



MYANMAR LEGAL ALERT

The Ministry of Electricity and
Energy Revises Electricity Tariffs:
Opportunities

1. INCREASED ELECTRICITY TARIFFS

On 25 June 2019, the Ministry of Electricity and Energy (“MOEE”) announced that the electricity tariffs payable by end-users will be revised upwards, significantly lessening the burden placed on the Electric Power Generation Enterprise’s (“EPGE”) coffers. The move is widely expected to accelerate the development of new power projects in Myanmar. It is anticipated that higher tariffs for end-users will give the MOEE and EPGE the ability to agree on more competitive tariff rates with prospective independent power producers (“IPPs”). However, a closer look reveals that despite this positive step, significant challenges remain.



An overview of the revised Tariffs

| Consumer | | Old Tariffs | | New Tariffs | |
|--------------------------|---|----------------|------------|----------------|------------|
| | | Unit | Kyat (MMK) | Unit | Kyat (MMK) |
| Domestic consumption | <ul style="list-style-type: none"> - Homes - Religious buildings | 1-100 | 35 | 1-30 | 35 |
| | | | | 31-50 | 50 |
| | | 101-200 | 40 | 51-75 | 70 |
| | | | | 76-100 | 90 |
| | | Over 201 | 50 | 101-150 | 110 |
| | | | | 151-200 | 120 |
| Over 201 | 125 | | | | |
| Non-domestic consumption | <ul style="list-style-type: none"> - Industry - Businesses - Governmental buildings - State-owned industries - State-owned businesses - River water pumping stations - Municipal departments & works - Non-governmental organizations - Embassies - International organizations | 1-500 | 75 | 1-500 | 125 |
| | | | | 501-5,000 | 135 |
| | | 501-10,000 | 100 | 5,001-10,000 | 145 |
| | | | | 10,001-20,000 | 155 |
| | | 10,001-50,000 | 125 | 20,001-50,000 | 165 |
| | | 50,001-200,000 | 150 | 50,001-100,000 | 175 |
| | | | | Over 100,001 | 180 |

Source: The Global New Light of Myanmar

A brief overview of the new tariffs indicates that the highest rate to be charged is MMK 185 per unit for non-domestic consumption and MMK 125 per unit for domestic consumption. Domestic consumption at present constitutes an estimated 60% of all consumption in Myanmar and therefore the bulk of consumers will pay an effective rate of 125 MMK or less per unit.

By contrast, tariff rates offered to IPPs are estimated to be in the region of USD 0.07 per kWh (or MMK 105) and any rate above that is considered to be very rare. A difference of a mere MMK 20 exists between the cost price of electric power and the effective rate paid by the majority of end-users. Once project development costs such as site payments, transmission line construction payments, and additional costs such as transmission and distribution costs (including line losses incurred during transmission) are factored in, it is clear that EPGE will continue its practice of providing a significant subsidy to the great majority of consumers, albeit a reduced one.

▪ **The opportunity**

What are the practical implications of this for prospective IPP developers in Myanmar? It is anticipated that the most significant effect will be the EPGE’s ability to provide more competitive tariffs to IPPs.

Hydropower and Gas to Power

This is likely to play out in the EPGE going ahead with several projects already in the pipeline, but which have become bogged down in tariff negotiations. The most obvious candidates are the four existing gas-to-power (“G2P”) projects and two hydropower projects in the pipeline which have executed memoranda of understanding (“MOUs”) with the MOEE and subsequently received a notice to proceed (“NTP”) in 2018.

| G2P | | | Hydropower | | |
|------------------|---------------|---------------|------------|--------------------------------|---------------|
| Project | Developer | Capacity (MW) | Project | Developer | Capacity (MW) |
| Kanbawk | Total/Siemens | 1,230 MW | Shweli-3 | Electricite de France/Marubeni | 1,050 MW |
| Mee Laung Gyaing | Zhefu/Supreme | 1,390 MW | Deedo | Andritz of Austria | 60 MW |
| Ahlonge | TTCL | 356 MW | | | |



Renewable Energy

The ongoing trade dispute between the United States of America and the People’s Republic of China has seen a dramatic shifting of manufacturing capacity from China to Myanmar to the tune of USD 480 million in the year 2018/19. The shift is led by small and medium-sized manufacturing enterprises. This has led to a significant increase in the demand for land in private industrial zones. Due to Myanmar’s lack of a reliable power supply, the demand for privately produced electricity is surging. With higher tariffs being charged by the main power grid, a significant opportunity now exists for solar power companies to provide electricity on an industrial-by-industrial zone basis using private power purchase agreements, especially in conjunction with diesel and HFO based generation.

▪ **MOEE & The Way Forward**

As noted above, the revised tariffs have

merely alleviated the problem caused by the MOEE’s subsidization of electricity for the bulk of Myanmar energy consumers. The MOEE has adopted a two-pronged assumption to reduce the deficit caused by the subsidization of electricity.

Firstly, the MOEE is of the view that higher tariffs will encourage domestic and non-domestic consumers to be more efficient in their electricity consumption and therefore reduce overall demand.

