

Client Alert

October 2022

New ERC Regulation and Notifications on Renewable Energy Big Lot Program

In May 2022, the National Energy Policy Committee approved a quota for the procurement of electricity generated from renewable sources under the Feed-in Tariff (FiT) scheme between 2022 and 2030. The Energy Regulatory Commission (the “**ERC**”), as the regulator, has issued the Regulation for the Procurement of Electricity generated from Renewable Sources under the Feed-in Tariff (FiT) Scheme 2022 - 2030 for Power Plants with no Fuel Costs B.E. 2565 (2022) (the “**Regulation**”).

Following the issuance of the Regulation, the ERC has announced the following notifications for the purchase of electricity: (i) the Notification for the Purchase of Electricity generated from Renewable Sources under the Feed-in Tariff (FiT) Scheme 2022 - 2030 for Ground-mounted Solar B.E. 2565 (2022); and (ii) the Notification for the Purchase of Electricity generated from Renewable Sources under the Feed-in Tariff (FiT) Scheme 2022 - 2030 for Ground-mounted Solar with Battery Energy Storage System B.E. 2565 (2022) (collectively, the “**Notifications**”).

A. The Regulation

1. Procurement Targets and Total Procurement Capacity

- Distribution Utilities¹ will purchase electricity from power producers utilizing renewable energy sources which include biogas (wastewater/waste), wind, ground-mounted solar, and “hybrid” ground-mounted solar (i.e., ground-mounted solar with battery energy storage system (“**BESS**”).
- Power purchase agreements will be awarded on a “non-firm” basis and a “partial-firm” basis. For biogas, wind and solar projects generated by small power producers (“**SPPs**”) and very small power producers (“**VSPP**”), the procurement will be in the form of non-firm purchases. The partial-firm purchase will apply to the hybrid ground-mounted solar projects generated by SPPs.
- According to the Power Development Plan 2018 - 2037 (Revision 1), the target procurement quota and scheduled commercial operation date (“**SCOD**”) for the renewable energy are as follows:

¹ Distribution Utilities refer to Electricity Generating Authority of Thailand (“**EGAT**”), the Provincial Electricity Authority (“**PEA**”), and the Metropolitan Electricity Authority (“**MEA**”).

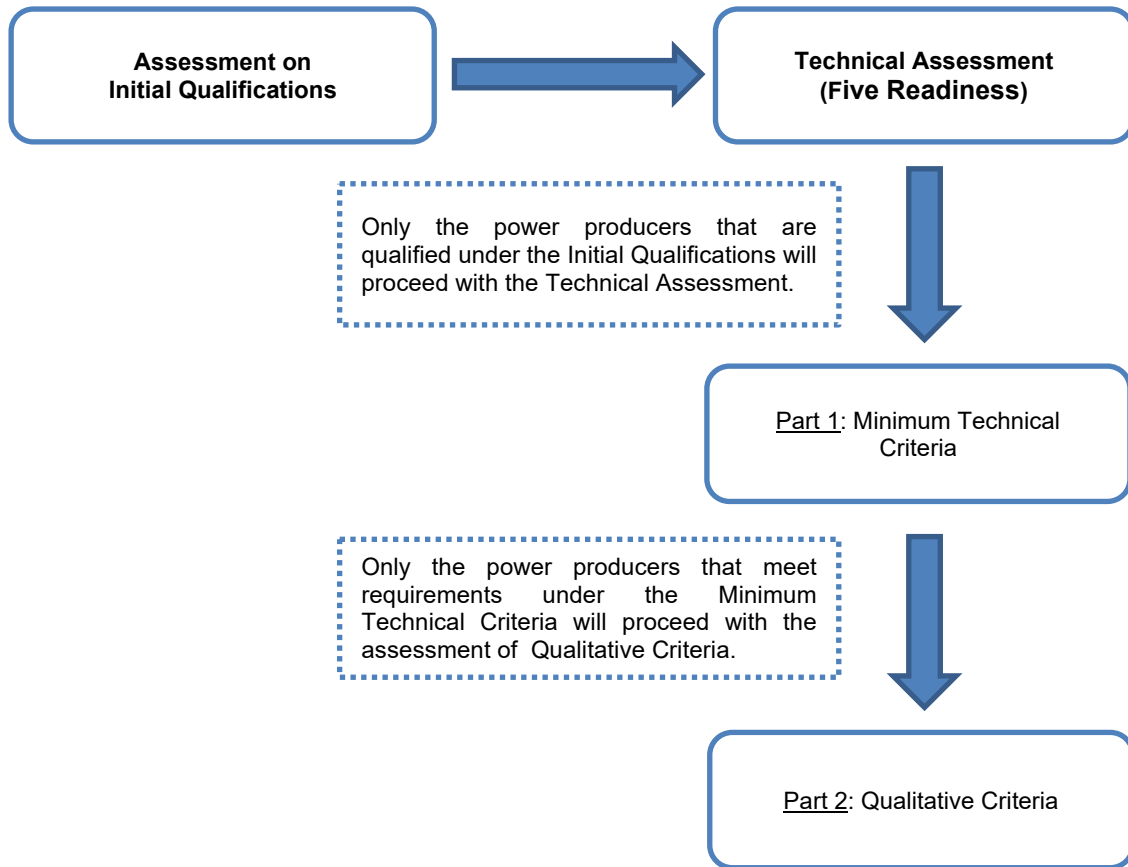
Renewable Energy	Contract	Procurement Quota per each year of SCODs							
		2024	2025	2026	2027	2028	2029	2030	Total (MW)
Biogas (waste water/waste)	Non-Firm	-	-	75	75	75	70	40	335
Wind	Non-Firm	-	250	250	250	250	250	250	1,500
Ground-mounted solar	Non-Firm	190	290	258	440	490	310	390	2,368
Hybrid ground-mounted solar (solar +BESS with a contracted capacity > 10-90 MW)	Partial-Firm	100	100	100	100	200	200	200	1,000
Total:									5,203

