



Conference on “Biogas is a
chance for Ukraine’s energy
independence and its European
integration”
22 November 2012
Kyiv, Ukraine



Practical legal aspects
of implementation of biogas
projects under “green” tariff

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DANEVYCH law firm

- ⇒ Strong international focus**
- ⇒ Actively involved into green energy legal environment for last 4 years**
- ⇒ IFC expert on “green” tariff mapping in Ukraine**
- ⇒ Legal expert and partner of Ukrainian Bioenergy Association**
- ⇒ We are proud to provide Clients with services which make the environment better and the economy of Ukraine stronger**

Incentives for development of biogas projects

☞ Tax incentives under the Tax Code

- ☞ exemption from import VAT and customs duties
- ☞ decrease of land tax for renewable energy power plants by 75%
- ☞ limits for rental payments for lands lease from state and municipal authorities by 3% of appraisal value
- ☞ exemption from CPT of
 - ☞ profit from main activity of companies in the energy sphere which produces electricity only from renewable till 2021
 - ☞ profit from simultaneous production of electricity and heat and/or heat from biofuels till 2020

☞ Possibility to use JI under Kyoto Protocol for biomass/biogas energy projects

☞ Feed-in tariff scheme or “green” tariff (GT)

Minimal fixed GT rates (current law)

Type of energy	Power station capacity and other factors influencing the rate of GT	Rate of the tariff (€ / kW)
Wind	less 600 kW	0,0646
	600-2000 kW	0,0754
	more 2000 kW	0,1131
Solar energy	Power plants on ground surface	0,4653
	Power plants on the roofs of buildings with power capacity exceeding 100 kW	0,4459
	Power plants on the roofs of buildings with power capacity of up to 100 kW and facades of buildings regardless power capacity	0,4265
Biomass	Should be at least partially of plant origin to be eligible	0,1239
Small hydropower plants	not more than 10000 kW	0,0775

Change/Decrease of GT in the future (current law)

- GT is established until 2030 (grounds for termination are also established by a Decree of NERC)

- Decrease of the current GT rates for BPPs commissioned (significantly upgraded) after:
 - 2014 – by 10%
 - 2019 – by 20%
 - 2024 – by 30%



Current statistics

- ⇒ In the middle of 2009 the core legislation on the current feed-in tariff scheme (GT) was enacted

- ⇒ As of November 2012 GT is
 - ⇒ established for 2 companies operating biomass power plants out of 69 licensees awarded with fixed (guaranteed) GT
 - ⇒ 1-2 biogas power plants (BPPs) with non-fixed GT



Current coverage of minimal fixed GT rate for biomass

Types of biomass (biogas)	Process of electricity generation	Eligibility to minimal fixed GT rate for biomass
Biomass of plant or at least partially of plant origin	Steam turbine process	Yes
	<u>Gasification</u> or other processes where biomass is <u>not used directly as a fuel</u>	No*
Biomass of animal origin	Any processes	No*
<u> BIOGAS, INCLUDING LANDFILL GAS, WASTE GAS, SIMILAR BIOGASES </u>	Any processes	No*

*National Energy Regulation Commission (NERC) will establish GT for them at commercially substantiated level (most likely very low)



Coverage of minimal fixed GT rate for biomass

- NERC approves minimal fixed GT rates only for BPPs using solely biogas!!!
- Combined use of biogas and traditional energy sources make BPPs ineligible to minimal fixed GT rate for biogas regardless of biogas share




Expected change in minimal fixed GT rate for biogas

Draft Law of Ukraine No. 10183 adopted on 20.11.2012 by the Ukrainian parliament. Expected to take effect on 01.04.2012

Categories eligible to GT	Coefficient of GT for power plants commissioned, Rate of the tariff (€ / kW)				
	till 31.03.2013 inclusively	from 01.04.2013 till 31.12.2014	from 01.01.2015 till 31.12.2019	from 01.01.2020 till 31.12.2024	from 01.01.2025 till 31.12.2029
Electricity from biomass	0,12386	0,12386	0,11147	0,09908	0,0867
Electricity from biogas	-	0,12386	0,11147	0,09908	0,0867

Expected definitions of biomass and biogas

 Biomass is determined as non-fossil biologically renewable substances of organic origin in the form of agricultural waste (livestock and crop sectors), forestry waste and technologically related industries which are subject to biodegrading as well as organic and industrial fraction of industrial and municipal waste. No restriction on source of animal or plant origin!!!

 Biogas is gas formed from biomass.



