

DRAFT RENEWABLE ENERGY BILL

REPORT

This project is funded by the European Union



Ministry of Energy, The Gambia

Prepared by:

AF-MERCADOS EMI

18 December 2012
MI 1312

RENEWABLE ENERGY BILL 2012

ARRANGEMENTS OF SECTIONS

SECTION 1.	SHORT TITLE.....	1
SECTION 2.	DEFINITIONS.....	1
SECTION 3.	TARGETS.....	3
SECTION 4.	USE OF OTHER FUNDING.....	3
SECTION 5.	SUPPORT FOR ON GRID RENEWABLE ELECTRICITY (FEED IN TARIFF)	3
SECTION 6.	SUPPORT FOR ON GRID RENEWABLE ELECTRICITY NOT QUALIFYING FOR FEED IN TARIFF 4	
SECTION 7.	SUPPORT FOR OFF GRID RENEWABLE ELECTRICITY	5
SECTION 8.	GENERAL INCENTIVES.....	5
SECTION 9.	BIOMASS STRATEGY.....	6
SECTION 10.	STREAMLINED PERMITTING	6
SECTION 11.	CAPACITY BUILDING	8
SECTION 12.	QUALITY OF INSTALLATION	8
SECTION 13.	REPORTING UNDER THE ACT	8
SECTION 14.	MISCELLANEOUS.....	9
	OBJECTS AND REASONS	9

RENEWABLE ENERGY BILL 2012

AN ACT to establish legal, economic and institutional basis to promote the use of Renewable Energy Resources and for connected matters.

ENACTED by the President and the National Assembly.

SECTION 1. SHORT TITLE

1. This Act may be cited as the "Renewable Energy Act 2012".

SECTION 2. DEFINITIONS

2. In this Act, unless the context otherwise requires:

"Act" means the Electricity Act; [cap 32.05]

"Aerothermal energy" means energy stored in the form of heat in the ambient air;

"Authority" means The Gambia Utilities Regulatory Authority established under The Gambia Public Utilities Regulatory Authority Act; [cap 66.01]

"Biofuels" means liquid or gaseous fuel for transport produced from biomass;

"Biogas" means a fuel gas produced from biomass and/or from the biodegradable fraction of waste, that can be purified to natural gas quality, to be used as biofuel, or wood gas;

"Biomass" means non-fossil, biodegradable organic material originating from naturally occurring or cultured plants, animals and micro-organisms, including products from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste.;

"Capacity" means the rated power output;

"Consumer" means any person or entity receiving electricity from the distribution or transmission network for his or her or its own use;

"Feed In Tariff Rules" means the rules to establish the Feed In Tariff system and to regulate the method of establishing and approving the Feed In Tariffs;

"Generation license" has the meaning given to it in the Electricity Act 2005;

"Geothermal energy" means energy stored in the form of heat beneath the surface of solid earth;

"Grid" means a number of transmission and distribution systems linked together, as provided for under the Act;

"Hybrid Systems" mean any power or energy generation facility which makes use of more than one fuel source with a minimum of ten percent (10%) of the annual energy output provided by Renewable Energy Sources, including but not limited to integrated combined solar and wind systems, combined biomass and fossil fuel systems, combined hydro and fossil fuel systems, integrated solar and biomass systems, integrated wind and fossil fuel systems;

"Hydrothermal" means energy stored in the form of heat in surface water;

"Hydropower" means water-based energy systems;

"Minister" means the Minister responsible for the electricity sub-sector;

"Ministry" means the Ministry of Energy;

"Ministry of Finance" means the body entitled to draft the general rules and policies related with the financial sector;

"Off-Grid" means not connected to the Grid;

"Person" means a natural or juristic person;

"Registry" means a registry to be managed by the Ministry to monitor renewable energy facilities;

"Renewable Energy Resources" means energy from non-fossil sources namely wind, solar, hydropower, biogas, biomass, landfill gas, sewage treatment plant gas, geothermal, aerothermal, hydrothermal and ocean;

"Responsible Network Utility" means the holder of a distribution licence or transmission licence (as applicable) granted by the Authority under the Electricity Act 2005 at the receiving point at which electric energy is delivered directly from a generating facility, where distribution licence, transmission licence, grid receiving point and distribution receiving point have the meanings given to them in the Act;

"Solar Resources" means the energy derived from solar radiation which can be converted into useful thermal or electrical energy

"Wind Resources" means energy derived from wind, converted into useful electrical or mechanical energy.

