

Fifth Conto Energia: New Feed-In Tariffs for Photovoltaic Energy Plants in Italy

8 August 2012

On 10 July 2012, the new decree on the incentive system for the production of electricity by photovoltaic (PV) plants was published in the Official Gazette. The Fifth Conto Energia introduces severe limitations to the access to feed-in tariffs (FiT) for utility scale PV facilities. Like its predecessor, the Fifth Conto Energia provides for a differentiated incentive system, depending on the type and size of the PV systems, and limited half-yearly expense budgets for larger PV plants that are distributed on the basis of a priority ranking system. The new tariff system will apply to PV plants starting operations after 27 August 2012 and will remain effective until 30 days after the annual aggregate cost of PV incentives has reached €6.7 billion.

Entrance into Force and Applicability

Decree 5 July 2012 of the Ministry of Economic Development, in conjunction with the Ministry of Environment and of the Protection of the Territory and the Sea, regarding the incentive system for the production of electricity from photovoltaic source (the Fifth Conto Energia) entered into force on 11 July 2012, after publication in the Official Gazette. The new incentive system applies only 45 days after the official announcement, by the Authority for Energy and Gas (AEEG), that the aggregate annual cost of incentives for PV plants has reached €6 billion. The official announcement by the AEEG was published by means of Resolution no. 292/12 of 12 July 2012, meaning the new incentive system under the Fifth Conto Energia will apply as of 27 August 2012.

This does not mean that the previous incentive system under the Fourth Conto Energia remains applicable until 26 August 2012, but the transitional rules are different:

- PV plants constructed on land or buildings owned by the Public Administration remain entitled to the incentives under the Fourth Conto Energia as long as they start operating on or before 31 December 2012.
- Large PV plants that have obtained a registration in the 2012 Gestori Servizi Energetici (GSE – the organisation that guarantees the subsidy scheme) ranking list continue to be entitled to the incentive under the Fourth Conto Energia, provided that construction works are completed within seven months (for PV plants up to 1 MWp) or nine months (for PV plants exceeding 1 MWp) of the publication by the GSE of the relevant ranking list.
- Small PV plants, concentrating PV plants and PV plants with innovative features remain entitled to the incentives under the Fourth Conto Energia if they commence operations before 27 August 2012.
- Large, ordinary PV plants that have not obtained a registration in the GSE 2012 ranking list and are not installed on property belonging to the Public Administration cannot, under any circumstances, qualify for the Fourth Conto Energia, and are subject to the rules of the Fifth Conto Energia even if they commence operations before 27 August 2012.

The Fifth Conto Energia will expire 30 days after the aggregate annual cost of PV incentives has reached €6.7 billion per year, which will be announced publicly by the AEEG on the basis of the data delivered by the GSE.

General Requirements of Qualification for the Feed-in Tariff

In order to qualify for the FiT under the Fifth Conto Energia, PV plants must fall under one of the following categories:

- Rooftop PV plants with a valid energy efficiency certificate located on buildings.
- Rooftop PV plants that replace entire asbestos coverings.
- PV plants built on farm buildings, arbours, greenhouses, acoustic fences, shelters and buildings not subject to the obligation to obtain energy efficiency certificates.
- PV plants built on exhausted landfills, contaminated sites, disused mines or quarries, non-agricultural lands destined for the use of the integrated water service and land owned by the Italian military.
- PV plants built on agricultural land, in compliance with the relevant provisions of law.
- PV plants other than those listed above, provided they have obtained the necessary permits for construction and operation on or before 11 July 2012.

Modules used for the PV plants must be new and not re-used and must have a 10 year warranty against manufacturing defects.

Furthermore, PV modules must have been produced by a company that has joined a PV modules recycling consortium, has obtained the ISO 9001:2008, OHSAS 18001 and ISO 14000 certifications and has a factory inspection certificate issued by a qualified certifying entity.

Access to The Incentives

Depending on their size and type, PV plants that qualify for the FiT can gain access either directly by simple application and without any budget restriction, or through a complex registration and ranking system aimed at distributing fairly the available limited budgets.

