

March 2011

THAI POWER SECTOR

The background to the energy sector in Thailand is that it had long been dominated by two state monopolies, Petroleum Authority of Thailand (PTT) and Electricity Generating Authority of Thailand (EGAT), and their subsidiary/affiliated companies. The major step of corporatisation of PTT (conversion from a statutory corporation owned by the state to a public limited company), initially 100% owned by the Ministry of Finance (MoF), was taken on October 1, 2001.

On October 1, 2002, the Thai government established six new ministries, including the Ministry of Energy and the Ministry of Natural Resources and Environment. There were consequential changes in the government offices responsible for the regulation of the energy sector. After some delays, EGAT was corporatised on June 24, 2005 and an IPO was scheduled in November 2005. However, the IPO was suspended by the Administrative Court following complaints filed by various interest groups, and on March 23, 2006 the two Royal Decrees relating to the corporatisation of EGAT were revoked, and EGAT reverted to a statutory corporation.

RECENT DEVELOPMENTS [as of March 2011]

Policies on Renewable Energy

On 26 December 2006, the National Energy Policy Council (NEPC) approved EGAT purchasing power from generators using renewable energy, and instructed EGAT to revise its regulations for purchase of power from SPP's using renewable energy.

On 18 April 2007, EGAT announced Regulations for the Purchase of Power from Small Power Producers exclusively for the generation from renewable energy. SPP's can obtain information from the Power Purchase Agreement Division, EGAT. The Regulations (as amended in 2009) can be found at www.egat.co.th.

On 28 January 2009, the Cabinet approved a 15-year alternative energy plan, and on 9 March 2009, the National Energy Policy Committee approved additional tariff "adders" for certain categories of alternative energy. The announced goal was for renewable energy to constitute up to 20% of total energy consumption by 2022.

See C&T papers on Wind and Solar for more details concerning these two sectors.

Energy Industry Act, B.E. 2550 (2007)

This Act was published and became effective in December 2007. It establishes a new regulatory regime for electricity and natural gas business. One of the purposes of the Act is to restructure the energy industry management by separating policy making, regulation and operating functions. It provided for establishment of an Energy Regulatory Commission (ERC), whose members have been appointed, and the Office of ERC. Operators of energy business must obtain a license from the ERC. Draft royal decree, regulations and notifications to implement the Act have been published. The ERC is responsible for prevention of abusive use of monopoly power and protection of energy consumers and those adversely affected from the energy industry operation.

Suit against PTT

A suit was filed in September 2006 against PTT Plc seeking to reverse the 2001 corporatisation of the Petroleum Authority of Thailand. The suit was filed in the Administrative Court by special interest groups, following their success in reversing the corporatisation of EGAT in March 2006.

On 14 December 2007, the Supreme Administrative Court ruled that the two royal decrees corporatizing PTT are valid and will not be revoked and that the status of PTT Pcl as a public company is confirmed. However, certain assets of PTT Pcl must be returned to the Ministry of Finance together with full authority over associated assets. The expropriated assets had an estimated value of 100 billion Baht and include 32 rai of land and 3,000 kilometres of gas transmission pipelines.

2007 IPP Solicitation

The first solicitation for bids for IPPs (independent power producers) was announced in 1994. Seven IPP projects were awarded PPAs. All obtained project financing from Thai and US\$ commercial banks. JBIC was a lender to three of the projects, and ADB was a lender to one of the projects.

The second solicitation for bids for IPPs was announced in June 2007 for base load capacity of 3,200 MW. Bidders were required to submit their proposals by October 2007. The Energy Ministry announced the four winners for capacity of 4,400 MW in December 2007, and the contracts to buy electricity will be signed with EGAT in mid 2008.

The bidding process was conducted by EPPO utilizing electronic means to the fullest extent possible. A website was the sole source of documents upon which proposals were to be prepared and submitted. The process had a high degree of transparency, with clear evaluation and award procedures. The standard form of PPA contained a standardized risk allocation. Proposals were evaluated solely on price.

The National Energy Policy Council approved an energy tax to be paid by all power plants, old and new. The rates vary, depending on the amount of emitted pollution and fuels used. The energy tax will be paid in two stages. During construction, the power plants are required to contribute according to their installed electricity capacities at a rate of Baht 50,000 per MW per year, or at least Baht 500,000 per year to the fund. After the electricity is supplied to the national grid, the power plants must contribute according to the amount of power they produce monthly at carrying rates depending on amount of emitted pollution.

