

Practical measures required for Former Certified Facilities due to the Revised Renewable Energy Act

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On 1 April 2017 (the “**Effective Date**”), the Act for the Partial Revision of the Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities (Act No.59 of 2016) (the “**Act**”) became effective, except for certain provisions, in order to substantially revise the current Feed-in-Tariff Scheme (the “**FIT Scheme**”). As a result of this revision, revisions to the Ordinance for Enforcement of the Renewable Energy Act, which prescribes the details of such new scheme, also became effective on the Effective Date. Under this revision, existing certified facilities will be deemed to be the FIT certified facilities under the new scheme if such facilities would satisfy with certain requirements (Former Certified Facilities, “**FCF**”). This revision has considerable impacts on the FCFs, the operators developing and operating the FCFs, and other related parties. This article provides an outline of the required measures that operators of FCF (“**FCF Operator**”) needs to undertake under the new scheme. Please see the article titled “Outline of the Revised Renewable Energy Act” (http://www.amt-law.com/en/pdf/bulletins9_pdf/170823_1.pdf) released together with this article for information concerning the outline of the Revised Renewable Energy Act.

1. Key measures concerning FCF

FCF Operators wishing to continue their business under the new FIT Scheme shall take the following measures;

- I. Check if they may obtain a Deemed Certification (the “**Deemed Certification**”) on their FCF and take certain relevant measures
- II. Prepare and submit business plan and ancillary documents within six months from the Deemed Certification Date
- III. Implement the business in accordance with the new FIT Certificate Criteria
- IV. Comply with the Operation Commencement Deadline

In the following sections, we will provide general information mainly on these points and also briefly explain other matters of particular note.

2. Actions to be taken by the FCF Operators

(1) Check if they may obtain the Deemed Certification on their FCFs and take the below measures

FCF Operator	Handling of FIT Certificate / Submission of Business Plan		
FCF Operators who have entered into interconnection agreement with transmission and distribution operators by the day immediately preceding the Effective Date (31 March, 2017) (including those who have already commenced operation)	<ul style="list-style-type: none"> As of the Effective Date, the FCF Operator is deemed as newly certified under the revised FIT Scheme The FCF Operator shall submit a business plan (along with a document certifying consent to a grid connection, which consists of a written consent to a grid connection and a document prescribing the amount of construction fees) by 30 September, 2017. The FIT Certificate shall be cancelled if it is not submitted. If the facility has already commenced its operation, the document certifying consent to a grid connection is not required. 		
FCF Operators without interconnection agreements as of the Effective Date	Principle: The FIT Certificate shall be cancelled Exceptions: (i) and (ii) described below		
	Exceptions	Requirements for Deemed Certification	Submission of business plan
	(i) FCF Operators who obtain FIT Certificates less than nine months before the Effective Date (FCF Operators who obtained FIT Certificates between 1 July, 2016 and 31 March, 2017)	If the FCF Operator executes an interconnection agreement within nine months from obtaining a FIT Certificate, it is deemed as a certified operator as of the execution date.	It shall submit a business plan (along with a document certifying consent to a grid connection) within six months from executing an interconnection agreement. The FIT Certificate shall be cancelled if it is not submitted.
	(ii) FCF Operators who are in the process of grid connection bidding as of the Effective Date or have completed such a process in less than six months	If the FCF Operator executes an interconnection agreement within six months from the end of the process, it is	If the facility has already

	before the Effective Date (FCF Operators who completed the process on or after 30 September, 2016 or are participating in a power source connection bidding process as of the Effective Date)	deemed as a certified business operator as of the execution date	commenced its operation, the document certifying consent to grid connection is not required.
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FCF Operators who obtained FIT Certificates under the former FIT Certification Scheme are deemed as acquirers of FIT Certificates under the new FIT Scheme, if they meet the requirements described in the table above. As mentioned above, the FCF Operators deemed as certified operators must submit "power generation business plan" (the "**Business Plan**") which meet the FIT Certification Criteria required by the Act.

