



## France

By

**Thierry Lauriol**

Partner, *JeantetAssociés (Energy, Mining and Infrastructures Department)*

with the collaboration of

**Capucine du Pac de Marsoulies**

**John Picarel**

**Olivia Woodroffe**

### Offshore parks: a new wind is blowing in France

Electricity production, based on offshore wind parks, consisting of offshore wind turbines deeply rooted in the seabed, or floating wind farms, is currently experiencing strong growth in Europe, while the United States of America<sup>1</sup>, China<sup>2</sup> and even Japan<sup>3</sup> are also developing important projects in this area.

Many benefits are acknowledged with offshore wind farms, both in terms of installed power capacity (between 2 and 6 MW compared to 3 MW for onshore wind farms), which is rapidly expanding due to the current technological develop-

ments (offshore projects with a capacity of 10 MW have already been announced), and with regard to their reduced environmental impact. However, construction delays remain longer than for land-based turbines (between 2 and 4 years, while onshore wind farms can be settled in only a few months), and installation and connection costs are also more expensive. This explains why offshore wind power only represents, at this stage, approximately 2 percent of the global wind capacities<sup>4</sup>.

To date, Europe has thus established itself as the leading market in offshore wind energy. It represents about 90 percent of the global offshore wind parks and includes a total installed capacity amounting to approximately 5 GW, spread over 55 parks covering 10 European countries (it being understood that 59 percent are established in the United Kingdom), and capable of producing about 18 TWh per year, *i.e.* 0.5 percent of European electricity consumption.

While France occupies the third European place in terms of installed capacity for land-based wind turbines and has many maritime coasts, no offshore wind farm has yet been made operational, as the commissioning of the very first one is currently scheduled for 2017/2018.

Indeed, French policy regarding off-

shore wind farms is in line with the European standards in this respect, which aim to reach 22.1 percent of consumption of electricity produced from renewable energies by 2020<sup>5</sup>, and have 15 GW of offshore wind installed power by 2030. For the purpose of coordinating the development of offshore wind parks in Europe while respecting the coastal areas and minimising any impact on natural resources, the European Commission submitted, on 13 March 2013<sup>6</sup>, a proposal for a framework Directive on maritime space planning and integrated coastal management

In order to reach such goal, France implemented an appropriate regulation and has decided to rely on a public call for tender for installing offshore wind farms.

In accordance with the European goals, the law n° 2009-967 of 3 August 2009 (the "*Grenelle 1*" law) has therefore set the target for consumption of electricity produced from renewable energies at 23 percent by 2020. Thereafter, the law n° 2010-788 of 12 July 2010 establishing a national commitment regarding the environment (the "*Grenelle 2*" law), and more recently

1 Out of a calculated 4,150 GW of offshore wind energy resource potential, the DoE's Wind Powering America initiative aims to achieve 54 GW by 2030.

2 China aims for an ambitious goal for offshore development of 5 GW by 2015, and 30 GW by 2020.

3 Japan may install as much as 7,5GW of fixed offshore and 17,5GW of floating offshore capacity by 2051.

4 Today, 4,620 MW of offshore wind power has been installed globally.

5 Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market.

6 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0133:FIN:FR:PDF>

the law n° 2013-312 of 15 April 2013 (the "*Brottes*" law) have amended significantly the legal regime for implementing (1) and operating (2) of offshore wind farms.

## 1 Implementation of offshore wind farms

Offshore wind parks' implementation requires, in the context of the public call for tenders procedure (1.1), the obtaining of specific administrative authorisations (1.2).

### 1.1 Recourse to the public call for tenders procedure

It follows from the provisions of Articles L.311-10 *et seq.* of the French Energy Code that, when production capacities do not meet the objectives of the multiannual programme of investments, in particular those concerning the production techniques and the geographical location of the facilities, the Minister of Ecology, Sustainable Development and Energy (the "Minister") may have recourse to the public call for tender procedure.

In such event, the Minister specifies the overall conditions of the call for tender to be implemented by the Energy Regulation Commission ("*Commission de Régulation de l'Énergie*" or "*CRE*") by using specifications. Once the call for tender notice is published in the Official Journal of the European Union, the CRE examines the application files and issues an advice. The candidates selected are then appointed

by the Minister.

In this context, two calls for tender have been successively launched by the French government.

Launched on 12 July 2011, the first call for tenders n° 2011/S 126-208873 initially focused on the installation of offshore wind parks with a total installed capacity of 3.000 MW spread over 5 zones, including 4 located in the English Channel and North Sea as well as on the Atlantic coast. After the announcement of the successful candidates made by the government on 6 April 2012 and the abandonment of one package, the call for tender represents approximately 330 offshore wind farms of 2.000 MW, for a total investment of 7 billion Euros, in addition to the creation of 10.000 direct industrial jobs. It is expected from these projects, which are currently at the stage of the public debate, will be finalised and commissioned by 2018-2020.

