
Provisions Of Renewable Energy Contracts: A Comparative Study

Karrar Maher Kadim¹, Hassan Dakel Abd Radhi^{1,a}, Alaa Falih Mutar¹, Ali Kadhim Aswad¹

¹Department of Law, Al-Kut University College, Al-Kut, Wasit, Iraq, 52001.

^aCorresponding author: Hassan.Dakl@alkutcollege.edu.iq

Abstract

Renewable energy contracts are one of the most prominent contracts developed for the establishment of energy projects by the private sector. Scientific imperatives and the great development of energy research have dictated the presence of this type of contracts on the legal transaction scene. This is particularly the case after the importance of relying on alternative energies, especially those that depend on renewable and natural sources, has emerged. The availability of energy services is a fundamental necessity to meet the escalating human needs of them, which depend on oil and nuclear reactors leaving behind waste that is harmful to the environment and entail countless risks. Accordingly, we will divide our research into two sections. In the first section, we will discuss the concept of renewable energy contracts. In the second topic, we discuss the effects of renewable energy contracts.

Keywords: renewable energy contracts, nature of renewable energy contracts, effects of renewable energy contracts, fossil fuels.

1. Introduction

1.1 The research topic

In light of the fact that the world has become disturbed by the unclean use of energy, we find the Iraqi reality in this regard is not encouraging. Iraq is not one of the leading countries in this field despite the availability of sufficient factors for Iraq to be at the forefront of countries transitioning towards clean energy use. The country has not taken any serious and bold steps until recently, despite the existence of an environmental law that touched on renewable energy and the preparation of a draft of a renewable energy law through the Ministry of Electricity in cooperation with the Regional Center for Renewable Energy of the United Nations Development Program. These late endeavors only cover some of the necessary requirements of their availability to advance the reality of renewable energy, especially with regard to regulating the contracts concluded therein and creating the appropriate environment for its success.

1.2 The Importance of research

The subject of our study, which concerns the provisions of renewable energy contracts, is of great importance that stems from practical aspects, as the transition to clean energy use in Iraq has become a critical issue that would provide radical solutions to many practical problems. The most prominent of these problems is perhaps solving the perennial issue of power outages not to mention the necessary reduction in the use and total dependence on fossil energy, which is vulnerable to exhaustion and has devastating effects on the environment.

1.3 The research problem

The problem of the study stems from the absence of a clear legal regulation of those contracts in Iraq that would open the door to the judiciary and jurisprudence and portend several practical problems facing those contracts. Huge contracts need several legal guarantees to be developed based on a clear and systematic policy that cannot be available with the absence of legislation to determine them. Relying on the general rules to follow in the conclusion and implementation of those contracts is something that hinders the achievement of the purpose of their conclusion.

1.4: Research methodology

In our study of the provisions of renewable energy contracts, we will rely on the comparative analytical approach.

1.5. The research plan

We will divide our research, which concerns the provisions of renewable energy contracts, into two sections, and as follows:-

2. The concept of renewable energy contracts.

2.1 What is meant by renewable energy contracts.

2.2 The legal nature of renewable energy contracts.

3. The effects of renewable energy contracts.

3.1 The state's obligations in renewable energy contracts.

3.2 The obligations of the contracting company in renewable energy contracts.

2. The concept of renewable energy contracts

Renewable energy contracts are one of the most prominent contracts the existence of which was dictated by scientific necessities and the great development in energy research on the legal transactions arena. This is particularly true given the emerging importance of relying on alternative energies. Of special note here are those that rely on renewable and natural sources to meet the escalating human needs where renewable energy with its various sources has become the focus of attention of the majority of countries. In order to identify the concept of renewable energy contracts, we will divide this section into two parts: the first discusses what is meant by renewable energy contracts, and in the second, the legal nature of renewable energy contracts is discussed.

2.1 What is meant by renewable energy contracts?

There is no doubt that defining what is meant by renewable energy contracts contributes to clarifying these contracts. This requires a definition that describes this type of contracts and their requirements. Accordingly, we will define them linguistically, juristically and legally.

1) Defining renewable energy linguistically.

