ELECTRICITY LAWYER

SIMPLIFIED LEGAL *And* REGULATORY GUIDE:

Renewable Energy Act (Act 832), 2011 (Ghana)

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Renewable Energy Act (Act 832), 2011 (Ghana)

OVERVIEW

The Renewable Energy Act of 2011 provides guidelines for stakeholders in the Ghanaian power sector regarding the development, management, utilization, sustainability, and adequate supply of renewable energy for generation of heat and power in an efficient and environmentally sustainable manner.

The Glossary of Terms referenced in this guide can be found in the main Act and in our Glossary of Industry Terms.

OBJECTIVE

Renewable Energy Act (Act 832), 2011 (Ghana)

OBJECTIVE

The rationale behind the promulgation of the Renewable Energy Act includes the following:[1]	• The provision of a framework to support the development and utilisation of renewable energy resources • The promulgation of guidelines towards the attainment of an enabling environment to attract investment in renewable energy resources. • The promotion for the use of renewable energy. • The diversification of supplies to safeguard energy security. • Improved access to electricity via the deployment of renewable energy resources. • The building of indigenous capacity in technology for renewable energy resources. • Public education on renewable energy Production and utilisation; and • The regulation of the production and supply of wood fuel and biofuel.

KEY PROVISIONS

Renewable Energy Act (Act 832), 2011 (Ghana)

KEY PROVISIONS

Licensing

No commercial activity in the renewable energy industry would be permitted without a licence granted to that effect. Such commercial activities include production; transportation; storage; distribution, sale and marketing; importation; exportation and re-exportation; and installation and maintenance.

A licence can be granted to a citizen; a body corporate registered under the Companies Act, 1963 (Act 179) or under any other law of Ghana; or a partnership registered under the Incorporated Private Partnerships Act, 1962 (Act 152).

Application for and Grant of Licences

An application for licence can be made to the Energy Commission in the prescribed form, information and with the prescribed fee required by the Commission. The Board of the Energy Commission will acknowledge receipt of an application within five (5) working days after receipt and inform the applicant in writing of the decision of the Board within sixty (60) days after the five days. The Board may however refuse the grant of a license on grounds of technical data, national security, public safety, food security, health; and environmental safety.

A licence may be granted subject to specified conditions within the licence. Generally, however, such conditions could include the licensee providing the Commission with the documents, accounts, estimates, returns, environmental impact assessment and management plans or any other information that the Board may require for the purpose of performing its functions under the Act in the manner and at the times as may be reasonably required.

Following the grant of a licence, it is noteworthy that such licence cannot be transferred to a third party without prior written approval received from the Board of the Energy Commission.

Duration and Renewal of Licenses

Licences granted by the Energy Commission are granted for the duration specified within the terms and conditions of the licence. An application for renewal of the licence must occur not later than sixty (60) days before the expiration of the licence.

Settlement of Complaints and Disputes

A person aggrieved by the decision of the Board of the Energy Commission regarding its refusal to grant or renew a licence, or its decision regarding a suspension, modification

or cancellation of a licence – can within thirty (30) days from the date of the decision of the Board, lodge a complaint with the Ministry of Energy and Petroleum.

Within thirty (30) days from the date of receipt of the complaint, the Minister will undertake an investigation and make a decision with regard to the complaint or may set up an arbitration panel under the Alternative Dispute Resolution Act, 2010 (Act 798) to settle the matter amicably with the aggrieved person. If the matter cannot be resolved amicably in this manner or the Minister fails to decide on the complaint, the aggrieved person may within a period of fourteen (14) days after the decision pursue the matter in the High Court.

Where parties to a dispute cannot reach an agreement, the Board of the Energy Commission may set up an arbitral panel on its own initiative or at the request of the licensees to arbitrate and settle such dispute.

Duties of Renewable Energy Producers

Persons licensed under the Act to produce renewable energy will be required to –

- maintain the equipment and property used in the provision of the service in a condition that would enable it to effectively provide the service.
- comply with technical standards and guidelines established by the Energy Commission; and
- comply with the terms of their respective environmental impact assessment permit.

Renewable Energy Purchase Obligations

Electricity distribution utilities or bulk customers are required to procure a specified percentage of total purchase of electricity from renewable energy sources to be determined by the PURC in consultation with the Commission, taking into consideration the technology utilized, financial integrity of public utilities and the net effect of the cost of renewable energy on end user tariffs.

