



Amendments to Japan's Renewable Energy Act

On April 1, 2017, substantial portions of the Amendments (“Amendments”) to The Act on Special Measures Concerning the Procurement of Renewable Energy by Operators of Electric Utilities (the “Act”) will become effective. These Amendments, enacted on June 3, 2016,¹ represent the most comprehensive set of changes to Japan’s feed-in tariff system since the implementation of the Act in 2012.² The Amendments reflect the efforts of the Ministry of Economy, Trade and Industry (“METI”) to cause certified renewable energy facilities to meet certain feasibility criteria and to commence operation and power production within a specified period of time following certification. These Amendments will also require owners of renewable energy facilities to enter into an interconnection agreement with the relevant utility before certification and will introduce a bidding process for determining the purchase price for power generated by large-scale solar projects. In an effort to promote the development of renewable energy beyond solar power, these Amendments will provide for the fixing of the purchase price for three consecutive years following certification in the case of certain renewable energy projects (such as wind, geothermal, and biomass) that require several years and substantial cost to complete a feasibility study.

This *Commentary* provides a summary of the material changes that will go into effect as a result of the Amendments.

Facility Certification

Beginning on April 1, 2017, a developer of a renewable energy project in Japan will be eligible for facility certification from METI only after entering into an interconnection agreement with the relevant utility (or other distribution and transmission) company.³ Subject to certain exceptions, in order to ensure the continued validity of the applicable purchase price and purchase period after April 1, 2017, (i) projects that METI certified on or prior to June 30, 2016, under the system in effect before April 1, 2017, are required to have entered into an interconnection agreement with the relevant utility by March 31, 2017, and (ii) projects that METI certified between July 1, 2016 and March 31, 2017 under such system are required to have entered into an interconnection agreement with the relevant utility within nine months of the certification date. Each facility with a valid METI certification as of April 1, 2017 that meets the foregoing requirement is deemed recertified as of such date under the new certification system under the Amendments.

Under the Amendments, the facility certification system will be replaced by a business plan certification system. Each project with a valid METI certification as of April 1, 2017 that is deemed recertified under this new certification system will be required to submit to METI a business plan for renewable energy power generation by September 30, 2017.⁴ Each business plan must set forth (i) the name of the applicant (including its officers and directors, if any); (ii) a description of the renewable energy source and the commencement date for operation; (iii) the classification of the facility; (iv) a description of the interconnection arrangement; and (v) the location, capacity, and maintenance of the facility. Failure to submit a business plan by the due date will result in the loss of the METI certification.

In addition to requiring a business plan, METI will also be authorized to cancel any facility certification and issue an implementation order for any project in order to ensure that certified projects comply with applicable legal and regulatory requirements, such as requirements for environmental assessment or development permit (including any local ordinance requirements). Information relating to a certified facility will be made available to relevant governmental and local authorities to ensure accurate monitoring of compliance with such requirements.

Bidding System

The Amendments will introduce a bidding system for METI certification, which will be designed to reduce the applicable purchase price by promoting competition among developers. This bidding system initially will apply only to solar projects of 2,000 kW or more. According to METI, the first bid will take place in October 2017 and twice annually thereafter, with each bid process expected to be completed within six months. The bid process will be managed by a nonprofit organization to be designated by METI.

Under this bidding system, METI would solicit bids for a stated total capacity, and bidders would be given priority in the METI certification process starting with the party that submits the bid for the lowest purchase price (to the extent of the capacity for which the bid is made). In order to participate in the bid, each bidder will be required to post a bond, the amount of which will be set forth in METI's bid solicitation;

each party whose bid is accepted by METI will be required to post an additional bond, which would be returned at the time of the application for METI certification. Each bid must be accompanied by a business plan that would be attached to the application for METI certification in the event the bid is accepted. The requested capacity in the bid must be the same as the capacity specified in the business plan. Once METI accepts a bid, the bidder is required to submit an application for METI certification by the deadline specified in the bid solicitation, together with evidence that the owner of the facility has secured the right to use the land on which the facility will be constructed. In addition, as a condition to METI certification, the owner is required to enter into an interconnection agreement with the relevant utility, pursuant to which the owner would be required to pay construction costs to the utility. Each party whose bid is accepted by METI is required to obtain METI certification within three months of the announcement date of the bid results. Until such METI certification is obtained, such party will not be able to transfer its rights under the bid to a third party. After such party obtains METI certification, any transfer of such party's rights thereunder will be subject to METI approval.

