DRAFT RENEWABLE ENERGY BILL

COMMENTARY
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TABLE OF CONTENTS

I. COMMENTARY .................................................................................................. 2
   1. OBJECTIVES AND TARGETS ........................................................................ 2
   2. FEED IN TARIFF (FIT) ............................................................................. 2
   3. LEVERAGING FIT WITH MULTILATERAL FUNDING ................................. 2
   4. ON GRID RENEWABLES NOT ELIGIBLE FOR FIT ................................. 3
   5. OFF GRID RENEWABLE ELECTRICITY ............................................... 3
   6. GENERAL INCENTIVES FOR ALL RENEWABLES .................................. 3
   7. COST PASS-THROUGH ............................................................................. 4
   8. STREAMLINED PERMITTING .................................................................... 4
   9. QUALITY OF INSTALLATION .................................................................... 5
  10. BIOMASS STRATEGY .................................................................................... 6
  11. INFORMATION AND REPORTING ............................................................ 6
  12. CAPACITY BUILDING ................................................................................ 6
  13. VALIDATION WORKSHOP ......................................................................... 6

ANNEX: WORKSHOP ATTENDEES ................................................................. 8

ACRONYMS

FIT Feed In Tariff
GMD Gambian Dalasi
kW Kilowatt, a unit of power (generation or demand capacity), 1,000 Watts
kWh Kilowatt hour, a unit of electricity generated or electricity demand, 1,000 Watt hours
MOE Ministry of Energy
MW Megawatt, a unit of power (generation or demand capacity), 1,000,000 Watts
MWh Megawatt hour, a unit of electricity generated or electricity demand, 1,000,000 Watt hours
NAWEC National Water And Electricity Company (responsible for transmission, distribution, generation and retail supply in the Gambia)
NEA National Environment Agency
PPA Power Purchase Agreement
PURA Public Utilities Regulatory Authority (regulates power sector in the Gambia)
PV Photovoltaic
WAPP West Africa Power Pool

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I. COMMENTARY

This report is designed to be read alongside the draft Renewable Energy Bill. It sets out the main features of the draft Renewable Energy Bill, and how it would interact with the wider framework.

1. OBJECTIVES AND TARGETS

The draft Bill sets out its objectives, which are to promote and enhance the use of renewable energy resources, which it aims to achieve by putting in place a framework for providing both fiscal and non-fiscal incentives, developing capabilities and establishing the roles of each relevant institution.

It requires the Ministry shall recommend middle and long-term (2030) national targets for the use of renewable energy resources in electricity generation. These targets shall be approved by Cabinet and then announced publicly not later than 6 months after this Act comes into force. Alternatively, the target can be set in the Bill. However, it is more flexible if done by announcement.

2. FEED IN TARIFF (FIT)

The draft Bill will put in place a legal basis for the introduction of a feed in tariff for renewables, and some other associated benefits that FIT-eligible generating plants will be entitled to.

PURA has an important role in FIT. In particular, they will recommend the “Feed In Tariff Rules” to Cabinet for approval. The principles and methodology for determining the FIT level will be defined by PURA and approved by the Minister of Energy. PURA will also set the “reasonable and fair” indexation formula. PURA will consult with NAWEC about setting the maximum capacity of electricity production that is eligible under the FIT. It is worth noting that draft FIT Rules, an initial level for the FIT, cap on eligibility and indexation formula were all proposed under our FIT and PPA report. The intent of the Bill is simply to put in place a legal basis for PURA to adopt this proposed approach (or another), and for reviewing them over time.

However, the draft Bill does make some firm commitments, which PURA must abide by. The duration of the FIT cannot be less than 15 years and retrospective changes cannot be made during the duration of the PPA for a specific generator. The Bill also specifies that electricity generated outside of the Gambia will not be eligible, and electricity generation using biomass will not be eligible due to concerns about wider sustainability. The biomass ruling can be superseded by the issuance of the Biomass Strategy based on an impact assessment.

