

Clean energy contract

Zainab Hadi Hamid Al-Rubaie¹, Zina Ghanem Al-Obaidi²

¹College of Administration and Economic, University of Baghdad, IRAQ

²College of Law, University of Mosul, Dean of the Faculty of Law at Nineveh University, IRAQ

Abstracts

Renewable or clean energy is non-traditional sustainable energy that is obtained from nature (natural resources), and it is an energy that is inexhaustible with human use, and thus differs from traditional energy sources that are threatened with extinction such as oil, coal and natural gas, and these sources have become the subject of civil contracts, however, this contract did not have an integrated legal regulation, despite its importance in providing energy in an exemplary manner, as it is one of the environmentally friendly contracts.

Keywords: Contract, clean energy, rights, obligations, the project company.

Introduction:

The energy contract is one of the contracts dictated by scientific necessities and the unlimited development in energy research and its presence in reality, due to its importance in preserving human health and the environment, especially after the importance of relying on alternative, renewable, natural energies have emerged because the availability of energy services has become an urgent necessity to meet the increasing human needs.

In any case, and because the contract under discussion is one of the contracts that suffer from a legislative deficiency and the Iraqi legislator's omission within the scope of the Iraqi civil law from organizing this contract within the named contracts, we decided to shed light on it in order to reach the

development of an integrated legal organization for it that covers its concept, sources and effects.

Nevertheless, the study of this subject was divided into two sections. In the first section, we dealt with the conceptual framework of the clean energy contract, and by two requirements, we allocated the first requirement to the nature of clean energy contracts and their sources. In the second requirement, we explained the most important characteristics of this contract, while in the second topic we dealt with the effects of the clean energy contract and it was divided into two requirements, in the first, we dealt with the obligations and rights of the state, while in the second we dealt with the obligations and rights of the

legislator's company. Finally, we concluded this research with a conclusion that included the most important results and suggestions that we reached.

The first topic :

Conceptual Framework for the Clean Energy Contract

Clean energy contracts are among the recent contracts in financing projects and employing manpower, as the state concludes contracts with a private sector company in order to produce electrical energy by investing natural resources. Therefore, this requires us to define the nature of these contracts and determine their sources, as well as clarifying the most important characteristics that pertain to them, by dividing this topic into two requirements. In the first requirement, we address the nature of the clean energy contract and its sources, and in the second requirement, we address the characteristics of these contracts.

The first requirement:

What are the clean energy contract and its sources?

Clean energy comes from the sun, wind, water, or tides. As it is energy resulting from natural sources that are characterized by permanence and continuity^{1 (1)}. Furthermore, a part of jurisprudence has defined clean energy as electrical energy derived from automatically and periodically renewable natural resources and is not exhausted with

consumption such as solar energy, wind, geothermal energy, hydropower, as well as biomass energy². As for the status of legislation on defining the concept of clean energy, although this is not one of the tasks of legislation and laws because defining the concept of any term is one of the tasks of jurisprudence, commentators, and researchers, however, the Jordanian Renewable Energy and Energy Rationalization Law No. 13 of 2012 defined this energy in the second article of it as “the energies resulting from natural sources that have the character of permanence and continuity.”

In Iraq, Law No. 53 of 2017 referred to clean or renewable energy as he called it without defining a concept or definition of it, and it was well done, as it was stated in Article 2 / Fifth, the following: -

((Support and encourage the use of renewable energy in various fields and localize its industry))

Nevertheless, what is meant by clean energy is the same as renewable energy, as this law indicated the necessity of using and exploiting these energies in order to secure the provision of energy that is at the lowest costs. Accordingly, we can define the clean energy contract as that contract that is often concluded between the contracting state and a private sector company with the intent of giving it the right to exploit resources and dispose of within a certain period in return for the state to obtain the financial compensation, as for the sources of this energy, it can be derived from sunlight, and here the source is one of the most important

Clean energy contract

sources of clean energy¹ It can also be derived from wind or from marine energy for latent, kinetic, thermal, and chemical seawater that can be converted to provide energy, thermal energy or drinking water, as there are several ways to take advantage of it such as tidal tanks, underwater turbines for ocean currents and tides, and heat converters to convert ocean thermal energy and even hydroelectricity, or the so-called moving water energy from high places to low places, which can be a primary source of clean energy to generate electricity, and among its projects are dams, reservoirs, projects of the natural flow of rivers and internal flow, as well as energy resulting from the attraction of the moon and the sun and the rotation of the earth around its axis, or what can be called tidal energy. Also, bio-energy that is produced from raw materials for biomass, which includes forests, animal and agricultural waste, and other organic solid components is a source of clean energy, as well as thermal energy derived from groundwater, where this source is used to generate electricity in places where high temperatures are close to the surface of the earth, such as springs and volcanic craters².

The second requirement: Clean Energy Contract Characteristics

Clean energy contracts are characterized by a number of characteristics that we highlight in this requirement, the most important of which are: -

Netting contract:

Clean energy contracts are netting contracts in which each of the contractors takes a return for what they give.

• Synallagmatic contract:

Since these contracts are concluded, opposite obligations arise between the two contracting parties, where each of them is a creditor and a debtor at the same time, and it follows that if one of the contracting parties does not implement his obligations, the other party may terminate the contract and restore the situation to what it was before the contract.

• Innominate contract:

As the Iraqi legislator did not regulate this contract and did not specify its terms and conditions in advance within the other named contracts, such as selling, renting, contracting, etc.