A word or phrase not specifically defined in this Act, but defined in the Electricity Act shall have the meaning assigned to it in that Act.

SECTION 3. TARGETS

3. The Ministry shall recommend middle and long-term national targets for the use of renewable energy resources in electricity generation, which may include targets related to geographic location and diversity. These targets shall be approved by Cabinet and then announced publicly.
4. Such indicative target for 2030 for the overall available generating capacity connected to the grid capable of generating electricity from renewable energy resources will be set by announcement by the Ministry, with Cabinet approval, 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. If you want a target that has more certainty and cannot be easily reduced in the future, then put the target in the Bill. If you want a target that can be more easily increased in the future (with the downside of it being more easily reduced in the future as well), then do not put the target in the Bill. To provide certainty for the utility and businesses, it is possible to limit revision of targets to no more than every 2 years, as longer timeframes may encourage investment. Target setting could include Ministry consultation.

5. The Ministry shall report annually to the Cabinet on progress towards these targets, including a review of the performance of the incentives provided under this Act.

SECTION 4. USE OF OTHER FUNDING

6. Funds may be provided to the Government of the Gambia in a variety of forms such as grants, subsidised loans, and in other forms by countries, international financial organisations, and others, with the purpose of encouraging the development of clean and renewable technologies.
7. The Ministry is given the authority by the Government to enable the use of such funds through grants to encourage renewable energy development.
8. The use or allocation of such funds shall, as far as practicable, be done through a competitive, efficient, non-distortive and transparent manner and to support the objective of minimising the costs to consumers, and this assignment of funds will be maintained until the renewable energy targets are met.
9. The Ministry shall report to the Cabinet on the use of such funds annually.

SECTION 5. SUPPORT FOR ON GRID RENEWABLE ELECTRICITY (FEED IN TARIFF)

10. To accelerate the development of renewable energy resources, a tariff system (the "Feed In Tariff") for electricity produced from eligible Renewable Energy Resources, including such portion of electricity from Hybrid Systems that is directly attributable to eligible Renewable Energy Resources, shall be introduced.
11. Eligibility for the Feed in Tariff will be defined by the Feed In Tariff Rules.

12. Towards this end, the Authority shall formulate and promulgate, and the Minister shall approve feed-in tariff rules within six (6) months of this Act coming into force, which shall include, but not be limited to the following:
- a. the Responsible Network Utility shall pay the Feed In Tariff only on the basis of electricity from renewable energy resources delivered into the Grid;
 - b. the rules defining eligibility for the tariff;
 - c. electricity generated outside of The Gambia will not be eligible;
 - d. Hybrid Systems shall receive the Feed In Tariff only for that portion of the electricity from renewable energy resources delivered into the Grid;
 - e. only biomass deemed sustainable by the Biomass strategy, to be adopted by the Government as specified under section 9, shall be eligible ;
 - f. a duration for power purchase agreements ("Feed In Tariff Power Purchase Duration") and standard contract terms established under the Feed In Tariff Rules;
 - g. the principles and methodology for determining the Feed In Tariff level and how often the Feed in Tariff will be revised, which will be defined by the Authority and approved by the Minister;
 - h. the Feed In Tariff payment during the Feed In Tariff Power Purchase Duration shall be adjusted based on a reasonable and fair indexation formula set by the Authority;
 - i. priority connection to the grid for any electricity producer that is eligible under the Feed In Tariff Rules;
 - j. the priority purchase and transmission of, and payment for, such electricity that is eligible under the Feed In Tariff Rules;
 - k. the Authority in consultation with the Responsible Network Utility shall determine a maximum overall national capacity of electricity production that is eligible under the Feed In Tariff Rules and this level will be published by Authority in the Feed In Tariff Rules;
 - l. such maximum capacity limit may be reviewed and revised by the Authority, based on evidence of impacts on the safety and reliability of the electricity system or the financial impact that it may be having in the power sector in accordance with the provisions set out in the Feed In Tariff Rules; and
 - m. determine the fixed tariff to be paid to electricity produced from each type of renewable energy and the mandated number of years for the application of these rates, which shall not be less than fifteen (15) years.
13. Retrospective changes shall not be made during the Feed In Tariff Power Purchase Duration.
14. Financial Institutions may offer preferential loan with financial interest subsidy, capital subsidies or other complementary mechanisms to renewable energy projects, without affecting their eligibility for Feed In Tariffs.