2. FiT Rates

The purchase price for each renewable energy is under the Feed-in Tariff (FiT) scheme as follows:

Energy Sources	FiT (THB/KWh)			Term (years)
	<u>FiT_F</u>	<u>FiT_V</u>	<u>FiT</u>	
Biogas (wastewater/waste)	2.0724	-	2.0724	20
Wind	3.1014	-	3.1014	25
Ground-mounted solar	2.1679	-	2.1679	25
Hybrid ground-mounted solar (solar +BESS with a contracted capacity > 10-90 MW)	2.8331	-	2.8331	25

3. Assessment Criteria



The Regulation sets out qualifications of the power producers and other requirements for the power producers to comply with. According to the Regulation, the ERC will first consider the initial qualifications listed out in item 3.1. If the ERC is satisfied with the initial qualifications, the ERC will further consider each of the “five readiness” qualifications of the power producer.

For the assessment of the technical qualifications listed out in item 3.2 (i.e., the “five readiness” qualifications), the power producer shall present all documents and evidence confirming that it at least has all technical qualifications required under the Regulation. This is called “minimum technical criteria”. The ERC will then consider the quality of each readiness qualification of the power producer. This is called “qualitative criteria”. Therefore, the ERC will not only consider if the five readiness qualifications are in place, but also score each of such readiness qualifications. The power producer with the highest score will be selected first.

Initial Qualifications

- **Corporate Qualifications.**
 - ***Entity.** The power producer must be a juristic person under the laws of Thailand or registered in Thailand having objectives to produce and distribute electricity established. The power producer must not be a government agency, a state enterprise, or any other public organization.
 - ***Foreign Shareholders.** If the power producer is a limited company with foreigners being ultimate shareholders, (i) the shareholding ratio of such foreigners must not exceed 49% of the total shares; and (ii) the

- number of such foreign shareholders must not exceed half of the total number of the shareholders.
- ****Director**. Not less than half of the total number of the directors must have Thai nationality.
- ****Authorized Director**. The authorized director of the company must have Thai nationality.
- **Registered Capital**. The registered capital of the power producer must not be less than THB 2,000 per kW of the electricity offered for sale. From our discussion with the ERC official, the ERC will only consider the “registered capital” as shown in the applicant’s company affidavit, and not the actual “paid-up” capital.
- **Exemptions²**. The exemptions to the anti-foreign requirements shall not apply to the power producer benefits from exemptions under any international agreements which grant the power producer national treatment, or other applicable laws.
- **Bid Bond**. The power producer must place a bid bond in an amount of THB 1,000 per kW of the electricity offered for sale.
- **Greenfield Project**. The project shall be a newly constructed power plant and never have been granted an acceptance to sell and purchase electricity or subsidized from any of the Distribution Utilities.

Technical Qualifications

The below table sets out a list of supporting documents³ of the Electricity Sale Application (the “**Application**”) to present technical qualifications or the so-called “five readiness” qualifications of the power producer.

No.	Readiness	Required Documents
1.	Land	(a) Document showing ownership of the land or the right to possess the land (e.g., agreement to sell and purchase the land or land lease agreement)
		(b) Document from a competent authority confirming that the land is eligible for the installation of a power plant under the law on town planning

² The Regulation provides that these restrictions can be exempted if there is an international agreement or treaty which provides the national treatment for Specific Commitment (Mode 3) for foreign entity and foreign shareholding noted with (*) above and Specific Commitment (Mode 4) for restrictions on the directors noted with (**) above. We understand that the “Specific Commitment” refers to the General Agreement on Trade in Services (“**GATS**”). However, as of the date of this Summary, the ERC officials cannot exemplify, describe or clarify characteristics of the international agreements and treaties that the power producer may utilize to exempt the anti-foreign requirements under the Regulation.

³ The detailed list of supporting documents for the submission of the Application (in Thai) can be downloaded from [this link](#).