Secondly, it believes that the current balance of 60% domestic and 40% non-domestic consumption will be inverted and that over time non-domestic consumption will take up a much larger percentage of overall consumption. As non-domestic consumption is subject to much higher tariffs, the MOEE is of the view that this will ultimately transform the EPGE into a profit-making enterprise, averting the need to raise tariffs again in the short to medium term.

2. TENDER OF 5 GAS RENTAL POWER PROJECTS

In order to meet the growing demand for electricity, the MOEE in May 2019 announced that it will seek an additional supply of electricity by calling a round of tenders for five rental power projects each with a five year duration. The five projects, if all are implemented, will increase Myanmar’s generation capacity by 1040 MW.

The projects are divided into two categories, Lot 1 which includes two gas-to-power projects (where gas will be supplied by Myanma Oil and Gas Enterprise (“MOGE”) on a pass-through-basis), and Lot 2 which includes three LNG-to-power projects where the obligations of LNG procurement and importation will be borne by the concessionaire. According to the MOEE, all projects will be conducted on a build-own-operate (“BOO”) basis.

Lot 2 projects are expected to be fueled by LNG imports. Myanmar currently does not have any operational LNG regasification facilities. As a result of the short timeframe in which to implement the projects, we anticipate that a floating storage and regasification unit (“FSRU”) will also be required for regasification and storage of the LNG prior to being used by the project.

| | | | Location | Size (MW) |
|-------|--------------------|-----------|-------------|-----------|
| Lot 1 | Gas (pass through) | Package 1 | Kyun Chaung | 20 |
| | | Package 2 | Ahlong | 120 |
| | | | Location | Size (MW) |
| Lot 2 | LNG | Package 3 | Kyauk Phyu | 150 |
| | | Package 4 | Thanlyin | 350 |
| | | Package 5 | Thaketa | 400 |

The tender submission has a tight deadline of 29 July 2019. The MOEE will enter into a Rental Power Purchase Agreement (“RPPA”) with the project operator for a concession period of five years commencing from the project’s commercial operation date (“COD”).

The newly increased electricity tariffs give the EPGE and MOEE some capacity to agree to higher tariffs in the RPPA, however we expect that the EPGE will still be highly price sensitive.

Small scale power projects (around 20 MW for example) need less investment capital and could thus be commercially viable for an investment period of five years. Large projects on the other hand such as the 400 MW Package 5 project will involve significant capital investment. Such projects with a relatively short concession period of only five years may not be very appealing to power producers.

Considering the commercial aspects, practical issues, short concession periods and other relevant requirements in an emerging economy like Myanmar, the Lot 2 projects leave a lot to be desired.

They are only likely to be feasible where the sponsor has ready access to an FSRU or the ability to charter an FSRU within the given time constraints. Given the truncated construction phase, the construction of onshore regasification facilities does not appear to be feasible.

The rental power purchase agreements and regulatory headwinds

The RPPA for Lot 2 projects will place the responsibility on the IPP to manage the procurement of LNG, transportation and regasification, thereby reducing the government’s responsibilities and obligations. The RPPA may not have provisions with respect to project financing (the only viable option would be offshore financing) and consequently, the IPP will be required to negotiate this with the EPGE.

As the IPP will bear the obligation of sourcing LNG, the RPPA will ideally include provisions shifting LNG price risks to the EPGE. The IPP is encouraged to negotiate for the inclusion of the LNG price (calculated on a tie-back pricing mechanism) or the actual LNG cost as a component in the RPPA’s tariff formula.

Importing goods into Myanmar is a particularly troublesome process. Import Licenses are only valid for periods of three months and must specifically identify all items to be imported. Therefore, where LNG demand by the IPP outstrips projections, delays and potential default may result. To remedy this situation, the concession agreement (“CA”) and/or RPPA should clearly provide for the right to import LNG and the onus should be placed on the EPGE/MOEE to procure all necessary approvals to this effect.



In addition, this item should be adequately covered and reflected in all of the project documents' force majeure clauses as an item of political force majeure.

Among other required licenses and approvals, IPPs must obtain investment approval from the Myanmar Investment Commission, which in turn will entitle them to various tax incentives and long term land use authorizations. This must also be accompanied by an approval from the Ministry of Natural Resources and Environmental Conservation ("MONREC") in the form of an Environmental Compliance Certificate. Additionally, the FSRU will require registration under Myanmar law which may take the form of temporary registration for the duration of the project with the approval of the Department of Marine Administration under the Ministry of Transport and Communications.

Click this [link](#) for full details on the tender.

Authors



Jacobus du Plessis

Legal Adviser, DFDL Myanmar

jacobus@dfd.com

Jacobus is a Legal Adviser and a member of the Energy Mining and Infrastructure practice. Jacobus is based in our Yangon office. He has varied experience in energy and infrastructure projects in Myanmar, having worked on some of the largest urban infrastructure projects and a number of the most recent hydropower projects.



Bhawna Bakshi

Legal Adviser, DFDL Myanmar

bhawna.bakshi@dfd.com

Bhawna is a Legal Adviser and is based in our Yangon office. She has varied experience in energy and infrastructure, acquisition and financing of major projects in Myanmar, having advised on one of the largest gas power project in the country.

Contact



William D. Greenlee, Jr.

Partner, Myanmar Managing Director

william.greenlee@dfd.com



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