



## Feed-in Tariff: shared MPAN 5MW + 5MW Schemes

Following recent Government announcements there has been an amendment to the eligibility criteria for the Feed-in Tariff (FIT) scheme making it possible for two projects to share the same MPAN (Meter Point Administration Number) and both still qualify for the FIT provided that one of those projects is owned by a Community Organisation<sup>1</sup>. This is seen by many as an important change particularly with the recent closure of the Renewables Obligation (RO) scheme to large solar projects.

Commercial developers and Community Organisations alike, are seeking to exploit this change by dividing up “shovel ready” large solar sites which missed the RO deadline. In reality there is probably a short window to capitalise on this opportunity before the next FIT degression kicks in on 1 July 2015. The changed rules only allow for two sites to share an MPAN and of course the maximum size of any individual project under the FIT is 5MW. For ease of reference we refer in this briefing to “5+5 projects” but clearly the capacities of the projects could be less. Readers should note that the rules do not allow sharing of an MPAN between an RO site and a FIT site. Developers will need to keep an eye on FIT degression to assess whether it makes sense to go the 5+5 route or just settle for a single 5MW RO project.

It is crucial for participants in this sector to approach 5+5 projects in an orderly way. Below is a list of questions and challenges that should be posed by both parties (the Community Organisation and the commercial developers). Burgess Salmon is working through a number of these with clients.

- FIT degression means that, practically, there is a deadline to move 5+5 projects forward to achieve FIT preliminary accreditation by 30 June. This will grandfather the existing FIT level and allow a six or 12 month grace period to build each project, depending (respectively) on whether it is a commercial project or community project. This makes it essential for everyone to focus on deliverability and to establish quickly:
  - What is the status of the site / projects; can they be constructed?
  - What due diligence has been carried out to assess whether:
    - (i) the Community Organisation: (a) can fund the project acquisition (b) qualifies as a Community Organisation and (c) is equipped to undertake the

community project; and  
(ii) the commercial developer can deliver and is credible?

- How are both entities intending to fund the construction of the projects? What security package will a bank require and is this deliverable?
- What will Ofgem require as evidence that one of the sites will be community owned?
- Do the parties understand what is needed to maintain the attractiveness of the community project to potential investors e.g. to maintain EIS relief? Is there any structuring of the opportunity which has prejudiced this?
- Grant funding and FIT projects do not mix well. Grant funding cannot be used for certain purposes. The parties will need to consider how any grants are both structured and used to ensure that the community project is not disqualified from the FIT.
- What contractual arrangements covering the community site acquisition will the parties need or want prior to preliminary accreditation? The Community Organisation will want to ensure that the developer is bound to sell the project to them. Equally if the Community Organisation cannot raise the requisite funds post preliminary accreditation will the developer want / need a fall back position? Parties may wish to consider formal mechanisms such as options and exclusivity periods. What does Ofgem require as evidence that one of the sites will be community owned?
- What, in practical terms, is needed to achieve preliminary accreditation? Are the parties able to satisfy the requirements prior to the next FIT degression? We have already mentioned above the issue of what Ofgem will need to see to demonstrate one project is community owned. The parties will also need to consider:
  - Planning: Is the existing planning permission wide enough to cover the proposed arrangements – can it be divided into 5+5? Does it need changing? Are there conditions which prejudice the division of the project into 5+5?
  - Grid connection: Has a grid offer been accepted? A single MPAN may mean a single grid connection and

<sup>1</sup> as defined in Art 11(6) Feed-in Tariffs Order 2012 as amended

complications around shared grid arrangements which will need to be worked through carefully (see the Burges Salmon article entitled **“Shared Grid Connections – Do They Work?”**).

- Notwithstanding preliminary accreditation what issues surround the division of the single project into two? The rules on sharing a single MPAN may have changed but that does not mean that Ofgem has abandoned other rules on site separation for FIT accreditation. In any event the parties will want to be clear on how the sites divide.
  - Land rights: Has the landowner agreed to grant a lease to both projects? Is renegotiation required with the landlord and how will that impact on timing and economics for the 5+5 projects? What additional rights are required to reflect a division into 5+5 i.e. will both sites have access routes?
  - With a single MPAN how will export power purchase agreements (PPA) work? Each project is likely to want its own export PPA. How will the revenues flow and by reference to what output?
- Planning: This is addressed in part above, however, consideration must also be given to ancillary agreements between the developer and the authority which granted the planning permission such as S106 Agreements; the Community Organisation may need to enter into the same or similar agreements.
  - What will be the arrangements surrounding build-out and operation of both projects? Has the Community Organisation considered what contracts it will need in place to ensure that the project it holds is built and operated robustly?

- What restrictions will each entity want to place on the other in terms of future conduct and uses of each other's site so as not to cause problems or a nuisance?

For 5+5 projects to work in the narrow initial window available before what is likely to be substantial FIT degeneration, these and other questions need to be considered. Ultimately developers will need to focus in on Community Organisations who have credible leaders, are well funded and who themselves are intent on focusing on delivering a few specific opportunities.

## Contacts

If you would like to discuss any of the issues raised in this briefing, or would like to find out more about the work we are doing in this area, contact Ross Fairley or Camilla Usher-Clark.



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