No.	Readiness	Required Documents
		(c) Layout showing the overall land parcel (in case the land is represented by more than one title deed or land right certificate)
		(d) Line route map showing the electricity line from the project to the grid synchronization point (if any)
2.	Technology	(a) Plant layout, certified by a competent engineer under the law on engineering profession
		(b) Copy of the license for practicing an engineering profession of the engineer who certifies the plant layout
		(c) Single line diagram which conforms to the Application certified by a competent engineer under the law on engineering profession
		(d) Copy of the license for practicing an engineering profession of the engineer who certifies the single line diagram
		(e) Summary of the total area of the project
		(f) Evidence showing experiences in the energy industry of the power producer or its affiliates
		(g) Evidence showing the power producer's readiness to procure machineries
3.	Fuel	Assessment report of the capability to generate electricity into the power network system per year
4.	Finance	(a) Estimated value of the project
		(b) Letter showing financial support from a bank
5.	Project Implementation Plan⁴	Project implementation plan and time frames for each phase of the development process

⁴ Project implementation plan is a new readiness that has been added to this RE Big Lot Program. As of the date of this Summary, the ERC released two forms (in Thai) for the power producers to fill in its project implementation plan. For ground-mounted solar: [04-03 แบบแสดงข้อมูลความพร้อมด้านเทคนิค Solar.pdf \(erc.or.th\)](#). For ground-mounted hybrid solar: [03-03 แบบแสดงข้อมูลความพร้อมด้านเทคนิค Solar-BESS.pdf \(erc.or.th\)](#).

Other Considerations

- **Shareholding Maintenance.** The shareholding ratio of the power producer specified in the Application shall not be changed to the level causing the number of shares held by the existing shareholders to be less than 50% of the total shares until the power producer has achieved the commercial operation date (“**COD**”) for three years, unless the power producer is a public limited company with its shares listed on the Stock Exchange of Thailand.
- **Carbon Credit.** The Regulation provides that renewable energy certificates (“**RECs**”) or carbon credits shall belong to the Distribution Utilities or other relevant governmental authorities.

B. The Notifications

As of the date of this memo, the ERC has announced the Notifications on 30 September 2022. Below are brief summaries of the Notifications.

1. Submission of the Application

- The power producer shall submit the Application and all Additional Documents (defined below) (in .pdf format) through the RE Proposal System available on the ERC’s website (www.erc.or.th) from 4 November 2022 at 12.01 AM until 25 November 2022 at 12.00 PM. The power producer is also required to confirm its submission through the RE Proposal System within the specified period.
- Within three business days of confirmation of the Application submission date, the power producer shall submit the following documents (collectively, the “**Application Package**”) to the Distribution Utilities in three separate envelopes. The Application Package must be in electronic form downloaded from the RE Proposal System and saved on USB flash drive:
 - two sets of copies of the submitted Application printed from the RE Proposal System (certified by the authorized director with the company’s seal on every page);
 - evidence of bid bond issuance; and
 - copies of the Additional Documents which include: (i) documents showing five readiness qualifications; and (ii) other supporting documents as specified in the list of supporting documents for the submission of the Application.
- The Distribution Utilities shall announce a list of the selected power producers and inform the non-selected power producers within three business days of the date the list of the selected power producers is announced.
- The non-selected power producer may file an appeal with the ERC by 15 December 2022.

2. Timeline

Set out below is a timeline for the procurement process.

No.	Process	Timeline
1.	The Distribution Utilities to issue a notification regarding the checking Feeder.	By 3 October 2022
2.	The Distribution Utilities to issue the notification prescribing details, procedures, places, timelines and other terms and conditions for the purchase of electricity.	By 14 October 2022
3.	The Distribution Utilities to check availability of the grid synchronization point (the “Feeder”) as requested by the power producer.	3 October 2022 to 28 October 2022
4.	The Distribution Utilities to announce result of the Feeder checking.	By 11 November 2022
5.	The power producers to submit and confirm the Application Package through the RE Proposal System available on the ERC’s website (www.erc.or.th).	<ul style="list-style-type: none"> Application submission: 4 November 2022 at 12.01 AM until 25 November 2022 at 12.00 PM. Confirmation of the submission: within three business days of the submission date, but it must be by 25 November 2022 at 12.00 PM.
6.	The Distribution Utilities to announce the list of the power producers that pass the initial qualifications assessment.	By 2 December 2022
7.	The power producers that fail the initial qualifications assessment to file appeals and evidence to the ERC.	By 15 December 2022
8.	The ERC to announce results of the appeals.	By 4 January 2023
9.	The ERC to announce the list of power producers that pass the five-readiness assessment.	By 18 January 2023
10.	The power producers that fail the five-readiness assessment to file appeals and evidence to the ERC.	Within 7 working days from the appeal date
11.	The ERC to announce results of the appeals.	By 22 February 2023
12.	The ERC to announce the list of selected power producers.	By 15 March 2023
13.	The Distribution Utilities to issue a letter of acceptance to each of selected power producers.	By 29 March 2023

No.	Process	Timeline
14.	The power producers to sign the PPAs.	<ul style="list-style-type: none"> • Within 180 days, starting from the date the process in item 13 above has been completed (in case that the SCOD is within 2024 and 2025). • Within 2 years, starting from the date the process in item 13 above has been completed (in case that the SCOD is within 2026 to 2030).

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