

## *Revisions of FIT Scheme to promote usage of Renewable Electric Energy*

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On January 22, 2015, the Agency for Natural Resources and Energy (“ANRE”) has promulgated a ministerial ordinance and related guidance notes (“**Ministerial Ordinance**”) revising the enforcement regulation of the Act on Special Measures concerning the Procurement of Renewable Electric Energy by Operators of Electric Utilities (the “**Renewable Energy Act**”), after holding a public hearing to deal with the fact that general electric utility operators have withheld applications of interconnection from power generation operators pursuant to the Renewable Energy Act. This Ministerial Ordinance has partially come into effect on January 26, 2015 (part of such Ministerial Ordinance and related guidance notes came into effect on February 15, 2015).

This newsletter article sets out an outline of the Ministerial Ordinance.

### **1. Outline of the Current FIT Scheme and the Reason for the Revision**

An electric utility operator (“**Utility Operator**”) is generally obliged to enter into an agreement (the “**Specified Agreement**”) in relation to the supply and purchase of electricity generated from photovoltaic (“**PV**”), wind, hydro, geothermal and biomass (the “**Renewable Energy**”), upon request from those who plan to supply Renewable Energy generated by a power plant certified by the Ministry of Economy, Trade and Industry of Japan (“**METI**”) (hereinafter such power facilities called as the “**Certified Facilities**”). Under the Specified Agreement, the Utility Operator is subject to a minimum price set by METI in advance when purchasing Renewable Energy (the “**Procurement Price**”) and to a certain period for the purchase agreement, which is also set by METI in advance (the “**Procurement Period**”).

Also, a power generation operator (“**Generation Operator**”) is not able to supply the Renewable Energy to a Utility Operator unless the Certified Facilities are interconnected to the power transmission and distribution networks (the “**TDN**”) of the Utility Operator. Then, a Utility Operator is also generally obliged to enter into an agreement in order to interconnect its TDN with the Certified Facilities upon request from such a Generation Operator (the “**Interconnection Agreement**”) (for an outline of Feed-In-Tariff (“**FIT**”) scheme, see our newsletter as of May 2012, [http://www.amt-law.com/pdf/bulletins12\\_pdf/120528.pdf](http://www.amt-law.com/pdf/bulletins12_pdf/120528.pdf))

It is important to keep similar levels of supply and demand at all times in order to keep the energy supply stable, as imbalance of energy supply and demand may cause a power outage and other problems. Therefore, in the case of oversupply of energy, a Utility Operator needs to reduce the energy supply by reducing the electricity generation by its thermal power plants and taking other measures. However, if a Utility Operator is not able to resolve the imbalance of energy supply and demand by taking those measures, it will have to direct Generation Operators to curtail the energy supply by the Renewable

Energy (this direction and curtailment called as the “**Curtailment**”). If a Utility Operator is not allowed to do such direction to implement sufficient Curtailment, it has to accept Renewable Energy to the extent possible under the expected lowest electric demand in order not to cause a power outage due to oversupply of energy. As a result, if a Utility Operator is allowed to implement the Curtailment, it may expand its capacity to accept Renewable Energy.

Prior to this revision, a Utility Operator was allowed to include a provision in the Interconnection Agreement requiring the Generation Operator to implement the Curtailment pursuant to the Utility Operator’s direction in relation to the Certified Facilities of PV and wind with the capacity of 500kW or more up to 30 days per year without paying compensation to the Generation Operator of such Certified Facilities, given the predictability of the Curtailment and the national burden to promote usage of the Renewable Energy, which costs higher than other energy sources, in addition to the relationship between the Curtailment and the Utility Operator’s capacity above.

However, the working group established by ANRE found that the energy supply by the Renewable Energy for Utility Operators already exceeds the Utility Operator’s capacity to accept the Renewable Energy under the prior Curtailment rules outlined above.

Under such situation, in order to develop the Renewable Electric Operating Business soundly and smoothly by expanding Utility Operators’ capacity to accept the Renewable Energy, as well as suppressing the increasing national burden of energy costs as a result of promoting the Renewable Energy supply, the following revisions have been promulgated (Please also see the attachment “List of outline of revision” below).

## **2. Outline of the Revision to the Target of the Curtailment and Interconnection**

### (1) Expansion of the Curtailment Target (effective from January 26, 2015<sup>1</sup>)

Before this revision, the target of the Curtailment was limited to a Certified Facilities of PV or wind with 500kW or more. The Ministerial Ordinance expanded the target of the Curtailment in order to include Certified Facilities of PV or wind of less than 500kW. This revision allows more flexibility in implementing the Curtailment, which will increase the Utility Operators’ capacity to accept the Renewable Energy.

