

- ENERGY PRACTICE UPDATE -
Recent Trends in the Renewable Energy Business and
METI's Model PPA under Japan's FIT Scheme

1. FIT Scheme for Renewable Energy in Japan

For the purpose of promoting the usage of solar and other renewable energy sources, Japan commenced from July 2012 a Feed-In-Tariff (FIT) scheme to oblige electric utility operators to purchase electricity generated from five renewable energy sources - photovoltaic (PV), wind, hydro, geothermal and biomass, at a fixed price and for a certain period of time on July 1, 2012 in accordance with the Act on Special Measures concerning the Procurement of Renewable Electric Energy by Operators of Electric Utilities (Act No. 108 of 2011, the Act) (for the outline of the FIT scheme, see our news letter as of May 2012, http://www.amt-law.com/pdf/bulletins2_pdf/120528.pdf).

2. Recent trends in the renewable energy business in Japan

Since July 2012, many renewable energy suppliers and other parties (both domestic and foreign) have entered or are expected to enter into the Japanese renewable energy markets, and the renewable energy business in Japan, especially PV, seems to be booming at the moment, mainly due to a very generous purchase price set by the Japanese government (e.g., 42 yen/kWh including tax for a PV facility with 10 kW capacity or more). The Ministry of Economy, Trade and Industry (METI) has disclosed the number of renewable electric energy generating facilities which have obtained a certificate from the METI under the FIT scheme and the aggregate capacity of the electric energies installed thereby. As at end of October 2012, 146,899 facilities have obtained a FIT certificate and 2,556,595 kW are expected to be generated by these facilities. It mainly consists of PV facilities, of which there are 146,858 facilities (including 340 mega solar facilities) generating an aggregate of 2,212,856 kW (including 1,008,439 kW generated by mega solar facilities).

3. Practice of executing PPAs with electric utility operators

One of the important factors for the renewable energy business is executing power purchase agreements (PPA) with the electric utility operators (such as TEPCO). The Act obliges electric utility operators, upon the request of renewable energy suppliers, to allow access to their grid connection and to execute a PPA to purchase electricity generated by renewable energy suppliers at the rate and for the period of time set by METI. Although the Act gives a supplier the power to force the electric utility operators to execute a PPA upon certain terms and conditions prescribed under the Act (such as fixed price and fixed purchase term), the Act also allows for the electric utility operators and suppliers to, upon a mutual agreement between them, execute a PPA which deviates from these prescribed conditions. Based on this understanding, many of the electric utility operators have published on their web-sites a "form PPA" for the FIT scheme, which includes several provisions defeating the purpose of the FIT scheme under the Act (for example, the electric utility operators have right to (i) change the purchase price or the purchase term at their discretion, (ii) decline to execute a PPA, (iii) amend other provisions at their discretion or (iv) control or suppress a power output without any indemnity.)

Although the suppliers may negotiate with the electric utility operators to revise these "form PPAs" to be consistent with the Act, such a negotiation may take time and pose an impediment on the smooth growth of the renewable energy market in Japan in the end.

Considering this situation, the METI prepared and disclosed on its web-site a model agreement for power purchase and grid connection (the "METI's Model PPA") on September 2012. The METI's Model PPA includes provisions consistent with the Act and other provisions which also seem fair and reasonable. Therefore, the suppliers should consider using the METI's Model PPA when they negotiate a PPA with electric utility operators under the FIT scheme.

Please note that the METI's Model PPA is drafted based on the following assumptions:

- (i) the same electric utility operator provides access to its grid connection to the supplier and purchases the electric power from the supplier;
- (ii) the power plant is a PV or wind facility with 500kW capacity or more;
- (iii) the METI's Model PPA is executed before the construction of the facility; and
- (iv) the supplier will raise the funds necessary for the construction of the facility from a financial institution.

In connection with (iv) above, the METI's Model PPA allows for the supplier to provide a security interest over its account receivables and other rights against the electric utility operator under the METI's Model PPA on behalf of the financial institutions or other financiers.

4. Future developments

We understand that the current boom depends mainly on the generous prices set for renewable energies. The purchase price and term will be reviewed and revised annually at the end of each March (or semi-annually, if necessary). Therefore, the current purchase prices of renewable energies may be revised from April 2013 and it may have an impact on the current trends of the renewable energy market in Japan. The market participants should pay close attention to coming price revisions and other developments in this area.

5. Practical Considerations for Securing the Price for the Period ending March 2013

Another matter that investors should be aware of is the timing of the acceptance of a written application for connecting renewable energy generating facilities to a grid by electric utility operators.

METI provides under the Act that, in order to secure a purchase price and purchase term of renewable energies, (i) renewable energy supplier must obtain a renewable electric energy generating facility certificate from the METI and (ii) its written application for connecting its facility with a grid must be accepted by electric utility operators. The process to obtain a certificate from the METI or its designated local office requires about one month. It should be also noted that, most electric utility operators require the evaluation process under which the electric utility operators evaluate a potential connection point to a grid, the capacity of their facilities and other equipments, before the renewable energy suppliers file a written application for a connection. This evaluation process usually requires three months for a renewable energy generating facility which is able to provide 50 kW or more.

To enjoy the generous 42 yen/kWh for electric power generated by PV facilities for the period ending March 2013, the renewable energy supplier will need to complete the evaluation process provided by the electric utility operator as soon as possible and file the written application for connection by March 31, 2013.

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