

## **LEGAL DUE DILIGENCE (REGULATION, TAXATION AND INSURANCE)**

### **1. INSTITUTIONAL FRAMEWORK OF THE RURAL ELECTRIFICATION SUB-SECTOR**

The rural electrification sub-sector falls under the Ministry of Petrol and Energies (MPE). The Ministry of the Environment and Sustainable Development (MEDD) also intervenes in the sector for taking into account, in projects, the Government's policy on the environment.

Orientation Law No. 98-29 of April 14, 1998 defines and fixes the rules for the development of the electricity subsector. It concerns: the overhaul of the electricity industry, the institution of a license and concession system, the establishment of an independent regulatory body, the change in the ownership regime of power lines and the creation of " an agency dedicated to rural electrification.

#### **1.1. Ministry of Petrol and Energies (MPE)**

The Ministry is responsible for the energy sector. Decree No. 2014-891 of July 22, 2014 sets out its responsibilities, which are, among other things, the preparation and implementation of the policy in terms of production, distribution and promotion of energy. MPE develops and monitors the application of all regulations relating to energy activities and exercises technical control over companies in the sector.

To effectively carry out its missions, MPE has four (05) main Departments including: the Electricity Department (DEL), the Hydrocarbons Department (DH), the Strategy and Regulation Department (DSR), the Planning and Studies Cell, and the Directorate of General Administration and Equipment (DAGE). MPE provides technical supervision of the national companies PETROSEN, SAR and Senelec. In addition, the concessionaires and operators of Rural Electrification Projects for Local Initiatives (ERILs), the state structures involved in the implementation and operation of the project are: (i) the Rural Electrification Agency (ASER) and (ii) the Electricity Sector Regulation Commission (CRSE).

#### **1.2. Ministry of the Environment and Sustainable Development (MEDD)**

The Minister of the Environment and Sustainable Development (MEDD) coordinates the development and implementation of government policy on the environment. It draws up legislation on the preservation of the environment, preventing and combating pollution and nuisances.

He plays an important role in the project with regard to the environmental aspect. Thus, the Directorate of Environment and Listed Establishments (DEEC) is responsible for approving Environmental and Social Impact Studies and the Environmental and Social Management Plan (ESMP) and examining the file relating to the issuance environmental discharge.

### **2. STRUCTURES CONCERNED BY THE PROJECT**

#### **2.1. Senegalese Rural Electrification Agency (ASER)**

The Senegalese Rural Electrification Agency (ASER) was created on December 30, 1999 by Decree No. 99-1254. With legal personality under public law and financial autonomy, ASER. is placed under the technical supervision of the Minister responsible for Energy and under the financial supervision of the Minister responsible for Finance.

##### **2.1.1. General presentation of ASER**

ASER's mission is to promote rural electrification through support for initiatives at national and international level, in particular to develop the electrification programs decided on the basis of the electrification plan defined by the Minister in charge of 'Energy. As such, it is responsible, among other things for: (i) delegated project management of rural electrification projects; (ii) support for setting up local initiative electrification projects; (iii) management of funding for rural electrification; (iv) developing the supply of electrical energy services in rural areas; and (v) conducting the selection process for concessionaires in the rural area and monitoring the implementation of their concessions.

ASER is organized around a Board of Directors and a General Management. The Director General is appointed by decree on the proposal of the Minister of Energy. As for the Board of Directors, it includes eight (08) members representing the ministries involved in the rural electrification sector. It meets at least once a quarter and, whenever necessary, when convened by its President or at the request of at least one third of the members. The Agency is subject to a performance contract which is subject to an annual evaluation by an independent firm chosen by the Supervisory Board.

Created by Decree n ° 2006-247 of March 21, 2006, the Rural Electrification Fund (FER) is managed by ASER but the use of its resources is authorized and supervised by the "Comité de Loans and Grants" mainly made up of people from outside ASER. This committee includes representatives of the state, local communities, consumer associations and NGOs.

The FER is intended, inter alia, to grant: (i) grants, loans and guarantees to rural electrification operators; (ii) subsidized rate credit lines with banks and financial institutions; (iii) grants and loans to promoters of productive uses of electricity; (iv) subsidies for efficiency actions energy and energy management; and (v) out-of-program rural electrification operations.

#### 2.1.2. ASER objectives and strategies

After stopping the perimeter of Senelec, the authorities have entrusted the electrification of the rest of the country to the Senegalese Rural Electrification Agency (ASER). ASER's intervention perimeter is subdivided into 10 rural electrification concessions. The concessions concerned are allocated to private operators selected by international tender. The map of rural concessions is presented in Annex 3.

