



Office franco-allemand pour la transition énergétique
Deutsch-französisches Büro für die Energiewende



Finance of Windenergy Projects in Germany and France in
Context of new Support Mechanisms of Renewable Energies.

Requirements concerning Project Finance and Handling of
Projects under Appeals and Lawsuits

Wolfgang Rohde:
(New) Aspects and Criteria for the Evaluation of Projects.

Sept. 20th, 2016

Portfolio Renewable Energies Bremer Landesbank



- Finance of **Windfarms** since 1991
ca. 550 Windfarms (ca. 2.250 turbines) with total installed capacity of > 5,2 GW;
with finance volume of ca. € 4,2 bn. (net after syndication)
Thereof
Ca. 35 Projects in France with ca. 500MW



- Finance of **Photovoltaic-Projects** since 2003
more than 70 projects (rooftop and open area) ca. 530 MWp
with finance volume: ca. € 575 m.



- Finance of **Biogas-Projects** since 1999, total installed capacity of > 130 MW_{el}
with finance volume: ca. € 450 m.

as of 07/2016

Bank's Evaluation of a Windfarm Project in General

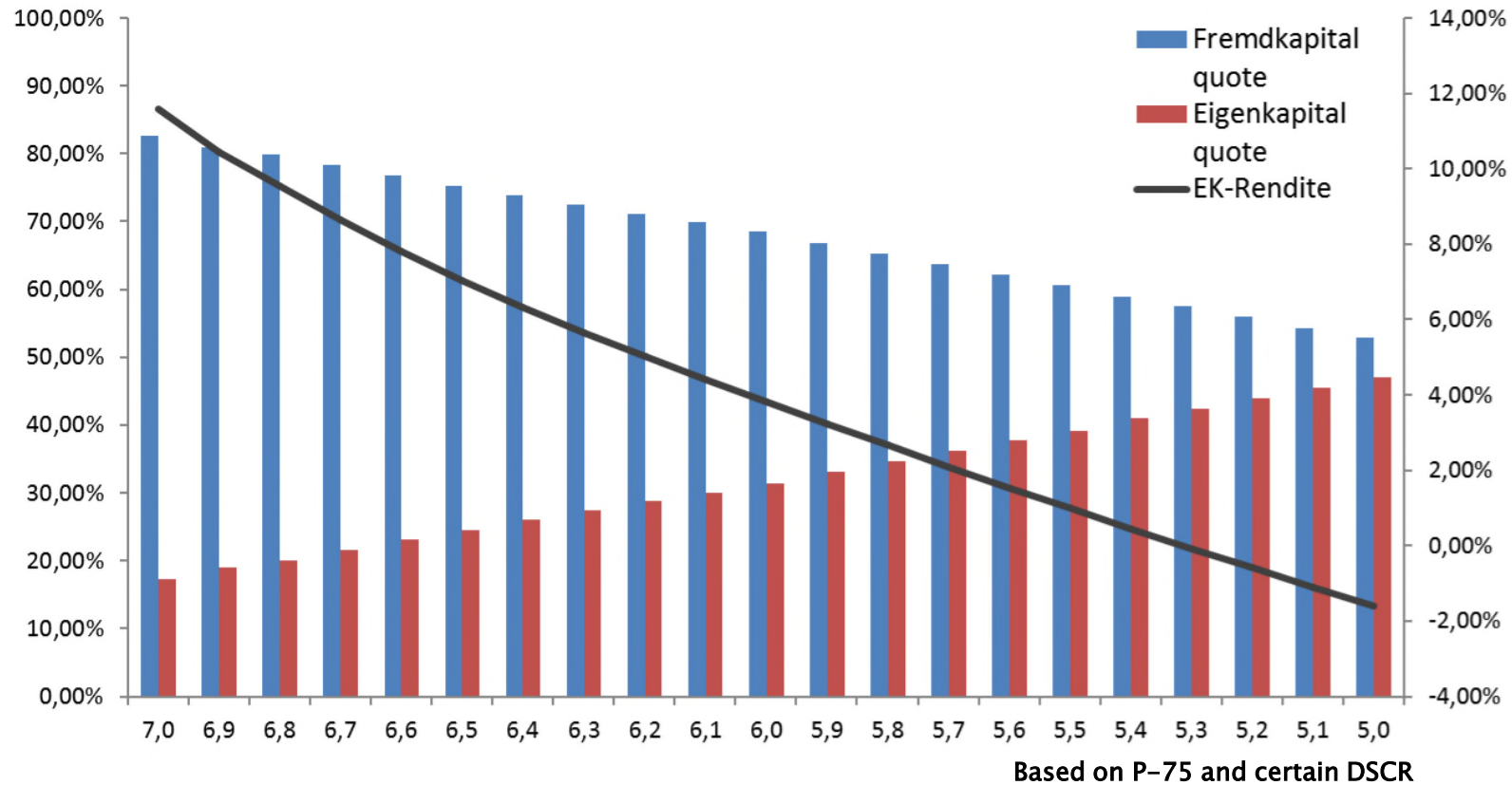
Aspect	
Site Quality	Bank's Yield Assessment and Assumptions, Model of Reference Yield → Debt Service Cover Ratio
Opex, other	Opex structure, §24/§51 EEG 6-h-negative, interest level
Technology	Proven (Construction and Operation)
Legal Frame	Reliability, Renewable Energies Regime (Mechanism and Permits), Grid Connection, Commercial Law, Collateralization, Construction and Operating Permit
Individual Package of Contracts	To be consistent
Players + Persons	Know your customer