Linguistically, the word “energy” means a branch or bundle of basil or blossom, or energy is hair, sticks, threads, and a cord that encircles, or without energy (Yaqoub & Abadi, 1996, p. 80). The Waseet Dictionary defines it as one that comes from the sun, wind, water, or tides (Mustafa et al., 2004, p. 80).

2) Defining renewable energy juristically.

Some defined it as the energy arising from sources that do not economically run out, that is, inexhaustible (Al-Ani, 2007, p.3; Hrez, 2014, p. 102). It is also known as the primary sources that exist in nature and are constantly available (Emara, 2012, p. 33). It is one of the main components of civilized societies, and all sectors of society need it in addition to the urgent need for it in the conduct of daily life (Al-Dughairy, 1992; Radhi, 2021a). We, on our part, endorse the last juristic definition because it is an all-inclusive definition.

3) Defining renewable energy legally.

The Iraqi legislator defined Renewable energy in the Iraqi Environmental Protection Law No. 27 of 2009 specifically in paragraph (19) of Article (2) as: “energy derived from natural resources that are renewable and cannot be implemented. It includes energy sourced from the sun, water, wind, waves, tidal movement. It differs from Energy coming from fossil fuels because their waste does not contain environmental pollutants. The draft of the Iraqi Renewable Energy Regulation Law for the year 2021 defines renewable energy according to paragraph (4) of Article (1) of it as: “energy that can be obtained from natural sources such as water, sun, wind, underground...etc, or from processes that are constantly renewed. Biomass money, waste treatment, etc.

We note from the foregoing that the Iraqi legislator mentioned renewable energy sources as an example, and this needs to be reconsidered because renewable energy sources cannot be counted. Sometimes, natural phenomena in the future lead to the emergence of new sources of renewable energy. Thus, it would have been better to mention them as an example rather than an exhaustive list.

As for the Egyptian legislator, it did not define renewable energy and defined renewable energy sources in the Law to Stimulate the Production of Electricity from Renewable Energy No. (203) of 2014 in Article (1) of it that: “The renewable energy source is the natural sources of energy that are inexhaustible and can be used in the production of electricity’ and investment systems in the field of renewable energy. What is worth noting in this regard is that the Arab Republic of Egypt is the most advanced country in the field of renewable energy in terms of action plans set for the development of methods of using renewable energy by the Egyptian government. This is in terms of the legislative aspect or the technical aspect according to The Renewable Energy and Energy Efficiency Guide in the Arab Countries for the year 2013 issued by the League of Arab States (Arab League, 2013, p. 65).

Likewise, the Jordanian legislator defined it in Article (2) of the Jordanian Renewable Energy and Energy Rationalization Law No. (3) of 2010, as amended by Law No. (13) of 2012, as: “The energy generated from natural sources that has the character of permanence and continuity. As defined in the Jordanian Electricity Law No. (15) of 2013, renewable energy is: “energy generated from inexhaustible natural sources, including solar energy, wind energy, hydropower, and bioenergy.”

As for the legislation of the United States of America, it differed in its definition according to what was stated in the laws of its states. The legislation of the state of New Jersey defined it as: energy produced from solar thermal and photovoltaic technologies, geothermal energy technologies, wave or tidal movement, and methane gas from landfills of waste energy derived from biomass provided that the Commissioner for Environmental Protection has determined that the bioenergy facility meets environmental standards (Chernyakhovskiy, 2026, pl. 2-8). Also, the State of Wisconsin's legislation defined renewable energy as electricity produced from renewable energy and defined it as: “electricity derived from renewable sources.” (Hawash, 2019, p. 12).

We note from the foregoing that the definitions share the inexhaustibility of energy and its renewal, and that it is clean energy that does not result in any environmental pollution. As for our part, we define renewable energy as 'that energy resulting from spontaneous natural sources such as solar radiation and wind, which is renewed in nature at a higher rate than the frequency of its consumption and is not depletable, and its investment does not harm the environment.

2.2 The legal nature of renewable energy contracts

Jurisprudence differed about determining the legal nature of renewable energy contracts. Thus, three directions appeared: the first direction views renewable energy contracts as an administrative contract, while the second sees that they are private law contracts. The last direction sees them as contracts of a special nature and we will shed light on these directions by dividing this section into three parts.

