



USAID
FROM THE AMERICAN PEOPLE

GEORGIA

USAID ENERGY PROGRAM

RECOMMENDATIONS ON THE ADMINISTRATIVE PROCEDURES FOR SIGNING OF THE AGREEMENTS ON DEVELOPMENT OF THE RENEWABLE POWER PLANTS IN GEORGIA

USAID ENERGY PROGRAM

20 September 2020

This publication was produced for review by the United States Agency for International Development. It was prepared by Deloitte Consulting LLP. The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

RECOMMENDATIONS ON THE ADMINISTRATIVE PROCEDURES FOR SIGNING OF THE AGREEMENTS ON DEVELOPMENT OF THE RENEWABLE POWER PLANTS IN GEORGIA

USAID ENERGY PROGRAM

CONTRACT NUMBER: AID-OAA-I-13-00018

DELOITTE CONSULTING LLP

USAID | GEORGIA

USAID CONTRACTING OFFICER'S

REPRESENTATIVE: NICHOLAS OKRESHIDZE

AUTHOR(S): ANA JEJELAVA

LANGUAGE: ENGLISH

20 SEPTEMBER 2020

DISCLAIMER:

This publication was produced for review by the United States Agency for International Development. It was prepared by Deloitte Consulting LLP. The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

DATA

Reviewed by: Tamar Murtskhvaladze, Tamar Jaliashvili

Practice Area: Renewable Energy Investments

Key Words: Agreement, Memorandum of Understanding, Administrative Procedures, Renewable Energy, Project Development.

ACRONYMS

EnCT	Energy Community Treaty
ESCO	Electricity Market Operator
EU	European Union
GoG	Government of Georgia
GSE	Georgian State Electrosystem
MoESD	Ministry of Economy and Sustainable Development of Georgia
MoF	Ministry of Finance of Georgia
MoU	Memorandum of Understanding
PPA	Power Purchase Agreement
PPP	Public-Private Partnership
RES	Renewable Energy Sources
USAID	US Agency for International Development
VRE	Variable Renewable Energy

CONTENTS

INTRODUCTION.....	5
EXECUTIVE SUMMARY	6
RES POWER PLANT PROJECT DEVELOPMENT FRAMEWORK	7
ANALYSIS OF THE GOG RESOLUTION NO. 515	9
ANALYSIS OF THE PPP LAW AND GOG RESOLUTION NO. 426.....	10

INTRODUCTION

In October 2016, Georgia signed an Energy Community Treaty (EnCT) with the European Union (EU), signaling the country's commitment to direct future energy planning and market development toward approximation. This treaty commits Georgia to enhance the security of its energy supply by promoting the development of relevant infrastructure, increasing market integration, gradually approximating key regulatory elements in the EnCT, and promote the use of renewable energy sources. In order for Georgia to meet its strategic commitments in the energy sector, the US Agency for International Development (USAID) is providing the country with technical assistance and policy advice on legal, regulatory, and institutional reform issues, including facilitating investment structuring, deal structuring, engineering analyses, environmental analyses, financial planning, outreach, and other consulting services. This technical assistance ("USAID Energy Program") is being rendered by Deloitte Consulting LLP under USAID contract AID-OAA-I-13-00018.

The objective of the USAID Energy Program is to support Georgia's efforts to facilitate increased investment in power generation capacity as a means of ensuring national energy security, facilitating economic growth, and enhancing overall national security. The project will have a significant impact on the Government of Georgia's (GoG) energy market reform efforts aimed at complying with EnCT obligations. The investment objective will be achieved through the provision of technical assistance to a variety of stakeholders in the energy sector.

The USAID Energy Program is tasked to: 1) Support energy market development in Georgia per the country's obligations under the EnCT; 2) Build the GoG's capacity to evaluate the fiscal and long-term impacts of regulatory changes; 3) Promote energy investment, especially in Variable Renewable Energy (VRE) development; 4) Support the integration of non-hydro renewable energy into Georgia's power system; and 5) Provide strategic advisory services to the GoG to increase Georgia's energy security.