The lender trusts and relies on proven technology, assessable wind conditions, calculable operating costs, professional handling and a reliable legal framework in order to be able to offer and structure a non-recourse project finance!

New Evaluation Aspects and Criteria under German Tender System from Lender's Perspective

Aspect	
New Model of Reference Yield EEG2017	<p>20 years fixed tariff after bid has been awarded (+) 5 years tariff check of actual production in arrears leads to increased tariff or redemption obligation. Evaluation: Redemption obligation (leading to increased reserve accounts) Increased loan administration and monitoring</p>
Bid Bond (30T€/MW)	<p>Issued by bank before fulfilment of usual conditions precedent. However, should be feasible as an approved project should have a certain value. Evaluation: debt service capacity, return on equity (marketable) Negative clause on project rights To be returned should the bid fail to get awarded.</p>
Credit Process	<p>Price Bid for <u>approved</u> project (=with permit). Price during project development and during credit negotiations not fix. Cash Flow unknown during phase before award. DSCR-driven credit process to be aligned. Scenarios with variable debt/equity-ratios</p>

Elasticity of equity/debt relating to tender price bids



New Evaluation Aspects and Criteria under German Tender System from Lender's Perspective

Aspect	
6-h-negative price (§51 EEG2017)	Suspension of tariff payment (Day Ahead Market). (Turbines > 3MW) No compensation within 5 years tariff check. Scenarios for future losses. No reliable forecast for losses possible.
Transition period EEG2014 → EEG 2017	Official permit before 1.1.2017 = transitory regulations §46/46a EEG2017 Option to change to tender system until 28.2.2017 Main Factors: special depression, site quality (old two-stage or new single stage reference yield model)
Public Participation in Windenergy projects	Facilitated Participation Process in Tender System for Projects <18MW with Public Participation. (without permit, decreased bond conditions (50%), highest bid-award applied, increased completion period). Evaluation: Bid Bonds for these projects (no permit) still feasible? Additional collaterals through initiators or even public crowd?

New Evaluation Aspects and Criteria under German Tender System

Conclusion

- EEG₂₀₁₇: no counterparty risk and no market price risk (unchanged, exception §51). Non-recourse project finance remains feasible. → EEG₂₀₁₉?
- Cash Flow to be anticipated in more detail (site quality, 5-years production check and losses acceptable for compensation (or not))
- Finance structure needs to provide for more practicable adaptability (tenor, early repayments, ... will supporting banks (KfW, LRB) react?)
- Strong supply over demand is to be expected (price decrease)
- Higher equity ratios to be expected, leading to lower return on equity ratios
- If public participation models will be able to generate starting capital under new circumstances remains to be seen
- Credit process and subsequent credit monitoring will become more complex

Current aspect under French Mechanism –implementation of „vente directe“ earlier than expected?

