

トルコ海外経済関係委員会 DEIK

The Time of Change in the Turkish Energy Markets

The legislation governing the Turkish energy markets has been in a period of change since the beginning of 2013. First, a new law regulating the Turkish electricity market (the “New EML”) was enacted in March, then the long-awaited new Petroleum Law (the “NPL”) came into force in May this year. A draft Natural Gas market Law is in process of preparation and will be submitted to the Turkish Grand National Assembly (the “TGNA”), which will replace its predecessor once approved by the TGNA.

The purposes common to all these changes are (i) introducing new and modernized provisions compatible with the regulations in liberalized and developed energy markets and which can respond better to the needs of the investors, (ii) attracting more private investment in the respective energy markets. This Article will provide a brief overview of the New EML and the NPL.

The New EML

The New EML repeals the Electricity Market Law of March 03, 2001 (the “Previous EML”). The Previous EML was in itself a reform, as it was the kick-off for the liberalization process of the Turkish electricity market. However, following 12 years of its enactment, The Previous EML clearly failed to respond to the various issues that arose along this liberalization process. The New EML aims to fill in the gaps of its predecessor and introduces many changes in this regard. Below are some of the highlights of the New EML:

1. Energy Markets Operating Corporation (“EPIAS”)

The New Law introduces a new corporation, EPIAS, in order to conduct market operating activities in a more effective way, with operations due to commence on September 30, 2013. EPIAS has been one of the issues that has been discussed the most and created many expectations in the market. The marketplace welcomed EPIAS as a step forward for the liberalization of the market. EPIAS will establish a stock exchange where electricity will be bought and sold. This would enable the determination of a reference price and the producers will be able to foresee the prices for a longer term. The market also expects EPIAS to pave the path for the issuance of derivatives depending on power purchase contracts.

However, it is still not clear how EPIAS will operate and what EPIAS’ shareholding structure will be. According to the New EML, maximum 15% of EPIAS shares can be held directly or indirectly by public institutions or companies with public capital, excluding the Istanbul Stock Exchange (“ISE”). This can be increased to a 30% by the Cabinet of Ministers. The government may choose to establish a 30:70 structure held by the Turkish Electricity Transmission Company and ISE. However, the private sector believes that at least 40% of the shareholding should be owned by the market players to ensure that EPIAS is operated independently and responds to the needs of the investors.

2. Pre-license

Another novelty of the New EML is the “pre-license” mechanism; a two tier system established to facilitate all administrative and bureaucratic requirements. The Previous EML required the issuance of the generation license by the Electricity Market Regulatory Authority (the “EMRA”), in order to make certain other applications, ultimately delaying the process for generator companies to become operative. The pre-license procedure aims to solve this problem. When a company applies for a license, it will first be granted a pre-license with a maximum period of 24 months. With this pre-license, the applicant company will have the right to make applications for various administrative permits, licenses and related documents as well as to acquire property rights and usage rights on the land plot where the facility will be built. If the necessary permits cannot be obtained over a period of 24 months, or the obligations specified by the EMRA cannot be fulfilled, the applicant will not be granted an electricity generation license.

Although the 24 month pre-license period has been criticized by the market for being too short, the law has not been amended to reflect this view. This demonstrates the enthusiasm of the government for new electricity generation projects to be realized as quickly and efficiently as possible. The same enthusiasm must be felt by the administrative bodies that will provide the permits required for the completion of a generation facility in order for the pre-license holders to obtain all the required permits in the given time.

Another highly debated provision is the prohibition of share transfers from applicant companies during the pre-license period. Except for the cases of succession or bankruptcy, any transaction which would result in a change in the shareholding structure of a pre-license holder will cause the pre-license to be nullified. The main purpose of this restriction is to prevent any kind

of license trading which, up until now, has been a serious problem in the development of generation facility projects.

3. Contest

An important change for the renewable energy sector is related to the contest principle when there is more than one application for the same area in the wind and solar energy licensing process. As per the New EML, the applicant who offers the highest contribution per kWh for a period of 20 years will win the contest as opposed to the previous system which set out a mechanism where the winner of the contest was the applicant who accepted the lowest price for the electricity it generated. The EML aims to grant licenses to the applicants who can make a serious investment.

