



Alerts & Publications

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Japanese FIT Law Takes Effect

July 23, 2012

In alerts dated September 8, 2011 (see [here](#)) and May 14, 2012 (see [here](#)), we noted that Japan's new "feed-in-tariff" law (the "FIT Law") would go into effect on July 1, 2012. As scheduled, the law is now in effect.

Before the FIT Law went into effect, the government determined the procurement price and duration for several sources of renewable energy (the "Procurement Price and Duration"). The prices set by the government reflect the government's favorable attitude toward renewable energy. Given this positive environment, Japan's renewable energy market is expected to grow rapidly, leading to Japan possibly becoming one of the leading renewable energy markets in the world.

I. Procurement Price and Duration

In mid-June, the Minister of Economy, Trade and Industry announced the Procurement Price and Duration for solar, wind, hydro, geothermal and biomass energy, which were the same as those suggested on April 27, 2012, by the Procurement Price Calculation Committee.

Source of Energy	Power	Price per kWh (US¢ / JP¥)	Duration (years)
Solar	< 10kW	52.5¢ / ¥42	10
	10kW <	52.5¢ / ¥42	20
Wind	< 20kW	72.1¢ /	20

		¥57.75	
	20kW <	28.8¢ / ¥23.1	
Hydro	< 200kW	44.6¢ / ¥35.7	20
	200kW - 1,000kW	38.0¢ / ¥30.45	
	1,000kW <	31.5¢ / ¥25.2	
Geothermal	< 15,000kW	52.5¢ / ¥42	15
	15,000kW <	34.1¢ / ¥27.3	
Biomass		17.0-50.8¢ / ¥13.65-40.95	20

Conversion rate: US\$1 = ¥80

The current Procurement Price and Duration (see above) are effective only until March 31, 2013. The Minister will evaluate and fix the Procurement Price every fiscal year, which starts on April 1. Under the FIT Law, the Minister must consider the profitability of operators of renewable energy plants for the first three years in determining the Procurement Price. The Procurement Price Calculation Committee has commented that the target internal rate of return of those operators should be approximately 5 to 6%, provided that 1 to 2% should be added to the internal rate of return for the first three years.

Once the Procurement Price is fixed for a plant, the price generally applies throughout the Procurement Duration. Although the FIT Law allows the Minister to later modify the Procurement Price if there are material changes in cost of living and other economic conditions, the Minister clarified during discussions of the bill in the Diet that the Procurement Price should be fixed and maintained throughout the original Procurement Duration.

The Procurement Price applicable to each plant is fixed at the time (i) the utilities receive an offering document to connect the plant to electric transmission facilities or (ii) the plant is qualified, whichever comes later. The Procurement Duration begins once electric power generation commences, after test operation. In case a party to a Specified Agreement (which we explain below) is replaced, the remaining term of the original Procurement Duration and the original Procurement Price applies to the new party. The same is true when the Specified Agreement for a plant is terminated and the operator executes a new agreement for the same plant with other utilities. The Procurement Duration is not suspended if the plant goes offline to effect the change.

II. Requiring Utilities to Purchase All of the Electricity Generated by a Plant

(A) Qualified Plants

Utilities are required to purchase, pursuant to a Specified Agreement, all of the electricity generated by plants that are qualified by the Minister. The conditions for qualification are set forth in the Ordinance for the

Enforcement of the FIT Law. These conditions include: (i) the plant must have a system for maintenance and inspection and, if necessary, any repairs must be commenced within three months; (ii) the location and specification of the plant must have been determined; (iii) the plant must accurately measure the amount of electricity generated by renewable energy and supplied to the utilities; (iv) the operator must record and report the details for the cost of installation and operation of the plant; and (v) certain other requirements depending on the type and scale of the plant.

In addition, according to official government comments regarding the FIT Law and the Ordinance issued by the Resources and Energy Agency (“Government Comments”), to be qualified, operators must not only meet the conditions in the FIT Law, they must also obtain necessary approvals and solicit input from local residents if required by local government ordinances.

Qualifying a plant should take approximately one month after the Minister receives an application. However, qualification of biomass plants may take about two months. Therefore, it is critical for operators to plan ahead, particularly because the Procurement Price and Duration will be evaluated and determined every year. It is worth noting that the Government Comments clarified that operators may consult with the utilities even before the operator’s plant is qualified. Operators should therefore start discussions with utilities as soon as possible in order to shorten the process after the operator’s plant is qualified.

(B) Specified Agreements with Utilities

Under the FIT Law, a Specified Agreement is one that provides for an operator to sell, and a utility to purchase, all of the electricity generated by a qualified renewable energy plant at the Procurement Price for the Procurement Duration. Utilities must accept an offer from an operator to enter into a Specified Agreement, provided that certain conditions are met. For instance, the operator must agree to give the utility the right to read electric meters on the date designated by the utility or to enter the operator’s facilities in order to read, fix and replace the meters. Specified Agreements must be written in the Japanese language, subject to the jurisdiction of Japan, and governed by Japanese law. Also, Specified Agreements may not include false information, violate the law, or impose no-fault indemnity liability or indemnity liability exceeding actual damages on the utility.

In addition, if a utility is not the owner of the electric transmission facility that connects it to the plant, the Ordinance lists other grounds for the utility to refuse to execute a Specified Agreement. One such ground would exist if geographical conditions physically prevent the utility from receiving electricity from the plant. However, the Government Comments clarified that a utility may not refuse an operator’s offer merely on the basis that the

operator has not entered into an agreement with the owner of transmission facilities to transmit the electricity to the utility.

(C) Connection to Electric Transmission Facilities

In Japan, many utilities own both power plants and electric transmission facilities. Therefore, in most cases the utility to which an operator will sell electricity will also be the party that owns the electric transmission facility. In such cases, the Specified Agreement should include provisions concerning the connection to the transmission facility. If the utility does not own the transmission facility that connects it to the plant, then the operator must enter into a separate agreement with the owner of the transmission facility. In either case, the utilities and other owners of transmission facilities must respond within three months to an offer from an operator to connect its plant to the transmission facility. Furthermore, the FIT Law states that a utility must accept the offer from an operator unless: (i) the operator does not bear the costs for adjusting/altering the utilities' electric transmission facilities so as to enable the connection; (ii) the connection would prevent the utility from assuring a smooth supply of electricity; (iii) the operator refuses to limit the output under certain circumstances, as specified in the Ordinance; or (iv) the utility has legitimate reasons to refuse the connection, as specified in the Ordinance.

III. Prospects for Renewable Energy in Japan

The Government Comments clarified that special purpose vehicles may apply to qualify a plant, and that utilities may not reject offers for Specified Agreements or for transmission agreements, even if the terms of such agreements allow operators to transfer, assign or encumber their rights or receivables under such agreements. As such, many Japanese and non-Japanese investors are considering forming funds to invest in plants or to securitize the receivables derived from plants.

As we noted above, because the Minister has set attractive prices and durations for all sources of renewable energy, many companies, including those from other industries, have started or announced plans to start building solar power and/or other renewable energy power plants in Japan. As a result, the market for renewable energy has already begun to grow.