DIRECT ACCESS TO THE INCENTIVES

Only the following PV plants have direct access to the FiT without budget restrictions:

- PV plants not exceeding 50 kWp, built on rooftops and replacing asbestos.
- PV plants not exceeding 12 kWp, including refurbished PV plants and PV plant refurbishments not exceeding 12 kWp.
- Integrated PV plants that use innovative technology, but only until the aggregate annual cost of incentives for this type of PV plant has reached €50 million.
- Concentrating PV plants, but only until the aggregate annual cost of incentives for this type of PV plant has reached €50 million.
- PV plants managed by public administrations after a public tender procedure has been carried out, but only until the aggregate annual cost of incentives for this type of PV plant has reached €50 million.
- PV plants having nominal power of between 12 kWp and 20 kW, including refurbished PV plants.
- PV plant refurbishments not exceeding 20 kWp, that apply for a FiT reduced by 20 per cent of the regular FiT applicable to PV plants of the same size.

ACCESS THROUGH THE GSE RANKING SYSTEM

PV plants that do not meet the requirements for direct access to the FiT, must apply to the GSE for enrolment in a special register and, in order to obtain the FiT, they must achieve a ranking position that is sufficiently high to fall within the following budgets:

- First register: €140 million
- Second register: €120 million
- Subsequent registers: €80 million, up to the €6.7 billion threshold.

Starting from the second register, the budgets will be reduced further by the incentives that have been granted to the following categories of PV plants that have started operations in the preceding six months period PV plants not exceeding 50 kWp that are built on rooftops and replace asbestos, PV plants not exceeding 12 kWp and PV plant refurbishments not exceeding 12 kWp. Limited to the second Register: PV plants that started operation on or before 31 December 2012, constructed on land or buildings owned by the Public Administration.

The GSE will publish the call for the first register on 19 August 2012. Calls for the subsequent registers will be made every six months.

The first register will be open for applications from 20 August 2012 to 19 September 2012. Subsequent registers for periods of 60 days. Within 20 days as of the closing of each register, the GSE will establish and publish its rankings, based on certain priority criteria.

The GSE has specified modalities for registrations and applications for FiT in the technical guidelines published on 7 August 2012.

CRITERIA FOR RANKINGS

In relation to the first register only, the highest priority criterion is the date of start of operations. This rule aims to protect projects that were developed under the third or fourth Conto Energia and were under construction when the Fifth Conto Energia entered into force. Accordingly, these projects are exempt from the new requirements of the Fourth Conto Energia but are still subject to those of the Fourth Conto Energia.

Once past this first criterion, which is exclusive to the first Register, the following are the criteria for the rankings, in order of priority:

1. Rooftop PV plants with a high certificate of energy efficiency (class D or higher) that replace asbestos
2. Rooftop PV plants with a high certificate of energy efficiency (class D or higher)
3. Rooftop PV plants that replace asbestos
4. PV plants using modules and inverters that were produced in the European Union or in the European Economic Area
5. PV plants built on contaminated sites, land belonging to the military, exhausted landfills and disused mines or quarries
6. PV plants not exceeding 200 kWp that provide energy to factories
7. PV plants built on—in order of priority—buildings, greenhouses, harbours, shelters and acoustic barriers
8. Other PV plants

In case the budget provided for a register is not sufficient for all the PV projects that qualify under one of these categories, the GSE ranks the same projects in the following order:

- PV plants for which a FiT reduction of 5 per cent has been accepted expressly
- PV plants with older building permits
- PV plants with lower nominal power
- PV plants for which the application to the register has been filed earlier

PV plants that have been ranked in a sufficiently high position to be entitled to the FiT must commence operations within one year of publication of the GSE rankings.

Incentives

AWARD AND DURATION

Within 15 days of the date the PV plant starts operating, the subject responsible for the PV plant must file the application for the FiT with the GSE. The GSE, once it has verified the application, awards the FiT within 90 days of receipt of the application.

The FiT is granted, without adjustment for inflation, for a period of 20 years, starting on the date the PV plant commences operations, or, in cases of delayed application, on the date the application is received. For PV plants that started operations prior to the closing of the GSE registration period, the 20 year period starts as of the closing of the registration period.

AMOUNTS OF FEED-IN TARIFFS

Ordinary PV plants are entitled to payments as set forth in tables 1 and 2, depending on whether they feed the produced electricity in the grid (table 1) or if the plant owner uses the electricity (table 2).

The FiT listed in table 1 for PV plants up to 1 MW is intended as an “overall tariff”, *i.e.*, it includes both a production premium and the price for the sale of the energy produced by the PV plant. It is paid on the net electricity fed into the grid. PV plants with a nominal power exceeding 1 MW are no longer entitled to sell the electricity to the GSE, but have to sell it to the market through bilateral power purchase agreements or through the Power Exchange. Accordingly, the FiT in these circumstances is determined as the difference between the amounts indicated in table 1 and the applicable average market price (*prezzo zonale orario*).