We recommend that facilities operating under the FIT regime shall not be entitled to any form of sovereign guarantee, instead they benefit from the security of the legal basis for FIT under the Renewable Energy Bill. However, to permit a degree of flexibility we have not set this requirement in the Bill. They are permitted to receive preferential loans or grants without affecting their eligibility.

Under the FIT producers also benefit from priority connection to the grid and priority dispatch.

Another benefit under the Bill is that PURA are required to prepare and implement streamlined procedures for the application for a Generation licence for FIT producers, including a simplified single application process incorporated with the application for FIT eligibility.

3. LEVERAGING FIT WITH MULTILATERAL FUNDING

The FIT and PPA report discussed the potential for the use of multilateral funding to fund complementary mechanisms to the FIT to encourage renewable development. The Bill gives the Ministry the power to use multilateral funds through grants, provided the method selected is “competitive, efficient, non-distortive and transparent”.

Our recommendation would be that this should be done using the approach recommended in our FIT and PPA report for allocating IFI funding to producers. This takes into account the desire to reduce energy cost to consumers and to enable more renewables to be developed.

Renewable project developers will be invited to tender on the basis of a discount on the Feed in Tariff. Developers would “bid” the discount on the FIT (an energy price - GMD/kWh - below the regulated FIT) that they would take on in return for the incentive. The winner of the tender will receive a financial incentive to offset this discount. Upfront grants (subsidies on the capital cost, e.g. 100
USD/kW) are considered the best approach with this model, although there are other alternatives. Under this methodology, subsidies are awarded based on lowest bid for each technology type. Producers will receive (1) capital subsidies selected based on the tender and (2) the discounted reference tariff.

We believe that this mechanism provides a standard and transparent regulatory environment to investors to facilitate and encourage private sector development activity.

4. **ON GRID RENEWABLES NOT ELIGIBLE FOR FIT**

Some grid connected electricity generated from renewable sources may not qualify for the FIT regime, for example if it is above the level of the cap.

Under the draft Bill, the electricity produced may be purchased at a freely negotiated rate (not higher than alternative generation), provided that NAWEC are satisfied about technical capability of the grid to safely integrate the project.

In the event that the required grid development is considered excessive by NAWEC and so they decide not to accept the project initially, then the developer may choose to agree to carry out these activities at their own expense.

PURA acts as arbitrator in the event of a disagreement between NAWEC and the developer.

5. **OFF GRID RENEWABLE ELECTRICITY**

It is not reasonable to expect NAWEC to pay for electricity generated in off-grid areas, as they would have to recover the cost from on-grid consumers who are already paying high tariffs.

Smaller off-grid systems may be able to supply a group of consumers. For example, a training centre with some diesel and solar PV generation might be able to supply a number of neighbouring houses. It is important that these small off-grid schemes are encouraged as a way to increase access to electricity in areas that NAWEC cannot reach.

Therefore the draft Bill provides that electricity generated from either renewables or hybrid systems (e.g. renewables plus diesel) who build connecting wires are allowed to charge electricity tariffs to end consumers up to the current national retail tariff rates provided the overall generation capacity is less than 200 kW. This greatly simplifies the administrative burden for such small systems.

Larger systems, ones that need to charge higher tariffs, or fossil-fuel only systems will still need to have tariffs approved by PURA (and the Minister for Energy) by going through the tariff justification process normally expected by PURA for a new provider.

PURA are required to streamline their application procedures for this type of off grid system, to make it easier for them to be set up.

6. **GENERAL INCENTIVES FOR ALL RENEWABLES**

The Gambia already has a favourable fiscal regime for renewable energy developers.

The Gambia Investment and Export Promotion Agency Act, 2010 provides incentives to enterprises in specific sectors and in rural regions. Priority sectors include renewable energy sources from solar, wind, hydro and biochemical energies as well as LPG and electricity generation, transmission and distribution. Where a new enterprise has invested at least USD 250,000, they can benefit from:

- A tax holiday for a period of five years in respect of corporate tax, depreciation allowance, withholding tax on dividends (eight years outside the Greater Banjul Area); and
- Import sales tax waiver in respect of importation of its manufacturing plant, construction material and spare parts for a period of five years.

