

QUID JURIS ?

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THE SELF - ENERGY PRODUCTION IN MOROCCO - TOWARD LIBERALISATION

Long gone are the days Morocco suffered from the lack of transparent and autonomous legal regime in the modern energy industry. From fantasy to reality, the liberalization of the energy sector has brought storms of appraisal from all over the nation, from the media, to the industrial sectors, even from foreign investors and the list goes on. But let us not get carried away by this new breath of fresh air. However, it should not be taken for granted. The new law 16-08 dated October 20th, 2008 modifying and supplementing Dahir (Royal Decree) N.1-63-226 creating the National Office of Electricity ("ONE"), presently named "ONEE", does indeed deserve the praise it received in 2015 but retrospectively, did it really deserve all the acclaim? Two years on, there is arguably the necessary hindsight to truly appreciate the introduction and implementation of such a law.

One must take a brief look on where auto production stands in the energy industry and more precisely, the renewable energy sector. Law 13-09 on renewable energies dated 11 February 2010 presents a legal framework that is intertwined with that of auto production. Even though the legal regime on renewable energies is designed to govern independent energy producers for the sale of energy on a national and possibly international level, it still has its role to play one way or another in the modern era of auto production.

Like most newly enacted laws, they are not without any fault, hence leading to inevitable practical and legal obstacles. The questions here remain whether or not the legal tools at the disposal of energy consumers will push through and go beyond, or will this law fall into oblivion?

An army of legislative weaponry to carry the auto production sector to glory

A bright idea can never shine on its own. It must come to life by while at the same time considering the different ways to sustain it. Such is the case for the auto production industry. It is a sector that may still be in its infancy with a great margin of progress, but it does possess the necessary legal foundation that could turn any bright idea into a magnificent project.

Law 16-08 introduces several novelties. The former monopoly that ONEE has been enjoying exclusively for the past years with regards to production and distribution of energy is currently being dismantled. There is now the possibility for any private or public person to produce its own energy for its own needs with a production capacity that cannot exceed 50 MW.

Law 16-08+exhibited its dynamism by allowing the possibility for auto producers to operate at a production capacity that could exceed 300 MW with a right of access to the ONEE national electrical network.

ONEE should secure any access to its national grid by entering into a convention with the auto producers operating at a capacity below 50 MW and above 300 MW, providing among other things, the technical terms of access to the national electrical network, the purchase by ONEE of any excess in energy, etc.

The legal arsenal of the energy sector also encompasses Law 13-09. In addition, it is now possible for

energy producers or a group of energy producers to enter into concession agreement with ONEE with respect to electrical energy from renewable energy, mainly utilized for wind power and whose sample is annexed to Law 16-08.

The greatest achievement so far

The evolution of the legal electrical sector hit the ground running with the introduction of a national regulatory authority (“ANRE”) independent from the operators pursuant to law 48-15 dated May 26th, 2016. In order to accompany the profound change that such a sector is going through, there was a clear and apparent need of a national regulator, which is designed among other things to counteract ONEE’ abusive and unfair monopoly.

This achievement is of a great accomplishment in the sense that it will allow ANRE by 2017-2018 to ensure the proper functioning of the open energy market as well as its national electrical grid. More specifically, ANRE ensures auto price fixing with regards to both access to the national electrical network and access to medium voltage networks (MT).

Law 48-15 will provide the ANRE the necessary financial autonomy vested with official powers as a public authority, similarly to what was done with the competition council. Additionally, ANRE will be entrusted to sanction any who are in infringement with the applicable law as well as managing any litigation that might arise with the management of the network. Moreover, ANRE is empowered to not only conduct unannounced on site check but also to approve the multiannual investment program of investors and ensure their implementation and follow up. Interestingly enough, one of the many prerogatives of ANRE is to approve the terms and access tariffs to national network as well as approve the quality indicator of such access.

Such is the strong signal sent out to both the foreign investors and local energy producers that will undeniably help further the develop such sector. This is a clear indication of energy efficiency, modernization and independence of the energy industry.

Is the auto production sector really that great?

The legislator cannot rest on his laurels. The energy sector and more specifically auto production is an industry that is continuously evolving. It is undeniable that the legislator has taken the necessary steps to ensure the development of the energy sector but it is also undeniable that more needs to be done.

ONEE reserves itself the full exclusivity of producing energy between 50 and 300 MW. To this day, there is no feed in tariff as the legislator is still working on implementing it. All auto producers of energy are obligated to sell their energy excess to ONEE at an outrageously low price. However, it would be appealing for auto producers for instance to buy a solar facility with an already fixed kilowatt (kWh) price established over a long period. This would inevitably provide a clear visibility and control of the energy bills of auto producers. Ultimately, securing its energy supply is securing its production. Moreover, auto producers are required to freely transfer to ONEE all of a project’s assets purpose of a concession agreement, which is surprising especially considering that it is an auto production facility and not a public service of energy production.

Instead, there should be subsidies and backing from the state with regards to certain energy plants with a premium for each kWh of energy used as opposed to being reinjected in the network.

The industrial sector – Full of energy and enthusiasm

It is evident that the legal framework of the energy sector is not without legal uncertainties and impediments. That does not prevent the big Moroccan industrials from enjoying the advantages that the law provides. Office Chérifien des Phosphates (OCP) is the perfect example as they will now be able to satisfy 75% of its energy consumption in 2020.

Other industrials are following in the footsteps of what OCP is doing and they are not afraid to do so. The industrial companies’ desire to modernize is supported with their financial power unlike some of the smaller companies. Smaller industrials suffer from huge electrical bills but sadly cannot enjoy the advantages of auto production due to their limited financial resources.

There is a clear need to democratize this law one way or another, a duty and service that must be provided to all. After all, shouldn’t the state’s objective be to reduce the level of imported energy and in consequence, reduce its energy expenditure?

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