Specifically with respect to PV power, a Utility Operator needs to implement the Curtailment with respect to Certified Facilities with 10kW or more before it does the same for Certified Facilities with less than 10kW. Also, currently a new rule has been under discussion with respect to a situation where the Generation Operator of a Certified Facility with less than 10kW intends to sell only the surplus of Renewable Energy not used by it. Pursuant to this rule, the Curtailment would only be applicable to such surplus of Renewable Energy.

### (2) Shift of Time Controlled Rules (effective from January 26, 2015<sup>1</sup>)

In addition to expanding the Curtailment target by providing flexibility in the implementation of the Curtailment, the revision intends to increase the Utility Operator’s capacity to accept Renewable Energy.

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<sup>1</sup> The prior rule will apply to the Recognized Power Facilities which completed an application for interconnect with the TDN before the enforcement of the Ministerial Ordinance. Also, please note that, although this is the general timing of the enforcement, different enforcement dates may apply depending on which Utility Operator owns the TDN and how much the electric output is.

Under the prior rule, a Utility Operator was allowed to implement the Curtailment on a daily basis and for up to 30 days per year without paying any compensation. On the other hand, under the revised rule, a Utility Operator is allowed to implement the Curtailment on an hourly basis, limited to 360 hours per year for a Certified Facility of PV, and 720 hours per year for a Certified Facility of wind, without paying compensation.

- (3) Measures to secure the appropriate enforcement of the new rule (obligation to install remote control system) (effective from January 26, 2015<sup>1</sup>)

Utility Operators shall implement the Curtailment in accordance with the new hourly basis Curtailment rule. It is important to appropriately implement this new rule for purposes of keeping Generation Operators profitable.

In order to secure the proper Curtailment operation under the revised rule, Generation Operators are required to install the appropriate equipment (such as remote control system to manage the Curtailment).

- (4) Addition of Designated Utility Operators (effective from January 26, 2015<sup>1</sup>)

If certain Utility Operators, as designated by the METI (“**Designated Utility Operator**”), are not able to continue to accept the Renewable Energy from Certified Facilities without implementing the Curtailment over the statutory limitation, such Designated Utility Operator is allowed to enter into an Interconnection Agreement under which the Curtailment may be implemented over the statutory limit. Previously, only Hokkaido Electric Power Company had been designated as a Designated Utility Operator. In line with this revision, in addition to Hokkaido Electric Power Company, the following companies have been designated as Designated Utility Operator on and from December 22, 2014: Tohoku Electric Power Company, Hokuriku Electric Power Company, Chugoku Electric Power Company, Shikoku Electric Power Company, Kyushu Electric Power Company and Okinawa Electric Power Company.

Please note that, similar to what was explained in item (1) above, Certified Facilities of PV or wind of less than 500kW are now included in the target of the Curtailment implemented by a Designated Utility Operator, and also a Designated Utility Operator needs to implement the Curtailment with respect to a Certified Facilities with 10kW or more before it does the same for Certified Facilities with less than 10kW.

Moreover, Renewable Energy Generation Operators are able to improve their profitability by informing them the expected period of Curtailment. Therefore, a Designated Utility Company is obliged to publicly release its expectation of the prospective Curtailment implementation once a year.

### 3. Revision of FIT Scheme

Under the FIT scheme, a Utility Operator is obliged to purchase the Renewable Energy at a minimum Procurement Price. However, because the Procurement Price is higher than what the Utility Operator would have paid for an equivalent amount of energy from another source, the end user fees increases. Therefore, the Procurement Price must be well-balanced and kept at an optimal level.

As PV equipment costs are decreasing, this revision promotes an adjustment of the Procurement

Price which is meant to promote the use of Renewable Energy while avoiding excessive electric charges.

(1) Adjustment of the Procurement Price applicable to PV

(a) Change the timing to determine the applicable Procurement Price (applicable to an interconnection application made on and after April 1, 2015<sup>2</sup>)

The moment of determination of the Procurement Price for the Renewable Energy generated by Certified Facilities will change from the “application for interconnection with the TDN” to the “execution of the Interconnection Agreement”, in order to reflect the accurate cost of the Renewable Energy as much as possible.

