

The summer months saw three key consultation documents issued by the Department of Energy and Climate Change (DECC) which presage major changes in the regulatory framework for solar projects.

ROC closure for projects of 5 MW and below

On 22 July 2015, the consultation on changes to financial support for solar PV proposes the early closure of Renewable Obligation Certificates (ROCs) for solar projects of 5 MW and below. Projects above 5 MW lost their entitlement to ROCs in April 2015, subject to grace period provisions. The new proposals are quite complex and, it is fair to say, have caused quite a lot of confusion in the market.

The proposal is that projects of 5 MW and below will no longer be eligible for ROCs from April 2016, subject to grace period proposals similar to those applicable to the ROC closure for larger projects earlier this year.

Thus, projects which either: (i) received preliminary accreditation by 22 July 2015; or (ii) in respect of which significant financial commitment had been incurred by 22 July 2015; or (iii) which suffer grid connection delays, and in any such case are unable to commission by 31 March 2016 could commission after 31 March 2016 and still be eligible for ROCs.

However, only projects which meet the "significant financial commitment" criteria will have their ROCs grandfathered. This means that a project which had received preliminary accreditation or was affected by grid connection delays, whilst remaining eligible for ROCs, could have their ROC entitlement reduced on a subsequent banding review, making such projects commercially unviable.

The proposals on grandfathering are of key importance. As mentioned above, grace period projects whose grace period entitlement is based on preliminary accreditation or grid connection delays which commission after 31 March 2016 will lose their protection against subsequent ROC reductions. In addition, all projects which commission on or before 31 March 2016 will also lose this protection unless they have the benefit of the grace period applicable for significant financial commitment. The grace period for significant financial commitment applies to a project in respect of which milestones had been achieved in relation to planning permission, grid connection and site rights by 22 July 2015. Thus a planning application must have been submitted (if required), grid connection offer made and accepted, and a site agreement (at the very least, an exclusivity agreement) in place.

Therefore, any project which did not meet the grace period requirements for significant financial commitment will not be grandfathered and therefore is at risk of a ROC reduction in future.

A further complication is that a banding review is proposed. It is not clear from the consultation document whether projects which meet the grace period requirements for significant financial commitment will or will not be subject to the banding review and this has led some in the industry to conclude that any project which is commissioned after the banding review comes into effect, even projects which meet the grace period requirements for significant financial commitment, will be affected by the banding review. However, the Impact Assessment published alongside the consultation paper suggests that this will not be the case.

The consultation period ended on 2 September so DECC's response paper can be expected in the next couple of months.

Ending preliminary accreditation for Feed-in Tariff projects

Preliminary accreditation was introduced to provide a tariff guarantee to developers of feed-in tariff (FiT) projects, to protect against the risk of tariff depression. A developer that has planning permission and a grid connection agreement can apply for preliminary accreditation and, in the case of a solar project, will have six months to commission (twelve months in the case of a community project).

On 21 July 2015, DECC issued a consultation paper Consultation on changes to Feed-in Tariff accreditation which proposed to end preliminary accreditation under the FiT scheme, thus ending the tariff guarantee. On 9 September DECC announced that preliminary accreditation would end with effect from 1 October 2015 but with the possibility that it will be restored in future following the implementation of the FiT review discussed below.

DECC have separately clarified that, as long as an application for preliminary accreditation is received by Ofgem before any legislation removing preliminary accreditation comes into force, the project will qualify for preliminary accreditation, subject to that application's subsequent approval by Ofgem.

Feed-in Tariff review

On 27 August 2015, DECC issued a consultation paper on the future of the FiT scheme. The paper, entitled Consultation on a Review of the Feed-in Tariffs Scheme, has as its primary objective the intention of bringing the costs of the scheme under control. There will be significant cuts in FiT rates for solar, quarterly depression will be mandatory and there will be deployment caps for each technology and bands within the technologies.

DECC are also reserving the right to end FiTs completely as soon as possible, which they envisage to be January 2016, in the event that the scheme is unaffordable. This suggests that in the event of a “gold rush” in Q4 this year, the scheme may be scrapped completely.

The consultation paper proposes other changes which, whilst less dramatic, are also important. These are the removal of “deeming” export for smaller projects which will require a meter for all installations; raising the energy efficiency requirement for buildings in the case of rooftop solar (excluding schools and community schemes); changing the indexation of tariffs from RPI to CPI; requiring that all installations are notified to the DNO and removing extensions from the scheme.

Andrew Whitehead
Partner, Energy
T: 0121 214 0528
E: andrew.whitehead@shma.co.uk

© Shakespeare Martineau 2015