For companies not qualifying for these reliefs, corporate tax is 31% of computed/accepted net profit or 1.5% of turnover of audited accounts or 2.5% of turnover of unaudited accounts (whichever is higher). Losses can be carried forward for 6 years.

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1 Soft loans (e.g. interest rate 2%, grace period 4 years) or even first loss guarantees may be tendered, though these approaches are significantly more complex.
The income and sales tax act 2005 specifies that sales tax applies to many goods and services. However, certain essential services like electricity are exempt.

There was a Cabinet Directive on 6th March 2008 in which approval was given with immediate effect for zero import duty & Sales Tax on the importation of solar photovoltaic (PV) panels, solar water heaters, wind energy equipment and energy efficient bulbs. However this concession does not include batteries to avoid the batteries being used for other purposes.

VAT will be introduced in the Gambia until 2013. The original intention that electricity will be exempt is currently under review, so we have added an exemption for electricity generation from renewable sources.

In addition, there is no license fee for operators in the electricity sub-sector generating from renewable sources.

Renewable Energy developers, including hybrid systems in proportion to of the renewable component, as certified by the Ministry of Energy (via the register – see later), shall be entitled to:

- Profit tax holidays; duly registered projects producing electricity from renewable energy resources within the meaning of this Act shall be exempted from corporate tax for a period of 15 years from commissioning.
- Tax Exemption of Carbon Credits; All proceeds from the sale of carbon emission credits shall be exempt from sales taxes.
- Qualified and registered generating units based on intermittent renewable energy resources, including but not limited to solar and wind, shall be considered "must dispatch" based on available energy and shall enjoy the benefit of priority dispatch.

7. **COST PASS-THROUGH**

The draft Bill specifies that grid connection and administrative expenses reasonably incurred by the NAWEC for the purchase of renewable power and other reasonable expenses may be included with other reasonable costs and recovered through the regulated selling price.

8. **STREAMLINED PERMITTING**

Permitting is an essential part of renewable energy development in all countries. At present in the Gambia the process is not particularly more arduous than internationally. The most difficult part of the process is tariff and PPA agreement, which the proposed FIT will address for many projects. It is worth remembering that a permit process is essential to ensure renewable projects are safe and do not harm the environment.

At present, when a potential investor is first interested in developing either a conventional or renewable energy project, they approach Ministry of Energy. If the President approves further negotiations, a task force is set up, including NAWEC, the Ministry of Energy, Ministry of Justice, Ministry of Finance and Ministry of Trade and Export. Each project negotiates its own PPA.

The seven step IPP process is summarised in Figure 1 and is currently equally applicable to renewables and conventional generation.

Government owns most land in the Gambia and offers permits for its use. The land use arrangements are reasonably favourable for investors: there is typically no charge for the use of the land for investment purposes and the duration for the defined use is not normally limited.

As well as land use, developers will also need environmental permits. To achieve an environmental permit, developers are expected to prepare an Environmental Impact Assessment according to terms prepared by NEA. NEA recognises the lower environmental impacts of solar PV (although they do expect water management plans for the cleaning of panels). For wind and biogas, safety and noise concerns are more important.

Generation licences are issued by the Minister, following recommendations by PURA. If the generator wishes to supply neighbouring consumers, a distribution licence is also required.

Although the permit process is probably not excessive at present, there is always room for improvement. The draft Bill sets out the objective of the Government to simplify, as far as reasonably possible, the permitting process for renewable energy facilities.
On this basis, the Ministry shall enter into a memorandum of understanding with other relevant ministries and authorities to coordinate and simplify the permitting process, including the:

- Department of Physical Planning
- Ministry of Forestry and Environment
- The Ministry of Agriculture
- PURA
- National Environmental Agency
- Such other organisations that it deems appropriate.

As a result of this process of the process shall issue clear guidelines for the processing of applications for renewable energy projects, which meet the targets set out in the draft Bill.

**9. QUALITY OF INSTALLATION**

One of the concerns felt by the Ministry of Energy is that there is a risk of poor quality domestic renewable energy installations being made in the Gambia. Consumers need to be protected as far as possible in the event that this happens.