Guarantee of GT application in the future

- Its rates are not tied to retail rates or average rates for producers of electricity
- They are fixed as of January 1, 2009 in EUR and linked to EUR/UAH exchange rate (if more than 10.86)
- The State guarantees GT application to commissioned BPPs and purchase of all electricity produced by them



Purchase of electricity at GT rates

- ▣ Wholesale Electricity Market of Ukraine (WEM) represented by State Enterprise “Energhorynok”
 - ▣ State guarantee of purchase of all electricity produced by BPPs under GT

- ▣ Direct sales of electricity to consumers
 - ▣ Legislative limitations
 - ▣ Absence of economic and administrative incentives



Purchase of electricity at GT rates

Draft Law No. 10571 adopted in the first hearing by the parliament on 20.11.2012- transition to bilateral contracts and balancing market

➤ All sales of “green” electricity at bilateral contracts, “day ahead” or balancing markets at market prices

➤ Only “day ahead” market shall purchase electricity at GT by its operator



Purchase of electricity at GT rates

Draft Law No. 10571

- Special requirements for coverage non-balance
- Special fund will secure the purchase of all GT electricity and reimburse expenses related to non-balance
- Terms of payments will be determined by special rules
- Transition period may last up to 5 years (deadline 1.01.2016)



Ukrainian component requirement (currently)

➤ The share of the Ukrainian component (fixed assets, materials, works, services) in the total value of BPP construction (if construction started after 2011) depending on the year of its commissioning shall be at least

➤ since 2012 – 15 %

➤ since 2013 – 30%

➤ since 2014 – 50 %



Ukrainian component requirement (currently)

⇒ Cabinet of ministers approved on 24.09.2012 «procedure»
on issuance of certificates of origin

⇒ Procedure entered into force on 28.09.2012

⇒ Procedure on calculation adopted by NERC on 15.06.2012


⇒ Procedure entered into force on 19.10.2012



Ukrainian component requirement (currently)

«Procedure» on issuance of certificate of origin

 Chamber of commerce of Ukraine or regional chambers issue the certificates (procedure is not adopted!)

 Calculation is carried out by expert organizations published Ministry of Regional Development, Construction and Utilities of Ukraine (not really correct wording)



Ukrainian component requirement (currently)

Procedure on component calculation (content)

 Formula for calculation

 Documents confirming value of materials, services, works and fixed assets

 Calculation after commissioning and respective application

 Conclusion of the expert organization and list of considered documents– confirmation of Ukrainian component



Ukrainian component requirement (expected)

➤ The share of the Ukrainian component (fixed assets, materials, works, services) in the total value of BPP construction (if construction started after 2011) depending on the year of its commissioning shall be at least

➤ since April 1, 2013 till July 1, 2013 – 15% (old calculation approach)

➤ since 2014 – 30%

➤ since 2015 – 50 %

➤ NERC will itself determine Ukrainian component since 2014!!!



Ukrainian component requirement (expected)

The fixed shares since 2014

Elements of local content	Operations should be taken in Ukraine	Fixed share, %
Bioreactor for hydrolysis	manufacturing	35
Cogenerator	manufacturing	35
Construction works	performance	30
Total		100



Ukrainian component requirement (expected)

The fixed shares- possible interpretations

Fixed shares (maximal shares) within respective 30% or 50% of the component which may be allocated for different types of elements of Ukrainian origin, for instance, value of BPP is EUR 1 000 000, 30% requirement – EUR 300 000, and the maximal value of elements of Ukrainian origin which could attributed for compliance with the requirement

- bioreactor – EUR 105 000
- cogenerator – EUR 105 000
- construction – EUR 90 000

Fixed shares (maximal shares) total value of the project and its any share may satisfy the requirement , in the foregoing requirement may satisfy 30% of the requirement

any other possible interpretation of NERC



Approval of GT

- Rates of GT shall be approved by NERC for each producer after filling the application and the required package of documents regarding the constructed and commissioned BPP
- Term for passing a decision by NERC:
 - Consideration of documents package– 30 calendar days
 - Approval by NERC’s meeting– 15 calendar days
- GT documentation (stipulated by the respective NERC’s Resolution)
- GOOD NEWS! Approval fee is absent

