

Model Contracts

Drafting Bilateral Contracts between VRE and FID

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- 1993 Partner at law firm Kuhbier, Brussels
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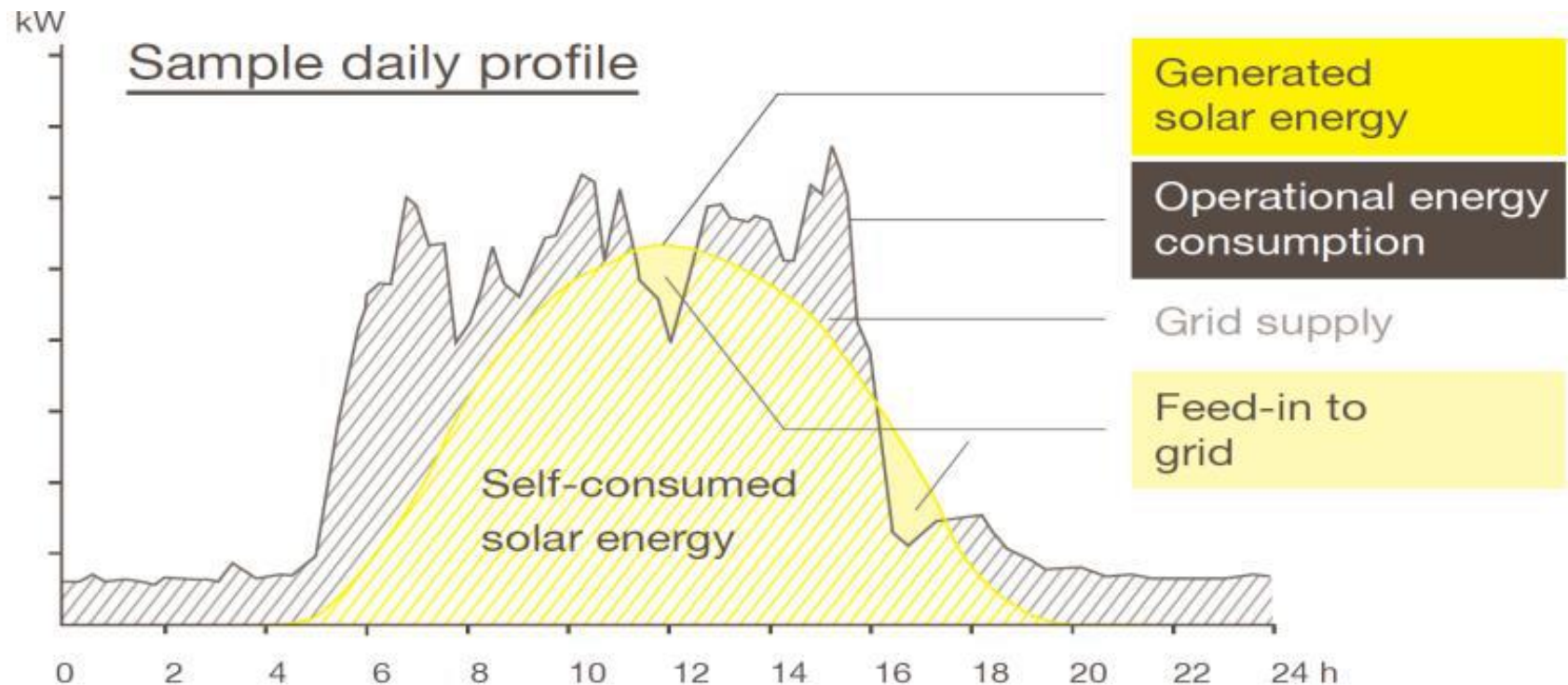
Agenda

1. Objective
2. Approach
3. First results
 1. Contract Business Model A2.2
 2. Contract Business Model A2.3
4. Conclusions

- ▶ Facilitating cooperation between VRE and FID
 - Show what is possible, and what is not
 - Pre-defined Business Models as „inspiration“
 - Create „instruments“ to allow for easier implementation
 - „**Check-lists**“ of what needs to be considered
 - Provide a basis for discussion
 - Example „**Model Contracts**“ perceived as more helpful
 - Point to Member State specifics
 - As different legal systems may necessitate different contractual settings

A graphic and example – a German plastics manufacturing industry and RES production and use daily self consumption