(2) Prepare and submit Business Plan within six months from the Deemed Certification Date

When the FCF Operator fulfills the requirements for the Deemed Certification and is expected to retain its certification under the new FIT Scheme, it must submit the Business Plan in the same manner as those who obtains a FIT Certificate under the revised Act within six months from the date on which they were deemed to be a FIT certified operator under the new FIT Scheme (the "**Deemed Certification Date**") (it is April 1, 2017 in the most cases. Please see the table in item 2(1) above). The main categories of evaluation and certification criteria are described below. Upon preparing the Business Plan, FCF Operators should pay special attention to those matters which were not required in the former Act (the bold items described below).

Category of evaluation	Certification criteria	Evaluation criteria	Required documents
Inspection and maintenance	It shall establish and properly implements a system for appropriate inspections and maintenance.	(i) There shall be a designated person responsible for inspections and maintenances. (ii) Plans and systems regarding inspections and maintenance are established.	-
Construction of fences and walls	Appropriate measures shall be taken to prevent people unrelated to the business from	(i) It is not required in certain cases, such as when third parties are unable to approach the power generation	These shall be indicated in the structural drawing (facility layout drawing).

	approaching the power generation facilities without good reason.	facilities easily. (ii) Fences and walls shall be made by materials that third parties cannot remove easily, such as wires and not by simple materials such as ropes.	
Disposal of facilities	Appropriate plans for handling of power generation facilities upon closing the power generation business (such as the disposal of the power generation facilities) shall be taken.	The expenses for disposal shall be incorporated on the plans for income and expenditures (it is recommended that this is based on an estimate by a contractor for disposal. If it is difficult to obtain such estimate, it should generally be more than 5% of the construction cost, as a guide.)	-
Posting signs	It shall post a sign that can be seen easily from the outside indicating the name of the person or entity operating the renewable energy power generation business and other such required items (provided that roof-top solar power plants less than 20kW shall be exempted from this item).	(i) The places of the signs shall be specified in the facility layout drawing. (ii) The sign shall be in line with the “Image of Signs” described in the Guideline for Developing Business Plans. (iii) The person designated in the Business Plan (and business operation organization chart) to be responsible for inspections and maintenances of the plants shall be also	Structural drawing (facility layout drawing)

		responsible for inspections and maintenances of this sign.	
Secure lands	The FCF Operators shall have obtained property rights or any other titles to use the site on which the renewable energy power generation facilities will be installed, or it shall be ascertained to acquire such rights or titles.	There shall be documents verifying that the operator has obtained property rights or any other titles to use the site on which the power generation facilities will be installed, or it shall be ascertained to acquire such rights or titles.	Certified copy of a land register, or a lease contracts if the lands are owned by a third party (a letter of consent from the land owner may be accepted instead; provided, however, that the operator is required to submit a document that verifies the existence of the contract within a certain period from the certification. Without such submission the certification will be cancelled).
Compliance with related laws and regulations	It shall comply with the provisions of related laws and regulations (including local ordinances).	The FCF Operator shall have checked with the local government the applicable laws and regulations.	Confirmation document of processes concerning compliance with the related laws and regulations
Stable procurement (for biomass only)	The FCF Operator is expected to stably procure biomass used for power generation.	The procurement method of biomass shall be based on quantitative means or a specific strategy / explanations the FCF Operator shall have made explanations to all prefectures from which biomass is planned to be procured.	A biomass procurement and consumption plan (which must include explanations to prefectures), and contracts shall have been executed between biomass suppliers.

Measures taken in order to generate electricity continuously and stably (for geothermal only)	The condition and amount of the geothermal resource used for generating electricity shall be continuously checked, along with other measures necessary to generate electricity continuously and stably, before the commencement of supplying renewable energy electricity by using such facility.	The FCF Operator shall establish a geothermal resource monitoring plan and an environmental monitoring plan in accordance with the Guideline for Developing Business Plans.	A geothermal resource monitoring plan (including monitoring results) and an environmental monitoring plan
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Further to the criteria listed above, in order to ensure that FIT operators implement their businesses appropriately, the “Guideline for Developing Business Plans” published by the Agency for Natural Resources and Energy in March 2017 shows detailed interpretations of the requirements for the certification criteria. This includes interpretations in regards to the implementation of inspections and maintenances or compliance with other related laws and regulations, and also a “Recommendation” which requests FIT operators to undertake certain measures for matters that are not regulated by laws and regulations. The FCF Operators should prepare Business Plan by also taking into consideration the Guideline.