The goal of this program is to enhance Georgia's energy security by improving the legal and regulatory framework for the energy market and increasing investments in the energy sector. Ultimately, the expected outcome of this program will be the implementation of a legal and regulatory framework that complies with the EnCT and other applicable EU requirements, encourages competition within the energy market, and stimulates private sector investment.

Under the contract, AID-OAA-I-13-00018, USAID Energy Program under the Energy Investment Optimization Task (Task 3) assists the counterparts in the development of enabling environment in the Renewable Energy Sector. To support the GoG in attraction of private investments, this report aims to describe the challenges existing in the agreement signing process for the renewable power project development. Based on the problem analysis it will identify the area for improvement for GoG which will focus on suggestion of the rules that can be easily introduced. The recommendation will be amending existing legal acts that defines terms of development of the power plant projects in Georgia.

EXECUTIVE SUMMARY

Private investments in the renewable energy generation were one of the leading areas in the economic sectors of Georgia in past years. However, recent drastic growth of the electricity imports highlights the further necessity to develop new power generation infrastructure. Investments in the renewable energy have dramatically decreased since 2017, when the GoG terminated the previously existing Renewable Energy Sources (RES) promotion scheme and announced introduction of the Public-Private Partnership (PPP) framework.

Ongoing reform process in the energy sector caused significantly changes in the respective legislation. Subsequently, this instigated major changes in the power market design and functioning. As a result, current power sector of Georgia is in unsettled condition. Meanwhile, the energy security goals require critical investments in the energy generating infrastructure.

To attract the investments, especially from foreign private entities, the GoG has to provide a clear framework for the renewable energy development. USAID Energy Program supports development of the renewable energy sources in Georgia, with major focus in wind and solar energy. As it is known to USAID Energy Program from the stakeholder consultations, the signing Agreements on RES project implementation with the GoG, especially ones that include Power Purchase Agreements (PPA), has been a challenge starting from 2017. As a fact, no agreements were signed with GoG on RES power plant project development in accordance with the PPP Law.

This report aims to describe the challenges existing in the agreement signing process for the renewable power project development. Based on the problem analysis it will identify the area for improvement for GoG which will focus on suggestion of the rules that can be easily introduced. The recommendation will be amending existing legal acts that defines terms of development of the power plant projects in Georgia.

Key recommendation from this report is: **The administrative procedures for renewable power plant development must clearly indicate the responsible parties, timeframes, and even include deadlines for the internal decision-making processes.** Thus, resolution No.426 and resolution No. 515 need to be amended in order to provide clear guidelines for the investors. **The accessibility of the information and transparency on the energy projects development should be increased.**

RES POWER PLANT PROJECT DEVELOPMENT FRAMEWORK

It is well known that starting from 2008, GoG promotes mastering of the domestic renewable energy resources. To attract investments into the energy sector, GoG signed agreements with developer companies. This type of the agreement is commonly known under the name of Memorandum of Understanding (MoU). They are mostly multilateral, and apart from the GOG and developer were cosigned by the respective state stakeholder parties: Electricity Market Operator (ESCO) – if the agreement included clauses regarding the guaranteed power offtake by ESCO, Georgian State Electrosystem (GSE) – if the agreement had clauses regarding connection to the grid owned by the state, Energotrans – if the agreement included clauses in regard to the priority access to the transmission line for export purposes. Since 2008, the GoG has signed 233 MoUs with developers of power plants, among which 81 included PPAs.¹