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Source: EU Commission 2015

The Variety in Europe – on Self-Consumption

1. Self-consumption (SC) schemes. Various sources, including information provide by MS.

| Member State | Remuneration for self-consumed or surplus electricity sold to the grid | Grid and system cost contribution |
|--------------|---|---|
| Austria | Private purchase agreement (PPA) | >25 MWh/y pay 1.5 € cent/kWh on SC electricity |
| Croatia | PV system <300 kWp, 80% at the FiT rate | Exempted |
| Denmark | FiT (0.08 €/kWh) | < 50kW: no taxes or PSO charge > 50kW: no RES surcharge |
| Cyprus | PV system < 500kWp, 5 MW yearly cap (under revision), no compensation | Fixed Network charges: H. Voltage 1,31 € cent/kWh M. Voltage 1,63 € cent/kWh L. Voltage 2,01 € cent/kWh RES levy 0.5 € cent/kWh Public service obligation 0,134€cent/kWh |
| Germany | < 90% production: applicable FIT or FiP rate > 90% production, either: a) average spot market price for solar energy (4-5 €/kWh) b) income from electricity sale (market or PPA) plus management premium of 1.2 €/kWh (decreasing to 0.7 €/kWh by 2015) PV system > 100 kWp (from 2016): market price | Before 01/08/2014 : exempted After 01/08/2014 : exempted if < 10 kWp and < 10 MWh/year If >10 kWp or > 10 MWh/y : subject to reduced RES-surcharge: 30% by end 2015 35% by end 2016: 40% by end 2017 |
| Germany | < 90% production: applicable FIT or FiP rate > 90%production, either: a) average spot market price for solar energy (4-5 €/kWh) b) income from electricity sale (market or PPA) plus management premium of 1.2 €/kWh (decreasing to 0.7 €/kWh by 2015) PV system > 100 kWp (from 2016): market price | Before 01/08/2014 : exempted. After 01/08/2014 : exempted if < 10 kWp and < 10 MWh/year. If >10 kWp or > 10 MWh/y : subject to reduced RES-surcharge: 30% by end 2015, 35% by end 2016, 40% by end 2017 |
| Finland | Private purchase agreement (PPA) | <100 kVA or 800.000 kWh, exempted from electricity tax, electricity transfer fee, and VAT - fixed part of the grid charge applies |

Source:
EU Commission
Com 2015 339 final

Variety Self- Consumption (cons.)

| | | |
|----------------|--|---|
| France | Under discussion | |
| Italy | <20 MWe: private purchase agreement (PPA) | < 20kW, exempted from grid and system costs 20-200kW partially exempted >200kW exempted only from system costs |
| Latvia | Regulation still to be adopted | |
| Malta | Private purchase agreement (PPA) | Exempted |
| Portugal | Average Iberian electricity market price minus 10% | If SC systems capacity <1% of total power capacity (TPC): SC exempted >1% and <3%, SC pays 30% grid fees, >3%, SC pays 50% grid fees |
| Spain | Up to 100 kWp, regulation still to be adopted | |
| Slovakia | Household with voltage level <0.4/0.23kV, connection capacity<16 A No compensation for excess power | Regulations still to be adopted |
| United Kingdom | PV and wind systems < 50 kWp: generation tariff + export premium of 4.77p £/kWh for up to 50% of excess power fed into the grid > 50 kWp and < 5 MWp : Feed-in-tariff | Exempted |

Net metering schemes – Information for some countries

2. Net metering schemes. Various sources, including information provide by MS.

| <i>Member State</i> | <i>Eligibility requirements</i> | <i>Netting period</i> | <i>Electricity compensation</i> | <i>Capacity cap</i> |
|---------------------|---|--|---|--|
| Belgium | RES systems connection <10 kVA (5 kVA in Brussels) ~ +/-12 kWp | Yearly | All categories of PV owners. | N/A |
| Cyprus | Household and municipal PV systems < 3 kW | Yearly | - Retail price - Subsidy of 900 Euro/kW for vulnerable consumers | 10 MW per year |
| Denmark | Non-commercial RES systems <6 kW | Hourly | Retail price | N/A |
| Greece | PV systems <20 kWp | Yearly | Retail price | N/A |
| Italy | RES systems: <200kW (after 31/12/2007) <500kW (after 1/01/2015) | Yearly | Net-billing system: remuneration based on time-of-use price | N/A |
| Hungary | Household and commercial RES systems <50 kW, connection size <3x63A | Negotiated with DSO (monthly, half-yearly or yearly) | Retail price, which is free from system charges. | N/A |
| Latvia | Household RES systems <11 kW, with installation <400V and <16A per connection | Yearly | Retail price | N/A |
| Netherlands | Connection size <3x80A | Yearly | Retail price | N/A |
| Poland | RES systems <40kW | Half-yearly | < 10 kW : Feed-in tariffs (15 years): ~ €0.18 per kWh per below 3 kW; €0.11 per kWh for below 10 kW projects. > 10 kW and < 40 kW: 100% of the average sales price of electric energy on the competitive market in the preceding quarter | 300 MW for systems <3kW; 500 MW for systems <10 kW |
| Sweden | RES systems connection size <100A | Yearly | Tax reduction: 0,60 SEK (~6 €cent) per kWh of RES reduction, but at least an equal amount of electricity should be bought from the grid. Tax reduction for delivery up to 30 MWh/y | For up to 30000 kWh, or 18000 SEK per year |

