

CURRENT LEGAL STATUS OF THE WIND ENERGY LICENSE APPLICATIONS MADE PRIOR TO NOVEMBER 1, 2007

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Introduction

Introduction of the renewable energies to Turkey's energy market and the legal system has started with the enactment of the Electricity Market Law, dated February 20, 2001 and numbered 4628 ("**Electricity Law**"). Following the enactment of the Electricity Law, Electricity Market Licensing Regulation has been adopted and published in the Official Gazette, dated August 04, 2002 and numbered 24836 ("**Licensing Regulation**"). While the Electricity Law regulated the entire electricity market with respect to all aspects of the sector, the Licensing Regulation focused particularly on the licensing matters such as license types to be granted in the electricity market, requirements for license holders, licensing procedures, cancellation of licenses and the like.

However, due to lack of technical and regulatory knowledge in Turkey, both the Electricity Law and the Licensing Regulation could not provide a sufficient and strong legal base for renewable energy investments. Despite these legislative efforts, the legal background, which is highly important to encourage the investors, could not be prepared. It did not take long time for the administration as well as other relevant parties in the market to understand that the legislations were far from being able to efficiently regulate the market. Thus, only three months after its adoption, first amendment was made in the Licensing Regulation. As of today, the Licensing Regulation has been amended more than thirty times since its adoption.

Further, the Law on the Use of Renewable Energy Sources for Electricity Generation Purposes ("**Renewable Energy Law**") has been adopted on May 10, 2005. The main purpose of the Renewable Energy Law was to encourage and expand the use of renewable energy sources, such as wind, solar and biomass, for the purpose of electricity generation. As a very superficial act, the Renewable Energy Law stated only few insufficient incentives for renewables and set forth some additional land use principles. Therefore, the Renewable Energy Law also failed to bring the long awaited dynamism to the renewable energy industry.

Brief History of Licensing in Turkish Wind Energy Sector

Electricity Law ordained that a regulatory and supervisory agency, namely the Energy Market Regulatory Authority (“EMRA”), shall be established. Actually, EMRA was first planned to be established as the Electricity Market Regulatory Authority, and accordingly the Electricity Law defined EMRA as the Electricity Market Regulatory Authority. However, only two months after the adoption of the Electricity Market Law, Natural Gas Market Law changed the name of the agency to Energy Market Regulatory Authority. This rapid amendment was a significant indicator of how the laws and other regulations related to the energy market were drafted with lack of an advance planning.

The Electricity Law also defined the duties and responsibilities of EMRA, which is yet to be established. Among other duties and powers, the power to grant electricity generation licenses (“License”) to wind farms was also given to EMRA. The Licensing Regulation, which followed the Electricity Market law, defined the principles, requirements and procedures of granting a License including the Licenses for wind farms.

Under above mentioned premature and insufficient regulations, EMRA started to accept License applications for wind farms on September 03, 2002. From this date until mid 2004, EMRA granted 38 Licenses for wind farms. However, due to the gaps in the Licensing Regulation, EMRA was not able figure out how it should act on some specific situations, such as in the situation where two different License applications were made for the same site. After mid 2004, EMRA stopped accepting License applications and it has resumed accepting License applications on January 01, 2006. Unfortunately, the regulatory and other circumstances then did not enable EMRA to manage and take necessary steps to handle the licensing process accurately; and with its decision dated October 14, 2007 and numbered 1332/15, EMRA decided to take License applications for wind farms in only one day,

November 01, 2007. Thus, the chronological differentiation has been created as the License applications for wind farms made prior to November 01, 2007 – License applications for wind farms made on 2007. Between January 01, 2006 and November 01, 2007, the License applications of 24 wind farm projects have been processed and brought up to certain legal status which we will explain below. After November 01, 2007, EMRA has no longer accepted any License application for wind farms.

Procedures of Licensing

Licensing Regulation sets forth principles for the application process, review and evaluation, and concluding the applications of Licenses. Briefly, the licensing process starts with the

submission of an application form and some other related technical and corporate documents by the applicant company to EMRA. EMRA then corresponds with other relevant agencies such as Turkish Electricity Transmission Company (“**TEIAS**”) and General Directorate of Electrical Power Resources Survey and Development Administration (“**EIE**”) in order to obtain their analyses and opinions regarding the projected wind farm.

