

OBTAINMENT OF FORESTRY PERMITS FOR THE CONSTRUCTION OF DAMS & HYDRO ELECTRIC POWER PLANTS

I. Introduction

Energy is considered to be one of the key factors in economic development. Sustainable energy resources are of vital importance and the energy resources, which are continuously available for long durations and which have no detrimental social effects, are compulsory for sustainable development.

The alternative energy resources, including hydropower, have some important advantages, such as being sustainable, renewable, environment friendly and clean. Turkish Government played a leading role in energy production and in energy use, as well as in other fields, and implemented several policies to increase electricity production. By 1950s, thermal power plants were used commonly in electricity production. In the following years, hydroelectric power plants were put into operation in order to use the considerable amount of water resources of the country.

II. Related Legislation

In the event of existence of public interest and necessity, real persons and private legal entities shall apply to the Local Directorate of Forestry (“*Bölge Orman Müdürlüğü*”) (“**Local Directorate**”) for the construction of dams and HEPP’s in accordance with Article 51 of the Regulation on the Permits to be Granted in the Areas of Forest Nature, published in the Official Gazette, dated March 22, 2007 and numbered 26470 (“*Orman Sayılan Alanlarda Verilecek İzinler Hakkında Yönetmelik*”) (“**Regulation**”).

Permits shall be granted by the Forestry Administration (“*Orman Genel Müdürlüğü Merkez ve Taşra Teşkilatı*”) (“**Administration**”) upon submission of; (i) a letter which includes specific

locations of the relevant area, (ii) a site map with the scale of 1/25000 which determines the demanded area, (iii) a site plan with the scale of 1/1000 which determines the planned facilities, (iv) the measures and the chart of accounts indicated the execution of the territorial measure based on the national triangulation and (v) opinions, documents and consents in accordance with the other regulations.

In case the necessity of the facility construction within State forestry area, *an initial permit report* or *a final permit* report shall be granted by the Administration.

III. Process of the Initial Permit

The initial permit holder shall submit the relevant documents, set forth in Article 54 of the Regulation, to the Administration. In the event that the initial permit report is approved, the Ministry of Environment and Forestry (“*Çevre ve Orman Bakanlığı*”) (“**Ministry**”) may grant an initial permit for a period of twenty-four (24) months. However in case occurrence of any force majeure events or occurrence of state of necessity determined by the Ministry, an additional time may be given by the Ministry with the consent of the Minister of Environment and Forestry.

The initial permit shall be revoked ex-officio by the Administration in the following conditions:

- If the applicant waives its requests regarding permit,
- If the applicant cannot fulfill its obligations to inform the relevant authority that the documents set forth in Article 54 of the Regulation cannot be submitted due to the causes other than its default or force majeure events.

The revocation of initial permit shall be notified to the applicant. The initial permit shall not be transferred.

IV. Process of the Final Permit

The final permit holder shall submit the relevant documents, set forth in Article 56 of the Regulation, to the Administration. In the event that the final permit report is approved, the Ministry may grant a final permit for a maximum period of forty-nine (49) years. The final permit holder has to utilize the presenting and warning signs which are obliged by the Administration in order to help preventing the forest fires and presenting the forestation activities.

The initial permit holder shall apply to the Local Directorate in order to obtain a final permit by submitting the requested documents. Therefore the Local Directorate evaluates and examines the documents and notifies the party in the event of a deficiency in the submitted documents and if some of the documents are found inappropriate. The request shall not be evaluated or examined by the Local Directorate unless the documents are completed.

The final permit may not be transferred unless a final permit shall be prepared in compliance with the provisions and time limits stipulated in undertaking (*undertaking of the transferee shall be approved by a notary*) and the approval of the Ministry.

In case the documents are approved, the final permit shall be granted by the Ministry for a maximum period of forty-nine (49) years.

The area shall be delivered to the final permit holder in condition of submitting a notarized covenant and a warranty within one (1) month as of the notification date. Otherwise, the granted permit shall be cancelled ex-officio.

The final permit shall be cancelled in the following conditions:

- expiration of the permit,
- waiver of the permit holder,
- failure to meet the requirements of the Regulation and the provisions of the undertaking.

In the event that the permit expires due to any reasons whatsoever, the buildings and the facilities shall be transferred to the Administration free of charge within three (3) months at the latest.

