

RENEWABLE ENERGY LAW HAS BEEN AMENDED

Law No. 5346 on The Use of Renewable Energy Sources for the Purpose of Electrical Power Generation dated 10 May 2005 ("**Renewable Energy Law**") has been amended by Law No. 6094 (hereinafter "**Amendments**"). The Amendments were published in the Official Gazette for promulgation on 8 January 2011.

The Renewable Energy Law is the most comprehensive statute enacted for the promotion of the use of renewable energy sources ("**YEK**" in Turkish; hereinafter "**RES**") in Turkey. The purpose of the Law is to –

- widen the use of renewable energy sources in generating electrical energy;
- bring in these sources into the economy in a safe, economical and quality way;
- increase source diversity;
- curtail greenhouse gas emissions;
- recuperate wastes;
- protect the environment; and
- develop the production sector which will be needed to accomplish these goals.

The Amendments are designed to further incentivise the use of RES for the purpose of generating electrical power. Relevant regulations mentioned in specific provisions of the Amendments are planned to be published within 3 months. You can find below a summary of the most important provisions introduced by the Amendments.

1) The Definition of RES under the Renewable Energy Law and the Amendments

As a result of the Amendments, the definition of RES applied in the Renewable Energy Law remains nearly the same¹ with the exception that gasses recovered from biomasses, including landfill gases ("**LFG**"), now fall within the ambit of the definition of RES and are enumerated as one of the subsidised non-fossil sources. LFG is defined as by-product gasses produced from wastes (including landfill wastes) used for the purpose of generating energy.

2) Pricing Incentives (Feed-in Tariffs) under the Amendments

The Amendments stipulate that the figures applicable to generation facilities based on RES will be determined in "Dollar cents" instead of "Euro cents". Furthermore, the original version of the Renewable Energy Law used to specify a universal 5.0 – 5.5 Euro cents incentive for every type of power generator. The Amendments introduce figures determined under the RES Support Mechanism for facilities that generate electricity from specific types of RES. The new incentives are as follows:

- **7.3** US dollar cents per kWh for a Hydroelectric generation facility.
- **7.3** US dollar cents per kWh for a Generation facility based on wind power.
- **10.5** US dollar cents per kWh for a Generation facility based on geothermal energy.
- **13.3** US dollar cents per kWh for a Generation facility based on biomass (including LFG).
- **13.3** US dollar cents per kWh for a Generation facility based on solar power.

The figures will be applicable for a period of 10 years for generation license holders who are subject to RES support mechanism and have commenced/will commence operations between 18 May 2005 and 31 December 2015. The rates applicable for facilities that will commence operations after 31 December 2015 will be determined by the Council of Ministers on the condition that they will not exceed the aforesaid rates.

As a result of the Amendments, hybrid energy generation facilities based on concentrated solar energy and energy sources other than RES now also fall within the ambit of the Renewable Energy Law.

Generators holding a renewable energy generation license and wishing to benefit from the RES Support Mechanism must apply to the Energy Market Regulatory Authority ("**EPDK**" in Turkish; hereinafter "**EMRA**") by 31 October of the year previous to the calendar year within which they wish to be subject to the RES Support Mechanism². Those who are subject to RES Support Mechanism cannot opt-out of the Mechanism within that year. Thereafter, they can opt-out and choose to sell their electricity in the spot market within the parameters set by their generation licences.

3) Incentives through the Pooling of Payments

The Amendment provides that suppliers of electricity (as defined by Electricity Market Law No. 4628) must pay into a pool that the Market Financial Settlement Centre ("**PMUM**" in Turkish) manages. This mechanism will better facilitate the collection of revenues by the generators.

The pool will provide an effective off-take guarantee for all renewable energy generators that opt into this system since this will guarantee the purchase of that generator's electricity by the suppliers. This incentive is broader in scope than the incentive introduced under the original version of the Renewable Energy Law because it will be applicable to all "suppliers" rather than "retailers" only. The word "Suppliers" includes but is not limited to "retailers"; i.e. it encompasses sources other than retailers such as wholesalers and generators. This way, eligible consumers choosing to buy electricity from sources other than Retailers will not water down the effectiveness of the off-take guarantee in the law.