- Amendment in French Finance Act (*Loi de Finances rectificative n°2015-1786 of 29 December 2015 regarding CSPE*).
Should the French State have notified this amendment to the EU-Commission in order to consider it under the new EU guidelines relating to state aid in the energy sector?
 - What regime to be applied for projects affected and currently under realization?
 - **High importance for the relevant projects and financing banks to clarify this issue swiftly!**
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- The idea of the „Vente Directe“ seems to be very similar to the German approach of the „Direktvermarktung“
 - New tariff remains to be seen
 - In general there should be no issue to for banks to continue project financing under the new expected regime – subject to further details to be published

Consequence of characteristics of Project Finance and Permits under Legal Proceedings

[irrespective of the current Mechanism]

- Focus on public permit (building and operating) - as essential part of legal frame: Permit needs to be **free of any legal proceedings** during realization and operation ...
- ...which consequently is a **Condition Precedent** for any loan disbursements
- no legal proceeding may **endanger the operating cash-flow** (risk of delay or failure)

With a permit under proceedings with open outcome a **lender would risk**

- to finance a project with **declined quality (= higher risk)**, e.g. due to delays, stronger restrictions
- a **partial or total loss** if the project fails in case of successful legal proceedings

In order to keep its commitment under a project finance structure an experienced lender would evaluate the risk concerning relevance for financing with the target to **continue lending** (eventually with LIMITED recourse to sponsor) in order not to endanger the project. This leads to the **important role of the lender's legal advisor**

Role of legal advisor

Legal opinion on public permit:

- duly executed authorisation process
- compliance with terms (deadlines)
- obligations of beneficiary
- rights of third partys (appeals/lawsuits)
- legal validity

Identification of legal issues that endanger legal validity of permit

Assessment of risk of
potential or even

filed appeals/lawsuits

and statement concerning a potential success of those legal filings

Recommendations to lender (the more pragmatic, the better)

The lender relies on competent assessment of Legal Advisor as basis for the lender's decision how to deal with a windfarm project under legal proceedings or under risk of potential appeals and lawsuits.

German Tender System: Projects with their permits under Legal Proceedings

- Projects that took part in tender system successfully might be affected by appeals and lawsuit which might cause a considerable **delay in project realization**
- Lender issued Bid Bond
- EEG₂₀₁₇ foresees realization within 30 months, but allows for a one-time extension of this period until termination date of the permit.
- Extension period decreases 20-yr-period for awarded tariff = **economic loss!**
- If period exceeded: Project loses right of tariff on awarded bid
- Lender's view:
increased importance of enforceability of public permits and its evaluation during credit process.
Even more under the decreasing acceptance observed recently

Conclusion

- New German tender systems leads to a more detailed economic analysis of projects and to an increased credit monitoring, however, the main finance product – non recourse project finance – remains feasible.
- Project finance requires valid and legally binding public permits, free of recourse.
- In light of decreasing acceptance of windenergy and guarantee drawdowns before permits become unimpeachable there will be an increased sensitivity of the lenders in this respect.
- Lawsuits against permits of projects under the new German tender system: Might cause a significant impact on equity return (reduction of tariff period if realization period is extended) or even make the project fail.
- Lenders need to evaluate the legal situation of projects under lawsuits and decide to continue financing based on legal assessments of its legal advisor in order to support client and project (risk delay or failure of the project).
- Legal advice is essential and clear statements and recommendations of legal advisors support the lender to decide. Experience of legal advisor and lender play important role.
- A common recommendation how to deal with a legal issue from the lender's perspective does not exist. Each appeal and lawsuit needs to be treated individually.



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