

ClientAlert

Power

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Developers Are Rushing to be Among the First in Japan's New Renewable Industry

On June 18, 2012, Yukio Edano, the Minister of Economy, Trade and Industry (METI) accepted the recommendation of an advisory committee on the new renewable energy industry and adopted a comprehensive system of feed-in tariffs in order to put Japan on the path to a more sustainable energy mix. As the move had been widely expected following the adoption of the Renewable Energy Act (REA) (effective July 1, 2012), numerous Japanese companies have been positioning themselves to take advantage of the unusually generous rates. METI has reported that, as of June 29, it has approved 44 applications (moshikomi) to establish facilities all over the country for a total of 41,605 kilowatts of renewable power. This year, the Ministry said that it expects to introduce approximately 2.5 GW of new renewable power; capacity equal to two nuclear reactors.

While feed-in tariffs have been set for a wide variety of technologies, it is widely expected that the focus will be on solar (42 yen/kWh) and wind (23.1/kWh) for the first year (July 1, 2012 – March 31, 2013). Under the REA, the tariffs for solar and wind will be fixed for a 20-year period if the developer can achieve two conditions precedent: (i) a "Facility Authorization" (setsubi nintei) from METI and (ii) an interconnection agreement for the grid, beginning with the later of these two dates. It is also widely expected that the tariff rates will decline over time. For example, the rates for the first period under the program were recently decided but at this stage, it is not known what the rates will be for the second period (April 1, 2013 – March 31, 2014) and the third period (April 1, 2014 – March 31, 2015) under the scheme.

If, for example, both conditions precedent are not met during the first period (ending March 31, 2013), the rate applicable during the second period will apply to the developer's project and so forth during the next succeeding period under the law. Furthermore, the entire program must be reviewed after the first three years following the effective date of the REA. While the law does not stipulate an absolute quota of renewable power that must be achieved by the utilities by a specified date (sometimes known as a "renewable portfolio standard"), it does require that all power produced from qualified renewable projects be purchased by the utilities and this will be applicable for the 20-year period following the commercial operation date of the project.

While the details differ somewhat between solar and wind facilities, METI generally requires information concerning the equipment that will be used, site details and plans for interconnection to the grid in order to issue the Facility Authorization. As the grid infrastructure is owned by the utilities, each company establishes its own specifications for interconnection but these are rather similar throughout the country and are consistent with the guidelines set forth by the Natural Resources Agency and an industry association known as the Electric Power System Council.

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Given the state of flux in Japan's energy policy following the Fukushima disaster, a degree of uncertainty is understandable. It is expected that the government will introduce its new policy in August, 2012 but several options are now being discussed. METI has floated three possible scenarios for the energy mix which it hopes the country may achieve by 2030, as follows:

Nuclear	Renewables	Fossil fuel
0%	35%	65%
15%	30%	55%
20 – 25%	25 – 30%	50%

While the protesters in the Tokyo streets and much of the public would prefer the zero nuclear scenario, the middle case is more likely, especially in light of the restart of the first nuclear reactor in Oi City, Fukui Prefecture. But public sentiment may harden or melt away depending on this summer's temperatures.

Another uncertainty is the potential availability of LNG produced from shale-gas in the US. Japan currently imports much of its LNG from the Middle East at extremely high prices linked to oil and would like to reduce its dependence on these sources. The US could be a much lower cost supplier but the US Natural Gas Act of 1938 prohibits export of US natural gas unless it is deemed by the Department of Energy to be in the national interest. This is not a barrier for countries such as Korea which have a free trade agreement with the US, so Japan must either join the Trans Pacific Partnership (TPP) plurilateral trade agreement (currently under discussion) in order to receive the "national treatment" which would remove legal barriers to LNG exports or seek an exemption.

Japan has studied some of the mixed results in European and US experience and does not wish to repeat these mistakes. For example, the costs of the feed-in tariff will be paid by a universal charge added to all rate-payers' bills rather than general tax receipts. In addition, early-qualifying projects will receive approval for a fixed tariff without the need for periodic renewal of this incentive. While some uncertainties remain, it is certain that renewables in Japan will get a big push in the next few years.

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