• Complex contract:

The clean energy contract is one of the complex contracts because it contains more than one agreement within one contract, as it contains energy production, importing equipment, and training its workers. It also contains insurance contracts in it, meaning that it combines several contracts mixed with each other.

• Commutative contract: It is one of the contracts in which the time of its conclusion is determined by the obligations that fall on

each of its parties, accordingly, the company is engaged in the production of energy in exchange for wages, in addition, the rights and obligations of the company are often predetermined.

The second topic:

The effects of the clean energy contract

The clean energy contract is concluded between two main parties, namely the state or the person of public law and the project company, and this contract gives the company the right to exploit natural resources for the production and distribution of electric energy. However, it arranges opposite obligations on its two sides. Therefore, this is what we will highlight in two specific requirements, the first requirement for the obligations and rights of the state, and the second requirement will deal with the obligations and rights of the project company.

The first requirement: State obligations and rights

The most important obligations of the state are its obligation to provide adequate protection for energy contracts projects that are held in them, and this usually requires the enactment of legislation or laws related to the protection of projects as well as its commitment to provide all assistance it can to the success of these projects, and this assistance is represented in granting licenses and facilitating the formalities to obtain them and granting the lands where the

natural materials are located to the company so that the latter can exploit them¹.

Nevertheless, the state is also obligated to implement the terms of the contract after concluding it and handing over the site, as well as its obligation to respect what is considered the requirements of the contract in accordance with the law, custom, and the nature of the obligation and to implement its obligations within the time limit specified in the contract or within the reasonable period if no period is specified for it.

Therefore, it should be noted that the state's obligation to hand over the project site is through the transfer of possession of the property on which the project will be built to the company, with the state remaining the owner of it, because the state will, after the expiry of the contract term, grant it to another company, or that it itself will produce energy²

In return for these obligations, the clean energy contract arranges rights for the state, represented in its right to monitor the implementation of the project, because natural resources are the property of the state and therefore it has the right to monitor how these facilities are set up and managed, and the state has the right to obtain operating revenues, and the contract usually specifies the state's share and the percentage that state deserves and how it is calculated, as well as imposing penalties as a means of putting pressure on the contracting party and forcing him to carry out his obligations, whether he was late in carrying out his obligations, abstaining from implementation, or if his

Clean energy contract

implementation is defective. Nevertheless, these penalties may be financial in return for the company's breach of its obligations or compensation for damage, or they may be in the form of delay fines imposed on the other contracting party when he delays the implementation of its obligations.

Also, the state has the right to terminate the contract, and this right is often mentioned in the terms of the contract, according to which the state has the right to terminate the contractual association at its own will before the end of the period specified in the contract¹.

The second requirement:

Obligations and rights of the project company

The company has a set of obligations in order to implement the contract in exchange for a set of rights established for the company against the state, and the most important obligation of the project company is the obligation to establish infrastructure projects, operate and transfer them to the state, as it is committed to producing electrical energy in accordance with the terms of the contract and within the time period specified in the contract. Furthermore, the implementation of the contract may be by the company itself, or by another company specialized in doing so, with an efficient operating experience because it requires advanced technology, and the company is also committed to

maintaining the project throughout the duration of the contract, this obligation is free of charge because the company obtains profits during the period of operating the project, and this obligation falls on the company so that the state can exploit the natural resources again.

However, the project company is committed to training its employees in order to be able to operate it at the end of the contract term and transfer it to the administrative authority. Nevertheless, it is worth noting that clean energy contracts are one of the most important means used by the state to transfer technology. Therefore, the project company's commitment to conducting the infrastructure facility by technological means is considered one of the most important obligations that must be stipulated in the contract².

Finally, the project company is obligated to implement the contract within the agreed period or the reasonable period, provided that the implementation is by itself, and in most cases, the energy contract includes a text that prevents the company from waiving the implementation of the contract in whole or part of it to another party. In return for these obligations, there are rights arranged by the clean energy contract of the project company, which can be determined by concessions that allow the construction of infrastructure projects.

As for the rights of the project company, it enjoys a set of privileges, rights, and income, foremost of which is its right to privileges that allow the establishment of infrastructure projects such as exemption from taxes and customs duties or their reduction, and its right to request the acquisition of real estate necessary to establish and equip projects, and it also enjoys the transfer of modern technological materials to the state.

Finally, the project company has the right to obtain the financial compensation, which is in the form of allowances, when it is related to the number of services obtained by the beneficiaries or their prices, such as the allowances paid for the distribution of electricity or water, so that the financial compensation is variable according to the consumption of the beneficiaries of water and electricity services.

Conclusion

Through our study of the subject of the clean energy contract, we reached the most important results and recommendations, which we include, respectively:

First: the results

- The clean energy contract is one of the recent contracts and of great importance in investing natural resources to generate energy and provide citizens with it.
- This contract is concerned with a number of characteristics, as it is one of the binding netting contracts for both sides and a

commutative, complex, and innominate contract.

- This contract did not have an integrated legal organization, like the so-called contracts organized by the Iraqi legislator within the scope of civil law, such as the contract of sale, lease, contracting, and other contracts.

Second: suggestions

- We recommend the Iraqi legislator organize the clean energy contract with integrated legal texts that regulate the concept of the contract, pillars, and its effects within the contracts named in the Iraqi civil law.
- We recommend the enactment of special legislation or laws in our country, Iraq, which still suffers from an eternal problem, which is power outages throughout the country to provide the necessary facilities for electric power generation companies to achieve, in the end, providing electricity to all citizens at the lowest costs.

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Clean energy contract

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