However, if a Utility Operator submits a certificate stating that an Interconnection Agreement has not been entered into after 270 days from the interconnection application due to the reasons attributable to the Utility Operator, then the Procurement Price is determined as the one applicable at the moment of the expiration of such period (270 days after the date immediately following the date the interconnection request was made). In response to a public hearing, METI listed the following examples as “reasons attributable to the Utility Operator” above: (i) broad scope of the interconnection works, (ii) negotiation with a land owner, (iii) occupation permission of public road, or (iv) the regulation of the work accompanied with blackout, are required in connection with the construction to interconnect the Certified Facilities with the TDN. This is meant to provide predictability on how much the Procurement Price may become for those who are planning to engage in the Renewable Energy generation business.

(b) Change in output power and “solar cell specifications” prior to the commencement of operation (applicable to an application for approval of change made on and after February 15, 2015)

The Procurement Price must be determined by taking into consideration the specifications of a Certified Facility, the costs structure and other items, and must be in an amount sufficient to secure the appropriate profitability of the Generation Operator. Therefore, if there is an increase of power output (not power output per solar cell but per whole part of the Certified Facilities) or change in the solar cell specifications (change of manufactures or kinds of solar cell, or decreasing of conversion efficiency) following the execution of the Specified Agreement and/or the Interconnection Agreement but before the commencement of operation, the Generation Operator will be required to submit an application for approval of such increase or change to METI and the Procurement Price shall be revised to one applicable at the time of the approval for such increase or change.

Please note that the decrease of conversion efficiency of solar cells is considered a change in the solar cell specifications and, as such, it triggers the change of the applicable Procurement Price regardless of further reasons. On the other hand, the Procurement Price should not be adjusted only as a result of a change in the power conditioner specifications.

Also, note that if the relevant change is not attributable to the Generation Operator, the Procurement Price may not be adjusted. METI lists the increasing of the power output as a result of the examination of the interconnection by a Utility Operator or change in solar cell

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<sup>2</sup> Please note that the current rule will be applicable to a Certified Facility which delivered an interconnection application to the responsible department prior to the relevant enforcement date.

specifications due to the suspension of its manufacturer's business, as examples of such changes.

Moreover, the Procurement Price for the Certified Facilities of PV with less than 10kW shall not be adjusted as a result of increasing the power output (to the extent that it remains as generating less than 10kW after the increasing) or changing solar cell specifications. This is explained by the fact that such the Certified Facilities are mainly constructed by general customers and serve their residential purposes, and while there are too many of such Certified Facilities, they are also less likely to make such change.

- (c) Change of the Procurement Price in relation to "increasing of power output" after the commencement of operation (applicable to an application for approval on and after April 1, 2015)

If the power output of a Certified Facility increases as a result of additional construction after commencement of the operation, the respective Generation Operator must submit an application for the METI's certification as a new facility with regard to the additional construction. If the additional construction is approved as another Certified Facility, the Procurement Price in connection with such additional Certified Facility will be one applicable at the time of such METI's certification. If a Generation Operator submits an application for an approval to increase power output of an existing Certified Facility instead of the separate certification mentioned above, the Procurement Price at the time of such approval will be applicable to all the Renewable Energy generated by such Certified Facility (both the pre-existing part and the additional construction).

However, because of the same reasons described in item (b) above, the Procurement Price for the Renewable Energy generated by the Certified Facilities of PV with less than 10kW is not subject to any adjustments as a result of increasing its power output (limited to less than 10kW following the increase) after commencement of operation.

Please note that the decrease of the power output of a Certified Facility after commencement of its operation does not trigger the adjustment of the Procurement Price.

- (2) Preventing Generation Operators to secure capacity before the commencement of operation (applicable to an interconnection application submitted on and after January 26, 2015)

Prior to the revisions, Generation Operators had been able to secure capacity to access its Certified Facilities to the TDN before execution of the formal Interconnection Agreement or before paying the construction cost for interconnection. As a result, sometimes, a Generation Operator secured such capacity without actually starting its operation.

To solve such problem, this revision changes the moment when a Generation Operator may secure such capacity, which now corresponds to the execution of the Interconnection Agreement. Also, a Utility Operator is allowed to refuse to execute the Interconnection Agreement unless the Generation Operator accepts the Utility Operator's right to terminate the Interconnection Agreement if (i) the Generation Operator fails to pay the construction cost for interconnection within one month after execution of the Interconnection Agreement or (ii) the Generation Operator does not commence its operation pursuant to the schedule to be agreed under the Interconnection Agreement.

