

Mechanism for Calculation of Electricity Generation Price Bracket for Post-FiT Solar/Wind Power Plants

After the expiration of the preferential Feed-in Tariff (**FiT**) policy for solar and wind power projects in Vietnam, the energy selling price of solar and wind power plants in Vietnam will now be up to the parties' negotiation in a power purchase agreement (**PPA**) but must be within the electricity generation price (**EGP**) bracket approved by the competent authorities. For that purpose, on 1 November 2023, the Ministry of Industry and Trade (**MOIT**) issued Circular 19 regulating the mechanism for establishing EGP brackets for solar and wind power plants (**Circular 19**).

To be specific, Circular 19 regulates the process, which should be done annually, to calculate the maximum value of the EGP bracket to be submitted to the MOIT for approval.

In essence, Circular 19 applies to new solar/wind power projects and existing solar/wind power projects that need to re-negotiate their EGP with Vietnam Electricity (**EVN**). Specifically, Circular 19 applies to solar and wind power plant developers (**Developers**), except for

- “Transitory Projects” (these are the project that has a signed PPA before FiT expires but failed to meet other requirement(s) to enjoy FiT, which was discussed in one of our blog posts available [here](#)); and
- existing projects whose EGP under their executed PPA with EVN is still in effect.

Although the Circular 19 is not entirely clear, it seems that there will be a separate EGP bracket for each of the following types of power plant:

- floating solar power plant (*nhà máy điện mặt trời nổi*);
- ground solar power plant (*nhà máy điện mặt trời mặt đất*);
- onshore wind power plant (*nhà máy điện gió trong đất liền*);
- nearshore wind power plant (*nhà máy điện gió trên biển*); and
- offshore wind power plant (*nhà máy điện gió ngoài khơi*).

The minimum value of the EGP bracket is 0 VND/kWh, and the maximum value of the same would be calculated and approved annually in accordance with the procedure stipulated under Circular 19.

New classification system for wind projects

As shown above, Circular 19 now classifies wind power projects/plants into three categories, which is different from the previously applicable two-category classification system under Decision 39 of the Prime Minister dated 10 September 2018 (**Decision 39**). Depending on which category the Developer's power project is in, the theoretical/legal maximum energy selling price for such power project could be different as it must apply the corresponding EGP bracket. In our view, existing wind power projects, unless being subjected to Circular 19 (e.g., its EGP under the PPA with EVN is no longer effective and requires re-negotiation), should not be subjected to re-classification in accordance with this new system under Circular 19.

The following table shows the differences between the classification systems under Decision 39 and Circular 19:

Decision 39	Circular 19
<p>Onshore wind power project (<i>dự án điện gió trong đất liền</i>) means a grid-connected wind power project with wind power turbines constructed and operated on land [onshore] and on coastal areas whose outer border is the average lowest sea edge over several years (18.6 years).</p>	<p>Onshore wind power plant (<i>nhà máy điện gió trong đất liền</i>) means a grid-connected wind power plant with the centre of the foundation of the wind power turbines constructed and operated within the average lowest sea edge over several years of the mainland according to applicable regulations.</p>
<p>Offshore wind power project (<i>dự án điện gió trên biển</i>) means a grid-connected wind power project with wind power turbines constructed and operated outside the average lowest sea edge over several years (18.6 years) off the coast.</p>	<p>Nearshore wind power plant (<i>nhà máy điện gió trên biển</i>) means a grid-connected wind power plant with the centre of the foundation of the wind power turbines constructed and operated between (i) the average lowest sea edge over several years of the mainland according to applicable regulations and (ii) the outer boundary 6 nautical miles away from the average lowest sea edge over several years of the mainland.</p>

Offshore wind power plant (*nhà máy điện gió ngoài khơi*) means a grid-connected wind power plant with wind power turbines constructed outside the 6-nautical-mile sea area of the mainland.

Below are the key takeaways from the changes under Circular 19:

- The original offshore wind power project (*dự án điện gió trên biển*) category under Decision 39 is split, at the 6-nautical-mile sea area outer boundary, into two categories under Circular 19 being (i) nearshore wind power project (*dự án điện gió trên biển*) and (ii) offshore wind power project (*dự án điện gió ngoài khơi*).
- Although the law of Vietnam is not entirely clear about whether an island could be considered mainland (*đất liền*), the boundaries used for classification under Circular 19 are measured from the mainland only, but not islands.¹ This might suggest that if a project is built near the shore of (or even on) an island but is outside the 6-nautical-mile sea area of the mainland, then such project could still be considered an offshore wind power project under Circular 19. If the authorities accept this interpretation, this could be more favourable for the Developers (than under the previous classification system) as generally, the EGP for a wind power plant is higher the further away it is from shore.