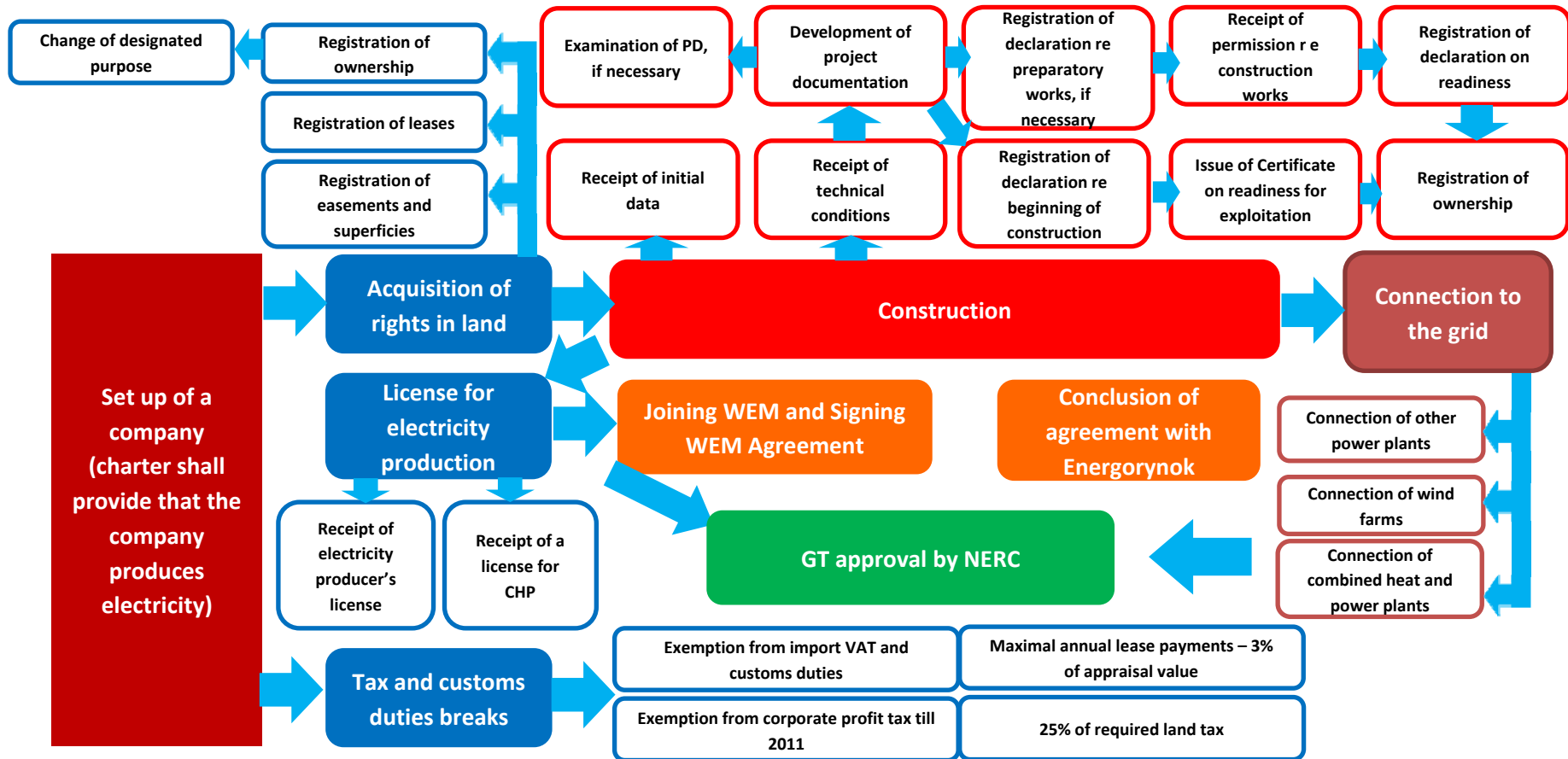


Conditions for GT Projects Implementation

- Set up of a company
- Electricity producer (CHP producer) license
- Connection to the grid (compensation of expenses related to grid connection)
- Participation in WEM and signing WEM Agreement
- Conclusion of agreement for sales of electricity with State Enterprise “Energorynok”
- Execution of documentation for power plants construction (documents on the use of land plots, project documentation, commissioning etc.)



Conditions for GT Projects Implementation



Legislative barriers

Main legislative barriers for development of biomass power projects under the GT

☒ state guarantee

☒ Ukrainian component requirement

☒ connection to the grid

☒ coverage of minimal fixed GT rates of biomass and biogas?!



CONTACTS

t +38 044 596 46 36

f +38 044 596 46 35

e maksym.sysoiev@danevychlaw.com

a 10 B, Vozdvyzhenska Street, Office 8, Kyiv, 04071
Ukraine

www.danevychlaw.com



**MAKSYM SYSOIEV, LL.M.,
Attorney-at-law, Senior Associate
of DANEVYCH law firm**