Where the electricity distribution utility or bulk customer is unable to purchase the specified percentage of its total electricity purchase from renewable energy sources, a premium will be paid to the Commission as determined by the Commission.[2]

Connection to Transmission and Distribution Systems

Operators of transmission or distribution systems are to connect generators of electricity from renewable energy sources within the relevant coverage area, upon a request by the generator, following which both parties will enter into a connection agreement.[3] Such operators are required to upgrade their network to accommodate/feed in the electricity from the generator of electricity from renewable energy sources.[4]

Integration of Renewable Energy Projects into the Energy System

The PURC and the Energy Commission in developing regulations and guidelines for electricity provision are to take into account the nature of the electricity generated from renewable energy sources in ensuring that relevant renewable energy projects are integrated into the power system.[5]

Renewable Energy Fund

The Act establishes a Renewable Energy Fund, the object of which is to provide financial resources for the promotion, development, sustainable management, and utilization of renewable energy sources.[6] Subject to the Ministries, Departments and Agencies (Retention of Funds) Act, 2007 (Act 735), the Fund is authorized to retain all moneys realized in the performance of its functions.[7] The Fund is also exempt from payment of tax.[8]

Control and Management of Biofuel and Wood fuel

Participants who have been granted licenses under the Act to produce bio-fuel from feedstock, will be required to obtain the relevant permit from the Ministry of Food and Agriculture and the Environmental Protection Agency.[9]

KEY STAKEHOLDERS

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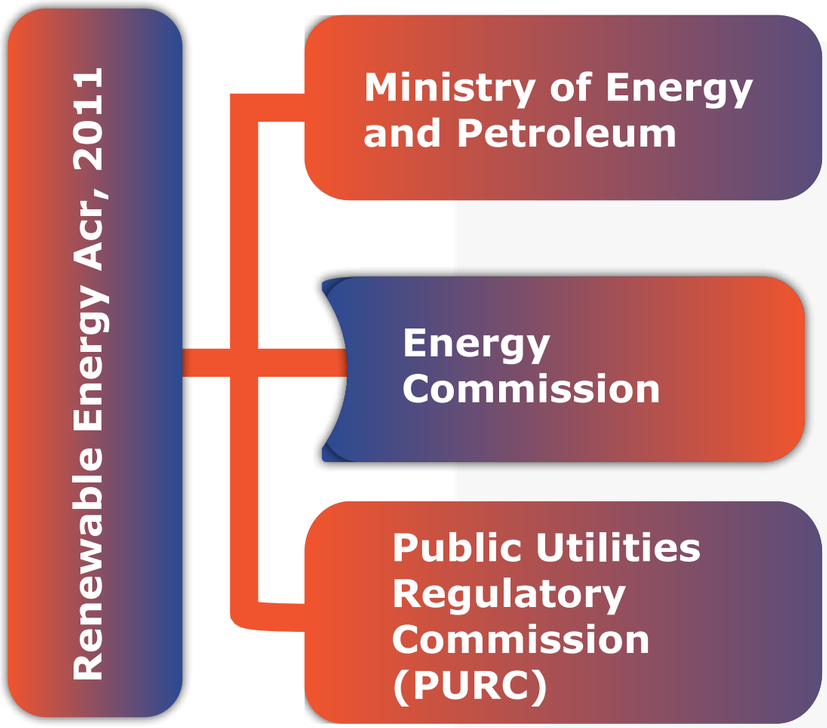
KEY STAKEHOLDERS

The following are the key stakeholders responsible for the proper implementation of provisions contained within the Renewable Energy Act:



Ministry of Petroleum and Energy

The Ministry is responsible for defining the policy direction for the achievement of the objectives of the Act.[10] This would involve the promulgation of regulations –[11]

- to prescribe fees and charges.
- for the conditions of licences.
- to prescribe standards for construction, operation and maintenance of facilities and installations in respect of biofuel and electricity from renewable energy sources.
- to prescribe standards of performance for the development, management, and utilisation of renewable energy resources.
- to prescribe technical standards for the use of renewable energy sources.
- for the control and management of (i) biofuel, and (ii) woodfuel.

- to establish a scheme for creating, trading, and extinguishing of renewable energy certificates.
- to provide for financial and other incentives necessary for the development, production and utilisation of renewable energy sources; and
- to provide for any other matter necessary for the effective implementation of the provisions of the Act.

