

Japanese Feed-in Tariff - METI has released its Model Power Purchase and Grid Connection Agreement

On September 26, 2012, the Ministry of Economy, Trade and Industry ("METI") released a model power purchase and grid connection agreement ("Model PPA"). The Model PPA is expected to be used as a guideline when suppliers of electricity from renewable energy sources ("Renewable Electricity") connect their Renewable Electricity generating facilities to the grid systems operated by electric utilities, and sell Renewable Electricity to the electric utilities, pursuant to the Act on Special Measures concerning the Procurement of Renewable Energy by Operators of Electric Utilities ("J-FIT Act").

The Model PPA will help facilitate the development of a market consensus for terms of power purchase and grid connection agreements. According to METI, the provisions in the Model PPA are consistent with the J-FIT Act (and the regulations issued thereunder). The Model PPA is designed to include terms that enhance debt financing of Renewable Electricity projects under the J-FIT Act.

The basic assumptions of the Model PPA are (i) that the purchaser of Renewable Electricity is the electric utility that operates the grid system which the relevant Renewable Electricity generating facility is connected to; (ii) that the relevant facility is certified by the Minister of METI as a solar power facility or as a wind power facility with a capability of 500 kW or more; (iii) that the power purchase and grid connection agreement will be executed before construction of the facility commences; and (iv) that the Renewable Electricity project will receive third party debt financing.

METI encourages Renewable Electricity suppliers to modify the Model PPA to fit with the needs and circumstances for each project, provided that the modifications are consistent with the J-FIT Act (and the regulations issued thereunder).

Background

Under the J-FIT Act, electric utilities are only permitted to refuse to enter into a power purchase agreement with Renewable Electricity suppliers for limited reasons that are stipulated in the J-FIT Act (and the regulations issued thereunder). These reasons are provided in order to protect certain legitimate interests of the electric utilities from being harmed unreasonably. Electric utilities are not permitted to refuse to enter into a power purchase agreement with a Renewable Electricity supplier unless a stipulated reason applies. This framework gives Renewable Energy suppliers a degree of flexibility when proposing terms of power purchase agreements to electric utilities.

With respect to a grid connection agreement, the J-FIT Act has adopted a similar framework where an electric utility is only permitted to refuse to enter into a grid connection agreement with a Renewable Electricity supplier if one of the limited reasons that are stipulated in the J-FIT Act (and the regulations issued thereunder) applies. Thus, Renewable Energy suppliers also have some flexibility when proposing terms of grid connection agreements to electric utilities.

Since the feed-in tariff framework under the J-FIT Act came into effect on July 1, 2012, electric utilities have asked Renewable Electricity suppliers to accept model power purchase agreements and grid connection agreements that were drafted by the electric utilities. There has been some concern in the market that the terms included in such model agreements include provisions that may be inconsistent with the J-FIT Act (or the regulations issued thereunder).

The Model PPA is expected to help overcome this issue by providing a guideline that METI has endorsed to be compliant with J-FIT Act (and the regulations issued thereunder). As described above, METI encourages Renewable Electricity suppliers to modify the Model PPA to fit with the needs and circumstances for each project. The Model PPA is expected to enable Renewable Energy suppliers to engage in constructive discussions regarding power purchase and grid connection agreements with electric utilities taking advantage of the flexibilities given to the suppliers. By facilitating such constructive discussions, the purpose of the J-FIT Act is expected to be better achieved.

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We note that Article 1.2 (Commencement Date and Term of Sale and Purchase) and Article 1.4 (Price) of the Model PPA are of particular importance to Renewable Energy suppliers. Article 1.2 provides for a full term (of up to 20 years). Article 1.4 provides for a fixed price applicable throughout the term. Please note, however, that both Articles provide for the following exceptions: (i) upon an amendment to the certification of a Renewable Energy generating facility, the term and price shall be replaced with a new term of up to 20 years at the price applicable under the J-FIT Act at the time of the amendment, and (ii) the term and price may be amended if a nation-wide order by the Japanese government is issued in accordance with Article 3.8 of the J-FIT Act¹.

Table of Contents of the Model PPA

The Model PPA is in Japanese. For your quick reference, English translation of the table of contents of the Model PPA is as follows:

Chapter 1 Sale and Purchase of Electricity from Renewable Energy Sources

- Article 1.1** Basic Matters concerning Sale and Purchase of Electricity from Renewable Energy Sources
- Article 1.2** Commencement Date and Term of Sale and Purchase
- Article 1.3** Measurement of Electricity Supplied and Checking Meter
- Article 1.4** Price
- Article 1.5** Supplying Electricity to Other Electric Utilities

Chapter 2 Matters concerning Grid Connection

- Article 2.1** Basic Matters concerning Grid Connection
- Article 2.2** Construction by Electric Utility for Grid Connection
- Article 2.3** Construction by Electricity Supplier for Grid Connection

Chapter 3 Matters concerning Operation of Electricity Generating Facility and Grid Connection Facility

- Article 3.1** Basic Matters concerning Operation for Supply of Electricity
- Article 3.2** Suppression

Chapter 4 Matters concerning Operation, Maintenance, Alteration and the Likes of Electricity Generating Facility and Grid Connection Facility

- Article 4.1** Management, Repair and the Likes of Electricity Generating Facility and Grid Connection Facility
- Article 4.2** Mutual Cooperation concerning Supply of Electricity
- Article 4.3** Inspection of Electric Facility
- Article 4.4** Improvement and the Likes of Electricity Generating Facility and Grid Connection Facility
- Article 4.5** Alteration of Electricity Generating Facility and Grid Connection Facility

Chapter 5 Termination of this Agreement

- Article 5.1** Termination
- Article 5.2** Removal of Facilities

Chapter 6 Representations and Warranties, Compensation for Damages, Covenants

- Article 6.1** Representations and Warranties
- Article 6.2** Compensation for Damages
- Article 6.3** Matters concerning Schedule of the Project

Chapter 7 Miscellaneous

- Article 7.1** Confidentiality
- Article 7.2** Assignment of Rights, Obligations and Contractual Position
- Article 7.3** Inconsistency with Other Agreements
- Article 7.4** Amendment
- Article 7.5** Governing Law, Jurisdiction, Language
- Article 7.6** Mutual Consultation in Good Faith

End

¹ Article 3.8 of the J-FIT Act provides that the Minister of METI can amend prices and terms applicable under the Act (including prices and terms previously announced), if prices and other economic conditions have changed materially or such a material change is likely, and the Minister considers such amendment to be necessary. It is generally understood that this Article is intended to deal with extraordinarily exceptional cases.

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