V. Permit Fees

With regard to the permits to be acquired in accordance with the types of permit fees within the State forestry are:

a) **Forestation fees** shall be calculated by multiplying the forestry permit area with multiplication of the gross wage of an unqualified employee determined for each local directorate of forestry by the General Directorate of Forestry multiplied by a coefficient of 1615 hours/hectare for pine needled forests and 1748 hours/hectare for broad-leaved forests,

b) **Area permit fees** shall be calculated by;

(i) multiplying the forestry permit area with the fee determined per meter square in accordance with the total amount of loss arising from destitution of area income during the period of operation and the decrease in the revenue of stands to be planted following the expiry of the relevant permit and the proximity of relevant forestry area to the main roads and residential areas, current values of the neighboring area and the qualification of the forestry subject to requested area,

(ii) taking five per thousand (0.5%) of the project fee to be determined based on the yearly unit prices of the Ministry of Public Works and Settlement and the relevant institutions,

c) **Development fee of forestry villagers** shall be calculated as three percent (3%) of the total amount of the project fee, [*Article 5 of the Basis and Procedures regarding the Services of Development of Villagers Living in Forestry Areas published in the Official Gazette dated December 31, 2005 and numbered 26040*]

d) **Forestation and erosion control fee** shall be calculated as two percent (2%) of the total amount of the project fee. [Article 4 of the Basis and Procedures regarding the Forestation and Erosion Control Services of the Ministry Environment and Forestry published in the Official Gazette dated September 03, 2005 and numbered 25925]

- The calculation of the fees shall be based on the portion of the fee corresponding to State forestry.
- The area permit shall be paid once a year, the other fees shall be paid once at the beginning of the permission process.
- Project value fees, calculated in accordance with the previous annual unit prices, may be updated by increasing in the proportion of deflator coefficient or re-evaluation rate until the publishing of the new annual prices.
- Pursuant to Article 8 of the Law on Usage of Renewable Energy Resources for the purpose of Generating Electricity dated May 10, 2005 and numbered 5346 (“*Yenilenebilir Enerji Kaynaklarının Elektrik Enerjisi Üretimi Amaçlı Kullanımına İlişkin Kanun*”) (“**Law No.5346**”), permits shall be granted and calculated in accordance with the principles contemplated therein. A legal entity, holding a generation license shall be awarded a Renewable Energy Source Certificate (“**YEK Certificate**”) by the Energy Market Regulatory Authority (“**EMRA**”), for the purpose of identifying and monitoring the type of the source in purchasing and selling electric energy generated from renewable energy sources in domestic and international markets. Therefore legal entities holding a retail sale license, shall buy electrical energy from power plants generating electrical energy from renewable energy resources within the scope of Law No.5346, which are holding a YEK certificate and which have not completed 10 (ten) years of operation.

The permit holder shall deposit the prices arising from the facility, permit and easement rights to the account at T.C. Ziraat Bankası at once for the development of forestry villagers, income of forestation and erosion within a month as of the notification date. Otherwise transaction of granting permit and easement right shall be invalid.

VI. Applications related to Acquisition of Land

Pursuant to the Law No.5346, the permission shall be granted, lease and easement right may be established or permit for utilization may be granted by the Ministry or the Ministry of Finance in exchange of a remuneration for the facility, transportation roads and transmission power lines to the grid connection point for the purpose of electricity generation from the renewable energy resources within real estate of forest nature or under the private ownership of the Treasury or under the disposal of the State in its entirety.

In the event that the real estate, which shall be utilized for the purposes regarding pasture, summer pasture (“*yaylak*”), winter quarters (“*kışlak*”) and public owned grazing (“*otlak*”) and grassland (“*çayır*”), shall be registered in the name of the Treasury upon changing the allocation purpose of the same within the scope of the Pasture Law dated February 25, 1998 and numbered 4342 (“*Mera Kanunu*”) (“**Pasture Law**”).

Eighty-five percent (85%) discount over such fee applicable to the roads for transportation and energy transmission power lines to the grid connection point regarding fees, lease, easement right and utilization permission shall apply in the first ten (10) years of the investment and operation period with respect to the facilities which shall be commissioned by December 31, 2012. Further the collection of Forest Villagers Development Revenue and Forestation and Erosion Control Revenue shall not be made.

In relation to the real estate which are under the private ownership of the Treasury and the disposal of the State in its entirety, and situated in the reservoir area of the hydro electricity generation facilities within scope of the Pasture Law, the permit for utilization shall be granted by the Ministry of Finance free of charge.