SECTION 6. SUPPORT FOR ON GRID RENEWABLE ELECTRICITY NOT QUALIFYING FOR FEED IN TARIFF

15. The tariff paid for electricity generated from Renewable Energy Resources that do not qualify for the Feed In Tariff regime shall be governed as follows:

- a. provided the Responsible Network Utility ensures the safety and technical capability of the grid to integrate the project, the electricity produced may be purchased at a negotiated rate which shall not be higher than the alternative cost of electricity generation;
- b. the Authority shall be responsible for assessing the alternative cost of electricity generation referred to above;
- c. in normal circumstances, required grid connection will be carried out with the division of costs normally applied for new grid developments, as approved by the Authority, unless the required grid development is considered excessive in the reasonable judgement of the Responsible Network Utility;
- d. in the event that the required grid development is considered excessive in the reasonable judgement of the Responsible Network Utility, the developer of a potential electricity generation project using Renewable Energy Resources may choose to agree to carry out these justified grid development activities at their own expense; and

Normally the reinforcement cost of grid connection is met by the network operator (NAWEC), the developer only needs to meet the immediate costs of connecting his site. This shallow charging methodology is in line with international best practice.

However, we want to provide for the case where NAWEC says it is not economically viable to connect a site. If the developer disagrees, they can meet their own full connection costs.

This provides some flexibility in the framework.

- e. the Authority shall act as arbitrator in the event of a disagreement between the Responsible Network Utility and the developer of a potential electricity generation project using Renewable Energy Resources.

SECTION 7. SUPPORT FOR OFF GRID RENEWABLE ELECTRICITY

- 16. Electricity generation from Renewable Energy Resources or Hybrid Systems in Off-Grid areas which build the required facilities to connect end consumers ("Private Wire Network") are allowed to charge electricity tariffs to end consumers up to the current national retail tariff rates ("Approved Electricity Tariffs"), as determined by the Authority, provided the Capacity of generating facility on such Private Wire Networks system is no greater than 200 kilowatts.
- 17. Private Wire Networks with a Capacity of generation from Renewable Energy Resources or Hybrid Systems greater than 200 kilowatts or wishing to charge tariffs greater than the Approved Electricity Tariffs may also be permitted, but will need to justify any tariffs to the Authority following the normal procedures under the Act.

SECTION 8. GENERAL INCENTIVES

- 18. The operators of facilities using Renewable Energy Resources, including hybrid systems in proportion to and to the extent of the Renewable Energy component, for both power and non-power applications, as duly certified by the Ministry, shall be entitled to the following incentives:
 - a. 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;
 - b. Value added tax; duly registered projects producing electricity from renewable energy resources within the meaning of this Act shall be exempted from value added tax for a period of 15 years from commissioning; and
 - c. Tax Exemption of Carbon Credits; All proceeds from the sale of carbon emission credits shall be exempt from sales taxes.
19. The fiscal incentives shall apply from the coming into force of this Act.
20. Grid connection and administrative expenses reasonably incurred by the Responsible Network Utility for the purchase of renewable power and other reasonable expenses may be included with other reasonable costs and recovered through the regulated selling price.
21. Qualified and registered generating facilities based on intermittent renewable energy resources, including but not limited to solar and wind, shall enjoy the benefit of priority dispatch whenever it is technically possible.

