

THE TURKISH RENEWABLE ENERGY LAW: STILL HUNGRY

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Turkey has recently enacted its first renewable energy law, namely Law No. 5346 Concerning the Use of Renewable Energy Resources for the Generation of Electrical Energy (the "Law"), which entered into force on 18 May 2005.

I. INTRODUCTION

The need for energy in Turkey as well as in the rest of the world is mostly met by fossil fuels, *e.g.*, oil, natural gas, coal, which are finite resources. However, the utilization of fossil fuels is subject to discussion in terms of, among others, environmental protection and supply security of energy.

Consequently, the utilization of renewable energy resources in Turkey as an alternative to fossil fuels has been promoted and encouraged particularly over last a few years. For example, the Electricity Market Law No. 4628 (the "EML"), which was enacted in March 2001, authorizes the Energy Market Regulatory Authority ("EMRA") to take the necessary measures to promote the utilization of renewable energy resources. The Electricity Market Licensing Regulation (the "Licensing Regulation") also sets forth a number of provisions aimed at promoting the utilization of renewable energy resources.

Article 12(4) of the Licensing Regulation, for example, provides that legal entities which apply to EMRA to obtain a license for generation of electricity from renewable energy resources are required to pay only one percent of the license acquisition fee and are exempted from the annual license fee payment requirement for a period of 8 years after the completion date of the construction of the facilities stated in their licenses. As another incentive to companies generating electricity from renewable energy resources, Article 17 of the Licensing Regulation provides that auto-producers which generate electricity from renewable energy resources may purchase electricity from private sector wholesale companies under certain conditions whereas the other auto-producers are not entitled to make such purchases.

Moreover, Article 38 of the Licensing Regulation provides that the Turkish Electricity Transmission Company (TEIAS) and/or the legal entities holding a distribution license shall give priority to the facilities generating electricity from renewable energy resources in terms of their connection to the transmission and/or distribution systems.

Since the incentives provided by the EML and the Licensing Regulation were not enough to achieve the desired increase in the utilization of renewable energy resources, the Law has been enacted to provide more incentives for renewable energy resources.

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The Law has also been enacted as a result of Turkey's efforts to harmonize its legislation with European Union ("EU") law. The enactment of a law to promote utilization of renewable energy resources was among the short term objectives in the National Program that the Turkish Government has prepared and submitted to the EU as a part of its accession efforts to the EU.

In the EU, the development of common rules for the promotion of renewable energy resources dates back to the late 1980's. The Council Recommendation to Promote Cooperation Between Public Utilities and Auto-producers of Electricity of 1988 is the oldest piece of legislation on renewable energy in the EU. However, as stated above, the promotion of renewable energy resources in Turkey is subject to far more recent attention.

II. BASIC FEATURES OF THE LAW

1. Purpose and Scope

The main purpose of the Law as stated in Article 1 thereof is to ensure the widespread utilization of renewable energy resources in a reliable and economic manner, to diversify the energy resources and to protect the environment.

The renewable energy resources covered by the Law are wind (*rüzgar*), solar (*günes*), geothermal (*jeotermal*), biomass (*biyokütle*), biogas (*biyogaz*), wave (*dalga*), stream (*akinti*), tidal (*gel-git*), river (*nehir*) and arc (*kanal*) type hydroelectric generation facilities, and the hydroelectric generation facilities with a reservoir area of less than fifteen square kilometers.

Although geothermal energy is also covered by the Law, a separate draft Law on Geothermal Energy has been prepared by the Ministry of Energy and Natural Resources ("MENR") and transferred to the Parliament for enactment, which is currently under discussion in the relevant committees.

2. Renewable Energy Resources Certificate

The Law provides that the facilities which generate electricity from renewable energy resources will be granted a renewable energy resources certificate (the "RER Certificate") (*YEK Belgesi*), which will entitle such facilities to benefit from the incentives provided by the Law. EMRA is the competent authority to grant the RER Certificates.

The Law does not regulate the principles and procedures concerning the RER Certificates, but leaves such details to the secondary regulation to be issued by EMRA. As recently stated to the press by Mr. Yusuf Günay, the chairman of EMRA, EMRA is planning to issue this Regulation within a period of 4 months.