Each bid solicitation by METI is expected to set forth the following bid conditions:

- the total capacity for which solicitation is being made;
- bid qualification;
- the amount of bond to be posted by each bidder;⁵
- the maximum purchase price;⁶
- the selection process for bid acceptance;
- the applicable purchase period;⁷ and
- the submission deadline for application for METI certification.

The introduction of this bidding system will likely increase the complexity for seeking METI certification for large-scale solar projects and the resulting competition likely will cause reductions in the applicable purchase price for such projects.

Three-Year Rule

Under the Amendments, a prerequisite for METI certification is a business plan for renewable energy power generation that provides, among other things, that the certified facility

will commence power generation within three years from the date of the facility certification. In the case of a facility whose facility certification was issued before April 1, 2017, and with respect to which an interconnection agreement with the relevant utility was executed between August 1, 2016 and March 31, 2017, power production must commence within three years of April 1, 2017 (i.e., no later than March 31, 2020). Failure to commence power production within the three-year period will result in a reduction in the purchase period by the number of months between the date of the certification and the date on which the affected project actually commences power production. Such reduction in the purchase period also will apply to projects whose purchase price was determined pursuant to the bid system described above.

Transfer of Facility Certification ID

Developers of certified renewable energy projects have sold projects by transferring the METI identification number issued in connection with the facility certification to the purchaser. Prior to April 1, 2017, such transfers generally were effected by submission by the transferor of a Notice of Minor Change to METI, specifying the name of the transferee. The transfer then became effective upon METI's receipt of such notice, without any further action by METI. Under the Amendments, however, a change in the holder of the METI identification number no longer will be regarded as a "minor change," and any such change will be subject to METI approval. Under this new system, the transferor will be required to submit to METI an application for transfer, which application will be examined and approved by METI before the transfer is deemed effective. METI estimates that the standard examination period for a transfer application will be one month, but METI has not clarified its criteria for approval. Sellers and buyers of renewable energy projects after April 1, 2017, therefore, will need to take into account the estimated amount of time required for METI approval of certification identification transfer in determining the schedule for consummating the purchase and sale of such projects.

Other Changes

Under the Amendments, purchasers of power generated by a certified renewable energy project must be distribution and transmission companies under the Electricity Business Act,

which, among other things, requires regional utilities to separate their electricity distribution and transmission businesses from their generation and retail businesses. A developer who entered into a power purchase agreement with a utility company prior to April 1, 2017, however, may continue to sell power to the utility company without amending the power purchase agreement.

The Amendments also provide for METI to determine the applicable purchase price for wind, biomass, geothermal, hydro, and solar (less than 10kW) projects for a consecutive three-year period, so as to facilitate potential developers in determining the profitability of any such potential renewable energy project.

Conclusion

The Amendments materially will change the standard time-frame and process for commencing renewable energy projects in Japan, and impose strict requirements for continued validity of the METI facility certification. After April 1, 2017, a developer will be required to (i) enter into an interconnection agreement with the relevant distribution and transmission company; (ii) (in the case of large-scale solar projects) participate in a bidding system in order to become eligible for METI certification; (iii) submit a business plan for the project and obtain METI certification; (iv) commence construction (including construction relating to interconnection); and (v) commence power generation within three years of the date of facility certification. The applicable purchase price and purchase period for large-scale solar projects will be determined after the completion of the bid and METI's acceptance of the business plan. With respect to projects for which METI certification was issued prior to April 1, 2017 and that satisfy the requirements for continued validity of such certification after April 1, 2017, the immediate priority will be the preparation and submission of a business plan by September 30, 2017.

Lawyer Contacts

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Endnotes

- 1 “Japan Expands Renewable Energy Program, Tightens Requirements for Renewable Energy Projects,” *Jones Day Commentary*, April 2016.
- 2 “Japan Launches the Feed-in Tariff System for Renewable Energy,” *Jones Day Commentary*, July 2012; “Renewable Energy in Japan: One Year After the Implementation of the Feed-in Tariff Law,” *Jones Day Commentary*, August 2013.
- 3 The execution of such interconnection agreement would mean that the applicant for facility certification must be contractually obligated to pay a specified amount to the utility company to cover the construction cost relating to the connection of the power facility to the utility’s power grid.
- 4 Owners of facilities that METI certified between July 1, 2016 and March 31, 2017 under the pre-Amendment system are required to submit their business plan to METI within six months from the execution date of the interconnection agreement.
- 5 Expected to be 500 Japanese Yen/kW at the time of bid submission and 5,000 Japanese Yen/kW upon bid acceptance (before application for METI certification).
- 6 Expected to be 21 Japanese Yen/kW for the October 2017 bid.
- 7 Expected to be 20 years.