SECTION 9. BIOMASS STRATEGY

22. Within one year of this Act coming into force, the Ministry shall carry out an impact assessment for the use of biomass for electricity and other energy purposes (heating, cooling and transport fuel). The assessment should include, but not be limited to:
- a. the potential impacts of growing energy crops specifically for electricity generation, heat or transport fuels, or for export (competition with food crops for the use of land, potential increase in food prices, etc.);
 - b. the most appropriate use for waste biomass, considering cooking fuel and electricity generation applications;
 - c. forestry impacts of using different biomass energy sources;
 - d. agriculture impacts of using different biomass energy sources;
 - e. the feasibility of using different biomass energy sources; and
 - f. potential economic impacts.
23. Until such impact assessment is complete, biomass energy sources beyond one megawatt total capacity shall not benefit from the Feed In Tariff or any other incentive.
24. Following completion of the impact assessment, the Government shall prepare and adopt a strategy for the sustainable use of biomass energy sources ("*Biomass Strategy*").

SECTION 10. STREAMLINED PERMITTING

25. The Government shall simplify, as far as reasonably possible, the permitting process for facilities using Renewable Energy Resources to facilitate timely development of these facilities. On this basis, the Ministry shall work with other relevant ministries and authorities to coordinate and simplify the permitting process, including where applicable on environmental impact, generation, distribution, land use, water use and construction.

26. The Ministry shall establish a Permit Streamlining Project with those authorities with responsibility for permitting energy projects.
27. Not later than 90 days after this Act coming into force, the Ministry shall enter into a memorandum of understanding with:
- the Department of Physical Planning;
 - the Ministry responsible for Forestry and Environment;
 - the Ministry of Agriculture;
 - the Authority;
 - the National Environmental Agency;
 - the Gambian Investment and Export Promotion Agency; and
 - such other organisations that it deems appropriate.
28. Not later than 30 days after the date of the signing of the memorandum of understanding all signatory parties shall assign an employee who has expertise in the applicable regulatory issues to the Permit Streamlining Project.
29. The Ministry shall issue clear guidelines for the processing of applications for the development of projects using Renewable Energy Resources, which shall include:
- require the relevant agency to respond within ten business days acknowledging receipt of any permit application and informing the applicant of any missing information required to assess their application;
 - an application process that reflects the scale and potential impact of the development (simpler processes for those developments that may have lower impacts, for example in the case of environmental impact assessments, certain renewable energy projects may have little environmental impact);
 - establish a timeline for the processing of each such application;
 - specific deadlines for decisions and actions on permit applications;
 - complete permit applications for developments using Renewable Energy Sources shall be assessed and responded to within sixty days after submission unless otherwise agreed with the applicant; and
 - if any agency fails to comply with any deadline with respect to a permit application, they shall notify the applicant every ten days with specific information regarding the reasons for the permit delay and an estimate of the time until the permit decision will be made; and
 - Establish a deadline by which the applicant must use the permit or forfeit their right to it
30. The Ministry shall 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.
31. For avoidance of doubt, application fees, timelines for construction, penalties, and other provisions set out in regulation will remain unchanged.

Alternative: if deadlines are exceeded by more than 120 days the decision is automatically made to the benefit of the applicant (that is to say the permit/license is awarded)

SECTION 11. CAPACITY BUILDING

32.The Ministry shall:

- a. work with other Ministries, universities and other training providers to promote the implementation of educational programmes within the renewable energy sector; and
- b. encourage the development of technical and standard requirements and certificates for installers of equipment to generate electricity from Renewable Energy Resources, to ensure the quality of these systems especially in small scale installations, whether residential or commercial.

