

Client Alert

January 2020

For more information, please
contact:

Frederick Burke
Managing Partner
+84 28 3520 2628
Frederick.Burke@bakermckenzie.com

Dang Chi Lieu
Partner
+84 24 3936 9341
ChiLieu.Dang@bakermckenzie.com

Nguyen Thanh Hai
Senior Associate
+84 24 3936 9606
ThanhHai.Nguyen@bakermckenzie.com

Vietnam's new policies for approving proposed power and energy projects in the master plan

Recent developments

Following the resolutions of the National Assembly and Government of Vietnam for implementation of transitional provisions of the new Master Planning Law, the Ministry of Industry and Trade ("**MOIT**")'s Party Committee recently issued Resolution No. 21 setting out principles, policies and processes for inclusion of power and energy projects into the master plan.¹

Resolution No. 21 sets specific orders of priority for the MOIT and other governmental agencies' reviews and approvals for numerous newly proposed projects applying for inclusion in the master plans. Resolution No. 21 makes the master plan approval process more selective in terms of energy sources, power generation technologies and characteristics of specific projects such as their location, grid connection plan, development progress and scale, among other factors. These rules may have significant impacts on private developers of different types of projects newly proposed or being developed but pending final approval of inclusion in the master plans, from renewables (wind, hydro, biomass, waste-to-energy) power projects to conventional (LNG-to-power) projects.

While the development of these rules indicates an intended process of continuing to approve more projects in the master plans for developments, the specific policies contained in Resolution No. 21 create new areas of uncertainty for private developers of those projects under low-priority categories due to the lack of a transparent selection process for various types of projects under Resolution No. 21.

We set out below the specific priority for projects to be included in the existing master plans under the MOIT's Resolution No. 21, as well as the longer-term policies for comprehensive new master plans for power and energy in Vietnam.

Section I. Policies for inclusions of new power and energy projects in the existing master plans

A. Priority order for approving proposed inclusions

Under Resolution No. 21, the MOIT sets out a general priority order for all power and energy facilities as follows:

1. Inclusion of power grids are prioritized over inclusion of power generation sources; and
2. Priority is given to areas with fewer renewable projects and with determined power evacuation capacity, taking into due consideration other areas (as further detailed below).

¹ Resolution No. 21-NQ-BCSD of the MOIT's Party Committee dated 10 January 2020 on the principles and process of implementation of adjustments and addition to the master plans on power projects ("**Resolution No. 21**").



B. Specific priority order for power grid systems

Under Resolution No. 21, the MOIT sets out a priority order for approving power grid systems as follows:

1. Transmission grid projects, which have not been included in the amended PDP VII but do not require application preparation, including:
 - Transmission grid projects, which have been approved by the Prime Minister and included in EVN's 5-year plan;
 - 220kV transmission grid projects, which have been approved in the provincial-level Power Development Plan for the period of 2016 - 2025, with consideration to 2035;
2. Power grid projects already included in the amended PDP VII which require modifications to their operation schedule and/or scale;
3. Power grid projects serving power evacuation for hydropower and renewable power generation projects;
4. Power grid projects serving for (adjusted) power supply to new loads or adjusted loads at industrial zones and major power consumers;
5. Power grid projects serving interconnection to power generation projects, for which their power plants have been included in the master plans but their grid interconnection plans have not been approved and are pending re-approval following adjustments.

C. Specific priority order for power plant/generation projects

Under Resolution No. 21, the MOIT sets out a priority order for approving power plant/generation projects as follows:

1. **Wind** power projects, which (i) are capable of completing commercial operation of their power plants and interconnection grid facilities before 1 November 2021 (i.e., by the current wind FiT deadline), (ii) are developed in areas for which their grids are not overloaded. Among this group of projects, priority is given to those projects, for which (a) their first phase has completed commercial operation, and (b) an expansion of their capacity or an implementation of a 2nd phase, utilizing the existing interconnection facilities, is proposed);
2. **Waste-to-energy** power projects;
3. **Biomass** power projects;
4. Small- and medium-scaled **hydropower** projects, which have been included in master plans, but for which their installed capacity requires adjustment for re-approval;
5. Small- and medium-scaled **hydropower** projects newly proposed for inclusion in the master plan;
6. **Conventional** power generation projects, among which priority is given to **large-scaled hydropower** and **gas-to-power** projects).

For **solar** power projects, inclusion of newly proposed projects on a project-by-project basis is pending until the conclusion and official issuance of new



Decision on solar power. Please refer to our separate alerts on the developments related to solar power projects.