Energy Commission

The Energy Commission is primarily responsible for advising the Ministry of Energy and Petroleum on renewable energy related matters. In the implementation of the provisions in the Renewable Energy Act, the Energy Commission also has the following obligations –[12]

- Creating a platform for collaboration between government and the private sector and civil society for the promotion of renewable energy sources.
- Recommending in consultation with the PURC, financial incentives necessary for the development, production, and utilisation of renewable energy sources.
- Promoting the local manufacture of components to facilitate the rapid growth of renewable energy sources.
- Promoting plans for training and supporting local experts in the field of renewable energy.
- Promoting the benefits of renewable energy to facilitate its utilization.
- Setting targets for the development and utilization of renewable energy resources in consultation with relevant stakeholders.
- Advising relevant stakeholders on the educational curriculum on efficient use of renewable energy sources and evolve programmes for its mainstreaming in the educational curriculum of educational institutions; and
- Recommending for exemption from customs, levies and other duties, equipment and machinery necessary for the development, production and utilisation of renewable energy sources.
- The Commission can also issue guidelines for the –[13]
    - development, efficient management, and utilisation of renewable energy sources.
    - connection of electricity generated from renewable energy sources to transmission or distribution systems; and

- technical standards for the use of renewable energy sources.

The Commission is permitted to issue a code of practice for the purpose of giving effect to the provisions of the Act.;[14] and is responsible for the management of the Renewable Energy Fund[15] subject to the Financial Administration Act, 2003.[16]

Public Utilities Regulatory Commission (PURC)

The PURC has the responsibility of approving rates chargeable for the purchase of electricity from renewable energy sources by public utilities; charges for grid connection; and rates chargeable for wheeling of electricity from renewable energy sources.[17]

PRICING AND TARIFFS

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PRICING AND TARIFFS

The Public Utilities Regulatory Commission (PURC) is responsible for preparing and providing public utilities with guidelines on the level of rates that may be charged for electricity generated from renewable energy sources.[18] Approved rates are to be published in the Gazette and at least one national daily newspaper.[19] In determining the tariff rates and preparing the guidelines, the PURC will have to consider the following factors:[20]

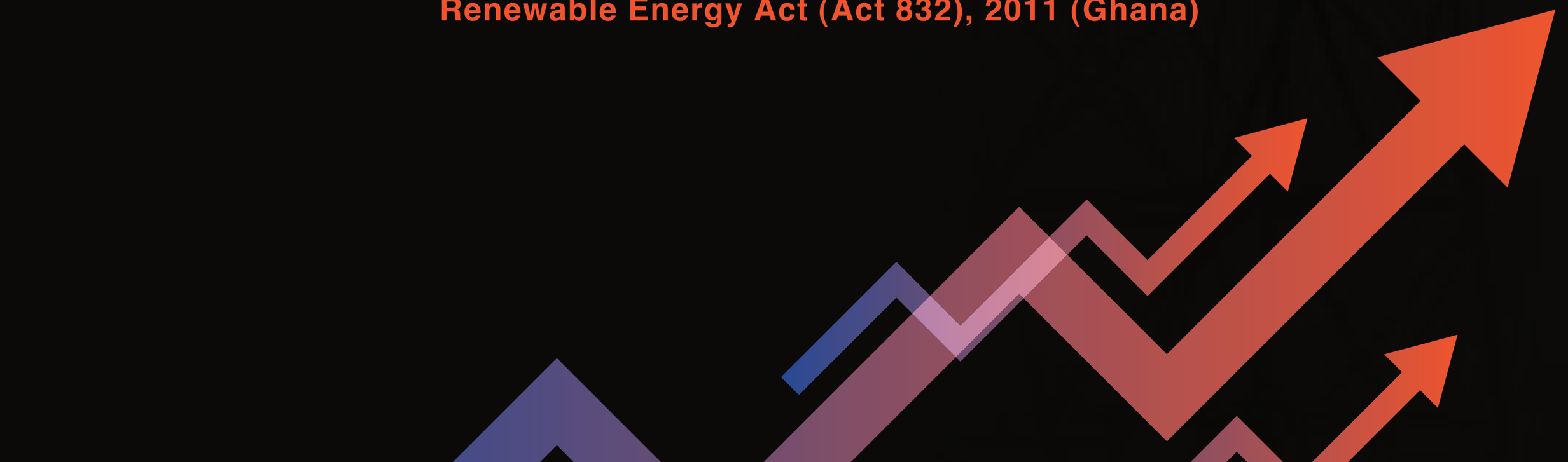
- technology being used in the renewable energy industry.
- location of the generation facility.
- operating norms for the specific technology under consideration.
- costs associated with construction, commissioning, operation, and maintenance of the plant.
- the reasonable rate of return; and
- the balance between the interest of the consumer and the investor.

