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Turkey Promulgates Renewable Energy Regulations

Turkey's Ministry of Energy and Natural Sources (the "Ministry of Energy") and Energy Market Regulatory Authority ("EMRA") promulgated four anticipated regulations implementing the recent amendments to the Law on Utilization of Renewable Energy Resources for the Purpose of Generating Electrical Energy (as so amended, the "Renewable Energy Law"). These regulations, summarized below, are the following:

- Regulation on Certification and Support of Renewable Energy Sources ("Regulation on Renewable Energy Support Mechanism"), promulgated by EMRA effective July 21, 2011.
- Regulation on Electricity Generation Without a License ("Regulation on License-Exempt Generation"), promulgated by EMRA effective July 21, 2011.
- Regulation on Domestic Manufacturing of Components used in Renewable Energy Electricity Generation Facilities ("Regulation on Domestic Components"), promulgated by the Ministry of Energy effective June 19, 2011.
- Regulation on Solar Electricity Generation Facilities ("Regulation on Solar Plants"), promulgated by the Ministry of Energy effective June 19, 2011.

Regulation on Renewable Energy Support Mechanism

This regulation implements the renewable energy support mechanism which encompasses the various incentives provided in the Renewable Energy Law such as the feed-in tariffs (the "Support Mechanism") and the certification process for opting into such Support Mechanism. Incentives are valid for a period of 10 years for (i) power generators that utilize the renewables defined in the Regulation on Renewable Energy Support Mechanism and commence operations between May 18, 2005 and December 31, 2015 and (ii) license-exempt renewable energy generators through the retailers operating in the same region.

Such power generators or retailers that wish to opt into the Support Mechanism for a particular year must apply to EMRA by October 31 of the preceding year (or by August 21, 2011 for the remaining portion of 2011, *i.e.*, from December 1, 2011, when the support mechanism is expected to be operational, to December 31, 2011). For generators, the application must cover the entire power generated by a facility that is attributable to renewable energy sources, and such power cannot be subject to any transaction outside the Support Mechanism. EMRA evaluates all complete applications and publishes a preliminary list of qualified applicants on its website during the first 10 days of November. This list can be challenged within 5 days by (i) any third party which alleges infringement of its rights, or (ii) the applicant for correcting or supplementing information contained in the publication. EMRA must resolve any such challenges by November 25, publish a final list on its website by November 30 and notify the same to the state-run Market Financial Settlement Center ("PMUM").

The settlement of power sales under the Support Mechanism is coordinated by PMUM. To that end, PMUM is to create a separate portfolio that will keep record of the power generated and sold under the Support Mechanism (as well as separate accounts for each Support Mechanism participant), and the power meters of relevant generators are to be updated accordingly. PMUM must complete all necessary preparations so that the Support Mechanism can be operational on December 1, 2011. Thereafter, each generator and retailer which has opted into the Support Mechanism will provide its estimated hourly generation (in the case of generators), or its estimated power purchase from renewable sources (in the case of retailers), to the National Load Dispatch Center ("NLDC") by 9 a.m. on the day preceding the transaction day (the "day-ahead"). Based on such estimates and/or its own estimates, NLDC will produce hourly regional and national production estimates and provide them to PMUM by 10:30 a.m. of the day-ahead, and PMUM will publish such estimates by 11 a.m. of the day-ahead. These estimates will then be communicated to the markets as a sale offer by 11:30 a.m. of the day-ahead.

All proceeds from these power sales will be invoiced by PMUM to the purchasers, deposited by the purchasers in the PMUM portfolio, and distributed by PMUM on a monthly basis to the relevant suppliers *pro rata* according to their relative percentage of Support Mechanism-eligible power supplied to the system, taking into account the feed-in tariffs specified in the Renewable Energy Law and any difference between the amount of power estimated on a day-ahead basis and the actual sale, in accordance with specific formulae provided in the regulations. Any interest earned on the portfolio proceeds will be added to the total portfolio proceeds before the end of each monthly cycle. The relevant calculations are made by PMUM, and any disputes regarding invoicing or payment of amounts will be resolved according to the existing Power Market Settlement Regulation.

Regulation on License-Exempt Generation

This regulation applies to (i) entities which establish co-generation facilities meeting certain efficiency requirements solely with the purpose of satisfying their own power needs ("co-generation facility"), (ii) facilities with an installed capacity of 500 kWe or less that utilize renewable energy resources ("small renewable generation facility"), and (iii) micro co-generation facilities with an installed capacity of 50 kWe or less ("micro co-generation facility"). These suppliers are exempt from the power generation licensing requirement, and certain special rules apply to their power sale arrangements.

Under license-exempt generation, each consumer facility can only have one co-generation facility, small renewable generation facility, or micro co-generation facility associated with it. Exceptions to this rule may be permitted if there is sufficient capacity in the distribution network. However, in no event can the total capacity of small renewable generation facilities associated with one consumer facility exceed 500 kWe, and in no event can a generation facility and a consumer facility of the same generator be in separate distribution networks. Two or more consumer facilities may jointly establish one or more generation facilities exempt from licensing under the regulation.