In addition to stimulating the demand for and supply of energy services in rural areas by broadly informing potential public and private partners, ASER is particularly responsible for:

- guide operators towards innovative solutions at the lowest cost;
- establish the annual rural electrification development program and provide support and monitoring;
- manage relations with donors as well as the financing mechanism for rural electrification investments;
- ensure the execution of agreements concluded in compliance with rules and standards;
- ensure for the Ministry in charge of energy the delegated project management for the execution of rural electrification projects and programs;
- promote the Local Initiative Rural Electrification (ERIL) projects by supporting them technically and financially.

To carry out its missions, ASER rests its strategy on the affirmation of the specific and priority

character of rural electrification, in the sense that it comes both from the commercial sector and from rural equipment. It emphasizes the positioning of rural electrification in a perspective of sustainable economic and social development, by a requirement of reproducibility and technical and economic viability in the setting up of operations. ASER favors the involvement of the private sector, the voluntary sector and local communities in the position of driving forces in rural electrification.

### 2.1.3. Organization of the ASER

The internal organization of ASER is structured around a General Management, seven (05) Directorates, four (03) Cells and one (01) Accounting Agency. The Directions and Unit involved in the project are presented below. The ASER organization chart is presented in Appendix 4.

#### a) Directorate of Studies and Planning (DEP)

The Direction of Studies and Planning (DESI) is responsible for designing and managing the Information System on Rural Electrification (ER) in Senegal. It collects, organizes and disseminates RE data and information. She is also responsible for assessing the environmental and socio-economic impacts of RE projects and the environmental monitoring of projects.

The staff of the Directorate is 12 agents including 6 executives. These personnel are qualified, competent and in sufficient numbers to carry out the tasks incumbent upon them.

#### b) Directorate of Rural Electrification Operations (DOER)

It ensures the process of carrying out part of the rural electrification projects. In this regard, it is responsible for the engineering and implementation of all rural electrification projects and programs based on the state-of-the-art extension of conventional MV and LV networks and off-grid systems.

It also defines and implements the process of selecting operators for the allocation of licenses and concessions in the rural area.

The staff of the Directorate is 12 agents including 06 executives. These personnel are qualified, competent and in sufficient numbers to carry out the tasks incumbent upon them.

#### c) Legal Unit, Markets, Contracts (CJMC)

The Legal, Markets and Contracts Unit is responsible for ensuring, in conjunction with the Technical Departments, the procurement process and the management of contracts. In this capacity, she is responsible, among other things, for: (i) the legal review of tender documents (DAO) and draft contracts; (ii) the validation of the procedures for examining the calls for tenders relating to the selection of works companies, works control offices, private operators (Concessionaires) as well as calls for proposals for the selection of ERILs projects.

The staff of the Directorate is 05 agents including 04 executives. These personnel are qualified, competent and in sufficient numbers for the accomplishment of the tasks incumbent upon him.

### 2.1.4. ASER activities

Since its creation, ASER has provided delegated project management for several rural electrification programs. These programs increased the rural electrification rate from 8% in 2000 to 42% in 2018. In terms of geographic coverage, the number of electrified villages stands at 2,314 including in 2014:

- 1,760 localities electrified by connection to the electricity network;
- 401 villages with individual solar systems;
- 123 villages per diesel or hybrid power plant connected to low voltage mini-grids (LV);
- 30 villages with solar photovoltaic mini-plants.

Overall, for fiscal year 2014, projects under ASER's delegated contracting authority served 208 villages and gave 3,371 new households access to electricity. The villages concerned are distributed as follows:

- 1,215 users in 116 villages for rural electrification concessions;
- 2,156 households in 92 villages for ERIL projects.

## 2.2. Electricity Sector Regulatory Commission (CRSE)

The Electricity Sector Regulation Commission (CRSE) was created by Law No. 98-29 of April 14, 1998 on the electricity sector. CRSE is an independent authority responsible for regulating the production, transport, distribution and sale of electrical energy. It also has consultative powers for the benefit of the Minister for Energy. Operational since 2000, it is an essential element in securing investment in the electricity sector.

The main tasks of the CRSE are as follows: (i) examining license and concession applications and forwarding them to the Ministry of Energy; (ii) ensure compliance with the terms of the licenses and concessions granted and make any necessary modifications to them; (iii) protect the interests and rights of consumers; (iv) ensure respect for competition; (v) impose sanctions in the event of non-compliance with the rules in force; (vi) define the pricing conditions jointly with the Ministry of Energy.

The CRSE is composed of three (03) members including a President, appointed by Decree with regard in particular to their qualification in the legal, technical and economic fields and their expertise in the electricity sector. The term is five years, renewable once. It currently has around thirty employees (experts and agents). The members and staff of the Commission are bound by professional secrecy for all the facts, acts and information of which their function brings them to know. They may not, during their term of office, take a public position on the questions which have been or are likely to be the subject of decisions by the Commission nor be consulted on these questions.

