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RECHTSANWÄLTE

Germany's capacity auction awards are in – the race to 2031 begins

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Many of Germany's new gas-fired power plants are being developed on sites with decades of power generation behind them. This can provide a substantial head start. The extent of that advantage, however, depends on what can actually be reused from the existing plant and its infrastructure.

The new plants are intended to generate electricity during extended periods of low wind and solar output (known in Germany as "Dunkelflaute"). To support these investments, operators will receive payments for keeping generating capacity available. On 3 November, Germany's Federal Network Agency, the Bundesnetzagentur, announced the first awards under the StromVKG, covering eleven projects. The capacity obligation period begins on 1 November 2031. In the first round Battery Energy Storage Systems (BESS projects) were indirectly excluded by a special requirement under the StromVKG requiring the plant being technically capable of supplying at least 80% of its installed capacity for 10 consecutive hours without interruption - a requirement for shorter-duration battery storage

That leaves roughly five years for delivery. RWE and LEAG are taking different approaches to using existing assets.

RWE plans new combined-cycle gas-fired power plants at its existing sites in Voerde, Weisweiler and Werne. The initial advantage lies in the sites themselves: developed land, existing grid connections, other site infrastructure and operating expertise are already available. The generating equipment itself will be new.

Even a familiar site requires careful preparation. New foundations and pipe and cable routes must fit around existing structures and services. Dismantling work and the handover of cleared construction areas need to be scheduled alongside the connections between the new unit and the existing infrastructure.

Procurement planning for the new generating equipment is progressing in parallel. RWE has already commissioned engineering work for permit applications and secured manufacturing capacity for key components. Preparations therefore started well before the auction awards.

LEAG's FuelSwitch projects in Jänschwalde and Boxberg place greater emphasis on reusing existing assets. Alongside grid connections, selected buildings and technical components are to be incorporated into the new gas-fired plants. This is intended to reduce material requirements, investment costs and construction time.

Here, assessing the existing assets becomes more closely connected with the engineering design. An existing building can save construction work, while also setting constraints on layout and access. For technical components, operating hours, maintenance findings and future operating conditions also need to be considered in such brownfield projects. Together, these factors establish what can remain unchanged, what needs adapting and what would be better replaced.

These decisions also provide the basis for the EPC contracts and related subcontracts. Scope, price and schedule should reflect a shared, documented understanding of the condition of the existing assets. Performance commitments (technical performance parameters and availability) and acceptance tests should address how the new and retained components work together. The construction sequence will differ depending on whether a new component is to be delivered or an existing one first needs to be inspected and upgraded.

Installation is followed by commissioning, testing and the preparation of the evidence required by law. Certain requirements must be demonstrated using three months of operating data; specified operational evidence may be submitted later, up to 31 January 2032. These periods need a firm place in the project program.

The planning horizon also extends beyond 2031: the capacity payments cover a 15-year period. For reused components, remaining service life, maintenance and foreseeable replacement costs therefore belong in the planning process. Existing assets can shorten the route to commissioning. Their economic value will also depend on their contribution to reliable operation in the years that follow.

For balance-of-plant subcontractors and specialist suppliers such as burner manufacturers, these considerations need to be reflected in their own work packages.

A piping subcontract for connections to retained equipment should, for example, specify the connection points, pipe materials and operating conditions, together with the shutdown windows available for the work. It should state to what extent inspection and repair of existing pipework are included in the price, and provide a clear variation procedure for additional work identified during those inspections. Pressure testing, handover documentation and acceptance of the piping package require defined criteria. Payment milestones can then be tied to completion of that scope, with a clear arrangement for any tests that depend on later commissioning of the whole plant.

COMINDIS provides specialist legal advice to contractors, subcontractors and suppliers on energy and industrial plant projects, particularly in an international context. We support contract negotiations, advise throughout project delivery and help prevent and resolve disputes.

Please get in touch if you would like to discuss how these considerations apply to your projects.

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