Table 2 contains the production premium in cases where the electricity produced by a PV plant is not fed into the grid but consumed on site.

In each case, the Fifth Conto Energia offers significantly higher incentives to PV plants installed on buildings as compared with other PV plants. PV plants installed on greenhouses, arbours, acoustic fences, shelters and/or platform roofs obtain a feed-in tariff that is equal to the average of the amounts payable to PV plants installed on buildings and those payable to other PV plants. Greenhouse PV plants are only recognised if the surface of the PV modules does not exceed 30 per cent of the area covered by the greenhouse. If the building permit for the PV greenhouse was issued before the entrance into force of the Fifth Conto Energia, the relevant percentage of area covered is 50 per cent.

ADDITIONAL PREMIUMS

Only in respect to ordinary PV plants, and, rooftop PV plants with innovative features, the following premiums can be added to the relevant FiT and self-consumption premiums:

- PV plants using modules and inverters that were produced in the European Union or European Economic Area are entitled to an increase of €20/MWh if they enter into operation on or before 31 December 2013, €10/MWh if they enter into operation on or before 31 December 2014 and €5/MWh if they enter into operation after 31 December 2014.
- PV plants installed on rooftops with simultaneous complete removal of asbestos are entitled to receive an increase of €30/MWh up to 20 kW nominal power and €20/MWh above 20 kW nominal power if they enter into operation on or before 31 December 2013, €20/MWh up to 20 kW nominal power and €10/MWh above 20 kW nominal power if they enter into operation on or before 31 December 2014 and €10/MWh up to 20 kW nominal power and €5/MWh above 20 kW nominal power if they enter into operation after 31 December 2014.

The premiums above can be cumulated with each other.

PV PLANTS WITH INNOVATIVE FEATURES

Table 3 lists the special FiT applicable to PV plants up to 5 MW that have innovative features. The Fifth Conto Energia requires that these PV plants comply with certain requirements of innovation and refers to the more detailed guidelines established by the GSE for innovative PV plants with architectonic integration.

The budget made available under the Fifth Conto Energia for these special incentives is limited to €50 million.

CONCENTRATING PV PLANTS

Table 4 lists the special FiT applicable to concentrating PV plants up to 5 MW. These tariffs are reduced by 10 per cent if the concentration factor is lower than 10. If the concentration factor is below three, the FiT for ordinary PV plants listed in tables 1 and 2 applies.

The budget made available under the Fifth Conto Energia for these special incentives is limited to €50 million.

Fees Payable to the GSE

All applicants for FiT under the new incentive system of the Fifth Conto Energia must pay the GSE a fee for administrative costs of €3/kW of nominal power of the relevant PV plan, up to 20 kW, and €2 for each kW of nominal power exceeding 20 kWp.

Furthermore, as of 1 January 2013, all PV plants receiving a FiT under the Fifth Conto Energia, or any of its predecessors, must pay the GSE a fee for its administrative control services of €cent0.05/kWh.

Table 1: Feed-in Tariffs For PV Plants

| | PV Plants Installed on Buildings | | | | | Other PV Plants | | | | |
|---|----------------------------------|-----|-----|-----|-----|-----------------|-----|-----|-----|-----|
| | Semester | | | | | Semester | | | | |
| Power Class | I | II | III | IV | V | I | II | III | IV | V |
| [kW] | [€/MWh] | | | | | [€/MWh] | | | | |
| 1≤P≤3 | 208 | 182 | 157 | 144 | 133 | 201 | 176 | 152 | 140 | 130 |
| 3<P≤20 | 196 | 171 | 149 | 137 | 128 | 189 | 165 | 144 | 133 | 124 |
| 20<P≤200 | 175 | 157 | 141 | 131 | 122 | 168 | 151 | 136 | 126 | 118 |
| 200<P≤1000 | 142 | 130 | 118 | 111 | 106 | 135 | 124 | 113 | 107 | 102 |
| For PV plants with a nominal power exceeding 1000 kWp, the GSE does not purchase the electricity produced but pays a feed-in premium that is determined as the difference between the hypothetical, all-inclusive tariff below and the applicable average electricity market price (<i>prezzo zonale orario</i>). | | | | | | | | | | |
| 1000<P≤5000 | 126 | 118 | 110 | 105 | 100 | 120 | 113 | 106 | 101 | 97 |
| P>5000 | 119 | 112 | 104 | 99 | 95 | 113 | 106 | 99 | 95 | 92 |

