



New Kosovo power plant – an expensive and outdated anomaly in a decarbonising world

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After years of delay, the New Kosovo lignite power plant took a step forward in December 2017 with the signing of commercial contracts between the Government of Kosovo and ContourGlobal.

However the contracts, published in January 2018, raise more questions than they answer. Numerous issues have been raised by the plant over the years, including carbon emissions, resettlement, the dubious single-bidder procurement process and many more. In this paper we will concentrate on two specific issues – that of state aid and best available techniques, but emphasise that the previously raised issues are not resolved, nor have alternatives to coal power been properly examined yet.

Overall cost and state aid compliance

The commercial contracts include a 269–page 20–year power purchase agreement (PPA) between the Republic of Kosovo and ContourGlobal Terra 6 S.à r.l.

The agreement sets out that the Republic of Kosovo will pay ContourGlobal “energy payments,” “availability payments,” and “additional payments.” The first would cover the power plant’s operating costs, including for fuel. The availability payments would cover fixed figures, including ContourGlobal’s equity return and interest payments. “Additional payments” would cover ancillary services to balance the power grid.

This includes a “target” consumer cost for the power plant’s electricity of €80 per megawatt hour (MWh). However, even this very high figure would not cover total costs, which in the contract appear to be based on calculations that take 22 pages to explain (Pages 170–192).

No explanation has been given by the Government of Kosovo what these calculations mean in terms of concrete figures, leaving significant uncertainty as to what such a plant would really cost for consumers and for the public purse. In fact, the Government misleads the public by constantly claiming that the project will not cause a burden for the Kosovar state.¹ Given the agreement to pay an availability payment, this is clearly untrue.

In our understanding, long–term power purchase agreements and the availability payments both raise potential state aid issues. The availability payment has not been based on any tender for capacity mechanisms but has been awarded solely to one company, so it is neither competitive nor technology neutral, nor have other options for Kosovo’s capacity issues such as liberalization been fully implemented.

As an Energy Community Contracting Party, the Republic of Kosovo is obliged to apply legislation prohibiting State aid granted in violation of Article 107 of the Treaty on the Functioning of the European Union and the principles of the Treaty.

Likewise, under its Agreement on Stabilisation and Association (SAA),² which entered force on 01.04.2016, the Republic of Kosovo has to ensure that an operationally independent authority is entrusted with the powers necessary to prevent any state aid which distorts or threatens to distort competition by favouring certain undertakings or certain products.

However, the State Aid notification, assessment and enforcement system in Kosovo is not yet operational, as described in the Energy Community’s Implementation Report 2017.³

Considering the size of the project, the long contract period, and the very large amounts of money involved, we are highly concerned that Kosovo may not be receiving good value for money and that it may later be assessed to be in non-compliance with its international obligations, with all the consequences that may bring.

The Energy Community Secretariat has examined the contract. And although its full results are not available to the public, it has confirmed in its recent Western Balkans 6 Electricity Monitoring Report⁴ that “The recent contractual framework adopted for the new Kosovo e Re power plant will seriously hamper the development of a market” and “The absence of functioning authorities exacerbates the lack of State aid compliance of the contractual framework for the Kosovo e Re project.”

We therefore consider that the EBRD, whose very purpose is to promote investments that build markets, cannot justify backing this project.

ContourGlobal gives itself the freedom to lower pollution control standards

The EBRD’s Environmental and Social Policy 2014 is unequivocal: PR 3 paragraph 9 clearly states that projects that would be subject to the EU Industrial Emissions Directive will be required to meet EU Best Available Techniques (BAT) and related emission and discharge standards, regardless of location.

With regard to large combustion plants, Best Available Techniques are laid out in the EU LCP BREF⁵ which entered force in August 2017 for new plants.

However the contracts signed by ContourGlobal and the Government of Kosovo do not clearly commit to this and leave ContourGlobal a choice to comply only with the less stringent and outdated standards from the EU Industrial Emissions Emission Annex V part II.

On p. Schedule 14 – 1 of the PPA, two options are mentioned as minimum conditions for the technology requirements in the tender procedure:

“With Emissions Option:⁶ Without limiting the obligation to comply with Best Available Techniques as described above, the KRPP Facility must comply with the least stringent emission limit values set forth in the EU Industrial Emissions Standards.

