

News Flash – Solar PV

The UK Solar industry has been in hiatus since the latter part of 2011. The popularity of domestic, small commercial and community solar projects was until then blossoming across the UK, thanks to a generous Feed-in Tariff and falling solar panel prices which resulted in attractive investment terms. The tariffs were initially due to be reduced from 1st April 2012 as part of the programmed 'degression' cycle of revising tariffs incrementally as the cost of equipment falls. However, the investment returns were so attractive that what was initially intended to stimulate local investment in renewables ended up by being dominated by applications from large-scale investors.

As a result an urgent consultation was announced on 31st October 2011 (Comprehensive Review Phase 1) in response to what was deemed a "financially unsustainable" trajectory of uptake. The Government surprised stakeholders in announcing that it was to cut the tariffs, by over half for all projects that had not been completed by 12th December 2011 (installations after which would have their tariff level downgraded to the lower tariff from 1st April 2012 onwards). This gave little time for active projects at the time to be completed but more significantly, the new "reference date" of 12th December was 11 days *before* the consultation end date.

A group of solar companies and Friends of the Earth mounted legal action against the Government for imposing a reference date prior to the end of the consultation. The initial legal hearing was unsuccessful but the appeal hearing in the High Court ruled the actions of the Government "manifestly unlawful". Whilst this was a positive result for the industry, it has left lingering confusion as to what this means in practice. Meanwhile, the Government is mounting an appeal against this decision, further extending the uncertainty.

Following calls from industry to provide at least some degree of clarity to stakeholders whilst the legal action continues, the Climate Change minister Greg Barker announced on Thursday that it was "laying before Parliament draft modifications which...makes provision for a reduced tariff rate...for new PV installations with an eligibility date on or after 3rd March 2012".

DECC (the Department of Energy and Climate Change) will continue with the appeal, with Mr Barker stating that "If the Court finds in favour of the Government's appeal, we intend to stand by all our consultation proposals, including an earlier (December) reference date, subject to the Parliamentary procedure and consideration of consultation responses". The formal results of the consultation are due to be announced on 9th February yet many view the consultation as a foregone conclusion.

The question is what does this mean for yet to be completed solar installations? One may interpret the making of 'contingency' measures as indication that the Government considers that it may lose its legal challenge. In this scenario, the 3rd March 2012 "reference date" would apply and those installations commissioned (and tariff applied for) before this date would be eligible for the existing higher tariff.

Should the Government win the appeal, it is expected to apply the 12th December 2011 "reference date" (regardless of consultation responses), which would place any installations commissioned after that date on the lower tariff from 1st April 2012 onwards (in effect, applying the lower tariff for most of the installation's tariff term).

Many projects put on hold may be reignited following this recent announcement and completion attempted by the 3rd March deadline in the hope of a 'positive' legal outcome. This may well be a risk that project proponents are willing to take, given there is every chance of achieving the higher tariff and the 'worst case scenario', the lower tariff, would still offer an acceptable return on investment in many cases.

We await to see the level of confidence instilled in the industry by this latest announcement. Clarity will only be restored when the legal proceedings have been resolved, which are likely to take place in February.

Controversy and uncertainty around Feed-in Tariffs is mirrored in Europe where the Spanish Government is reported to be facing multiple lawsuits over cuts to their Feed-in Tariffs, due to be applied not only to new installations but controversially to existing installations as well. This may result in a drawn out legal wrangling, perhaps involving the European Commission, which may well add to a growing lack of confidence across Europe in the development of renewable self-generation.

EU member states are committed to jointly increasing the level of renewable generation from the current 9% to 20% by 2020, under the EU Renewable Energy Directive. Wavering confidence and developing mistrust in the certainty of support mechanisms has the potential to derail the expansion of small scale renewable generation which demands certainty in support to enable investment decisions to be made. One hopes that the instability in the UK and Spain does not result in these unintended consequences, ironically as a result of actions taken to ensure the sustainability of such schemes.

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