4. Unlicensed Power Generation

One of the most welcomed amendments brought by the New EML relates to unlicensed power generation. Under the Previous EML, power plants using renewable energy resources with a maximum capacity of 500 kilowatts could generate electricity without obtaining a license. The maximum limit was constantly criticized for being extremely low. The New EML responded to the feedback from the market and increased the maximum capacity to one megawatt.

Although one megawatt may seem too small compared to the huge amount of electricity need in Turkey in the coming years; if the industrial facilities and households feel incentivized by the benefits provided by this provision, the cumulative effect of the separate small investments made for unlicensed power generation will definitely serve to respond to the electricity needs of Turkey.

The New EML also introduced a new provision concerning unlicensed power generation. Regardless of capacity, if a power plant generating electricity from renewable energy resources is isolated from the transmission and distribution grid, it will be exempt from the requirement of obtaining a production license.

The NPL

Turkey forms an energy corridor between Europe and the oil-rich countries of the Middle East and the Caspian Sea. Despite its important role in oil and gas transportation, the same statement cannot be made for oil production. 2.3 million tons of crude oil was extracted in 2012 as opposed to the 42.98 million tons in Azerbaijan to its east and the 157 million tons extracted in Iraq, its south-eastern neighbor.

The outcome of the recent exploration and production activity in Turkey shows that Turkey may have a promising potential in oil production. The extent of investment required to turn that potential into actual oil production is too cumbersome to be borne by the state-owned Turkish Petroleum Corporation. Therefore, a more enticing investment environment had to be created for the private players. The NPL that came into force in May this year was enacted for that purpose, replacing its outdated predecessor that dated back to 1954 (the “FPL”).

The FPL was a liberal and progressive legislation for that period in Turkey which led a nationalistic and conservative economic policy. Much has changed since then. Turkey became a liberal state making efforts to apply the principles of the free market system. The FPL was not investor-friendly enough to attract the required investment. The legislator therefore enacted the NPL to improve the regulations and to encourage investment in the exploration and operation activities. Below is a brief summary of some of the highlights of the NPL:

- Turkish land, which was formerly divided into 18 petroleum regions, is divided into two sections: onshore and off-shore. Under the FPL, the provisions regulating the onshore exploration activities used to apply to both onshore and off-shore. The lack of a separate regulation specific to off-shore exploration activities resulted in the decrease of investment.
- A “search permit” allowing the companies to collect hydrocarbon data on the allocated fields is introduced. The General Directorate of Petroleum Affairs will keep the information obtained confidential for eight years. Although not explicitly stated by the NPL, the reasoning of the NPL shows that the intent is to enable the sale of the collected hydrocarbon data in Turkey or abroad.
- The term of the exploration license for onshore is increased from 4 years to 5 years with a possibility to extend to 9 years. For off-shore, this period 8 years with a possibility to extend to 14 years.
- Unlike the FPL, under the NPL, the companies applying for the exploration license are obliged to provide a guarantee in the amount of 2% of the investment for onshore and 1% for off-shore. This was introduced to provide the licenses only to those who are serious about making the necessary investment.

- The FPL set forth a minimum of one drilling obligation and a maximum of eight licenses per company in every petroleum region each of which covered approximately 3 million hectares. This provision had been misused by the investors. Based on this regulation, some of the investors were obtaining the maximum amount of licenses in a specific region but conducting drilling activities for only one of those licenses to keep their other licenses in the region. This practice allowed those licensed investors to exclude other potential investors to make investments in the land plots where no drilling activity was going on. Thus, this misuse led to a result where most of the regions were left unexplored and closed to the exploration of other companies. The NPL revoked this provision which allowed such a misuse.
- Unlike the FPL where the state share to be paid by the oil manufacturer was calculated based on the wellhead prices, under the NPL it is calculated based on the local crude oil market price, which is a more sound and transparent way of calculating the state share.
- It is not possible to apply for a new exploration license until June 11, 2014.

Conclusion:

These legislative changes introduced by the New EML and the NPL were timely, if not late and were welcomed by investors. The government and the Ministry of Energy and Natural Resources are likely to introduce further decrees and communiqués to detail the application of these amendments and continue to further liberalize the energy market to meet its 2023 progress goals.

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