D. Specific implications for wind power projects

While priority is given to wind over other energy sources, among wind projects, priority is further given by location. Specifically, under Resolution No. 21, the MOIT proposed that the order of priority by location among wind projects is as follows:

1. wind projects in those provinces where there are fewer wind projects with pending applications for inclusion of the master plans and where there are feasible grid connections and power evacuation capacity. The MOIT specifically named some provinces for this purpose, including Quang Binh, Ha Tinh, Ba Ria - Vung Tau and Hau Giang.
2. other wind projects in those provinces where there are more wind projects, among which, priority is given to those wind projects in locations for which their power evacuation capacity have been comprehensively assessed and determined, including provinces in South Western Region or Quang Tri Province.

Under Resolution No. 21, the MOIT's Electricity and Renewable Energy Authority ("**EREA**") is proposed to organize meetings for review of various applications for inclusion in the master plans as proposed by the provincial-level People's Committees, taking into account key factors such as land-use factors, interconnection capability, and probability of achieving commercial operation before 1 November 2021 for approval for inclusion in the master plan.

For wind projects in those provinces where there are many wind projects, the order of priority is proposed as follows:

- a) wind projects for which the appraisal of the applications for inclusion in the master plan has been completed. Those projects proposed first will be progressed first.
- b) for other wind projects, priority is given based on the point of time when their application for inclusion in the master plan is proposed, and specifically, those projects proposed first will be reviewed and progressed first.

E. Relevant existing master plans for inclusion of newly proposed projects

Notwithstanding the priority order set out above, it is of prime importance for developers to apply for inclusion of their projects in the right master plans and be aware of the implications under those master plans.

For this purpose, the Government of Vietnam has issued Resolution No. 110 providing a list of over 257 types of previously approved master plans that are eligible for continued application based on the transitional provision of the



Master Planning Law,² following earlier Resolution No. 751 of the National Assembly's Standing Committee.³

For the power industry, this list includes the following key master plans for power development:

1. National Power Development Plan for the period of 2011-2020 with consideration to 2030, as amended and supplemented in March 2016 (as also known as the "**Amended PDP VII**"); and
2. 63 provincial-level Power Development Plans of 63 provinces and cities under the central government for the period of 2016 - 2025 with consideration to 2030.

In addition, depending on the energy sources and power generation technologies involved, other technology-specific or energy source-specific master plans will be relevant for approval purposes. This includes 11 provincial-level Wind Power Development Plans for the period of 2011-2020, with consideration to 2025, which have been issued by the MOIT for 11 provinces of Binh Thuan, Ninh Thuan, Soc Trang, Quang Tri, Tra Vinh, Ben Tre, Ca Mau, Bac Lieu, Thai Binh, Dak Lak, Ba Ria - Vung Tau.

For other energy sources, consideration also needs to be taken in relation to other master plans on:

- **gas/LNG-to-power and LNG terminal** projects (particularly, Vietnam Gas Industry Development Master Plan to 2025 with a vision to 2035, LNG terminals development master plan until 2020 with a vision to 2030);
- **small and cascade hydropower** projects (particularly, national small hydropower master plan and 13 cascade hydropower master plans);
- **biomass** power projects (particularly, regional-level biomass power master plans);
- **other renewable** energy projects (particularly, regional-level renewable energy master plans); and
- **coal-fired** power projects (particularly, Vietnam Coal Industry Development Master Plan until 2020).

In short, at this point in time, specific volume, schedule, scale of the proposed projects and the probability of getting approvals for inclusion in the relevant master plans will be determined on a project-by-project basis based on several factors.

Section II. Policies and roadmap for formulation of new power and energy master plans

Under the new Master Planning Law, the MOIT will be required to prepare two main national-level master plans related to the power and energy sector, including:

- new National-level Power Development Plan for the period of 2021 to 2030, with a vision towards 2045 (also known as "**new PDP VIII**"),

² Resolution No. 110/NQ-CP dated 02 December 2019 of the Government ("**Resolution No. 110**").

³ Resolution No. 751/2019/UBTVQH14 dated 16 August 2019 of the Standing Committee of National Assembly ("**Resolution No. 751**").



which terms of reference (key tasks) were approved by the Prime Minister under Decision No. 1264 on 1 October 2019; and⁴

- new National-level Energy Master Plan for the period of 2021 to 2030, with a vision towards 2050, which terms of reference (key tasks) were recently approved by the Prime Minister under Decision No. 1743 on 3 December 2019.⁵

A. Specific Policies proposed for the new National-level Power Development Plan (new PDP VIII)

Under the Prime Minister's Decision No. 1264, the scope of the new PDP VIII covers power sources and power transmission grid development planning for voltage levels of 220kV or larger in Vietnam during the 2021 to 2030 period, with a vision towards 2045, including facilities connected with grid systems of Vietnam's neighboring countries.

