medium voltage network within the limit of 20% and under commercial conditions to be set by the ANRE.

3.3 Visibility of the network's reception capacities

The text specifies that the national transport grid operator has to determine the "carrying capacity", which is conceived as the maximum amount of installed power from renewable energies, all power combined, that the grid can accommodate without constraints on the management of the means of production. The conditions for publishing this information and updating it remained unknown. If such a procedure were correctly implemented, it would indicate the remaining capacities on the grid to developers.

3.4 Towards a state-led selection process for renewable energy projects implemented by MASEN

In the future, developers interested in Morocco can hope for a certain visibility on the network's reception capacities. However, they will not find in the draft law No 40-19 any selection criteria between projects when the cumulated capacities of the latter exceed the reception capacity.

The draft law No 40-19 introduces the possibility for the administration to organise "*calls for projects*" in the image of what has been done in recent years in Tunisia. It obtains from ONEE a reserved capacity which it distributes between several sites for which the developers are held to propose a solution and clients.

It is in anticipation of the adoption of this new text that the Ministry of Energy and MASEN issued a call for expression of interest for the allocation of 400 MW of solar photovoltaic projects at the beginning of this year. In the upcoming call for projects, which will have to wait for the vote and the promulgation of the text of Law No 40-19, MASEN will propose sites to candidates who will have to propose solar PV production projects and find clients.

Does this mean that there will be "*capacity*" left for other developers outside the calls for projects? It is doubtful.

It is also doubtful whether there is a market outside these calls for projects. Indeed, potential clients will prefer to wait until they have a certain degree of certainty as to the feasibility of the project proposed by a developer before starting to negotiate with it. The question of the capacity reserved on the network for the project is crucial. They will naturally wait for the developers to enter into this process before contracting.

Thus, the regime which was intended to be liberal in the spirit of Law No 13-09 in 2010 is likely to be channelled by MASEN and ONEE in the future.

3.5 Developers under surveillance

It seems that the widespread practice in the renewable energy industry whereby the developer sells his project to an operator once the project is ready to be implemented is not to the liking of the Moroccan authorities.

Indeed, the draft law No 40-19 provides that applicants for a construction permit will have to produce a bank guarantee under conditions to be defined by decree and any change in the control of the project company bearing the construction permit for the renewable energy production facility will be subject to the prior approval of the administration.

This constraint can be understood for large-scale projects for which the Moroccan State needs a strong commitment from the producer whose failure could impact the balance of the network. On the other hand, it is to be feared that such a requirement may temper the impetus for projects of a few megawatts which can only be developed by small structures with reduced costs, which resell them to energy operators who would not otherwise be interested in them.