

10 January 2011

LAW NO. 6094 AMENDING THE RENEWABLE ENERGY LAW

This article provides information regarding the new incentives introduced for renewable energy based power plants by Law No. 6094 (the “New Law”), amending the Renewable Energy Law. The New Law became effective on 8 January 2011.

Please refer to our previous article dated 25 May 2005 for more information on the Renewable Energy Law.

I. RAISES IN GUARANTEED PRICES

The New Law raises the guaranteed prices for the sale of electrical energy by renewable energy resources (“RER”) certificate holders. Such guaranteed prices are in the range of 5 - 5.5 €cent/KWh under the Renewable Energy Law for all types of renewable energy sources.

Set forth below are the new raised guaranteed prices under the New Law:

	First 10 Years of Operation (US cents/KWh)
Hydropower :	7,3
Wind :	7,3
Geothermal :	10,5
Solar :	13,3
Biomass (including landfill gas) :	13,3

The Council of Ministers is authorized to determine the fixed guaranteed prices and the terms applicable for the renewable energy types that are not included in the table above.

These figures are envisaged to apply only for the power plants which shall be commissioned on or before 31 December 2015. The fixed guaranteed prices and the terms applicable for the power plants to be commissioned after 31 December 2015, which shall not exceed the determined prices set forth above, shall be regulated by Council of Ministers’ Decrees.

II. DOMESTIC PRODUCTION INCENTIVE

In addition to the above-stated guaranteed prices, the New Law envisages a further incentive for the projects to be commissioned by 31 December 2015 whose mechanical and/or electromechanical parts have been produced in Turkey. For such power plants, the additional

incentives set forth in the table annexed to this article shall be applicable for a period of 5 years from the date of commencement of commercial operation of the relevant power plant.

The Council of Ministers is authorized to determine the domestic production incentives available for the renewable energy producers to be commissioned after 31 December 2015.

A regulation shall be issued by Ministry of Energy and Natural Resources (“MENR”) regarding the procedures and principles for definition of the scope of domestic production, its standards, certification and inspection procedures.

III. PARTIES SUBJECT TO THE PURCHASE OBLIGATION

Pursuant to the Renewable Energy Law, retail sale license holders are subject to purchase obligations. The New Law, however, uses the expression of “suppliers that supply electricity to consumers” instead of retail sale license holders. Since the Electricity Market Law defines the term supplier so as to cover generation companies, auto-producer and auto-producer group companies and wholesale companies in addition to the retail sellers, the New Law may be interpreted as widening the scope of the entities subject to purchase obligations, to the extent that they sell electricity to “consumers”, i.e., those users who purchase electricity for their own utilization.

IV. NEW METHOD FOR PURCHASE ARRANGEMENTS

Under the Renewable Energy Law, retail sellers are obligated to purchase an amount of energy equal to a certain percentage of the electricity that they sold in the previous year from the entities holding an RER certificate. To perform this obligation, retail sellers are required to sign bilateral energy purchase agreements. Although the term “bilateral agreements” was removed from the Renewable Energy Law by an amendment dated 2 May 2007, the current version of the Renewable Energy Law does not provide for any alternative to the bilateral agreements for the retail sellers to perform their purchase obligation.

The New Law sets forth a new method for the performance of the purchase obligation of suppliers. According to the New Law, the purchase obligation will be performed through a program in which all suppliers subject to purchase obligation and all RER certificate holders will participate, rather than executing separate bilateral agreements for each sale transaction between each supplier and RER certificate holder.

According to the New Law, the Market Financial Settlement Centre (“MFSC”) shall determine the total generation of each power plant included in this program for each invoice period and determine the price to be paid by each power plant. The sum of the prices determined for each power plant shall be announced for each respective invoice period.

The purchase obligation ratio of each supplier shall be determined by MFSC by identifying the ratio of the amount of energy supplied to the consumers by each of the suppliers for the same invoicing period to the total amount of energy supplied to all of the final consumers in Turkey. Following, the amount corresponding to the share of each supplier shall be calculated by multiplication of the purchase obligation ratio of each supplier with the total price to be paid to the RER certificate holders. Notification shall be sent to the parties and the related suppliers shall be invoiced by MFSC. The price collected by MFSC shall be paid pro rata to the related RER certificate holders. A regulation regarding the principles and procedures of this implementation shall be issued by EMRA.

The annual generation amount that will be incorporated in the licenses of the electricity generation facilities shall be the maximum annual generation amount with respect to their current installed capacity according to their energy source. The existing licenses shall be amended accordingly within 3 months upon the application of the relevant parties.

The RER certificate holders are eligible to participate in this program on an annual basis; i.e., once participating, they cannot leave the program during the year and participation in the program is permitted only at the beginning of each calendar year. However, RER certificate holders are not required to participate in the program. Those who do not wish to participate in the program may sell electricity to the open market and may sign bilateral energy sale/purchase agreements. In such cases, however, they would not be entitled to benefit from the purchase and price guarantee incentives of the Renewable Energy Law.

The inspections of the generation facilities under the Renewable Energy Law and other facilities generating or distributing electricity shall be executed by Energy Market Regulatory Authority (“EMRA”) or EMRA shall authorize an auditing company for such inspection, the costs of which shall be borne by the relevant facility. A regulation regarding the procedures and principles of the authorization of the auditing companies shall be issued by EMRA upon obtaining the opinion of MENR.