Accordingly, the Prime Minister's Decision No. 1264 sets out the following key viewpoints and policies of the Government on the formulation of new PDP VIII:

- a) Power development must be one step ahead in order to ensure power supply for socio-economic development as well as national security and defense;
- b) Ensure the participation of different economic sectors, especially the private sector, in power development.
- c) The Master Plan must be open and identify lists of major and national-level important power sources, lists of important power transmission grids with voltage level from 220kV and prioritized investment projects during the 2021 to 2030 period; with an orientation towards developing the power transmission grid for voltage levels of 220kV during the 2031 to 2045 period.

In addition, the Prime Minister's Decision No. 1264 sets out the following key principles of making new PDP VIII:

- a) Ensure balanced development in areas and regions as well as in power sources and loads;
- b) Prioritize appropriate development of power sources utilizing renewable energy;
- c) Economic and efficient use of power (energy efficiency);
- d) Develop modern and smart grids that connect to Vietnam's neighboring countries;
- e) Develop the power market and encourage different economic sectors to participate in power development and investment; and

⁴ Decision No. 1264/QĐ-TTg dated 1 October 2019 of the Prime Minister on approving tasks for preparation of the national power development plan for the period of 2021 - 2030 with a vision to 2045 ("**Decision No. 1264**").

⁵ Decision No. 1743/QĐ-TTg dated 3 December 2019 of the Prime Minister on approving tasks for preparation of the national energy master plan for the period of 2021 - 2030 with a vision to 2050 ("**Decision No. 1743**").



- f) Develop the power sector adaptively with climate change and ensure sustainable development that is consistent with the national strategy on green growth.

In terms of working schedule, under the Prime Minister's Decision No. 1264, the preparation of new PDP VIII will be implemented in a period of 12 months after Decision No. 1264 is approved on 1 October 2019 and the MOIT's technical consultant has been confirmed/selected.

B. Specific Policies proposed for new National-level Energy Master Plan

Under the Prime Minister's Decision No. 1743, the scope of new National-level Energy Master Plan covers the whole system of Vietnam's energy infrastructure nationwide, taking into account energy import and export with other countries.

Accordingly, the Prime Minister's Decision No. 1743 sets out the following key viewpoints and policies of the Government on the formulation of new National-level Energy Master Plan:

- a) Energy development must be associated with the country's socio-economic development strategy and ensure the overall energy system optimization, forward looking and sustainable approach while continuing to diversify energy sources for stable and full supply to meet the country's socio-economic development requirements and industrialization and modernization strategy in the global era of the Industrial Revolution 4.0;
- b) Exploring, exploiting, processing and using domestic energy resources in a reasonable and efficient manner while combining imported energy and overseas exploited energy to conserve domestic resources and ensure national energy security;
- c) Develop a competitive energy market, diversify ownership and business methods, aim satisfy consumers' needs; and accelerate the elimination of subsidies, thereby phasing out the implementation of social policies through energy prices;
- d) Coordinated and rational development of the energy system, covering electricity, oil, gas, coal, new and renewable energy; rational distribution of energy systems by region; balance between exploration, exploitation and processing stages; coordinated development of infrastructures, services and recycling systems; encouraging the development of new and renewable and clean energy sources;
- e) Apply the achievements of the knowledge economy, the 4th Industrial Revolution and other scientific and technological advances to improve energy efficiency, boost energy business efficiency; and improve the quality of supply and energy services;
- f) Energy development is closely associated with environmental protection, ensuring energy development in the direction of green and sustainable growth while effectively responding to climate change.



In terms of working schedule, under the Prime Minister's Decision No. 1743, the preparation of new National-level Energy Master Plan will be implemented in a period of 12 months after Decision No. 1743 is approved on 3 December 2019 and after the MOIT's technical consultant has been confirmed/selected.

* * *

In the new context of Vietnam, while there are still plenty areas of short-term and long-term opportunities in power and energy projects in Vietnam, it is essential for private investors to identify and embrace the right opportunities, taking in account characteristics of specific projects, as well as best practices and market roadmaps to respond to challenges at this point in time in Vietnam.

If you would like to discuss further details of the above developments, how they impact to specific project(s) and necessary steps going forward, please do not hesitate to contact us.

www.bakermckenzie.com

Baker & McKenzie (Vietnam) Ltd.
12th Floor, Saigon Tower
29 Le Duan Blvd
District 1
Ho Chi Minh City
Socialist Republic of Vietnam
Tel: +84 28 3829 5585
Fax: +84 28 3829 5618

Baker & McKenzie (Vietnam) Ltd.
Hanoi Branch Office
Unit 1001, 10th Floor
Indochina Plaza Hanoi
241 Xuan Thuy Street
Cau Giay District, Hanoi
Socialist Republic of Vietnam
Tel: +84 24 3825 1428
Fax: +84 24 3825 1432