## 2.3. Private rural electrification operators

The institutional and regulatory framework in Senegal establishes the private sector as a major player in the implementation and operation of rural electrification projects. Thus, to achieve the Government's strategic objectives, two types of private public-private partnership are favored, namely the concession and rural electrification of local initiative (ERIL). These two types of operators will be responsible for the exploitation of the investments to be made within the framework of this project.

### 2.3.1. dealers

The Government of Senegal has chosen public private partnership for rural electrification. The rural perimeter has thus been subdivided into ten (10) rural electrification concessions which are: (i) Dagana-Podor-Saint-Louis, (ii) Louga-Kebemer-Linguère, (iii) Kaffrine-Tambacounda –

Kédougou, ( iv) Mbour, (v) Kolda-Vélingara, (vi) Kaolack-Nioro-Fatick-Gossas, (vii) Foundiougne, (viii) Matam-Bakel-Kanel- Ranero u, (ix) Mbacke- Diourbel- Bambey-Tivaouane-Thiès –Ruffque and (x) Ziguinchor-Oussoye-Bignona Sedhiou.

Operators are selected on the basis of: (i) allocation and implementation procedures for transparent concessions; (ii) minimum technical requirements and environmental standards; (iii) transparent financial mechanisms and eligibility criteria and (iv) existence of local electrification plans (PLE) for several concessions. The private operator, once selected for a given concession, will be in charge of: carrying out electrification works, technical-commercial management of electrical services and renewal of equipment, during the duration of their contract of a duration of 25 years.

Six (06) concessions have been awarded to date with financial contributions from private operators in the region of FCFA 102,240 million, or 49.15% of the total amount of investments (FCFA 210,000 million). They have received support from leading financial partners, including the International Finance Corporation (IFC), the Islamic Development Bank (IDB) and ECOBANK.

On a minimum service objective set in the Tender Documents (DAO) of 53,000 households, the concessionaires have committed to their offers to serve 106,601 households. Also, the qualities of the private individuals selected attest to the attractiveness of the partnership. These are: ONE (Morocco), EDF (France), STEG (Tunisia), ISOFOTON (Spain-Morocco). The operation also saw the significant participation of national private individuals with proven references in the field of energy, in particular: MATFORCE, COSELEC, Les Câbleries du Sénégal (LCS) and ENCO.

### 2.3.2. Rural Electrification of Local Initiative (ERIL)

The process of selecting private individuals for the granting of concessions takes place over a fairly long period. In addition to this system, ASER supervises and technically and financially supports rural electrification projects of local initiative (ERILs). The targeted localities are not within the scope of intervention of the Priority Rural Electrification Program (PPER). The promoters of these projects present feasibility study files that ASER examines in order to decide on the financial assistance they can benefit from.

ERILs projects relate to the following uses: (i) electrification of schools and health huts; (ii) public lighting and (iii) electrification for domestic and productive uses (Income Generating Activities). The ERIL projects funding scheme in force is as follows: (i) 70% on ASER resources; (ii) 20% for the project promoter and (iii) 10% for the users (in the form of fees). The equipment installed remains the property of the State.

Implemented in parallel with the initiatives of the PPER and the PUER, the ERILs projects make it possible to meet ad hoc electrification needs and within reasonable execution times. The projects concerned arise from the initiative of local actors (Community, Economic Interest Grouping, etc.) who position themselves as promoters. The project promoter ensures the installation, operation, maintenance and renewal. Electricity service users pay an initial access fee and a monthly fee, the amounts of which are set by the Electricity Sector Regulatory Commission (CRSE).

The setting up of ERILs projects has aroused enormous enthusiasm among rural populations. At the end of 2014, the ERILs projects under the delegated project management of ASER made it possible to serve 175 villages and provide access to electricity for 4,612 new households.

## 3. RURAL ELECTRIFICATION TARIFF POLICY

The electricity prices in the rural area are subject to regulation, in application of the law n ° 98-29 of April 14, 1998 relating to the electricity sector, of the decree n ° 98-335 of April 21, 1998 relating to the principles and procedures determination and revision of tariff conditions and operator concession contracts. The aim is to find the lowest possible price for consumers, while ensuring the operator's financial viability.

The regulation of tariffs is made through an income control formula which makes it possible to determine each year, according to inflation and the quantities of energy sold, the maximum amount of income that the operator is authorized to collect from its customers.

In fact, thanks to this system, the risks are divided between consumers and the private operator during the period of validity of the pricing conditions. During this period, consumers only bear the additional costs created by events such as inflation, over which the operator has no control, while the operator bears the residual additional costs.