First: the first direction.

Some public law scholars consider renewable energy contracts as administrative contracts but a rather modern form of concession contract (Asante, 1979, p.4). This is because they are contracts of obligation attached to public utilities and then falling within administrative contracts (Al-Banna, 2007, p. 15). Proponents of this trend take as basis the fact that these contracts meet the criteria for distinguishing administrative contracts. These criteria are that the administration as a representative of the beneficiary (the State) is a party to the contract, and that the contract is connected to a public utility (Badri, 1957; Radhi, 2021b).

This trend has been criticized because of the scientific considerations required by the requirements of international trade, which require the availability of a great deal of flexibility in renewable energy contracts. Therefore, the state must come down to the level of a private contractor in order to be able to achieve its interests. Private law contracts are more in line with the requirements of international trade, and this what is required by the economic direction and investment realization (Raysan & Hussein, 2015; Radhi, 2021c).

Second: The second direction.

The proponents of this trend have argued that renewable energy contracts do not acquire an administrative character because they do not involve exceptional and unfamiliar conditions. It is also because these contracts are not related to a public utility, and that the exploitation of energy by the company is not considered a project that works on a regular and continuous basis. Therefore, it is closer to civil contracts and is subject to resolving its disputes private law (Haddad, 2007, p. 175).

One of the arguments on which the proponents of this trend relied is that the state, as soon as it signed the contract, relinquished its sovereignty and acted as one of the persons of private law. The state is obliged to amend its investment legislation to become more compatible with investment contracts in this field. This indicates the special nature of these contracts and denies them the administrative character. (Badr, 2002, p. 50).

Third: The third direction.

The proponents of this trend argue that renewable energy contracts are concluded through multiple mechanisms. Each contract has its own circumstances so that it is difficult to establish an abstract general rule in this regard with which it can be said that it is an administrative or civil contract. Also, it is necessary to refrain from trying to establish a single adaptation that applies to these Contracts, regardless of the conditions, elements, and circumstances surrounding each contract. It is best to adapt each contract separately in light of its conditions, elements, and the circumstances and circumstances surrounding it. (Abdel Sadiq, 2005, p. 67).

The special nature of these contracts comes from the stages they go through. The proponents of this trend distinguish between two stages in these contracts. The first stage is the pre-contract stage, in which the management personality is prominent with its authority that comes from public law. Therefore, this stage and the agreements issued during it between the company and the administration is subject to the administrative law. As for the second stage: it is the stage of contracting and concluding contracts. Here, the administration and the contracting person are equal after the terms and obligations have been clarified. The applicable law determines the point of settling the dispute, which is through mediation or arbitration, and contracts are implemented in accordance with the principle of good faith (Al-Sharman, 2018, p. 180).

Through the foregoing, we see that classifying contracts related to renewable energy as administrative contracts just because the state is a party to them is inaccurate and an insufficient criteria. This is because the state does not appear as the owner of sovereignty as usual in the administrative contracts it concludes. On the contrary, the state waives its sovereignty for the benefit of the investor (company of the project). It also provides for the latter all guarantees and privileges on one hand. On the other hand, adapting those contracts as civil contracts is an opinion that is not correct because the place of the contract and its clauses make it of a special nature and stands in the middle between administrative and civil contracts. This prompts us to support the last trend, which is that renewable energy contracts are contracts of a special nature. This is because inviting companies to contract confirms the administrative nature, and entering into negotiations confirms the nature of private law.

3. Effects of renewable energy contracts

Since renewable energy contracts are binding contracts for both sides, they incur mutual obligations on both parties. In addition to this, they are reciprocal contracts that give each party in return for what they take, and that the commitment of each party is at the same time the right of the other.

Accordingly, we will divide this topic into two sections. We will deal first with the obligations of the state in renewable energy contracts. In the second section, we will address the obligations of the contracting company in renewable energy contracts.