Approach – first words

- ▶ Framework for legal set of contracts between VRE and the offtaker (FTI) is manifold and to a large extend often based on established codes and typical contract elements such as in the planning and permitting environment, example:
- ▶ Site and construction permits
- ▶ Labor and safety regulations
- ▶ Transmission line approval
- ▶ Licenses granting permission for generation
- ▶ License for transmission and sale of electricity
- ▶ Environmental permits

Approach

- ▶ Step 1: Model Contracts, taking the example of Germany
 - As a starting point
 - Idea: Based on Model Contracts for Germany, accompanied by advice on how to transfer them, parties can negotiate contracts under their national legislation
- ▶ Step 2: General assumptions for the Business Models
 - To clarify the „basis“
 - Idea: In the negotiations, parties need to have a clear understanding of what their project is going to look like
 - However: No assumptions as regards e.g. size or technology of the VRE, or the consumption data of the FID, to keep the results sufficiently general

Approach

▶ Step 3: Check-lists

- To form a basis for the discussions
 - Idea: Short check-lists to give an overview of the questions which need to be addressed in the contracts
 - Less detailed, but more discussion basis for actual negotiations
 - » „Generalizing“ the Model Contracts

▶ Step 4: Member State specific considerations

- To make Check-lists and Model Contracts transferable
 - Idea: The legislative framework in the Member States is different, so that partners need to be informed and enabled to negotiate contracts meeting their jurisdiction's specificities
 - Check-list + Model Contract + Specific considerations = solid basis for negotiation

First results

Example Business Model A2.2

Assumptions:

- ▶ Electricity is delivered by a supplier from one or more VRE plants
- ▶ The supplier owns and operates the plants
- ▶ The plants are located outside the industrial territory (industrial electricity consumer- IEC-'s property)
- ▶ For the supply the public grid is used
- ▶ The IEC is not exclusively supplied by the supplier with the VRE
 - Buys all VRE production but has second supplier for remaining demand

First results

Example Business Model A2.2

Check-list:

- ▶ Objective
 - What exactly do the parties expect from this contract?
- ▶ Electricity supply contract needed
 - Provisions on the amount and quality of the electricity to be supplied
 - All VRE electricity produced?
 - Then IEC would need to contract a second supplier for the remaining consumption
 - » Alternative could be supplier supplies also electricity from other sources, own or contracted
 - Specific technologies, projects etc.?
 - ...

First results

Example Business Model A2.2

Check-list:

- Provisions on the price for the electricity to be supplied
 - How is the price signal passed on to the IEC?
 - » Important to agree on a sufficient incentive to allow change of behaviour
 - References to market prices?
 - Different prices for different time frames (day/night/peak/off-peak/production forecast)?
 - Specific provisions addressing mutual benefits to parties
 - » E.g. if IEC contributes to the financing of the VRE, then possibly repayment through lower prices?
 - Flatrate?
 - ...

First results

Example Business Model A2.2

Check-list:

- Provisions on the availability of FID
 - Does the IEC adapt production processes voluntarily as response to the price signal?
 - Is the IEC contractually obliged to adapt production processes?
 - Can the supplier even call up FID somehow?
 - Solutions by agreement or even automatically?
 - » Note: if the supplier takes control over the FID, then more Business Model B.2
 - ...
- Duration of the contract
- Liability and sanctions
- Changes to the contract...