(3) Measures to be taken concerning the new FIT Certification Criteria

As the new FIT Certification Scheme is applicable to the FCF Operators deemed as certified operators, such FCF Operators are required to establish measures to comply with the criteria under the new FIT Scheme concerning the implementation of businesses, such as appropriate inspections and maintenances and posting signs disclosing information about the FCF Operator. Most of the criteria needs to be satisfied within “one year from the Deemed Certification Date” (i.e., March 31, 2018 in most cases), however some of criteria must be fulfilled “promptly after the commencement of operation” if the operation of the plants has not commenced at the Deemed Certification Date. Therefore, the deadlines can depend on the status of each FCF Operator.

(4) Compliance with the Operation Commencement Deadline

Among the FCF, the solar power generation facilities which entered into an interconnection agreement on or after 1 August, 2016 are required to commence its operation by certain deadline date set forth in the revised Act (the “**Operation Commencement Deadline**”). The Operation Commencement

Deadlines are as outlined in the following table.

	Operation Commencement Deadline	Penalties for Delays	Targets
Solar power - 10kW or more	3 years from obtaining a FIT Certificate	The procurement term shall be shortened by the number of days delayed.	Among the FCF, it is applicable only to those which entered into an interconnection agreement on or after 1 August, 2016
Solar power - less than 10kW	1 year from obtaining a FIT Certificate	Cancellation of the FIT Certificate	

As described in the table above, for FCF Operators who entered into interconnection agreements on or after 1 August, 2016, the Operation Commencement Deadline (i.e., term of 3 years or 1 year) commences from the Deemed Certification Date. In general cases where the interconnection agreements were executed by the end of March 2017, the Deemed Certification Date shall be 1 April, 2017, and it will also be the first day for calculating the Operation Commencement Deadline. In this case, the procurement price ("**FIT price**") shall not be changed even if the FCF Operator obtained the certificate for major changes other than certain items such as the increase of outputs of the plants (for example, the FIT price remains unchanged even if the manufacturer of modules certified under FIT Certificate are changed)¹. In contrast, FCF Operators who entered into interconnection agreements on or before 31 July, 2016 are not subject to the Operation Commencement Deadlines but subject to the rules concerning changes to the FIT prices under the former scheme, and therefore changing modules may have an impact on their FIT prices.

Furthermore, as described in the table, if the Operation Commencement Deadline passes, (i) the procurement terms may be shortened for facilities with outputs 10kW or more and (ii) the FIT Certificates may be cancelled for facilities with outputs less than 10kW.

3. Other matters to which FCF Operators should note

(1) Amendments to the specific agreements due to reasons attributable to Retailers

Under the revised FIT Scheme, those obliged to purchase the renewable energy electricity changed from "Electricity Retailers" to "General Electricity Transmission and Distribution Operators"², and

¹ Ministry of Economy, Trade and Industry is considering to amend the relevant regulations so that change of outputs of the modules will trigger an adjustment of the FIT Price except certain minor level of change: i.e. (1) a decrease of less than 20% of the total power output of the solar modules; and (2) an increase of less than (a) 3kW; or (b) 3% of the total power output of the solar modules.

² For example in Kanto-Region, TEPCO Energy Partner, Incorporated (TEPCO Energy Partner) is the "Electricity

"Specified Electricity Transmission and Distribution Operators" (both defined under the Electricity Business Act), who are responsible for operating grids and balancing supply of and demand for electricity. Even after the Effective Date of the revised Act, however, power purchase agreements (Specified Contracts) entered into with the FCF Operator before March 31, 2017 shall remain effective and Electricity Retailers may continue to purchase electricity until such Agreements expire. Therefore, in general, if the FCF Operators have entered into the power purchase agreement with the Electricity Retailer (e.g., TEPCO Energy Partner) by March 31, 2017, they can keep it as an effective power purchase agreement with such Electricity Retailer under the new FIT Scheme.

However, if any of (i) parties, (ii) facilities, (iii) FIT period, or (iv) FIT price of such a power purchase agreement is amended, which are substantial elements of such agreement and an amendment of such substantial elements can be virtually seen the same as executing a new specific agreement, the FCF Operator must execute the power purchase agreement with Electricity Transmission and Distribution Operator (e.g, TEPCO Power Grid), if any of (i) to (iv) of an existing agreement is amended due to certain conditions of the Electricity Retailer (such as bankruptcies), who is an existing party of the power purchase agreement .