3.1 State obligations in renewable energy contracts

The state is the main party to renewable energy contracts and has a set of obligations to do everything necessary to implement the contract. The state enjoys a set of rights that enable it to impose its supervision and control over the implementation of renewable energy contracts. Although the state has entrusted the implementation of the contract to the contracting company, this does not cancel out the state's abandonment

of this facility because the natural resources are the property of the state and it has the right to monitor how it is used and managed. The right of the State to do so is justified by two considerations. The first consideration is the length of the period of the obligation. The second is the obligation of the contractor to return the ownership of the project to the State after the expiry of the term of the renewable energy contract, thus justifying the right of the State in accordance with the foregoing (Weil, 1970, p. 525).

Also, the state has the right to impose sanctions on the contracting company in renewable energy contracts if it fails to implement its obligations, be it delay in implementing the commitment, or refraining from implementation (Sarri El-Din, 2001b, p. 234). In this regard, we find that the Moroccan legislator in Law No. (1309) relating to renewable energy for the year 2016 explicitly stipulated the state's right to impose penalties by allocating Chapter VI of the above-mentioned law to monitor violations and penalties. It also explicitly imposed administrative penalties and criminal penalties for the violations mentioned in Renewable Energy Contracts.

In return for the above-mentioned rights, the contracting state has a number of obligations in the renewable energy contract, according to the following:

First: Executing the contract in accordance with the principle of good faith.

Contracts, in general, are subject to a general principle, which is the necessity to implement them in good faith. This principle must be implemented on renewable energy contracts. The State shall execute all the provisions of the renewable energy contract and hand over the site on which the project company will carry out its project from which the energy will be produced. The state shall also hand over to the company all the implementation belongings of the necessary licenses and its requirements in accordance with the law, custom and nature of the obligation. The State shall also transfer the possession of the property on which the renewable energy project will be built and a record thereof shall be organized in which the status of the site at the time of delivery shall be organized. This facilitates the process of proof when returning the facility to the State. The energy contract often includes the delimitation of project boundaries and sizes (Al-Sharman, 2018, p. 63).

Second: The contracting state's obligation to provide adequate protection for the renewable energy contract project.

The state is obliged to provide the investor with adequate protection on its lands. For this purpose, it must enact legislation that guarantees such protection, as this investment has a public and private impact. The state's commitment to provide protection for these projects has a positive impact on encouraging project companies to invest in the areas of renewable energy contracts. This is particularly true for countries the laws of which do not guarantee the provision of such protection, and by the latter we mean protection at the security level or issues related to political risks and others (Mohamed, 2005, p. 123).

Since renewable energy contracts projects require large funds, the state resorts to issuing investment legislation to encourage it and support economic development. Iraq is an example especially after the issuance of Investment Law No. 13 of 2006 in order to encourage and develop investment and development in Iraq at various economic levels. This law granted investors privileges and exemptions from taxes and customs duties. This law includes the field of renewable energy because it applies to all areas of investment, the oil and gas sectors and the banking sector.

3.2 Obligations of the contracting company in renewable energy contracts

The contracting company in the renewable energy contract enjoys a number of rights, including obtaining concessions and ensuring that the financial balance remains in place during the term of the contract. Of these concessions are exemption from taxes and customs duties or their reduction; the right to transfer modern technology materials to the state, and also the right of the company to own real estate without being bound by the ownership controls of real estate by foreigners.

The Iraqi Investment Law No. 13 of 2006 provided for such guarantees and privileges, as the project that obtained the investment license enjoys exemption from taxes and fees for a period of ten years from the date of the start of commercial operation for each stage of the project's establishment, as well as the exemption of raw materials imported for the purposes of commercial operation of the project. of taxes and fees.

As for ensuring the financial balance of the contract, the contracting company must obtain the aforementioned guarantee because the company aims, when managing the renewable energy project, to achieve profit. This goal is not achieved by making the contract economics balanced in which the revenues

cover the burdens with the profits that the company seeks to achieve (Al-Habashi, 2002, p. 132). In return for the above-mentioned rights, the contracting company in renewable energy contracts has several obligations, which are:-

First: The commitment of the contracting company in renewable energy contracts to implement the contract personally and within the specified period.