A second call for tenders n° 2013/S 054-088441 has just been launched in March 2013. This call for tenders provides for the construction and operation by 2021-2023 of two offshore wind parks, having each 80 to 100 wind turbines, located in the English Channel and between the islands of *Yeu* and *Noirmoutier*, having respectively an installed capacity of 500 MW and representing an investment amounting to 3,5 billion Euros.

Apart from the technical details of

the specifications, in conformity with the evaluation criteria, candidates which submit their tender are required to consider the purchase price (40% of the final marks), the industrial aspects of the project (40 % of the final marks), and the existing activities and respect for the environment (20% of the final marks).

At the financial level, applicants are requested to present the solidity of their financial structure – which must have funds exceeding 20% of the global investment amount – and any other structure involved. In addition to bank guarantees for performance, candidates are also required to provide financial guarantees in order to ensure the decommissioning and rehabilitation of the site at the end of the operation.

The tender focuses highly on respect for all the standards and easements related to the environment. Indeed, the projects must take into account preexisting human activities, the candidates being required to produce an environmental impact assessment demonstrating the compatibility of the project with the environment surrounding the site.

Candidates have until 29 November 2013 to submit their tenders before the CRE.

However, the specifications of the calls for tenders state that a successful applicant is not exempted



from obtaining the necessary administrative authorisations with regard to the conformity of its facilities, be they related to the installation or operation of the offshore wind park.

## 1.2 Administrative authorisation for installation

Since the aforementioned "*Grenelle 2*" law, and unlike their onshore counterparts, offshore wind parks are exempted from any formality required under the French Town Planning Code, including the obtaining of building permission, for their installation as well as works carried out on wind turbines.

Although the installation of offshore wind farms benefits from a preferential town planning treatment, any successful applicant in a call for tender in this respect is however required to obtain a right to use the public maritime domain ("*concession d'utilisation du domaine public maritime*" or "*DPM*") from the Prefect, for the wind turbines located in such area. Such concession is granted for a period that shall not exceed 30 years, which corresponds approximately to the lifetime of an offshore wind farm.

In accordance with the provisions of the French Environment Code, the successful candidate must provide the Prefect with an application including information notably related to the nature and costs of the works, the maintenance methods, the project's impact on the environment and natural resources, as well

as the nature of the site dismantling and rehabilitation operations.

In this respect, it results from the specifications that, upon submitting their application, candidates are required to provide an environmental impact assessment of the project on the fauna, flora, natural areas and landscape. The successful candidate must also refer to the National Commission of the Public Debate ("*Commission Nationale du Débat Public*") which shall appreciate the opportunity to organise a public debate upon the implementation of these projects.

The right to use the public maritime domain may also require that the applicant implement and provide financial guarantees, the amount of which being assessed by taking into account the estimated site restoration and rehabilitation costs.

For purposes of ensuring a solid legal and financial foundation, candidates are also requested, when examining their technical and financial capacity, to provide certain guarantees.

Finally, in accordance with the provisions of the French Environment Code, offshore wind parks shall be subject either to an administrative authorisation or declaration regime under the Law of the Sea, depending on whether they present dangers or risks to water resources and aquatic ecosystems.

Once the successful candidate has

been granted an administrative authorisation to implement its offshore project, it must then comply with the regulation on offshore park exploitation.

## 2 Operation of offshore wind farms

Offshore wind parks' exploitation implies the obtaining of an exploitation authorisation in accordance with environmental regulations (2.1), as well as the facilities' connection to the existing transport network and the purchase of the electricity thus produced (2.2).

### 2.1 Authorisation to operate

When electricity is generated from an offshore wind park whose installed capacity is greater than 30 MW, the provisions of Article L.311-1 *et seq.* of the French Energy Code require the operator to obtain an authorisation to operate from the Minister in charge of Energy.

Offshore facilities generating electrical power for less than the above mentioned threshold, which is settled by decree, are deemed to be authorised.

However, the specifications of the two public calls for tender indicate that a successful applicant is automatically granted an authorisation to operate under the conditions provided by Article L.311-11 of the French Energy Code.

Once acquired, the authorisation is

personal and non transferable. In the event of a change of operator, the transfer of the authorisation to such new operator is subject to the approval of the Minister in charge of Energy matters.

The aforementioned specifications of the calls for tender thus provide for a transfer of the operating authorisation. Such provision has been enacted for purposes of attracting further investors in such area, as long as the bidders do not necessarily wish to operate such park for several years.

However, the said specifications forbid the applicant from mentioning in its offer that another company shall be the holder of the operating authorisation should its project be selected.

The respect for environmental rights and standards constitutes a major challenge for the operating of an offshore wind farm. Particular attention must be paid to such condition, since offshore wind farms involve the production of electricity based on renewable energies.