‘Standard’ projects for determination of EGP bracket

The maximum value of an EGP bracket will be the EGP of the relevant ‘standard’ solar/wind power projects calculated in accordance with the mechanism provided under Circular 19. However, the regulations under Circular 19 might cause many issues in selecting standard projects in practice. This is because:

- Circular 19 is unclear on who has the authority to decide on the standard projects to be used for EGP calculation. On the one hand, Circular 19 tasks EVN with suggesting standard projects to be used for EGP calculation before 1 November of the relevant year. On the other hand, Circular 19 stipulates that EVN is liable for selecting (either by itself or as advised by its consultant) standard projects. One might argue that EVN is only liable for selecting solar/wind power projects to be suggested as standard projects; and

- the criteria for a standard project are rather broad and ambiguous. As such, there might be little transparency in how and why a project was nominated and selected as standard.

With regard to solar power projects, the maximum value of the EGP bracket would be determined based on the average annual radiation intensity of three regions (Northern, Middle, Southern) of Vietnam. Therefore, standard solar power projects must be specifically selected for the relevant regions.

Mechanism for determination of the EGP bracket

The mechanism for the calculation of the maximum value of the EGP bracket is illustrated in the diagrams below. Please refer to [this document](#) for the details of this mechanism.



Figure 1. Maximum EGP for Solar Power Plant

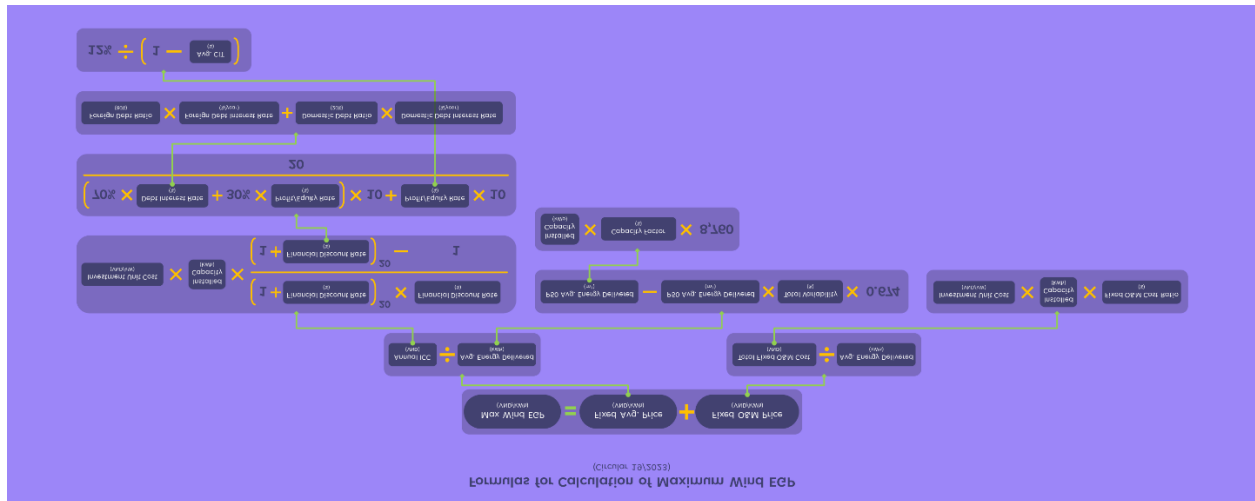


Figure 2. Maximum EGP for Wind Power Plant

Other notable matters

It should be noted that under current regulations, the EGP in the relevant PPA may be negotiated by the parties thereto but must still be within such approved EGP bracket, even if the power purchaser is not EVN.² It is unclear whether this is (i) intended by the drafter or (ii) an issue arising from the outdated regulations during the time when EVN was, generally speaking, the primary power purchaser of the power plants in Vietnam.

Another issue is that, even if there is an approved EGP bracket, it might be difficult for a Developer to agree on the specific EGP for their project with EVN as (i) Circular 19 provides no such guidance and (ii) in the past, EVN has rejected to agree on the final EGP for Transitory Projects based on the same reasoning.³ The MOIT has recently issued Circular no. 7 dated 12 April 2024 which seems to touch on this matter, we would take a closer look at the new regulation and might cover it in a future article.

¹ Our assumption was based on (i) the fact that Circular 19 specifically and solely referred to the boundary lines of “mainland” and (ii) our understanding from the sea regulations of Vietnam that there are boundary lines measured from mainland and those measured from island (e.g., Article 3.3 of Decree 11 of the Government dated 10 February 2021 on sea area allocation; the endnote of Decision 853 of the Ministry of Natural Resources and Environment dated 25 April 2022 declaring the outer boundary of the 3-nautical-mile and 6-nautical-mile sea areas of the mainland).

² Article 31.3 of the Law on Electricity of the National Assembly dated 3 December 2004, as amended.

³ Source: <https://tuoitre.vn/31-3-lieu-evn-co-dam-phan-xong-gia-dien-gio-mat-troi-2023033009552301.htm>