Table 2: Premiums Self-Consumption

| | PV Plants Installed on Buildings | | | | | Other PV Plants | | | | |
|-------------|----------------------------------|-----|-----|----|----|-----------------|----|-----|----|----|
| | Semester | | | | | Semester | | | | |
| Power Class | I | II | III | IV | V | I | II | III | IV | V |
| [kW] | [€/MWh] | | | | | [€/MWh] | | | | |
| 1≤P≤3 | 126 | 100 | 75 | 62 | 51 | 119 | 94 | 70 | 58 | 48 |
| 3<P≤20 | 114 | 89 | 67 | 55 | 46 | 107 | 83 | 62 | 51 | 42 |
| 20<P≤200 | 93 | 75 | 59 | 49 | 40 | 86 | 69 | 54 | 44 | 36 |
| 200<P≤1000 | 60 | 48 | 36 | 29 | 24 | 53 | 42 | 31 | 25 | 20 |
| 1000<P≤5000 | 44 | 36 | 28 | 23 | 18 | 38 | 31 | 24 | 19 | 15 |
| P>5000 | 37 | 30 | 22 | 17 | 13 | 31 | 24 | 17 | 13 | 10 |

Table 3: Feed-in Tariffs For PV Plants Using Innovative Technology

| | All-Inclusive Tariff | | | | | Self-Consumption Tariff | | | | |
|---|----------------------|-----|-----|-----|-----|-------------------------|-----|-----|-----|-----|
| | Semester | | | | | Semester | | | | |
| Power class | I | II | III | IV | V | I | II | III | IV | V |
| [kW] | [€/MWh] | | | | | [€/MWh] | | | | |
| 1≤P≤20 | 288 | 242 | 218 | 196 | 176 | 186 | 160 | 144 | 130 | 117 |
| 20<P≤200 | 276 | 231 | 208 | 187 | 169 | 174 | 149 | 134 | 121 | 109 |
| P>200 | 255 | 217 | 195 | 176 | 158 | 153 | 135 | 121 | 109 | 98 |
| For PV plants with a nominal power exceeding 1000 kWp, the GSE does not purchase the electricity produced but pays a feed-in premium that is determined as the difference between the all-inclusive tariff above and the applicable average electricity market price (<i>prezzo zonale orario</i>). | | | | | | | | | | |

Table 4: Feed-in Tariffs for Concentrating PV Plants

| | All-Inclusive Tariff | | | | | Self-Consumption Tariff | | | | |
|---|----------------------|-----|-----|-----|-----|-------------------------|-----|-----|-----|----|
| | Semester | | | | | Semester | | | | |
| Power class | I | II | III | IV | V | I | II | III | IV | V |
| [kW] | [€/MWh] | | | | | [€/MWh] | | | | |
| 1≤P≤20 | 259 | 215 | 194 | 174 | 157 | 157 | 133 | 120 | 108 | 97 |
| 20<P≤200 | 238 | 201 | 181 | 163 | 146 | 136 | 119 | 107 | 96 | 87 |
| P>200 | 205 | 174 | 157 | 141 | 127 | 103 | 92 | 83 | 75 | 67 |
| For PV plants with a nominal power exceeding 1000 kWp, the GSE does not purchase the electricity produced but pays a feed-in premium that is determined as the difference between the all-inclusive tariff above and the applicable average electricity market price (<i>prezzo zonale orario</i>). | | | | | | | | | | |

For more information, please contact your regular McDermott lawyer, or

Carsten Steinhauer: +39 06 462024 1 csteinhauer@mwe.com

Anna Vesco: +39 06 462024 1 avesco@mwe.com

For more information about McDermott Will & Emery visit www.mwe.com

The material in this publication may not be reproduced, in whole or part without acknowledgement of its source and copyright. This *White Paper* is intended to provide information of general interest in a summary manner and should not be construed as individual legal advice. Readers should consult with their McDermott Will & Emery lawyer or other professional counsel before acting on the information contained in this publication.

© 2012 McDermott Will & Emery. The following legal entities are collectively referred to as "McDermott Will & Emery," "McDermott" or "the Firm": McDermott Will & Emery LLP, McDermott Will & Emery AARPI, McDermott Will & Emery Belgium LLP, McDermott Will & Emery Rechtsanwälte Steuerberater LLP, McDermott Will & Emery Studio Legale Associato and McDermott Will & Emery UK LLP. These entities coordinate their activities through service agreements. McDermott has a strategic alliance with MWE China Law Offices, a separate law firm. This communication may be considered attorney advertising. Prior results do not guarantee a similar outcome.