V. OTHER INCENTIVES UNDER THE NEW LAW

The New Law also governs the following incentives for the renewable energy producers:

- Renewable energy producers are entitled to construct additional capacity on the condition that such additional capacity is constructed within the area specified in their licenses and that the power delivered to the transmission system does not exceed the installed capacity stated in their licenses.
- Priority shall be given to the renewable energy producers when evaluating the connection requests of generation license applicants to the transmission system.
- In the event that forests and 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 the right-of-way or usufruct rights thereof, shall be granted to the relevant entities. Before the New Law, the fees for the grant of such rights were to be discounted by 85% for the first 10 years of operation. The New Law maintains this period and discount amount.
- Renewable energy projects can be developed in national parks, natural parks, natural protection zones, protected forests, natural sites, etc., on the condition of receiving the affirmative opinion of the relevant Ministry or the relevant general directorate of protection, as the case may be.
- For the establishment of usufruct rights over Treasury and State owned lands, the right holder must pay 1% of its revenues to the Treasury in addition to the usufruct fee. The New Law removes this 1% payment obligation for the renewable energy producers.
- A regulation regarding the application procedure, permit process, inspection, and the technical and financial procedures for the renewable energy based generation facilities

within the scope of Article 3(3) of the Electricity Market Law No. 4628¹ shall be issued by EMRA by obtaining opinions of MENR, Ministry of Interior and the General Directorate of the State Hydraulic Works. Real and legal persons generating electricity within the scope of this Article shall benefit from the prices set forth within the chart above for ten years if they generate more than their needs and transmit it to the distribution system.

The New Law does not introduce any tax incentive to the renewable energy based power plants.

VI. AMENDMENTS REGARDING SOLAR ENERGY

The New Law includes the following provisions regarding the solar energy based power plants:

- A regulation regarding the standards and testing methods which shall be used for the inspections and procedures and the standards regarding the inspection of the generation amount of the solar and hybrid power plants shall be issued by MENR with an opinion by EMRA.
- The information regarding transformer centers and their connection capacities shall be issued by MENR on an annual basis until 31 December 2015 by obtaining the technical opinions of General Directorate of Electrical Power Resources Survey and Development Administration (“EPRA”) and Turkish Electricity Transmission Company (“TETC”). The information regarding transformer centers and their connection capacities for the years following 31 December 2015 shall be determined and issued annually by MENR. The first issuance in this regard shall be made on 1 April 2014.
- Within the (generation) license applications for solar energy based power plants, it is obligatory to provide appropriate measurement compatible with the standards.
- If the owner of the site where the power plant shall be located applies for a license, another real or legal person can not apply for a (generation) license regarding the same site.
- In the instance where there are more than one (generation) applications regarding the same area and/or same transformer center, in order to determine the applicant that shall connect to the system with the announced capacity, a competition shall be held by TETC by an underbidding procedure with respect to the prices set forth within the New Law. A regulation regarding the procedures and principles with respect to this competition shall be issued by TETC by obtaining opinions of EMRA and EPRA.
- The total established capacity of the solar energy based power plants which will connect to the transmission system until 31 December 2013 shall not exceed 600 MW.

¹ The renewable energy based generation facilities with a minimum established power of 500 KW and micro cogeneration facilities, which are exempt from the obligation to obtain a license and establish a company, are within the coverage of Article 3(3) of the Electricity Market Law No. 4628.

VII. PARTICIPATION IN THE PROGRAM FOR THE YEAR 2011

All the regulations mentioned above shall be issued within 3 months of the effective date of the New Law. The facilities which are willing to participate in the program of MFSC for the year 2011 shall obtain an RER certificate and apply to EMRA within one month following the issuance of these regulations. The list of RER Certificate holders participating in the program for 2011 shall be issued by EMRA within one month following the receipt of the applications. ⊕

ANNEX

DOMESTIC PRODUCTION INCENTIVES

Facility Type	Domestic Production	Domestic Share Support (US cents/kWh)
A- Hydroelectric Generation Facility	1- Turbine	1,3
	2- Generator and power electronics	1,0
B- Wind Energy Generation Facility	1- Wing	0,8
	2- Generator and power electronics	1,0
	3- Turbine tower	0,6
	4- All mechanical equipment of rotor and nacelle groups (excluding the payments made for wing group, and generator and power electronics)	1,3
C- Photovoltaic Solar Generation Facility	1- PV panel integration and production of solar structural mechanics	0,8
	2- PV modules	1,3
	3- Cells composing PV module	3,5
	4- Inverter	0,6
	5- Equipment focusing the sunlight on PV module	0,5
D- Condensed Solar Generation Facility	1- Radiation receiving tube	2,4
	2- Reflective surface panel	0,6
	3- Solar tracking system	0,6
	4- Mechanical equipment of storage system of thermal energy	1,3
	5- Mechanical equipment of steam generation system that accumulates sunlight on the tower	2,4
	6- Stirling engine	1,3
	7- Panel integration and structural mechanics of solar panel	0,6
E- Biomass Generation Facility	1- Fluidized bed steam boiler	0,8
	2- Liquid org as fired steam boiler	0,4
	3- Gasification org as cleaning group	0,6
	4- Steam org as turbine	2,0
	5- Internal combustion engine or stirling engine	0,9

	6- Generator and power electronics	0,5
	7- Cogeneration system	0,4
F- Geothermal Generation Facility	1- Steam or gas turbine	1,3
	2- Generator and power electronics	0,7
	3- Steam injector or vacuum compressor	0,7