Despite the general exemption from licensing, these suppliers must still obtain approval for grid connection and system usage. Hydro-powered generators must apply to provincial administrations and all other generators must apply to the relevant distributor for grid connection. In evaluating the applications, the following criteria are considered in sequence: (i) whether the facility uses renewable energy resources, (ii) whether the facility is a co-generation facility, (iii) whether the generation facility and consumer facility are in the same region, (iv) whether the applicant was previously granted a grid connection, (v) whether the applicant's power production in the past year exceeds that of the other

applicants, and (vi) the date of the application, if multiple applications fulfill the foregoing criteria. Within 90 days following the approval of the grid connection application, suppliers enter into a system usage agreement with the distributor. The general provisions of the grid connection and system usage agreements are to be determined by EMRA. Once these steps are complete, suppliers can start providing power to the system and paying a usage fee.

Any excess power generated and not used by these suppliers is provided to the system through distributors. In the case of small renewable generation facilities, such excess power is sold at the feed-in tariff specified in the Renewable Energy Law, and in the case of micro co-generation facilities, at the lowest feed-in tariff specified in the Renewable Energy Law. The Regulation on License-Exempt Generation also permits consumption of the excess power in one or more consumer facilities in a different region, but associated with the same generator. However, power generated by a license-exempt facility cannot be sold through bilateral agreements outside the Support Mechanism.

Regulation on Domestic Components

In addition to new feed-in tariffs, the Renewable Energy Law introduced incremental price incentives for generators that use certain domestically manufactured mechanical and electromechanical components in their projects. These incremental price incentives apply only to projects that commence operations before December 31, 2015 and which have opted into the Support Mechanism, and they are available for five years after a project commences operations.

While the Renewable Energy Law indicated the general categories of components and the corresponding price incentives, the technical definitions of the components and the procedures for utilizing the price incentives were left to the authority of the Ministry of Energy. The domestic component incentives range from \$4 to \$35 per mWh according to the type of facility and the domestic component used, and they are added to the respective feed-in tariffs for facilities utilizing hydraulic, wind, solar, biomass or geothermal power. For example, the incremental price incentive is \$6 per mWh for reflective surface panels used in solar projects, \$8 per mWh for blades used in wind power projects, and \$13 per mWh for turbines used in hydroelectric projects. The table below shows the feed-in tariffs, as well as the maximum amount of domestic component incentive that can be obtained if all domestic components listed in the legislation are used in a facility:

Power Source of Generating Facility	Feed-in Tariff (dollars/mWh)	Maximum Domestic Component Incentive (dollars/mWh)	Maximum Total Price for Power Output (dollars/mWh)
Hydraulic	73	23	96
Wind	73	37	110
Solar (photovoltaic)	133	67	200
Solar (concentrated)	133	92	225
Biomass	133	56	189
Geothermal	105	27	132

In order to benefit from the domestic component price incentives, generators must submit to the Ministry of Energy (i) a "domestic manufacturing certificate" attesting to the domestic origin of the relevant component, to be prepared by a certified public accountant in accordance with a form provided in the Regulation and approved by the Chamber of Industry and/or Chamber of Industry and Commerce with which the component supplier is affiliated, and (ii) a "product certificate" to be prepared by a national accreditation agency recognized by the International Accreditation Forum and attesting to the conformity of the component to applicable national or international standards.

If the Ministry of Energy determines that the components are manufactured with entirely domestic added value, it notifies EMRA of the applicable incentive price within fifteen business days. The regulation clarifies that the constituent parts of a subject component must also be manufactured domestically. Domestic production includes production in free zones within the borders of the Republic of Turkey.

During the "provisional acceptance" process where the Ministry of Energy determines whether a licensed facility may become operational, authorized officers from the Ministry of Energy must confirm whether a licensed facility has a "domestic manufacturing certificate." If not, then the prices applicable to such facility are recalculated by the Ministry of Energy and notified to EMRA.

Regulation on Solar Plants

The Renewable Energy Law limits the total installed capacity of solar projects that can be connected to the grid before December 31, 2013 to 600MW. The Regulation on Solar Plants provides that the Electricity Works Survey Administration ("EIE") will monitor the amount of electricity generated from solar power. Facilities using solar power (including in hybrid facilities) must be equipped with monitoring systems that will submit certain required information to EIE's electronic control center, such as the total amount of solar radiation falling on the solar panels and the amount of power transmitted to the substation. Such facilities must also submit to EIE an estimated production capacity every December, and EIE is authorized to conduct site visits to verify the foregoing information.

In addition, the regulation sets forth the technical standards for the performance testing (in accordance with the TS EN 61215, TS EN 61646 and TS EN 62108 standards) and safety testing (in accordance with the TS EN 61730 standard) of photovoltaic modules, and authorizes the Scientific and Technological Research Council of Turkey to test the thermal performance of concentrated solar plants.

State-owned Turkish Electricity Transmission Company is expected to promulgate additional regulations regarding the bidding process to be applied in the event of multiple solar power license applications in the same area and/or substation.

Conclusion

The Regulation on Renewable Energy Support Mechanism and the Regulation on License-Exempt Generation provide significant regulatory guidance on the implementation of the Renewable Energy Law. In addition, the domestic component price incentives are generally viewed as an important development that could bolster the Turkish renewable energy components sector. On the other hand, the regulations on solar plants are viewed as having somewhat more limited impact due to the strict cap on the portion of installed capacity that can be connected to the grid prior to December 31, 2013.

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