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Goya paints bright. Windy picture

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The financing of the Goya wind farms project in Aragon ushered in a new generation of Spanish renewable power projects banked on private market-price offtakes rather than government subsidies. The deal required careful structuring to accommodate innovative features.

Fernando Sol SL (Forestalia), Cierzo Spain Wind, SLU (Mirova Eurofideme 3), EFS Global Energy BV (General Electric) and Engie Energy Services International SA (Engie), reached on April 25 2018 an agreement with several financial entities for the financing of the construction and operation of nine wind farms projects with a total installed capacity of about 300MW in the Autonomous Community of Aragón, Spain, without any grant or subsidies from the Spanish government.

This so-called Goya Project was structured in two phases. The first comprises the financing of seven wind farms with a total installed capacity of 193.96MW; and Phase 2 the financing of two wind farms with a total installed capacity of 106.55MW.

The required investment for the design, development, construction, commissioning, financing, operation, management, maintenance and decommissioning of the nine wind farms was partially funded with external financing of about €196m.

The external financing includes:

- Two senior term loan facility agreements granted by Banco Bilbao Vizcaya Argentaria SA (BBVA), Banco Santander SA (Santander) and CaixaBank, SA (CaixaBank), as original senior lenders and mandated lead arrangers, for a maximum amount of circa €75m for Phase 1 and €45m for Phase 2;
- Two senior term loan facility agreements granted by the European Investment Bank (EIB) for a maximum amount of circa €31m for Phase 1 and €19m for Phase 2;
- Three hedging agreements executed by BBVA, Santander and CaixaBank, respectively, for the interest rate risks related to the senior debt of Phase 1 only;
- Two VAT credit facility agreements granted by BBVA, Santander and CaixaBank for a maximum amount of circa €7m for Phase 1 and €4.5m for Phase 2; and
- Two guarantee line facility agreements granted by BBVA, Santander and CaixaBank for a maximum amount of circa €9m for Phase 1 and €5m for Phase 2.

In addition, the sponsors committed to contribute a maximum amount of circa €96m for Phase 1 and €44m for Phase 2, in the form of equity or shareholder loans, bringing the total cost of the project to approximately €310m. This means that an overall percentage of approximately 45% of the total costs of the Goya Project will be sourced through equity.

The Goya Project was awarded to Forestalia in the first wind power auction launched by the Spanish Government in 2016, under the new scheme of remuneration since the changes in law of Spain's feed-in tariff (FiT) that took place in 2013.

Forestalia was the major awarded tenderer in that auction, for the construction and operation of 300MW of wind power. The new remuneration scheme implies that the Spanish government will not provide any grant or subsidies for the generated power, and includes an implicit floor price guaranteed by the government for the generated energy that might change in different scenarios. In principle, this means that the projects developed under such auction will be exposed to pool prices.

Such new conditions bring a very innovative structure to the Spanish wind market: for the first time, the construction of a greenfield wind project was financed based on two power purchase agreements (PPAs) of 12 years each, with Engie Espana SLU as offtaker (one PPA per phase).

Pursuant to the PPA, Engie agreed to buy an annual energy contracted amount from the SPVs – borrowers under the financing – and the SPVs agreed to sell such annual energy contracted amount to Engie for a price calculated on the basis of the average hourly spot price of the daily market of the Spanish electrical power market managed by the Independent Market Operator (OMIE), with a fixed amount of discount, and taking into account an agreed floor price, subject to changes in law.

The implementation of the PPA allows the Goya Project to avoid the risks associated with market exposure and the sale based on the pool prices, providing a more fixed base model in terms of remuneration under the external financing.

To the extent that the PPA is the main source of income of the Goya Project, several guarantees have been granted in connection therewith.

In particular, Engie provided to the seller certain guarantees to secure the fulfilment of its payment obligations under such agreement mainly on-demand bank guarantees and/or corporate on-demand guarantees; and, on the other hand, the project companies that own the wind farms acted as personal guarantors and the SPVs committed to furnish one or several annual on-demand bank guarantees in favour of Engie to secure fulfilment of their payment obligations under the PPA.

The amounts guaranteed were capped for both parties. Furthermore, in case the PPA is terminated due to a buyer's default, Engie shall be obliged to partially prepay the financing, up to a capped amount.

The engagement of the EIB as senior creditor pari passu along with BBVA – which also acted as facility agent account bank and security agent – Santander and CaixaBank was a key aspect that qualified the structure due to its special requirements as the bank owned by the Member States of the European Union.

Hence, the mix of senior creditors with different natures and needs also required the development of specific features for the drawdown mechanisms, the decision-making process among senior creditors, and certain alternative remedies for the borrower in specific circumstances.

The equity holders of the project companies were also critical for the successful closing of the financing and the project contracts: Mirova (affiliate of Natixis Global Asset Management) as majority shareholder, GE and its affiliate GE Renewable Energy as turbine supplier of the wind farms, Engie, which was involved not only as equity investor and buyer under the PPA but also as contractor under the BOP agreements jointly with other companies, and Forestalia, the sponsor, which also acted as manager, engineer and operator under the relevant project agreements.