(2) Conditions concerning the FIT prices for existing FCF

Power source	Fiscal Year	Rules for determining the pricing date	Changes to prices due to a Certification of Change
Solar power	Fiscal year 2012	"Grid connection application date" or "Certification date" whichever comes later	None
	Fiscal year 2013		· Significant changes to outputs before commencing operation (except for (i) changes caused by the utility company)
	From 1 Apr, 2014 to 14 Feb, 2015		· Changes to outputs before commencing operation as large as 10kW or more and 20% or more (except for (i) above)
	From 15 Feb, 2015 to 31 Mar, 2015		· Changes to the manufacturers or types of modules or changes which lower conversion efficiencies (excluding those with outputs less than 10kW or cases where the manufacturer ceases to produce such type of module)
	Fiscal years 2015 -	"Interconnection execution date" or "270 days from the day following the grid	· Increase of outputs or decreases as large as 10kW or more and 20% or more before commencing operation (except for (i) above and

Retailer" and "TEPCO Power Grid, Incorporated" (TEPCO Power Grid) is the "General Electricity Transmission and Distribution Operator", which are both subsidiaries of Tokyo Electric Power Company Holdings, Inc. (TEPCO Holdings) .

	2016	connection application date (or the certification date if the operator applied for grid connection before obtaining certification)" whichever comes earlier	(ii) cases where the facility's output is originally less than 10kW and will remain under 10kW) *For fiscal years 2015 and 2016, changes to outputs after commencing operation (except for (i) above) shall also be subject to change to prices. * If the interconnection agreement is executed on or after 1 August, 2016, only increase to outputs (except for (i) above) shall be subject to change to prices (provided, however, an operation commencement deadline shall be applicable).
	Fiscal year 2017 and after	"Certification date" *The interconnection agreement is required as one of the conditions to obtain certification.	· Increase of outputs (except for (i) above and (ii) above) *If the interconnection agreement is executed on or before 31 July, 2016, the criteria for fiscal years 2015 and 2016 shall apply.
Non-solar power	Fiscal year 2012	"Grid connection application date" or "Certification date", whichever comes later	None
	Fiscal year 2013		· Significant changes to outputs before commencing operation (except for (i) above)
	Fiscal year 2014		· Changes to outputs as large as 10kW or more and 20% or more (except for (i) above)
	Fiscal year 2015 - 2016		· Changes to outputs as large as 10kW or more and 20% or more (except for (i) above) * For unused woody biomass power generation facilities, changes to categories between 2,000kW or more and less than 2,000kW shall also be subject to change of prices.
	Fiscal year 2017 and after	"Certification date" *The interconnection agreement is required as one of the conditions to obtain certification.	· Changes to outputs as large as 10kW or more and 20% or more (except for (i) above)

The conditions for the application of FIT prices and rules for price changes are generally described in the table above.

The FCF Operators who meet the requirements for the Deemed Certification should also note that they

must comply with the requirements imposed on them upon obtaining certification (which requires them to (i) (a) secure titles to use the site and (b) place an order for facilities (including modules), or (ii) submit documentary evidences concerning the commencement of operation, within 270 days from the certification date, the deadline of which may be extended in certain cases).

4. Conclusion

As mentioned above, revisions to the FIT Scheme by the revised Act have a substantial impact on FCF Operators which are already developing or operating power generation facilities under the former scheme. Specifically, FCF Operators who have already obtained FIT Certificates under the former FIT Scheme must prepare and submit Business Plan in line with the new FIT Certification Criteria. After the FCF Operator obtains a (deemed) FIT Certificate and finally commences its operation (by the Operation Commencement Deadline), it is also required to carry out inspections and maintenances of facilities and to dispose of the facilities upon closing its operation in accordance with the new FIT Certification Criteria and the Guidelines for Developing Business Plans. FCF Operators may receive orders of improvement or lose its certification if it does not operate its business in line with its certified Business Plan. Therefore, in order to comply with laws and regulations, FCF Operators should not only take measures which are explicitly required under certain laws and regulations but also pay attention to the actions “recommended” in the Guidelines for Developing Business Plans issued in March this year.

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