Based on the changes that took place in 2018, there are two approaches that define how power plant projects can be developed in Georgia: 1. **PPP type power plant project** is developed in accordance with **GoG Resolution No. 426** on “Approval of the Rules of Developing and Implementing Public-Private Partnership Projects” and 2. **Non-PPP type power plant project** is implemented in accordance with the **GoG Resolution No. 515** on “Rules and Conditions for Submit to the Ministry of Economy and Sustainable Development and Reviewing the Proposals on Conducting Construction Feasibility Studies, Construction, Ownership, and Operation of those Power Plants that are not Public-Private Partnership Projects”.² The PPP focused resolution No.426 was enacted on August 17, 2018 and it set detailed instructions for the identification, initiation, preparation, implementation, and post-implementation stages of a PPP project. PPP Law allows GoG to conduct direct negotiations on the energy projects, which means that terms and conditions of the above mentioned resolution will not apply to these projects. As for the projects that do not fall under the PPP framework, resolution No.515 enacted on October 31, 2018 defines rules and conditions for the power project development.

PPP power projects also can be distinguished by the initiator of the project: 1. Ministry of Economy and Sustainable Development of Georgia (MoESD) or PPP Agency and 2. Private Developer. In the first case, the GoG through the respective entities prepares the project in accordance with the PPP Law requirements and afterwards selects the private developer. In the second case, the private developer prepares the initiative proposal and submits it to the MoESD.

It has to be highlighted that projects that envision to receive remuneration from end-users, directly or indirectly, are defined to be a concession and thus are subject of the PPP Law. PPA is therefore acknowledged as a concession by the PPP Law and the power plant projects that request PPA should be developed in accordance with the PPP framework.

In 2019, USAID Energy Program developed Renewable Energy Investor Guidebook. That report represents a comprehensive analysis of all regulations in regards to renewable power plan project development. The Guidebook especially focuses on PPP legislation and GoG Resolution No.515. Therefore, it is recommended to read this report to fully understand the project development cycle in the energy sector of Georgia as of today.

It should be mentioned, that signing of the Agreement with the GoG on RES power plant project development does not require to obtain any kind of license in accordance with the existing legislation of Georgia. Therefore, this report will no longer focus on licensing related matters, and only provide analysis of the administrative procedures.

As of today, there are several ways how investors can develop the project, however legal acts provide only brief indication of what should be in the agreement. It is recommended that GoG amends legal acts in order to ensure procedural rules for major terms and clauses of the agreement. Of course, the

¹ USAID Energy Program 2020: “Regulatory Impact Assessment on Ways to Manage Existing Backlog of PPAs and MoUs”.

² USAID Energy Program, 2019: “Renewable Energy Investor Guidebook”.

final agreement is the subject of negotiations, however the basic terms/approach should be one for all.

As current legislative framework does not provide the full outline of the agreement for power project development, thus each negotiations are exclusive and therefore require full-cycle approach, which hinders the agreement signing process. Extended timeline drives increased costs for the investors on the early stages of the project development that is commonly undesirable for the private sector.

It was revealed that the most common issue is non-existence of the internal deadlines for the governmental bodies. This can stretch agreement signing procedures indefinitely. As for the existing level of the bureaucracy, in regards to the signing of the agreements it is of acceptable level.

Another improvement could be publicly available monitoring system, where all interested parties would have opportunity to follow-up the power plant project development process. It is at least necessary on the level of applicant, who will be able to track the process flow and will be fully informed on the project development. In addition, publicly available monitoring system will reduce the number of projects, which overlap and thus reduce the workflow of the GoG and accelerate the agreement signing process.

ANALYSIS OF THE GOG RESOLUTION NO. 515

Picture 1: Stages of Singing of the MoU according to the GoG Resolution No. 515



STAGES OF MOU SIGNING UNDER RESOLUTION NO.515

1. Pre-application;
2. Proposal;
3. Proposal review by the MoESD;
4. Proposal review by the GoG;
5. Singing of the MoU.

1. PRE-APPLICATION STAGE

- Deficiency of the information on the already signed MoUs;
- Unavailability of information on the ongoing applications;
- Lack of Information on the land status (ownership, status and etc.);
- Unapproachability of the information on the grid connection availability.