SECTION 12. QUALITY OF INSTALLATION

33.Installers of systems using Renewable Energy Resources, including electricity generation and thermal energy systems shall be appropriately trained to install the equipment that they offer, with appropriate certification where relevant.

34.The Authority will maintain a register of appropriately qualified installers of systems using Renewable Energy Resources.

35.The Authority shall require importers of systems using Renewable Energy Resources to provide details of compliance with internationally recognised performance and safety standards.

36.Installers of systems using Renewable Energy Resources shall provide a quality guarantee for the proper installation according to best practice. The minimum obligatory duration of such guarantee will be six months, or such other period set by announcement by the Authority.

This section is intended to ensure the quality of smaller installation, for example in homes and small businesses. It could be the subject of discussion at the workshop. We suggest a minimum duration of guarantee of around six months, with potential to extend to up to three years.

SECTION 13. REPORTING UNDER THE ACT

37.The Authority shall, within two weeks after the end of each quarter, publish on an appropriate website a report setting out at least the following:

- a. the number of applications for the connection of renewable energy generating facilities to a Relevant Network Utility received by the Relevant Network Utility during the period as well as the capacity involved;
- b. the number of renewable energy generating facilities connected to a Relevant Network Utility by the Relevant Network Utility during the period; and
- c. the total number of renewable energy generating facilities connected to a Relevant Network Utility's network and their capacity, comparing this to the maximum overall national capacity of electricity production that is eligible under the Feed In Tariff Rules.

38.The Responsible Network Utility shall make available to the Authority without delay:

- a. the information the Authority requires to prepare the report mentioned in section 37; and
 - b. the data the Authority requires to record tariff payments and recovery mechanisms of the Feed In Tariff regime.
39. Developers of systems using Renewable Energy Resources shall:
- a. register facilities with the Ministry for inclusion in the Registry;
 - b. inform the Responsible Network Utility of the location and installed capacity of the installation as well as of the quantity of electricity expected to be fed into the grid (where applicable); and
 - c. by 31 January of each year provide the Responsible Network Utility with the data required for the final accounts of the previous year.
40. Responsible Network Utilities shall determine the quantities of electricity and tariff payments based on actual measurements.
41. The Authority 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.
42. The Authority may disclose the surcharge to final consumers.
43. This surcharge shall be laid out in a manner which is understandable to consumers without the need for further information.

SECTION 14. MISCELLANEOUS

44. The Ministry shall be the lead agency mandated to implement the provisions of this Act, working closely with the Authority on such aspects that pertain to electricity generation.
45. The Authority may, with the approval of the Minister, make regulations for the better carrying out of the purposes of this Act.
46. The Authority is vested with the power to administer the Act in accordance with the provisions of the Act and The Gambia Public Regulatory Authority Act. [cap 66.01]
47. If any provision or part of a provision of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, those provisions not affected thereby shall continue to be in full force and effect.
48. All prior rules and guidelines, or portions thereof, issued by the Authority not consistent with these Rules are hereby repealed or modified accordingly.

OBJECTS AND REASONS

The objectives of this Act are to:

- a. promote the use of renewable energy resources, including hybrid systems, to achieve greater energy self-reliance and thereby reduce the exposure to fossil fuel price fluctuations, reduce harmful emissions, and promote economic growth and protection of the environment in The Gambia;
- b. increase the development of renewable energy by development of national and local capabilities and providing both fiscal and non-fiscal incentives;

- c. enhance the use of renewable energy resources;
- d. establish the roles of each relevant institution; and
- e. contribute to observe the regional decisions adopted in Accra regarding the ECOWAS Regional Renewable Energy Policy.

.....

MINISTER OF ENERGY