

22 July 2011

NEW RENEWABLE ENERGY PURCHASE MECHANISM IN TURKEY

This article provides information regarding the Regulation on the Encouragement of Renewable Energy Resources¹ (the “RER Regulation”) dated 21 July 2011, which sets forth a new purchase mechanism for the electricity generated from renewable energy resources.

I. GENERAL

The RER Regulation implements the recent amendments made to Law No. 5346 concerning the Use of Renewable Energy Resources for the Generation of Electrical Energy² (the “RER Law”), by Law No. 6094³ (the “New Law”), which became effective on 8 January 2011. The New Law, among other amendments, increased the amount of the guaranteed price for the sale of electrical energy generated by renewable energy resources certificate (the “RER Certificate”) holders, and provided a new method for the purchase of such electricity.

Prior to the New Law, retail sellers were required 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 prior to the New Law, retail sellers were required to sign bilateral energy purchase agreements with the RER Certificate holders. The New Law, however, set forth a new method for performance of the suppliers’ (as opposed to retail sellers only) purchase obligation. Under the New Law, rather than executing separate bilateral agreements for each sale transaction between a supplier and an RER Certificate holder, the said purchase obligation is to be performed through a program in which all suppliers subject to a purchase obligation and all willing RER certificate holders will participate. The RER Regulation has been issued to implement the provisions of the New Law regarding this new sales arrangement, which is called the RER Support Mechanism (*YEK Destekleme Mekanizması* - “YEKDEM”).

With the enactment of the Regulation on Electricity Generation without a License⁴ (the “Exemption Regulation”) on 21 July 2011, renewable energy based generation facilities with a minimum established power of 500 KW and micro cogeneration facilities are exempt from the obligation to obtain a license from the Energy Market Regulatory Authority (“EMRA”) and to establish a company. The RER Regulation refers to the producers subject to the Exemption Regulation as “Exempted Producers.” Pursuant to the RER Regulation, Exempted Producers are also entitled to benefit from the purchase and price guarantees of the

¹ Published in the Official Gazette No. 28001, dated 21 July 2011.

² Published in the Official Gazette No. 25819, dated 18 May 2005.

³ Published in the Official Gazette No. 27809, dated 8 January 2011.

⁴ Published in the Official Gazette No. 28001, dated 21 July 2011.

RER Law. However, unlike the RER Certificate holders, Exempted Producers participate in YEKDEM through retail sale companies, which are required to purchase the electricity generated by such producers.

II. FUNCTIONING PRINCIPLES AND PROCEDURES OF YEKDEM

A. Participation of the RER Certificate Holders under YEKDEM

RER Certificate holders are entitled to participate in YEKDEM on a yearly basis for the first 10 years of operation provided that their power plants are commissioned on or before 31 December 2015.

RER Certificate holders are eligible to participate in this program on an annual basis; *i.e.*, once they participate they cannot terminate their participation during that year and the decision to participate in the program is allowed 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 YEKDEM may sell electricity in the free market and may sign bilateral energy sale agreements. In such cases, however, they would not be entitled to benefit from the purchase and price guarantee incentives of the RER Law. Unlike the RER Certificate holders, Exempted Producers do not have the option to sign bilateral energy sale agreements rather than participating in YEKDEM.

RER Certificate holders that wish to participate in YEKDEM must apply to EMRA by 31 October each year (for participation in YEKDEM for the following year). However, RER Certificate holders that wish to participate in YEKDEM for the year 2011 must apply to EMRA by 21 August 2011. YEKDEM is expected to become operational as from 1 December 2011. The retail companies subject to the obligation to purchase electricity from the Exempted Producers must apply to EMRA by 31 October each year for the participation in YEKDEM for the following year.

EMRA shall evaluate the applications and prepare a preliminary list of YEKDEM participants by 10 November each year. Said preliminary list will be published on EMRA's website, and the interested parties may object to the list until 15 November. The received objections shall be evaluated by EMRA and shall be concluded by 25 November.

The preliminary list of YEKDEM Participants shall be finalized by EMRA after consideration of the results of the objections. The final list shall be announced on EMRA's website and shall be sent to the Market Financial Settlement Centre (*Piyasa Mali Uzlaştırma Merkezi* - "PMUM") by 30 November.

B. Determination of Parties' Rights and Obligations of the Participants by PMUM

RER Certificate holders and the retail companies (for the Exempted Producers) shall notify the National Load Dispatch Center (*Milli Yük Tevzii Merkezi* - "MYTM") by 9:00 a.m. every day, of their estimated generation amounts for the following day. MYTM shall evaluate these estimates and finalize the regional and national daily generation projections for the following day by 10:30 a.m., and shall give notify PMUM and announce the results to market participants by 11:00 a.m. each day.

Based on the list of final participants prepared by EMRA and the notifications made by MYTM as explained above, PMUM shall determine:

- (i) the total generation by each power plant included in this program for each invoice period; and
- (ii) the price to be paid for each power plant. The sum of the prices determined for each power plant shall be determined and announced for each respective invoice period.

The purchase obligation ratio of each supplier shall be determined by PMUM by identifying the ratio of the amount of energy supplied to 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. The amount corresponding to the share of each supplier shall then be calculated by multiplying the purchase obligation ratio of each supplier with the total price to be paid to the RER Certificate holders. The parties shall then be notified and the relevant supplier invoiced by PMUM. The amounts collected by PMUM shall be paid pro rata to the related RER Certificate holders.

Prices to be paid to RER Certificate holders shall be calculated in the Turkish Lira currency. The conversion of the guaranteed price from US Dollars to Turkish Lira shall be made using the foreign exchange rate of each transaction date.

The annual generation amount to be included in the licenses of the electricity generation facilities shall be the maximum annual generation amount with respect to its currently installed capacity according to its energy source. Existing licenses shall be amended accordingly, within three months of the application by the relevant parties.

III. MISCELLANEOUS

Other important provisions of the RER Regulation include the following:

- Prior to the RER Regulation, license holders generating electricity based on renewable energy resources were required to obtain a separate RER Certificate to benefit from the purchase and price guarantees provided by the RER Law. Pursuant to the RER Regulation, however, if a generation license holder generates electricity from renewable energy resources in compliance with the RER Law, a statement shall be included on its generation license to demonstrate that situation. The statement is considered to have the same force and effect as an RER Certificate without one being separately issued.
- Once an RER Certificate holder participates in YEKDEM for a specific power plant, all of the electricity generated by such power plant must be treated under YEKDEM; *i.e.*, no portion of it can be sold to third parties under bilateral agreements or through other arrangements.
- A power plant covered by YEKDEM cannot make separate loading or de-loading offers to MYTM, other than the above-explained day-ahead notifications of estimated generation amounts.

- Participants of YEKDEM (throughout the years when they actually participate in YEKDEM) are exempt from the requirements to participate in the primary frequency, secondary frequency and balancing power market control mechanisms, and to pay the market management fee to PMUM. ⊕