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AMENDMENTS IN THE FORM SYSTEM UTILIZATION AGREEMENT

This Article provides information on the new form system utilization agreement to be signed between users of the electricity transmission system and the public electricity transmission company (“TEİAŞ”) (the “New Form Agreement”), adopted by the Board of the Energy Market Regulatory Authority (“EMRA”) in its meeting on 15 March 2012 (“EMRA Decision”). The New Form Agreement was published in the Official Gazette, and became effective, on 29 March 2012. According to this EMRA Decision, TEİAŞ and all system users shall execute the New Form Agreement to replace their existing system utilization agreements within a period of 90 days following the effective date of the Decision (by 29 June 2012). The full text of the New Form Agreement in Turkish can be viewed on EMRA’s website.

The New Form Agreement includes a number of changes with regard to excess energy use, penalties, payments, assignments, amendments and termination of agreements. It also clarifies certain points that lacked clarity in its previous form, such as payment procedures and guarantees.

Excess Energy Use

The New Form Agreement, unlike the previous form agreement, obligates TEİAŞ to issue a 7 day advance notice prior to cutting power in the event of excess energy use by the user. However, in the event the excess energy use has a negative effect on electricity transmission, such prior notice by TEİAŞ is not mandatory, and TEİAŞ may cut power immediately. The determination as to which events may be considered as having a negative effect on electricity transmission remains unclear. In the New Form Agreement, it is provided that in the event maximum power is exceeded because of instructions from TEİAŞ, such excess will not be considered as power excess under the agreement. Therefore, it may be argued that the excess energy transmission due to loading and de-loading instructions from TEİAŞ will not be considered as and have consequences of excess use, if such loading or de-loading causes an excess energy transmission in the system.

Failure of TEİAŞ to Provide Capacity

The previous form agreement provides that in the event TEİAŞ fails to provide the capacity it has undertaken to the user, TEİAŞ shall return the fees corresponding to such failed capacity to the user. The New Form Agreement states that the user shall issue an invoice to TEİAŞ, including details such as the name of the transformer center, day and hour of the failure, for the return of the fees paid by the user to TEİAŞ for the capacity TEİAŞ failed to provide.

However, the New Form Agreement also provides that in the event the connection agreement, electricity generation license (for generation companies) or system utilization agreement states that the user bears the risk for connection with a single line, then TEİAŞ will not be responsible for its failure to provide capacity and will not make any return payments to the user.

Payments

The New Form Agreement states that system utilization and operation fees shall be calculated based on the maximum capacity amounts provided under the agreement. In the event a user exceeds the maximum levels, the higher utilization amount shall be taken into consideration for the calculation of such fees. The previous form agreement did not provide a calculation method for system utilization fees.

The previous form agreement also lacked a provision regarding the procedure to be followed in the event of the default of a user in its payment obligations. In the New Form Agreement, it is provided that TEİAŞ shall notify the user in case of such default. If the user does not pay its due debts to TEİAŞ under the agreement within eight days following notification by TEİAŞ, then TEİAŞ will have the right to collect this unpaid amount by cashing the guarantees posted by the user. The user must provide an additional guarantee within thirty days. If such guarantee is not provided, and thus the guarantee remaining is deficient, TEİAŞ may cut power by giving 7 days prior notice.

Prohibition to Assign or Transfer Agreement

While the previous form agreement permitted the assignment or transfer of the agreement by obtaining the prior consent of TEİAŞ, the New Form Agreement explicitly prohibits such assignment or transfer.

Penalties

The New Form Agreement includes a number of changes to the penalties provided under the agreement, both in terms of actions leading to penalties and amounts of penalties.

Amendments to Agreement and Increase / Decrease of Capacity

Contrary to the previous form agreement, the provisions regarding increase or decrease in capacity under the agreement are regulated in detail in the New Form Agreement.

Under the New Form Agreement, a user may request an increase in capacity under the agreement a maximum of three times per year, in equal periods of four months. TEİAŞ has a period of 60 days to either grant or refuse such request, during which time the user may not exceed the current capacity of the agreement. If TEİAŞ does not respond to such request within 60 days, it shall be construed as implied approval for the capacity increase.

A user may also request a decrease in capacity under the agreement. This request may be made only once annually and, at the latest, by the beginning of September. The capacity decrease shall become effective at the beginning of the following calendar year. However, in the event a new transformer center is constructed by TEİAŞ, TEİAŞ may allow for the decrease of capacity in the system utilization agreement executed for the current transformer

center, provided that (i) there is a transfer of load to the new transformer center, and (ii) the total of the energy capacities in the two transformer centers are collectively equal to the current system utilization agreement.

Termination of Agreement by User

According to the New Form Agreement, in the event a user requests the termination of its agreement it shall notify TEİAŞ at least 4 months prior to the requested termination date and shall continue making payment of the system utilization and operation fees until the end of the calendar year. In the previous form agreement, termination of an agreement by a user was possible; however, such termination became effective on a date agreed upon by parties which meant that TEİAŞ had a discretionary power regarding the termination date. In the New Form Agreement, the termination date is now regulated and TEİAŞ has no discretion over such date.

Notices

It is provided under the New Form Agreement that notices between a user and TEİAŞ shall be subject to the procedures stated in the Communiqué regarding Connection and System Utilization to the Transmission and Distribution Systems in the Electricity Market. According to this Communiqué, notices shall be made according to Notice Law No. 7201, however, until the effectiveness of the provisions of Law No. 7201 regarding electronic service, and until TEİAŞ establishes the necessary background for electronic service, TEİAŞ may serve any notice to users via its internet site. TEİAŞ will notify users as to when it will switch to electronic service as per Law No. 7201.