20th Round: Petroleum Concessions

The DMF (Department of Mineral Fuels) announced the 20th round of bidding for petroleum concessions in May 2007. The first bid submission deadline was July 15, 2007. Special advantages must include 5% Thai participation after Production Area is approved and first priority for Thai content. The bid round was open for one year, with bids being received and considered as of the 15th of each calendar month through May 2008.

As of March 2011, a total of 74 applications had been filed for 52 exploration blocks in the 20th round. 28 petroleum concessions for 34 blocks have been approved, of which 22 petroleum concession for 24 blocks have been signed.

LNG Terminal

PTT LNG Co., Ltd., a subsidiary of PTT, commenced construction of its LNG Receiving Terminal Project with capacity of 5 million tons per year. The LNG terminal facilities consist of LNG storage tanks (160,000 m³ x 2), vaporizer and jetty located in Map Ta Phut Industrial Estate. The project is scheduled to be completed in June, 2011.

Hydropower Projects

In April 2007, Myanmar began implementation of the 7,110 MW Tar-Hsan hydropower project. This Myanmar-Thailand joint venture project is one of two signed with Thai companies. The other is the 600 MW Hutgyi on the same river signed with EGAT. Electricity generated from the two plants will be sold mainly to Thailand.

On September 7, 2007, governments of Laos PDR and Thailand signed a joint communique on hydropower development. The action plan will be discussed and finalized at the second forum which will be held in Vientiane in the last quarter of 2008. Subsequently, both governments signed a Memorandum of Understanding on Electric Power Development Cooperation in Lao P.D.R. on 20 December 2007 in which the Thai side agreed to purchase more electrical power from Lao P.D.R., increasing from 5,000 megawatts to 7,000 megawatts within 2015.

REGULATORY SETTING

Prior to October 1, 2002, NEPO (National Energy Policy Office) was the government authority charged with the supervision of all state enterprises involved in energy matters. NEPO was responsible for developing policy guidelines and regulations to govern the private electric power sector. Since October 1, 2002, NEPO is under the MoE, under the name Energy Policy and Planning Office (EPPO).

PRIVATISATION POLICIES

Royal Thai Government Privatisation Master Plan

On September 1, 1998, the Cabinet approved a privatisation master plan, which systematically dealt with policies to develop and implement structural reform or privatisation of 59 state enterprises. The energy sector was one of the five major sectors addressed by the master plan.

Corporatisation Legislation

The Capital of State Enterprise Act, B.E. 2542 (often referred to as the “Corporatisation Act”) was published on December 16, 1999, after the Constitutional Court confirmed its constitutionality.

The Act is an enabling act that provides a regulatory framework for the conversion of state enterprises to either private limited companies or public limited companies, which will initially be 100% owned by the MoF. It sets forth a process, but it does not prescribe which state enterprises will be privatised, nor provide any timetables. It provides for the establishment of a State Enterprise Capital Policy Committee, which would conduct studies and propose to the Cabinet for approval of the principles and guidelines to corporatise all or part of specific state enterprises. For each such state enterprise, a second committee, the Company Establishment Preparation Committee, would be established to work out the details of the corporatisation and to draft a royal decree to deal with issues requiring legislative solutions. Cabinet approval is required before any state enterprise is corporatised.

The Act did not include any amendments to the PTT Act or the EGAT Act, both of which remained in full force and effect. Currently, the government has under consideration a bill to replace the Corporatisation Act.

Power Sector Liberalisation

EGAT was a state enterprise in the form of a statutory corporation without shares owned by the state, under the administration of the Ministry of Energy (since October 1, 2002). Its property is exempt from execution. It possessed statutory powers to survey and use land for transmission line rights-of-way, and the right to acquire land for electricity generation plants through expropriation. Section 45 of the EGAT Act provided an assurance that in the event of a shortfall in revenues, the state would appropriate funds to meet the shortfall.

On May 10, 2005, the Cabinet approved the recommendation of the State Enterprise Capital Policy Committee to proceed with the corporatisation of EGAT. On May 13, 2005, the Secretariat of the Cabinet sent a letter to the Chairman of the State Enterprise Capital Policy Committee, confirming the Cabinet’s approval according to the resolution of the State Enterprise Capital Policy Committee No. 1/2548, and the two draft royal decrees were forwarded to the Office of the Council of State for review.