3. Incentives to the Renewable Energy Sectors

The Law provides the following incentives to entities generating electrical energy from renewable energy resources:

(i) Retail sale license holders are obliged to purchase a certain percentage of the amount of electricity that they sold in the previous year from the entities holding a RER Certificate. However, Temporary Article 2 of the Law provides that the public distribution companies holding a retail sale license shall be exempted from such purchase requirement until 1 January 2007. This

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provision of the Law may be criticized for creating inequalities between public and private distribution companies and lessening the underlying incentive provided by such provision. The reasoning of that article states that the purpose of such exemption is to facilitate the privatization of TEDAS. However, this provision provides an exemption only to the public companies, which means that such companies will not be entitled to benefit from the exemption after their privatization.

(ii) In the public areas or the lands owned by the Treasury, no housing plans can be prepared in a way to adversely affect the utilization and productivity of renewable energy resources.

(iii) Until the end of year 2011, the price of the electrical energy generated from renewable energy resources, which is to be purchased pursuant to the provisions of the Law, shall be the average electricity wholesale price of the previous year to be determined by EMRA. The Council of Ministers is authorized to increase such price by 20% at the beginning of each year.

(iv) The Law provides a 7-year price guarantee for entities generating electricity from renewable energy resources. After the end of year 2011, the above-stated price determination mechanism will not be applicable to the entities holding a RER Certificate which are in operation for more than 7 years. However, after the end of year 2011, the retail sale license holders will be obliged to purchase energy under the Law from the RER Certificate holders which are in operation for less than 7 years at an average electricity wholesale price of the previous year, and only if the amount of energy so purchased is below the limit of their purchase requirement, such license holders would be obliged to purchase electricity from the RER Certificate holders operating for a period of more than 7 years without a price guarantee.

(v) There are certain incentives concerning the investment periods of the projects. For example, the service fees will not be collected from the individuals or legal entities willing to construct generation facilities to meet their own energy needs from renewable energy resources for the preparation of final project, planning, master plans, initial examination and initial studies to be performed by the State Hydraulic Affairs General Directorate or the Electricity Affairs General Directorate. In addition, the investments for energy generation facilities, procurement of electro-mechanic systems within the country, research, development and production investments concerning solar energy units, and research and development investments for biomass energy may benefit from the incentives upon a Council of Ministers' Decree.

(vi) The need for heat energy in the municipalities or governorates where there are sufficient geothermal energy resources will be primarily met by geothermal and solar thermal energy resources.

(vii) In the event that the forests and the lands under private ownership of the Treasury or under the control or disposal of the State are utilized for the generation of electricity from renewable energy resources, such lands shall be leased to or right of way or usufruct rights thereof shall be granted to the relevant entities. During the investment period, the fees for the granting of such rights will be discounted by half. In addition, certain duties will be waived for lands in forestry areas.

4. Sanctions

In the event that the requirements of the Law are not complied with by the market players, EMRA is embodied with the obligation of imposing a fine of TL 250 billion (approximately US\$ 180 000

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as of 1 June 2005). In the event that the same violation is repeated by the same entity, EMRA has the obligation to impose heavier sanctions including their cancellation of the licenses to perform energy market activities.

III. CRITICISM OF THE LAW

1. Definitions of Renewable Energy Resources

As stated in Section II.1 above, the Law enumerates the types of renewable energy resources which are covered by the Law. The enumeration of the types of renewable energy resources may be criticized for not being flexible in that it does not leave room for new types of renewable energy resources as a result of technological developments in the future. We, therefore, believe that the Law should have determined the common minimum characteristics of renewable energy resources, rather than enumerating them in a limited way, and that EMRA should have been granted the authority to add other types of renewable energy resources which meet such criteria to the scope of the Law.