- (3) Facilitation of securing the site locations (as soon as possible)

As Certified Facilities of PV need a large project site, sometimes there were disputes or other issues in connection with securing the locations. To prevent such disputes, those who apply for

METI's certification of Certified Facilities are required to provide information about progress/status of relevant procedures to be taken pursuant to the relevant laws and regulations that are necessary to secure the site locations and/or construction of Certified Facilities at the time of approval. The information provided by applicants will be made available by METI to the local authorities of the place where Certified Facilities will be constructed, including details of the project.

#### **4. Conclusion Remarks**

Although almost 3 years have passed since the Renewable Energy Act, the situation surrounding the electric utility industry keeps changing. Issues like the reform of the electricity system with full liberalization of the electricity retail business, as well as the legal unbundling of the power generation, transmission and distribution sectors have been under discussion. Also, METI has made it public that it continues to consider the revision of the rules about frequency conversion station, pursuant to which Utility Operators alternate the current of the electricity in order to transmit the Renewable Energy efficiently, together with new rules on settlements between Utility Operators for purposes of mutual electricity transmission.

In that context, we will continue to pay attention to the possibility and progress of future revisions as we develop our understanding of the Ministerial Ordinance.

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Items	Prior Revision	Post Revision	Timing of Enforcement
<b>1. Curtailment</b>			
Target of the Curtailment	Limited to PV or wind with 500kW or more	All Certified Facilities (With respect to PV, 10kW or more are prioritized for the Curtailment)	January 26, 2015 (the prior rule will be applicable if the request of application to interconnect was completed before the enforcement)
Revision of time controlled rule	Time unit: daily basis	Time unit: hourly basis	
	Maximum without compensation: 30 days per year	Maximum without compensation: For PV: 360 hours per year For wind: 720 hours per year	
Measures to secure the appropriate enforcement of new rule (obligation to install remote controlling system)	No regulation	Generation Operators are obliged to install enough equipment (such as remote control system for the Curtailment) in order to implement to the Curtailment properly.	
Designated Electric Utility Operator	Only Hokkaido Electric Power Company	Hokkaido Electric Power Company, Tohoku Electric Power Company, Hokuriku Electric Power Company, Chugoku Electric Power Company, Shikoku Electric Power Company, Kyushu Electric Power Company and Okinawa Electric Power Company	January 26, 2015
<b>2. FIT Scheme (Procurement Price)</b>			
Timing for fixing the Procurement Price	The date of interconnection application	The date of execution of the Interconnection Agreement (where a Utility Operator submits a certificate that an Interconnection Agreement has not been entered after 270 days have elapsed from the interconnection application due to the reasons attributable to it: 270 days after the date immediately following the date such application was made)	Applicable to an interconnection application on and after April 1, 2015
Increasing of	The Procurement Price is	The Procurement Price at the time	Applicable to an

power output or PV facility specifications before commencement of operation	adjusted at the time of submitting the document to change power output over 10kW or PV facilities output capacity +/- 20%	of submitting the application in relation to the relevant changes will be applicable except if such changes are not attributable to the Generation Operator. There is no adjustment applicable to PV facilities with less than 10kW (provided that such power output is still less than 10kW after the relevant changes).	application for approval of change on and after February 15, 2015
Increasing of power output after commencement of operation	The Procurement Price applicable to the existing facility continues to be applicable.	Additionally constructed part is regarded as a new Certified Facilities and the Procurement Price at the timing of certification of the new facilities will be applicable. If a Generation Operator would seek approval to increase the power output of the whole existing facility instead of the new certification above, the Procurement Price at the timing of approval will be applicable to the whole existing facility. There is no adjustment applicable to PV facilities with less than 10kW (provided that power output is still less than 10kW after the relevant changes).	Applicable to an application for approval on and after April 1, 2015

### 3. FIT Scheme (Improvement of Management of Scheme)

Preventing Generation Operators to secure capacity to access its Certified Facility without operation	No rules	A Utility Operator is allowed to refuse to execute an Interconnection Agreement without reserving its right to terminate it if (i) the contribution to the cost for interconnection construction is not paid by the Generation Operator within 1 month after execution of the Interconnection Agreement or (ii) the Generation Operator fails to commence its operation pursuant to the schedule in the Interconnection Agreement.	Applicable to an application for recognition of change on and after January 26, 2015
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Securing the site locations	No rules	Applicants need to submit information about the progress/status of the relevant procedures under the relevant laws and regulations, and METI will make such information available to the local authorities where the Certified Facilities will be constructed, including details of the project.	As soon as possible
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