First results

Example Business Model A2.2

Examples from the Model Contract:

▶ § 3 Electricity Supply Contract

- (1) *An electricity supply contract will be concluded between the Parties. This contract will govern the electricity supply produced in the variable renewable energy power plant owned by VRE to the IEC. Electricity will under this contract only be supplied as in accordance with the capacity and actual generation of the variable renewable energy power plant owned by VRE. VRE will supply the electricity generated without reserve or balancing electricity and net of own electricity demand.*
- (2) *IEC is obliged to meet all its electricity demand primarily from the electricity supplied from the variable renewable energy power plant (take or pay). Only where such electricity generation is not sufficient, ABC may buy from a third party. To that end, the Parties agree that IEC may keep another electricity supply contract.*
- (3) *IEC agrees to adapt its demand profile to the production forecast of the VRE. This includes in particular, that IEC will shift its production activities to times of high generation in the variable renewable energy power plant as in accordance with the forecasts provided by VRE.*
- (4) *VRE is obliged to operate the plant at least ... hours per year at full capacity. Surplus electricity produced in such times of high generation and exceeding IEC's demand will not be compensated by IEC.*

...

First results

Example Business Model A2.3.1

Assumptions:

- ▶ Electricity is delivered from one or more VRE power plants
- ▶ The VRE power plant is located on the IEC territory
- ▶ The IEC is connected to the grid
- ▶ The VRE power plant is connected to the grid at (or through) the same connection point as the IEC
 - i.e. supply without using the public grid
- ▶ The **IEC owns and operates the VRE**

First results

Example Business Model A2.3.1

Check-list and Model Contracts

- ▶ Where IEC is owner and operator of the VRE, no contract needed
 - „Pure“ self-consumption

First results

Example Business Model A2.3.2

Assumptions:

- ▶ Electricity is delivered from one or more VRE power plants
- ▶ The VRE power plant is located on the IEC territory
- ▶ The IEC is connected to the grid
- ▶ The VRE power plant is connected to the grid at (or through) the same connection point as the IEC
 - i.e. supply without using the public grid
- ▶ The VRE is **owned and operated by a third party**

First results

Example Business Model A2.3.2

Check-list:

- ▶ Objective
- ▶ Contract on the set-up of the VRE needed
 - Specifications relating to the technology etc. of the VRE
 - Right to access and use the IEC's property
 - Provision ensuring the VRE stays (under property law) within the ownership/control of the other party
 - Limited personal servitude? Other constructions?
 - Right to access and use IECs' (grid) infrastructure
 - Timeline for construction, sanctions in case of late/faulty delivery
 - ...

First results

Example Business Model A2.3.2

Check-list:

- ▶ Electricity supply contract needed
 - Provisions on the amount of electricity produced
 - Only the electricity IEC needs?
 - What with surplus? What with deficit?
 - Only parts of the VRE produced?
 - Only when less expensive than market prices?
 - ...
 - Provisions on the price at which electricity shall be supplied
 - Provisions on the availability of FID
 - Duration of the contract, liability and sanctions...

First results

Example Business Model A2.3.2

Check-list:

- ▶ Further contractual agreements
 - Provisions on who takes over the VRE after the electricity supply contract expires?
 - Potentially also provisions on the financing of the VRE?
 - More energy services offered by the other party?
 - E.g. certain process optimization management services to allow more energy efficient production?
 - ...

First results

Example Business Model A2.3.3

Assumptions:

- ▶ Electricity is delivered from one or more VRE power plants
- ▶ The VRE power plant is located on the IEC territory
- ▶ The IEC is connected to the grid
- ▶ The VRE power plant is connected to the grid at (or through) the same connection point as the IEC
 - i.e. supply without using the public grid
- ▶ The VRE is owned by the IEC and **only set-up and later operated by a third party**

First results

Example Business Model A2.3.3

Check-list:

- ▶ Sales Contract for the VRE
 - Technical specifications
 - Price
 - Timeline for delivery, sanctions in case of late/faulty delivery
 - Liability
- ▶ Service contract for the construction of the VRE
 - Access to the property
 - Price
 - Timeline for delivery, sanctions in case of late/faulty delivery
 - Liability

First results

Example Business Model A2.3.3

Check-list:

- ▶ Service contract for the operation of the VRE
 - Services to be included
 - e.g. also additional energy services (process optimization etc.)
 - Access to property
 - Price
 - Duration
 - Sanctions
 - Liability

Conclusions

- ▶ Different business models require different contractual settings
 - Concrete interests of the parties and specificities of each project make it impossible to create „one size fits all“ contract
- ▶ BUT: examples and check-lists can form a basis for negotiations and drafting the individual contracts
 - Check-lists more practical, Model Contracts more “visual”
- ▶ Differences in national legislation need to be addressed as well
 - Summaries of the differences and specificities shall allow parties to understand and ultimately address them

Thank you very much
for your attention.

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