The state is keen that the contracting company in renewable energy contract projects be tested with enormous care from among the group of advanced companies. This is because this company is considered a personality, that is, it must carry out the implementation of the contract by itself and may not use people other than those who have been agreed upon without the consent of the two parties. The company must also work to finish the project within the time period specified in the contract. This is because the place of the renewable energy contract is related to the provision of a public service. However, in the absence of this period in the contract, the contracting company is not free to implement the contract, but rather it must implement it within a reasonable period commensurate with accuracy of implementation and in the event of delay in implementation, a late fine shall be imposed (Sarie El-Din, 2001a, p. 251).

Second: The commitment of the contracting company in renewable energy contracts to train manpower and transfer technology.

Many legislations tended to impose an obligation on the investor to train and qualify the national workforce through courses and workshops in training centers (Badr, 2003, p. 36). The Iraqi legislator, through Investment Law No. 13 of 2006, obligated the investor to train the national workforce, as it stipulated in Article (14) paragraph (8) to "train and qualify its Iraqi employees, increase their efficiency, raise their skills and capabilities, and prioritize the employment and use of Iraqi workers."

As for the obligation to transfer technology, renewable energy contracts are included in the contracts for the transfer of technology from the source country to the importing country so that the obligation to transfer technology is one of the important obligations that fall on the project company. It is also one of the obligations associated with these contracts for its luxury, which requires the use of advanced technology, as the localization of renewable energy technology in these countries needs procedures to transfer knowledge of the manufacture and use of renewable energy equipment and technologies (Cory et al., 2009, p. 1).

Conclusions

Now that we have finished our discussion, it is time to present a conclusion to it, in which we outline our findings and recommendations as follows:

First: Findings.

- 1- Renewable energy can be defined as that energy resulting from the sources of automatic nature such as solar radiation and wind, which is renewed in nature at a higher pace than the pace of its consumption. It is also inexhaustible, and its investment does not lead to damage to the environment.
- 2- It became clear to us that renewable energy contracts are contracts of a special energy. This is because inviting companies to contract confirms the administrative nature and entering into negotiations confirms the nature of private law. Thus, they must be regulated by special rules away from the administrative and civil nature, taking their privacy into account.
- 3- Renewable energy contracts are among the consensual contracts, as the consent is sufficient to conclude the contract without the need for a specific formality through which the contracting parties' will appears.
- 4- It turns out to us that the state is the main party to renewable energy contracts and has a number of obligations to do everything necessary to implement the contract. The state enjoys a set of rights that enable it to impose its supervision and control over the implementation of renewable energy contracts. Of these rights is its right to monitor the implementation of the contract although the state entrusted the implementation of the contract to the contracting company.
- 5- It became clear to us that the contracting company in the renewable energy contract has a number of rights, including obtaining concessions and ensuring that the financial balance remains in place during the duration of the contract. It also includes exemption from taxes and customs duties or reducing them; the right to transfer modern technology materials to the state, as well as the right of the company to possess real estate without being bound by the ownership controls of real estate by foreigners.

Second: Recommendations.

- 1- Calling for the adoption of the draft renewable energy law in Iraq to be regulated by the process of investment in renewable energy in general and not limited to the Ministry of Electricity, but for all aspects of investment in the field of renewable energy in Iraq. This is in order to have a clear vision before investors in this sector, whether national or foreign, and that the legal texts in it are clear and transparent, and that the process of regulating contracts concluded in this area is integrated, whether at the stage of negotiation, conclusion or implementation, with a focus on regulating the obligations of the parties because of the need to explicitly indicate some obligations that are not directly regulated even within the general rules of Iraqi legislation such as commitment to information or technology transfer.
- 2- The need for local industries to support the equipment of renewable energy projects through local companies specialized in industry, installation and maintenance with the development of the necessary standards and specifications.
- 3- Inviting specialized authorities to enter into other regional and international agreements in the field of renewable energy in order to achieve economic integration in this sector, especially in countries the economy of which depends on fossil resources.
- 4- In order to complete the regulation of renewable energy contracts, and to ensure that they achieve the desired goal, we call on the Iraqi legislator to adopt the approval of incentives and exemptions for renewable energy users.

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