

NUCLEAR ENERGY IN TURKEY

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Although Turkey has rich uranium reserves and a nuclear power plant has been on the agenda of the Government since the early 1960s, Turkey does not have any nuclear power plant in operation or under construction. Attempts by the Government in 1960, 1968, 1974 and 1998 in various provinces such as Sinop and Akkuyu have all failed. Despite lengthy research, detailed preparation efforts and tender processes for such projects, all of them have failed for different reasons.

Turkey's latest effort to construct and operate a nuclear power plant commenced in the early 2000s. Sinop, a province on the Black Sea coast, was determined as the location for the power plant. Recently, a draft Law Concerning the Construction and Operation of Nuclear Power Plants and the Sale of the Energy Generated from Nuclear Power Plants (the "Draft Law") has been prepared and submitted to the Parliament to regulate the details of the tender for such project.

The Draft Law

The Draft Law, prepared by the Ministry of Energy and Natural Resources ("MENR"), has been submitted to the Parliament by the Prime Ministry on 31 October 2006 pursuant to the Council of Ministers' Decree dated 25 September 2006.

The Draft Law is expected to be discussed at the relevant Committee of the Parliament (i.e., the Industry, Commerce and Energy Committee) before being transmitted to the General Assembly of the Parliament for final discussions and voting. The Draft Law may be amended by the relevant Committee and/or the General Assembly of the Parliament before its enactment.

The Draft Law aims to establish the legal basis for the operation of nuclear power plants in accordance with the general energy plans and policies of Turkey. The principles and procedures concerning the construction and operation of nuclear power plants as well as the sale of energy generated from such plants are regulated by the Draft Law.

Method of Determination of the Authorized Company

The Draft Law provides that the process for selection of the private sector company which will construct and operate the nuclear power plant will start subsequent to the evaluation of the opinions of the relevant ministries and public entities by MENR. This latest attempt by the Government for the establishment of a nuclear power plant is unique in that regard: it is the first time such attempt has been formulated by means of a special law.

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The Council of Ministers is authorized to determine the capacity of the nuclear power plant to be constructed, the location of the power plant, the license fee, the incentives in relation to infrastructural matters, and the principles and procedures regarding the selection of the authorized company.

Any local or foreign company who fulfills the criteria to be determined by the Turkish Atomic Energy Authority (“TAEK”) may qualify to participate in the selection process. The company who offers the lowest purchase and purchase guarantees shall be awarded the contract. In other words, the price guarantee offers (in Turkish currency) and the purchase guarantee offers (in kWh terms) of the bidders for the 15-year operation period will be multiplied and the company for which the result of such multiplication is the lowest will be selected as the company authorized to construct and operate the nuclear power plant.

The amount of the price guarantee offered by the bidders shall not exceed the average wholesale price of TETAS (the public wholesale company). Such average wholesale price, announced for the year 2006 by the Energy Market Regulatory Authority (“EMRA”), is Ykr 8.36. This figure corresponded to approximately 5.05 Euro Cents when it was announced by EMRA in April 2006. However, due to an increase in the value of the Euro against the Turkish Lira, 8.36 Ykr is now approximately 4.50 Euro Cents.

According to an official from EMRA, the average wholesale price of TETAS was calculated by using the following formula:

[TETAS' sale price X 80% (as TETAS currently supplies 80% of Turkey's demand)] + [Retail Sale Tariffs Approved by EMRA X 20% (share of private producers)] = 8,36 Ykr

Incentives

The Draft Law provides the following incentives for the operation of a nuclear power plant:

(i) The electricity retail sale license holders (and therefore the distribution license holders, since the distribution companies can perform both the distribution and retail sale of electricity) are obliged to purchase a certain percentage of the electricity they sell from the nuclear power plant. The price and purchase guarantees offered by the authorized company during the selection process shall be applicable to such sales.

(ii) The Council of Ministers is authorized to provide certain incentives for investments concerning technology development and production of nuclear fuel as well as the training of the personnel to be employed in the nuclear power plants.

(iii) In the event a nuclear power plant is to be constructed on forest land and/or on land under the private ownership of the Treasury (i.e., Treasury lands which are not allocated for the performance of a public service) or under the control or disposal of the State, such land shall be leased to, or a right-of-way given, or usufruct rights thereof shall be granted to the relevant entities.

Sanctions

In the event the retail sale and distribution license holders do not comply with the above-stated purchase requirement, EMRA is embodied with the obligation of imposing a fine of

TL 250 billion (approximately US\$ 170,000 as of the date hereof). In the event that the same violation is repeated by the same entity, EMRA has the obligation to impose heavier sanctions including the cancellation of the distribution and/or retail sale licenses of the relevant companies.

The Cross-Authority Problem

The Draft Law empowers the Council of Ministers, MENR, TAEK and EMRA to regulate and supervise the implementation and supervision of certain provisions of the Draft Law. For example, the authority to determine the principles and procedures for the selection of the authorized company rests with the Council of Ministers while the authority to prepare and conduct the selection process of the authorized company is granted to MENR. On the other hand, TAEK will be the regulatory authority in the nuclear energy sector. EMRA, which is the regulatory authority in the electricity, natural gas, petroleum, LNG and renewable energy sectors, will not have any regulation or supervision authority with regard to nuclear power plant operators. Moreover, the Draft Law envisages TAEK to be replaced by another public authority to be established in the future; the regulation and supervision authorities of TAEK are of a temporary nature.

We believe that 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 Draft Law, since the authorization of two public authorities (i.e., TAEK and its future replacement, and EMRA) in the same field of activities is likely to create cross-authority problems which may lessen, in practice, the utilization of the benefits envisaged by the Draft Law.