In determining the mechanism for the regulated electricity market pricing framework, the PURC will take into account the price differential between the purchase price of electricity generated from renewable energy sources and the price of electricity purchased from other sources.[21]

Where a public utility seeks to demand a higher feed-in-tariff rate than the rate approved by the PURC based on an agreement reached with the consumer, written permission must be sought from the PURC except in circumstances relating to the export of electricity generated from renewable energy sources.[22]

INCENTIVES AND INVESTMENT OPPORTUNITIES

Renewable Energy Act (Act 832), 2011 (Ghana)



INCENTIVES AND INVESTMENT OPPORTUNITIES

The Act establishes a Feed-in-tariff scheme for the purpose of guaranteeing the sale of electricity generated from renewable energy resources.[23] The Feed-in-tariff scheme consists of the renewable energy purchase obligation; the feed-in-tariff rate; and a connection to transmission and distribution systems.[24] The Feed-in-tariff rate is guaranteed for ten (10) years, following which it shall be subject to review every two (2) years.[25]

SANCTIONS AND PENALTIES

Renewable Energy Act (Act 832), 2011 (Ghana)

SANCTIONS AND PENALTIES

Any person who engages in a commercial activity in the renewable energy industry without a licence issued by the Energy Commission will be deemed to have committed an offence and will be liable on summary conviction to a fine not exceeding two thousand penalty units and or to a term of imprisonment not exceeding five years or to both.[26] Where the offence is committed by a corporate entity, that entity would be liable on summary conviction to a fine not exceeding five thousand penalty units.[27]

The Board can also administer the following sanctions on participants who fail to apply guidelines established by the Commission – imposition of a fine not more than one thousand penalty units; suspension or revocation of a licence; and any other administrative sanction determined by the Board.[28]

An electricity distribution utility or a bulk customer that fails to purchase a specified percentage of its total electricity purchase from renewable energy sources or refuses to pay the premium as required in the Act may stand the risk of its permit being suspended by the Commission to purchase electricity from a wholesale supplier and the bulk customer will be required to pay the sum total of the difference between the end user tariff and the purchase price of the renewable energy payable calculated from the date the amount was due and payable and a fine of five thousand penalty units.[29]

An electricity distribution utility that negotiates a Power Purchase Agreement with a generator of electricity and buys power from a generator of electricity from a renewable energy source without the written approval of the PURC, will be found to have committed an offence and will be liable on summary conviction to a fine of ten thousand penalty units.[30]

In addition, a public utility that demands a feed-in-tariff rate without the approval of the PURC or demands a higher feed-in-tariff rate higher than the rate approved by the PURC in relation to electricity generated from renewable energy sources commits an offence and will be liable on summary conviction to a fine of ten thousand penalty units.[31]

Operators of transmission or distribution systems that fail to connect generators seeking to feed in electricity from renewable energy sources into the network will be liable on summary conviction to a fine not exceeding ten thousand penalty units and the Commission may in addition, suspend the operator's license.[32]

Furthermore, for persons who fail to obtain the relevant permit from the Ministry of Food and Agriculture after the grant of the licence; display at the point of sale the proportion of bio-fuel contained in the bio-fuel blend; maintain the equipment and property used in the provision of the service; or comply with the technical standards established by the Commission – it is notable that such persons would be deemed to have committed an offence and will be liable on summary conviction a fine of not more than five thousand penalty units and in the case of a continuing offence to a further fine of not more than fifty penalty units for each day during which the offence continues after written notice has been served on the offender.[33]

Endnotes

1 Section1
2 Section 26
3 Sections 30(1)(5)
4 Section 30(2)
5 Section 46(1)
6 Section 32(1)
7 Section 36(1)
8 Section 37
9 Section 41
10 Section 3
11 Section 50
12 Section 4
13 Section 49(1)
14 Section 49(6)
15 Section 31
16 Section 35(2)
17 Section 5
18 Section 27(2)
19 Section 29
20 Section 27(3)
21 Section 27(5)
22 Section 28 (3) (4)
23 Section 25(1)
24 Section 25(2)
25 Section 27(4)
26 Section 8(4)
27 Section 8(5)
28 Section 49(4)
29 Section 26(6)
30 Section 27(7)
31 Section 28(5)
32 Section 30(4)
33 Section 47

DISCLAIMER

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