2.PROPOSAL STAGE

The steps are clear and non-exhausting.

3. PROPOSAL REVIEW BY THE MOESD STAGE

- The administrative procedures for the proposal review are not defined;
- The time frames and deadlines for each of the administrative stages are not fully defined. Initial review period is set to be 30 days, however MoESD has a right to extend the review period. As only this review period is defined, other internal stages in the MoESD are not described in the resolution and therefore no deadlines are indicated (ex. timeline for proposal submission to the GoG);
- The monitoring on the flow of the administrative procedures is publicly unavailable.

4. PROPOSAL REVIEW BY THE GOG CABINET STAGE

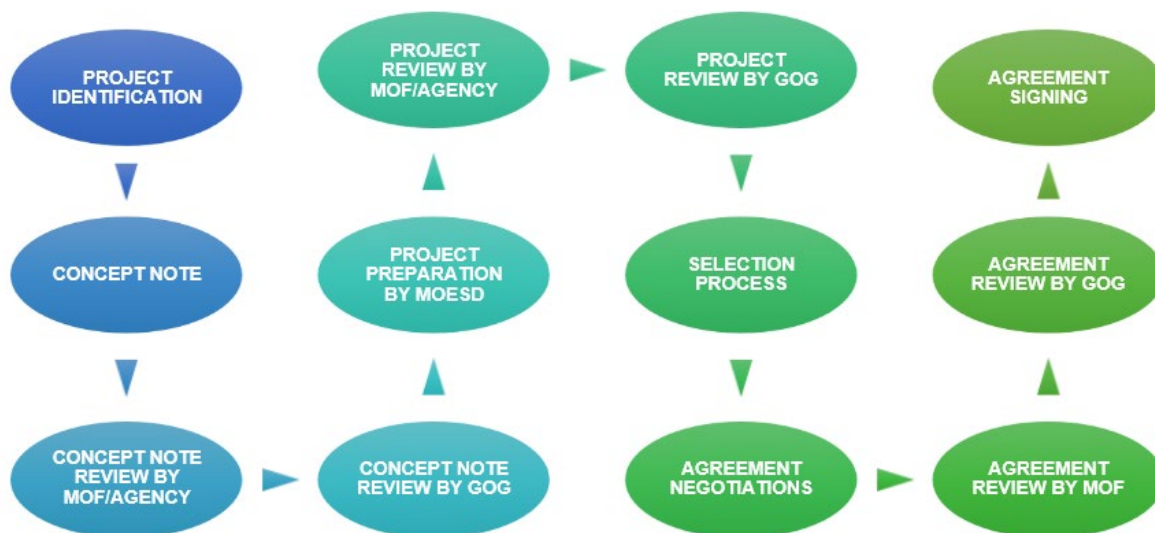
- The administrative procedures for the proposal review are not defined;
- The time frames and deadlines for each of the administrative stages are not defined.

5. SINGING OF THE MOU STAGE

- The administrative procedures for the proposal review are not defined;
- The time frames and deadlines for each of the administrative stages are not defined;
- Considering the prior stages, only signing of the MoU between the parties is left. Therefore, 120 days for the signing of the MoU by the parties is an unnecessary long deadline.

ANALYSIS OF THE PPP LAW AND GOG RESOLUTION NO. 426

Picture 2: Stages of Signing of the Agreement for the PPP project, Resolution No. 426



STAGES OF THE AGREEMENT SINGING UNDER THE RESOLUTION NO. 426:

1. Project Identification;
 2. Concept Note;
 3. Concept Note review by the MoF and PPP Agency;
 4. Concept Note review by the GoG;
 5. Project Preparation by MoESD (FS, Environmental Decision, Procurement Method);
 6. Project review by the MoF and PPP Agency;
 7. Project review by the GoG;
 8. Selection Process of the Implementer by MoESD;
 9. Negotiations on the Agreement between MoESD and winner of the selection;
 10. Draft Agreement review by MoF;
 11. Agreement review by GoG;
 12. Singing of the Agreement.
1. **PROJECT IDENTIFICATION** – timelines are unlimited. However, this is acceptable in both cases – when the project is developed by MoESD/Agency or Private Developer.
 2. **CONCEPT NOTE** – timelines are unlimited. In case of private developer initiating the project, the prolonged administrative process of concept note preparation is not suggested. It can hinder overall flow of the project implementation, and in future reduce the number of private developers initiating projects.
 3. **CONCEPT NOTE REVIEW BY THE MOF/PPP AGENCY** – As both parties can request the MoESD to amend the Concept Note, it is essential that the deadline for the amendment to be also defined. It is recommended to limit it to 1-month period, which also should include all the procedures including the submission of the Concept Note to the GoG for the review.
 4. **CONCEPT NOTE REVIEW BY THE GOG** – GoG has to have a specific deadline for the review period, otherwise it can be a significant challenge in the administrative process. It is advised that the review period to be 1-month from the submission of the Concept Note by the MoESD, though the maximum period should not exceed 3-month period.
 5. **PROJECT PREPARATION BY MOESD** – this stage envisions preparation of the feasibility study and obtainment of the environmental decision. Both of these tasks are comprehensive

and require significant financial sources. In case of MoESD, the deadlines may be undefined. However, for the private developer the maximum period should be indicated. There may be necessity to define different timeframe for Feasibility Study based on the project type. However, the time limit should be set. This will ensure timely completion of the necessary procedures and support the project implementation in the reasonable time period. It has to be highlighted, that timeframes for the Environmental Decision are visibly defined.

On the final stage of this phase, the MoESD is expected to make a decision on the form of the procurement – how the project developer will be selected. This decision-making process also has no defined timeframes.

6. **PROJECT REVIEW BY MOF/AGENCY** – As in case of Concept Note review, the deadlines are clearly defined. On this stage, Ministry of Finance of Georgia (MoF) has 45 days to prepare the conclusion. Again, the responsibility of the MoESD in terms of dates needs more clarity.
7. **PROJECT REVIEW BY THE GOG** – GoG has defined 120 days to review the project, and afterwards may approve, reject or request to amend it. This timeline is of reasonable duration.
8. **SELECTION PROCESS** – This phase is not described in the details in the Resolution, as the terms and conditions are expected to vary from project to project. Nevertheless, the selection process announcement is expected to provide details on all the administrative procedures and timelines, and it is recommended that the bureaucracy and overall timelines to be of reasonable level.
9. **AGREEMENT NEGOTIATION** – This phase does not have defined timelines. Initial selection of the winner does not mean finalization of the selection process. Until the Agreement is signed or the GoG terminates the selection, all participants are on the waiting list. All participants are required to present the bank guarantee throughout the selection process. Therefore, each prolonged day of the selection process is an additional cost for the participants. Thus justifiable deadlines are of an essential value for the renewable power project development, particularly, at this stage.
10. **AGREEMENT REVIEW BY MOF** – There are no deadlines for this administrative procedure for the involved parties, and considering that this phase is a part of the selection process, the same concerns as for the selection process and agreement negotiations apply here respectively. It is recommended to introduce similar deadlines for MoF as in case of Concept Note and Project Review. As for the MoESD, the recommendation is to define the deadlines as in case of Concept Note and Project Review.
11. **AGREEMENT REVIEW BY GOG** – In case of GoG, the same recommendations are applicable as for the Concept Note. The timeframe set for the Project Review can be used for this phase.
12. **AGREEMENT SIGNING** – This phase does not have deadlines. However, considering the preceding stages, it is advisable to limit this period to 30 days.

USAID Energy Program

Deloitte Consulting Overseas Projects LLP

Address: 29 I. Chavchavadze Ave., 0179, Tbilisi, Georgia

Phone: +(995) 595 062505

E-mail: info@uep.ge