Without Emission Option: Without limiting the obligation to comply with Best Available Techniques as described above, the KRPP Facility must comply with the following emission limit values, consistent with the standards set forth in in Council Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions and integrated pollution prevention and control:” There follows a table with emission limit values from Annex V part II of the Industrial Emissions Directive

which are not in line with the new LCP BREF.

The Definitions section is clear that EU Industrial Emissions Standards means the new LCP BREF. So the first option means the lower end of the range of the new LCP BREF standards.

But what about the second option? On first glance, it appears that compliance with the Best Available Techniques and thus the 2017 LCP BREF is still obligatory. But then why cite the less stringent Annex V, part II values? And why are there two choices, if they amount to the same? We believe the answer lies in the description of Best Available Techniques higher up page Schedule 14 – 1:

“(b) BAT. The KRPP Facility shall be designed and constructed consistent with Best Available Techniques, as described in Council Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions and integrated pollution prevention and control. In accordance with the foregoing, further information regarding Best Available Techniques is available in the IPPC Reference Document on Best Available Techniques for Large Combustion Plants (Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions).” (our emphasis)

Although on first glance it appears that EU BAT laid out in reference documents including the LCP BREF are being stipulated, closer inspection reveals ambiguous language. No specific article of the IED is mentioned, and BAT is “described”. This raises concerns that the PPA is referring only to the general concept of BAT defined in Article 3 of the IED and not to the concrete provisions of Chapter II of the IED and the BREF documents arising from it. This suspicion is further supported by the “further information is available” formulation regarding the LCP BREF, rather than clearly stating that the application of BAT as laid out in BREF documents is a condition for permitting for large combustion plants, as is stipulated in Article 14.3. of the IED, which states that “BAT conclusions shall be the reference for setting the permit conditions.”

ContourGlobal has been professing its concern about public health in Kosovo, namely “The health of the Kosovar population and especially a healthy future for the children is one of the greatest goals of any modern civilization,”⁷ while the Government of Kosovo has promised that “The KRPP will be built in line with the EU Directive on Environmental Standards for Industrial Emissions and 2017 BATs, with a minimum of 40% efficiency with super-critical technology.”⁸

Their failure to commit to ensuring that the latest standards are applied, and leaving themselves the option to apply what will be 20 year-old standards by the time the plant is due to go online⁹ leaves a

sour taste. It must not be accepted by the EBRD or by other potential financiers.

Notes

1. <http://mzhe-ks.net/en/news/med-publishes-commercial-contracts-on-kosova-e-re-power-plant-#.Ws9rpNa-INw>
2. <http://data.consilium.europa.eu/doc/document/ST-10728-2015-REV-1/en/pdf>
3. <https://www.energy-community.org/implementation/IR2017.html>
4. WB6 Electricity Monitoring Report, Energy Community Secretariat, March 2018, <https://www.energy-community.org/documents/reports.html>
5. http://eippcb.jrc.ec.europa.eu/reference/BREF/LCP/JRC107769_LCP_bref2017.pdf
6. From the PPA definitions on p. 18: "Emissions Options" – Has the meaning given thereto in Section 3.9.2.". Section 3.9.2 states: (b) GenCo shall deliver to NKEC and GOK as soon as is reasonably possible, and in any event at least thirty (30) days prior to the anticipated release of any request for qualifications or any request for proposals, a copy of such Tender (Plant) documents to be used by GenCo to conduct the Tender (Plant), including: (i) the Tender (Plant) Pre-Qualification Criteria;(ii) Tender (Plant) Evaluation Criteria to be used by GenCo;(iii) the Tender (Plant) Technical Specifications (which shall be as provided for in Schedule 14, as updated as necessary to include specifications related to both a design as set forth in Schedule 14 and a design as set forth in Schedule 14 modified such that the specifications would comply with the EU Industrial Emissions Standards (the "Emissions Option"));
7. Annual report 2017 http://www.contourglobal.com/sites/default/files/2018-04/contourglobal_-_2017_annual_report.pdf
8. <http://mzhe-ks.net/en/projects-202#.Ws9cyNa-INw>
9. The Annex V standards from the Industrial Emissions Directive are taken from the 2006 BREF, which is based on plants already built and functioning in the years before this. As the New Kosovo plant is planned to go online around 2023, it will be around 20 years since those standards truly represented best in class.