EGAT was corporatised (as noted in the introduction to this article) on June 24, 2005 under Section 26 of the Capital of State Enterprises Act, and converted to EGAT Public Company Limited (EGAT Pcl). Two Royal Decrees were published:

- Royal Decree stipulating powers, rights and benefits of EGAT Pcl, B.E. 2548 (2005), which prescribed that EGAT Pcl shall have the powers, obtain exemptions, have special rights and receive protection as prescribed and granted by the law governing EGAT and other laws applicable to EGAT. Certain assets of EGAT Pcl are not subject to execution (assets related to the electricity generating business for common interest). Specified employees of EGAT Pcl performing work on electricity systems have official powers under the Criminal Code. This Royal Decree established an Electricity Generating Business Committee with power to approve new power plants, transmission line rights-of-way and other policy decision.
- Royal Decree stipulating time clause for repealing the law governing EGAT, B.E. 2548 (2005), which prescribed that the Electricity Authority of Thailand Act is repealed as of June 24, 2005.

EGAT Pcl is governed by the provisions of the Public Limited Companies Act, B.E. 2535 (1992).

EGAT Pcl had planned to conduct an IPO in November 2005, offering up to 25% of its shares to the public, but the Administrative Court on November 15, 2005 issued an injunction to suspend the IPO until a future date.

On March 23, 2006, the Administrative Court issued a ruling revoking retroactively the two Royal Decrees. The effect has been interpreted as reversing the corporatisation of Electricity Generating Authority of Thailand retroactively to June 24, 2005. The juristic status of EGAT Pcl is uncertain. The Council of State issued an opinion on April 21, 2006 to address some of the issues raised by the Court's ruling.

Gas Sector Liberalisation

PTT was a state enterprise in the form of a statutory corporation without shares owned by the state under the administration of the Ministry of Industry. Its property was exempt from execution. It possessed statutory powers to survey and use land for pipeline rights-of-way, and the right to acquire land for refineries, gas separation plants and other facilities by expropriation. Section 42 of the Petroleum Authority of Thailand Act provided an assurance that in the event of a shortfall in revenues, the state would appropriate funds to meet the shortfall.

PTT was corporatised on October 1, 2001 under Section 26 of the Capital of State Enterprise Act by conversion to PTT Public Company Limited ("PTT Pcl"). Two Royal Decrees were published on September 30, 2001:

- *Royal Decree Stipulating Powers, Rights and Benefits of PTT Pcl*, which prescribed that PTT Pcl shall have the powers, obtain exemptions, have special rights and receive protection as prescribed and granted by the law governing PTT. Certain assets of PTT Pcl are not subject to execution (assets acquired under the law on expropriation of immovable properties, and the petroleum pipeline system). Specified employees of PTT Pcl performing work on tank farms and pipeline systems will have official powers under the Criminal Code.
- *Royal Decree Stipulating Time Clause for Repealing the Law Governing PTT*, which prescribed that the Petroleum Authority of Thailand Act is repealed as of October 1, 2001.

In November 2001, PTT conducted an IPO and as of 2006, approximately 47% of its shares were owned by the public.

A suit was filed in September 2006 against PTT Pcl seeking to reverse the 2001 corporatisation of the Petroleum Authority of Thailand. A suit was filed in the Administrative Court by special interest groups, following their success in reversing the corporatisation of EGAT in March 2006. The government has taken several steps to forestall that result, including the enactment of a Royal Decree published on 16 February 2007 withdrawing special powers, rights and benefits granted to PTT Pcl in 2001, and establishing an interim regulatory body for the electricity industry.

On 14 December 2007, the Supreme Administrative Court ruled that PTT should remain a listed company; however certain assets of PTT as well as authority over associated assets must be transferred back to the state.

2011-2012 RISK MANAGEMENT ISSUES

Sponsors and lenders will need to address the above developments in considering investments and project financings in the energy sector in Thailand during 2011-2012. They have commercial, legal and political risk dimensions.

Major sources of information include DEDE, EPPO, MoE, MoF, EGAT and PTT.

Acronyms:	DEDE	Department of Alternative Energy Development and Efficiency
	DMF	Department of Mineral Fuels
	EGAT	Electricity Generating Authority of Thailand
	EPPO	Energy Policy and Planning Office (formerly NEPO)
	MoE	Ministry of Energy
	MoF	Ministry of Finance
	PTT	Petroleum Authority of Thailand
	PTT Pcl	PTT Public Company Limited

Website:



Board of Investment
www.boi.go.th



www.bot.or.th



Council of State
www.krisdika.go.th



DEDE
www.dede.go.th



EGAT
www.egat.co.th



EPPO (formerly NEPO)
www.eppo.go.th



Ministry Finance
www.mof.go.th



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