There are certain differences between the definition of renewable energy resources under the Law and the Licensing Regulation. For example, contrary to the Licensing Regulation, the Law includes the stream (*akinti*) energy among the renewable energy resources. In addition, the Law accepts all river (*nehir*) and arc (*kanal*) type hydroelectric generation facilities as based on renewable energy resources whereas the Licensing Regulation provides that among them only those with an installed power of 50 megawatt (MW) and less are considered as renewable energy resources; *i.e.*, the scope of the Law is broader in such respects. Furthermore, hydroelectric generation facilities with a reservoir area of less than fifteen square kilometers are considered as renewable energy resources under the Law whereas the Licensing Regulation considers the hydroelectric generation facilities with a reservoir volume less than a hundred million cubic meters or with a reservoir area less than fifteen square kilometers as renewable energy resources; *i.e.*, a broader scope is adopted in the Licensing Regulation with respect to hydroelectric generation facilities. We believe that the definition of renewable energy resources under the Licensing Regulation should be revised by EMRA so as to bring it in line with the definition provided by the Law in order to prevent inconsistencies in their implementation.

2. Cross-Authority Problem

The Law empowers both MENR and EMRA to regulate and supervise the implementation and supervision of certain provisions of the Law. For example, the authority to prepare projections for the amount of electrical energy to be generated by RER Certificate holders is granted to MENR. In addition, MENR is authorized to coordinate the implementation and supervision of the general principles and requirements provided by the Law as well as the planning of the necessary measures. On the other hand, EMRA is authorized to grant the RER Certificates and to apply the sanctions stipulated in the Law. Moreover, both MENR and EMRA are authorized to issue the regulations to implement certain provisions of the Law. For example, EMRA is authorized to issue the regulation concerning the RER Certificates whereas MENR is authorized to issue the regulation concerning the determination and utilization of geothermal energy resources. A better approach would be to authorize EMRA, which is the independent regulatory authority in the energy sectors, to act as the only competent authority implementing the Law, since the authorization of two public authorities in the same field of activities is likely to create

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cross-authority problems, which may lessen the utilization of the benefits envisaged by the Law in practice.

3. Lack of Tax Advantages

Contrary to the expectation of the renewable energy sector, the Law did not provide any tax advantage to entities generating electrical energy from renewable energy resources.

4. Lack of Sufficient Incentives for Wind Energy

As explained in Section II.3 above, the retail sale license holders are obliged to purchase energy under the Law from the RER Certificate holders which are in operation for less than 7 years for the average electricity wholesale price of the previous year. For wind energy, however, the market players argue that the wholesale price of power is not sufficient for reaching commercial viability even at the windiest available sites. This is especially true when taking into account that financing costs in Turkey are significantly higher than in West-European countries. We believe that an additional premium could have been provided for the wind energy in the Law. As a matter of fact, the first draft version of the Law as submitted to the Parliament provided that the price of electricity generated from the wind and solar energy would not be, in any case, less than 5 Euro cent/kWh. This provision, however, was later removed from the Law during the discussions in the relevant committees of the Parliament.

IV. CONCLUSION

Turkey has a large potential for renewable energies. Therefore, Turkey can reduce its dependence on fossil fuels by utilizing its renewable energy resources. Turkey has an annual biomass potential of approximately 32 mtoe; a gross annual hydro potential of 433,000 GWh, which is almost 1% of the total world potential; wind power capacity of approximately around 19 MW; solar energy potential which is estimated to be 26.4 million toes (thermal) and 8.8 million toes (electricity); and geothermal potential of approximately 38,000 MW.¹ According to the news published in certain energy magazines, 204 license applications have been made so far to EMRA for projects to generate electricity from renewable energy resources, and EMRA has already issued 37 wind, 16 hydroelectric, 4 geothermal and 3 biomass licenses.

Given its high potential for renewable energy, the promotion of renewable energy resources in the generation of electrical energy is particularly important for Turkey in terms of, among others, reduction in the dependence on energy imports, strengthening the supply security, protection of the environment, and creation of job opportunities. The Law, despite its above-explained shortcomings, is likely to be an important instrument in the achievement of such goals. The implementation of the Law and its Regulations, however, remains to be seen in order to assess their impacts on the renewable energy sectors.

¹ Mustafa Balat, *The Use of Renewable Energy Sources for Energy in Turkey and Potential Trends*, Energy Exploration & Exploitation, August 2004, vol. 22, no. 4, pp. 241-257.