

## Renewables Obligation – is UK Solar on the ROCs?

11 September 2012

Authors: Richard A. Ceeney , Stefan Schmitz , Christopher Parrott

Given the British Government's recent periodical decreases in the levels of Feed in Tariff support for solar PV projects, the announcement that it is also consulting in reductions in Renewables Obligation support will not come as a surprise. It will, however, remove the "Plan B" that many solar plant developers had been relying upon. In addition, given the potential fallout from the investigations into dumping of solar panels by Chinese companies, the changes may signal a period of reduced returns for the solar industry.

### Background

For some time there have been, and until the switch to Feed in Tariff Contracts for Difference in 2017 there will be, two mutually exclusive schemes providing support to generators of solar electricity in the UK.

For projects with a total installed capacity of up to 5MW, generators can currently apply for accreditation under the Feed-in-Tariff (FiT) scheme, which entitles the generator to payment of a certain sum per kWh.

As an alternative, generators can register the plant for the Renewables Obligation scheme, entitling the generator to Renewables Obligation Certificates (ROCs) for generated electricity. These ROCs can then be traded with other parties, and have a market value – but not a fixed price; the project income is generated from the sale of ROCs, combined with the sale of the electricity (usually under one power purchase agreement).

Historically, the FiT has been the route preferred by solar generators. It provided a greater (and more certain) level of support than ROCs. However, the PV solar industry has changed considerably in recent years, with substantial decreases in the cost of PV generating equipment (especially modules manufactured in China) making solar energy increasingly viable and profitable. The result was a considerable increase in the number of projects applying for FiT support. The reaction from the British Department of Energy and Climate Change (DECC) was swift; through incremental steps they have considerably reduced the level of FiT support offered, from 30.7p/kWh in April 2011 to the current level of 7.1p/kWh for projects of between 250kW and 5MW. The support offered by ROCs has not decreased at the same rate as the FiT levels, and increasingly, solar projects have been relying instead on ROCs.

On 25 July 2012, the DECC announced its decision on the banding review for support under the RO system. We have previously [commented](#) on this review. As part of that review, the DECC noted that it would issue a further consultation on reduction of ROC support for solar PV projects, and also consult on whether to exclude new projects at or under 5MW from the RO system entirely, taking away the choice for such projects and confining them to the FiT scheme.

On 7 September 2012, the DECC published its [consultation](#) on solar PV support under the RO. The consultation does not seek responses regarding whether ROC support should be excluded for new projects at or under 5MW (as was anticipated in the banding review); instead, it now appears that the DECC is seeking to reduce ROC support so that the level of support mirrors the FiT scheme. The effect of this change is that projects above 5MW, as well as those below, would be impacted.

## The proposals in outline

The DECC proposes to reduce the support rates for new solar PV projects accredited from April 2013, so that the RO support rates broadly reflect the rates under the FiT scheme (for projects between 250kW and 5MW). The proposed rates are (down from the current rate of 2 ROCs/MWh):

- 2013/14: 1.5 ROCs/MWh
- 2014/15: 1.3 ROCs/MWh
- 2015/16: 1.1 ROCs/MWh
- 2016/17: 0.9 ROCs/MWh

These rates will apply to all projects under the RO system, including projects above 5MW. However, the consultation invites comment from the solar industry regarding large-scale solar PV projects, so that it can “get a more complete picture” of the likely costs over the next few years for large-scale projects.

In addition, the consultation notes that in due course, a further consultation may still be issued relating to the exclusion of new projects up to and including 5MW from the RO system entirely, binding all but the largest of projects to the FiT scheme.

It should be noted that the consultation also reiterates the government’s commitment to “grandfathering” (i.e. maintaining) the support offered to existing projects.

## Comment

The proposed reductions in support are significant: an initial cut of 25%, followed by further reductions which in four years’ time will see a ROC allocation of less than 50% of that provided now. This reduction in support appears to anticipate a continuing steep drop in production costs over the next few years.

Recent political indications, however, are that the industry will be hard pushed to meet these price reductions. This is shown by the ongoing trade disputes regarding solar “dumping” (i.e. selling panels for substantially less than the cost of production), both in the EU and the US.

Following allegations in the U.S. that Chinese manufacturers have been “dumping” solar panels, the U.S. Government has announced plans to impose import tariffs of up to 250% on imports of solar panels into the US from China. On 6 September 2012, the European Commission (EC)

itself [announced](#) an investigation into imports of solar panels from China, following allegations of dumping. EU ProSun, a European industry group, has argued that such dumping could threaten the prospects for European solar companies.

If the EC investigation follows that of the United States, then it seems likely that import tariffs will be imposed on imports of Chinese solar generating equipment. Not only would these tariffs themselves increase the cost of PV, but they would also indicate that current equipment prices are a product of Chinese market manipulation and not a true reflection of the cost of PV.

Given that the DECC is looking to reduce support based on the current cost of PV, it has to be asked whether the decreases in price over the past few years are indicative of a natural and sustainable fall, or whether in fact the market is simply temporarily and artificially suppressed. Events in the United States, followed by the EC investigation, tend to suggest the latter. If this is correct, then the decrease to ROC support as currently proposed by the DECC could mean that new solar PV projects are not sustainable at all.

The consultation is open for comments until 19 October 2012, and the DECC welcomes evidence from the industry of forecasted costs of production, especially with regard to projects above 5MW.

## About Reed Smith

Reed Smith is a global relationship law firm with more than 1,600 lawyers in 23 offices throughout the United States, Europe, Asia and the Middle East.

The information contained herein is intended to be a general guide only and not to be comprehensive, nor to provide legal advice. You should not rely on the information contained herein as if it were legal or other professional advice.

Reed Smith LLP is a limited liability partnership registered in England and Wales with registered number OC303620 and its registered office at The Broadgate Tower, 20 Primrose Street, London EC2A 2RS. Reed Smith LLP is regulated by the Solicitors Regulation Authority. Any reference to the term 'partner' in connection to Reed Smith LLP is a reference to a member of it or an employee of equivalent status.

This Client Alert was compiled up to and including September 2012.

The business carried on from offices in the United States and Germany is carried on by Reed Smith LLP of Delaware, USA; from the other offices is carried on by Reed Smith LLP of England; but in Hong Kong, the business is carried on by Reed Smith Richards Butler. A list of all Partners and employed attorneys as well as their court admissions can be inspected at the website <http://www.reedsmith.com/>.

© Reed Smith LLP 2012. All rights reserved.