IMPENDING MARKET REFORM IN GAS AND ELECTRICITY

New regulatory developments initiated by the Government herald a new era in the gas and electricity sectors in Israel

JACK SMITH
PARTNER
GORNITZKY & CO.

On March 26, 2014, the Anti-Trust Authority and owners of the "Leviathan" natural gas field agreed upon the terms of a Consent Order, which, if, as expected, is approved by the Anti-Trust Court, will pave the way for the development of the "Leviathan" field and introduction of a competitor for supply of gas to the domestic market. The main trade off in the Consent Order is that the owners of the controlling interests in the "Leviathan" field, Noble Energy and the Delek Group, have agreed to divest their holdings in 2 smaller reservoirs known as "Karish" and "Tanin" to an unrelated third party and in exchange, the Anti-Trust Authority has agreed to allow the owners of the "Leviathan" field to jointly market, until 2020, the gas from the "Leviathan" field. This arrangement allows the Anti-Trust Authority to lay the groundwork for the introduction of a competitor in the domestic market and allows the owners of the "Leviathan" field to jointly market gas in the period which is crucial for them to sanction the development of the field.

Parallel to this development, the Petroleum Commissioner granted the owners of the "Leviathan" field a 30 year lease to the field, pursuant to the provisions of the Petroleum Law. The lease contains a timetable for the development of the field, with first gas to flow by Q1 2018.

In the electricity sector, the electricity regulator which is known as the Public Utility Authority – Electricity ("PUA") published for public hearing a scheme to implement a radical change to the private electricity market. The scheme intends to require all IPPs that have not yet achieved financial close, to effect, as of 2019, all private electricity sales through a pool system to be managed by the System Operator. The scheme of the PUA is, however, predicated upon the consent of Israel Electric Corporation ("IEC") (the national electricity utility) to the transformation of its current system operation unit to an independent system operator .As of 1.1.19 the capacity payments that IEC is committed to make, which to date have underpinned the financing of IPPs will be gradually reduced up to 60% of the plant's capacity. Another prominent change being proposed in the PUA scheme is that the energy costs of the IPP will no longer be underwritten by IEC and henceforth, IPPs that are subject to the new scheme will have to manage their gas risks on their own account. One practical ramification of the shifting of the gas risk to the shoulders of the IPPs may be that IPPs will seek to significantly curtail their "take or pay" obligations under the gas supply agreements they will enter into with gas suppliers.

Parallel to the publication of the PUA scheme, on March 23, 2014, the government appointed "Yogev Committee" for reform of IEC and the electricity sector, published its recommendations. The main theme of the Yogev Committee recommendations is to unbundle the monopoly of IEC (including mandating the creation of an new government company that will act as an independent system operator) while shoring up the finances of the businesses that IEC will retain, through, inter alia, sale of assets (including some existing CCGTs), an IPO and a costs savings plan. The Yogev Committee has set a goal to attain a minimum of 42% of the overall national installed capacity to be provided by private generation. Reading this goal together with the changes recommended above in the PUA scheme regarding elements that have had to date significant importance in structuring the financing of IPPs, it remains to be seen, how in practice, the common goals on the PUA scheme and the Yogev Committee can be accomplished. It is notable that the strong IEC Union has rejected the Yogev Committee recommendations, so it appears that much more work and political will of the government will be required in order to have the Yogev Committee recommendations enacted.

ABOUT THE AUTHOR:

Partner, Jack Smith is one of Israel's leading energy lawyers. Through the lead roles he has played over many years on our key energy sector mandates, Jack is the leader of our Band 1 Energy practice. Jack specializes in all facets of energy law, including natural gas/fuel supply, oil & gas exploration, regulatory matters and M&A.