One of the most critical steps in the process is the opinion of TEIAS, which decides on the availability of the grid line for the connection of the wind farm. If TEIAS gives a negative opinion on the connection of the wind farm to the grid line, EMRA directly rejects the License application with no further processing.

If TEIAS gives a positive opinion (“**Affirmative Connection Opinion**”) on the connection of the wind farm to the grid line, EMRA conducts its internal evaluation on the wind farm, particularly focusing on the documents provided by the applicant company. After evaluating the project file submitted by the applicant company and the Affirmative Connection Opinion of TEIAS, EMRA grants a pre-approval (“**Pre-approval Decision**”) to the wind farm project and requires the applicant company to increase its capital to a certain level defined in the Pre-approval Decision and submit a bank bond to EMRA in the amount defined in the Pre-approval Decision as well. Pre-approval Decision also states that the applicant company must fulfill all the requirements mentioned in the Pre-approval Decision, within ninety days of its receipt; and upon fulfillment within due time, EMRA will grant the License.

Relevant sections of the Licensing Regulation state that EMRA, within 45 days after receiving the Affirmative Connection Opinion from TEIAS, will complete its evaluation on the project. Further, the Licensing Regulation sets forth that EMRA will grant Licenses to the applicant companies if they fulfill the requirements stated in the Pre-approval Decision sent them by EMRA, within 90 days of its receipt.

The procedures and rules mentioned here are mandatory provisions of the Licensing Regulation, and therefore, both private and administrative parties are obligated to comply with such provisions.

Status of 24 License Applications for Wind Farms Made Prior to November 01, 2007

It has been mentioned above that there are 24 License Applications for wind farms made prior to November 01, 2007. 12 of these projects have obtained the Affirmative Connection Opinion of TEIAS at different times but all prior to 2010. With respect to these 12 License

applications, EMRA was under a statutory duty to evaluate their files and decide, within 45 days, whether to grant a pre-approval decision or not. However, EMRA failed to do so. Other 12 projects have also obtained the Affirmative Connection Opinion of TEIAS, and even more, they have been granted a Pre-approval Decision by EMRA respectively. All of the applicant companies which have been given a Pre-approval Decision for these 12 License applications, have fulfilled the requirements of pre-approval decisions within due times. Therefore, with respect to these 12 projects, it was incumbent upon EMRA to grant their Licenses. However their cases have proceeded differently.

On February 18, 2010 EMRA took an extremely important decision, numbered 2431/10 (“**Decision**”). By this decision, EMRA implicitly cancelled the Affirmative Connection Opinions given by TEIAS and the Pre-approval Decisions granted by itself. The Decision also stated that the License applications made prior to November 01, 2007, must participate in a bidding to be organized by TEIAS together with the License applications made on November 01, 2007. This newly arisen situation was obviously not welcomed by the License applicants applied prior to November 01, 2007 since they had already passed certain licensing stages and 12 of them were even entitled to obtain their licenses. Considering that EMRA’s decision was in clear breach of the law, they sued EMRA before the State of Council as the first degree court for cancellation of the Decision and with a demand of the stay of execution. The case is ongoing.

Conclusion

EMRA, has been established by the Electricity Law as the regulatory and supervisory agency of Turkey, to ensure that the customers are supplied with a cost efficient electricity, in good quality conditions and environment friendly manner. EMRA was specifically charged with a duty by the Electricity law to encourage and expand the use of renewable energy sources for electricity generation purposes, and provide incentive solutions for renewable energies. Unfortunately however, premature policies and insufficient regulations did not allow EMRA to perform better and develop a well-organized wind energy market. As a consequence of ongoing lawsuits regarding EMRA’s Decision filed by the majority of the market players, the wind energy market seems to have been somehow locked up, and the Court’s decision is awaited by both investors and EMRA in the hope that it will remove the confusions and uncertainties regarding the market.