The main transaction documents entered into in connection with the Goya Project are divided as follows: (i) project agreements, (ii) equity support agreements, and (iii) finance documents.

Project agreements

In addition to the PPA, the following main project agreements were entered into for each phase: (a) evacuation infrastructure and balance of plant agreements (EIBOP), (b) turbine supply agreements (TSA), and (c) interface agreements.

The EIBOP regulates the civil construction of the wind farms and connections to the common infrastructure, and was executed by the SPV, as employer, the project companies, as guarantors, and a joint venture (Unión Temporal de Empresas, Law 18/1982, May 26) formed by Engie Servicios Energéticos, SA, COPSA Empresa Constructora SA and Acciona Industrial SA, as contractor.

The EIBOP's underlying principle is that the contractor assumes, for a lump-sum price, all the risks, liabilities and obligations relating to the design, execution and completion of the works, the commissioning tests, and the remedying of any defects as well as all other explicitly expressed obligations to be assumed by the contractor under the EIBOP.

The aforementioned principle is subject, with some exceptions, to agreed liability caps at a specific percentage of the contract price. The contractor's total exposure is also limited at a given percentage of the contract price and all its obligations were secured by several first demand bonds.

The TSA regulates the supply of the turbines to be installed on each wind farm, and was executed by the SPV and each of the project companies, as buyers, and the consortium of GE Wind Energy GmbH and GE Wind Energy SL, as sellers.

All risks, liabilities and obligations related to the supply and the maintenance for an agreed period of the turbines are vested in the seller, which assumes them subject to agreed liability caps and some exceptions.

To the extent that both the works of the contractor under the EIBOP and the seller under the TSA must be coordinated for the commencement of the operation of the wind farms in due time, and given the participation of such unrelated parties during the project, an interface agreement between the contractor and seller was also entered into to secure a reliable co-ordination during the construction and commissioning period.

The allocation of responsibilities between those parties was regulated in a division of the responsibility matrix, which is meant to last until takeover of the last of the wind farms of each phase.

Equity support agreements

Equity injection commitments in connection with the project were regulated under shareholders support agreements. Equity contributions include share capital, capital increase premium, subordinated debt and profit participation loans.
Different equity funding alternatives were available, based on the preferences and particularities of each of the shareholders: (a) equity first, which means that the total equity contribution of the relevant shareholder is a condition precedent to the first utilisation of the financing, (b) equity last, which means that the equity contribution shall be made during the period between the final utilisation date of the financing and the commercial operation date (or a long-stop date); and (c) equity pari passu, which means that equity contributions will be made at the same time as drawdowns under the financing.

In both equity last and equity pari passu scenarios, acceptable guarantees were given in favour of the project lenders, and such equity contributions may be accelerated upon the occurrence of an event of default or other circumstances.

Finance documents

Due to the particularities of the EIB as lender, the financing of each of the phases of Goya Project was regulated in two sets of documents: a senior credit facility agreement executed by BBVA, Santander and CaixaBank, and EIB finance contract. Terms and conditions of each agreement were similar, with cross-references provisions regarding the early repayment mechanisms and based on pari passu treatment.

Together with the senior facility agreement of the commercial lenders and the EIB finance contract, other finance agreements were also treated as first ranking secured documents under the security package: the guarantee line facility agreements, usually required for the issuance of on-demand guarantees related to the project; and the hedging agreements, to cover the risks of the interest rates of both the senior facility agreement and the EIB finance contract.

The VAT credit facility agreement, executed to finance the payment of the recoverable VAT arising from the TSA, was treated as a second ranking secured agreement.
In this sense, the facility agent role assumed by BBVA and the provisions of the intercreditor agreement were very important to guarantee the implementation of the aforementioned agreements.

Neither the SPV, as borrower, nor the shareholders, were parties to the intercreditor agreement. Hence, this agreement mainly regulated the decision-making process between lenders, setting forth the different quorums and majorities required for the approval of certain matters.

These were: (i) unanimity, required for decisions that set up new undertakings for senior lenders, and for adjustments on the main economic terms and ratios, security and other essential terms; (ii) super reinforced majority, required for the amendment of those other essential terms that are not subject to unanimity, and (iii) reinforced majority, for the rest of the decisions.

To the extent that the borrower and the shareholders did not execute the intercreditor agreement, a subordination agreement was required to regulate the subordination of the borrower's debt vis-à-vis its shareholders in connection with the external financing.

The EIB's standard additional finance documents (such as compensation agreements and the management of information agreements) were also signed by the relevant parties.

A customary package of security documents was granted by the shareholders, the borrower and the project companies in favour of the lenders, in order to secure the fulfilment of obligations arising from the finance documents, including pledges over quotas, pledges over credit rights arising from agreements, and pledges over the balance of bank accounts and promissory mortgages.

Cuatrecasas acted as legal counsel to the borrowers (SPVs), the project companies and Forestalia in this innovative and complex project finance transaction.

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