While land-based wind turbines are subject, since 26 August 2011, to the regulation of Classified Facilities for the Protection of the Environment ("*Installations Classées pour la Protection de l'Environnement*" or "*ICPE*"), in conformity with Article L.553-1 of the French Environment Code, no regulatory provision deals specifically with offshore wind parks. In addition, the specifications of the

two calls for tender do not make any reference to the *ICPE* policy regarding necessary administrative authorisations to be obtained.

In such circumstances, offshore wind parks are currently not subjected to the *ICPE* regime. However, this does not exempt them from complying with the environmental regulation.

The maritime environment, within which wind farms are implemented, is subject to many environmental requirements related in particular to respect for protected marine areas, *i.e.* including national parks, marine and regional natural parks and natural reserves. Like magnetic and electric fields emanating from their submarine cables, the facilities themselves are indeed likely to have an impact on the wild fauna and flora, on land or in the marine environment.

Many other rights also bear on offshore wind parks: landscape and visual impact, noise, easements related to the national defence (including electro-semantic positions, lights, lighthouses and coastal defence), aeronautics, radio communications, natural and technological risks, standards and easements in relation to maritime and commercial traffic, pleasure boating as well as fishing activities.

These different constraints must be taken into particular account during the studies, impact assessments and public inquiries which have to be conducted during the call for

tender procedures then during the procedure for obtaining the concession of DPM.

Once authorised, offshore wind farms must necessarily be connected to electricity networks. The operator shall then benefit from a power purchase agreement.

## 2.2 Network connection and electricity purchase

The operator, acting as an electricity producer, must address to the manager of the electricity transportation network ("*Réseau de Transport d'Electricité*" or "*RTE*") in order to ensure the connection of its offshore facilities, from delivery substations to the electricity public transportation network.

The connecting procedure to the *RTE* is non-discriminatory and independent.

Each producer must submit to the *RTE* a technical and financial proposal for connection which requires prior approval before the producer may await connection.

For purposes of efficiency, such connection procedure has however been adjusted to the context of calls for tenders. Indeed, as soon as the call for tenders was announced by the government, each package's maximum power was placed in the queue for connection.

Then, both *RTE* and the producer put in place a connection agreement, along with a network access



contract, and an operation agreement allowing the commissioning of the connection.

Concerning the burden of the connection costs, and in the context of the calls for tenders, the successful candidate is required to bear all the costs in relation to the studies and work necessary to carry out the connection extension works, knowing that RTE will act as both the authority and project manager for the studies and works on the connection facilities, in addition to their operation and maintenance.

The next step for the operator is to enter into a purchase agreement for the electricity produced with *Electricité de France* ("EDF") or with any other local distribution company.

For purposes of promoting wind energy projects, since the *Brottes* law, the so-called rule of a minimum of five wind turbines, which used to be a condition for the obtaining of a purchase agreement, is no longer in force. In the context of the call for tenders, the specifications provide that the successful candidate will automatically be granted an electricity purchase agreement for a period of 20 years per tranche.

The purchase price of electricity produced from onshore or offshore wind farms is normally settled through a regulatory basis. However, in the procedure of calls for tenders, the candidate producer is allowed to submit its own price

proposal. Such price will come up to 40% in the weighting of the award criteria for the call for tender.

The latest call for tenders specifications thus provide that the proposed price is calculated on the theoretical one year basis of full power functioning offshore wind turbines. This price includes costs related to the feasibility, construction, operation and decommissioning of the offshore wind farms, as well as the costs related to the feasibility and construction of the connection work.

However, both specifications respectively limit the price which should be between 115 and 200€/MWh and 140 and 220€/MWh, given that such price will be indexed and readjusted.

### 3 Conclusion

The development of the renewable energies sector is an essential element of French energy policy. Many hopes and attentions rest on offshore wind power. The development of the legal operating conditions under the two dimensions of flexibility and adaptability has certainly not yet reached the stage of full stability.

## Finland

By

**Rabbe Sittnikow**

*Attorney-at-law, partner, Hannes Snellman Attorneys Ltd, Helsinki, Finland*

**Johannes Husa, LL.M.**

*Associate, Hannes Snellman Attorneys Ltd, Helsinki, Finland*

### Aspects of Energy Law

This Country Report discusses certain recent legislative reforms that can be relevant when considering investments in Finland relating either to renewable energy or to electricity distribution. The topics of the report include:

- The feed-in tariff subsidy for energy produced from renewable sources.
- The proposed new Electricity Market Act.
- The recently introduced new rules on corporate acquisitions made by foreign (non-EU) parties.

### Feed-in tariff regime

Since March 2011 a production subsidy in the form of a guaranteed minimum feed-in tariff for energy produced from renewable sources has been in force in Finland. The legislation governing the feed-in tariff system is based on the Act on Production Subsidies for Electric-