We discussed options for testing laboratories and accreditation schemes or checks for domestic and small business-scale installations in the Gambia. However, the scale of investment required for such facilities means we do not recommend them at present. The Gambia could consider exploring options to co-ordinate with other WAPP countries to develop a regional accreditation system along the model of schemes developed under the European Renewable Energy Directive.

Until such a scheme is in place, the simplest option that we see is for a minimum performance guarantee to be required on all installation of renewable energy equipment (electricity and thermal), and relating to both the quality of the equipment and the quality of the installation.

Furthermore, PURA can require details of third party conformity tests that demonstrate conformity with international requirements for quality and safety of equipment.

PURA already have plans to register qualified electricians and introduce an ID card scheme to give consumers confidence and ensure the safety and compliance of home electrical systems with the network. The proposed system for renewables is designed to be complementary to this wider electrician certification scheme. Installers are required to be appropriately trained to install the equipment that they offer, with appropriate certification where relevant.
Installers must provide a quality guarantee for the proper equipment and installation according to best practice. This will mean that they are likely to put similar obligations on importers.

The minimum obligatory duration of such guarantee will be set by announcement, but is initially set at six months. We suggest keeping this under review and extending to up to three years if it seems necessary for consumer confidence.

10. BIOMASS STRATEGY

As already discussed, there are concerns about the impact of biomass, biofuel and energy crops in the Gambia, because of the risk that they might displace food crops or cause deforestation. Therefore, the Ministry is required to carry out an impact assessment for the use of biomass for electricity and heating, and the production of bioliquids and biofuels.

Until the impact assessment is complete, biomass energy sources above a cap of 1 MW shall not benefit from the Feed In Tariff or any other incentive under the draft Bill. Following completion of the impact assessment, the Government shall prepare and adopt a more long-term strategy for the sustainable use of biomass energy sources.

11. INFORMATION AND REPORTING

Under the draft Bill, the Ministry of Energy is required to report annually to the Cabinet on progress towards the renewable energy targets, including a review of the performance of the incentives provided under the Bill.

They are also required to maintain and disseminate centralised information on potential renewable energy resources to ensure that information is available to potential investors. This information may, for example, include the Lahmeyer reports on renewable energy potential and NAWEC information on the grid status and current demand. Separately, the draft Bill requires the Ministry of Energy to compile details of all relevant permit application processes and summarise them for potential developers, including making the information and relevant application forms available on their website.

The Ministry is also expected to maintain a registry of installed facilities using renewable energy resources. Developers of systems using renewable energy are required to register in this registry.

PURA is required to produce a quarterly report on renewable electricity, which will be support by information that NAWEC is required to provide. In turn, renewable energy projects are required to provide information to NAWEC (like expected generation) to support the process.

PURA will publish, in an anonymised form on a shared website, the quantities of electricity purchased at the Feed In Tariff and the surcharge, if any, on the consumers. This surcharge shall be laid out in a manner which is understandable without the need for further information.

12. CAPACITY BUILDING

The Ministry of Energy is given the task of fostering capabilities in the use of renewable energy resources. This may take two forms:

- Working with other Ministries, universities and other training providers to promote the implementation of educational programmes within the renewable energy sector; and
- Encouraging the development of technical and standard requirements and certificates to installers, to ensure the quality of these systems especially in small scale installations.

13. VALIDATION WORKSHOP

Within the framework of this project we held a validation workshop on 6 December 2012. This was well attended, with the Secretary General representing the Minister of Energy (the President). Representatives of NAWEC, PURA, the EU delegation, the American Embassy, the World Bank, donor institutions, the private sector and the media were present. A full attendee list is provided in the Annex.

In addition, we arranged a number of separate sessions with important stakeholders (including the Ministry, NAWEC, PURA and GEF UNIDO).
The Ministry also arranged a meeting of donors and key stakeholders on 7 December to discuss and prioritise the action plan in much greater detail, and to begin a process of trying to organise greater co-ordination of donor funding.

As a result of these meetings a number of changes were incorporated in the Strategy, draft Bill and FIT Rules.

*Figure 2: Photographs of the workshop*