4) Incentives Due to the Use of Components Made in Turkey

The Amendments additionally incentivise the use of mechanical and/or electromechanical components manufactured in Turkey. The generation facilities that use domestic mechanical and/or electromechanical components will benefit from the following supplementary contributions (for each domestic component they use) for a period of 5 years provided that they become operational before 31 December 2015:

- Hydroelectric generation facility
 - **1.3** US dollar cents per kWh for Turbine
 - **1.0** US dollar cents per kWh for Generator and power electronics
- Generation facility based on wind power
 - **0.8** US dollar cents per kWh for Wings
 - **1.0** US dollar cents per kWh for Generator and power electronics
 - **0.6** US dollar cents per kWh for Turbine tower
 - **1.3** US dollar cents per kWh for Rotor and all of mechanical parts within nasal groups (excluding payments made for wing groups, generator and power electronics)
- Generation facility based on photovoltaic solar power
 - **0.8** US dollar cents per kWh for PV panel integration and production of solar structural mechanics
 - **1.3** US dollar cents per kWh for PV modules
 - **3.5** US dollar cents per kWh for Cells constituting the PV **modules**
 - **0.6** US dollar cents per kWh for Inverters
 - **0.5** US dollar cents per kWh for Equipment used in focusing solar rays onto PV modules
- Generation facility based on concentrated solar power
 - **2.4** US dollar cents per kWh for Radiation accumulation tubes
 - **0.6** US dollar cents per kWh for Reflective surface panels

- **0.6** US dollar cents per kWh for Sun tracking systems
- **1.3** US dollar cents per kWh for Mechanical parts used in storing thermal energy
- **2.4** US dollar cents per kWh for Mechanical parts used in systems producing steam by collecting solar rays at the tower
- **1.3** US dollar cents per kWh for Stirling motors
- **0.6** US dollar cents per kWh for panel integration and solar panel structural mechanics
- Generation facility based on biomass energy
 - **0.8** US dollar cents per kWh for Fluidised bed steam boilers
 - **0.4** US dollar cents per kWh for Liquid or gas bed steam boilers
 - **0.6** US dollar cents per kWh for Gasification and gas cleaning group
 - **2.0** US dollar cents per kWh for Steam or gas turbines
 - **0.9** US dollar cents per kWh for Internal combustion engines or sterling motors
 - **0.5** US dollar cents per kWh for Generator and power electronics
 - **0.4** US dollar cents per kWh for Cogeneration systems
- Generation facility based on geothermal energy
 - **1.3** US dollar cents per kWh for Steam and gas turbines
 - **0.7** US dollar cents per kWh for Generator and power electronics
 - **0.7** US dollar cents per kWh for Stream injector or vacuum compressor

5) Other Incentives

- Generation facilities which become operative before 31 December 2015 (including facilities which were already operational at the date of enactment of the Amendments) will continue to benefit from an 85% discount for power transmission line permits, leases, rights of easement and usage permit costs during the first 10 years of their investment and operation. A similar provision existed in the original version of the Renewable Energy Law but its scope is now widened.
- Unlike other types of generators, the establishment of electricity generation facilities based on RES may be permitted in environmentally sensitive areas; subject to the affirmation of the relevant Ministry or regional conservation committee.
- Legal persons who are licensed to generate electric energy based on RES can set up additional capacity provided that –
 - they remain within the scope (e.g. area) set out in their licence; and
 - the power released to the system at the time of operations do not exceed the installed capacity specified in their licence.
- Generators based on RES whose installed capacity do not exceed 500kWh as stated under Electricity Market Law No. 4628 can benefit from the aforesaid price incentives for portions of energy that exceed their personal use and are released into the energy distribution system.

6) Special Regulatory Provisions Concerning Solar-Based Generators

- The standards applicable to parts used in solar-based electricity generation facilities, the test methods applicable in inspecting these facilities and the regulations regarding the procedures and principles which concern the proportion of solar-based electricity generated within solar based and hybrid electricity generating facilities will be stipulated by a regulation to be enacted by the Ministry in consultation with EMRA.
- On licence applications to build electricity generating facilities based on solar power, if the legal owner of the area of the facility is an applicant, no other application can be made in respect of the same facility area (i.e. there will not be a tender).

- Installed capacity for RES-Certified solar-based electricity generators that will be linking to the transmission system by 31 December 2013 cannot exceed 600MW. For generators linking to the system after 31 December 2013, the Ministry is entitled to lay down the maximum level of installed capacity.

Güner Law Office