



On the Subject

GSE Guidelines for Modifications to PV Plants

Carsten Steinhauer and Riccardo Narducci

On 1 May 2015, the Gestore dei Servizi Energetici (GSE) published the *Regole per il mantenimento degli incentivi in Conto Energia* (the guidelines). This is a set of guidelines for the implementation and communication of modifications to photovoltaic (PV) plants receiving incentives under any of the five Conto Energia.

Contrary to past practice, the GSE now requests that any kind of modification, irrespective of whether or not it is relevant for the award of the feed-in tariff (FiT), must be notified to the GSE. Any such modifications implemented in the past and not yet communicated to the GSE must be notified to the GSE within 30 days from publication of the Guidelines, *i.e.*, by 31 May 2015. The burden of notification is increased by the duty to pay the administrative fees established by the Ministerial Decree of 24 December 2014, which, depending on the circumstances, can be disproportionately high.

The GSE also now requires that any replacement modules or inverters that are acquired and installed in a PV plant after 1 May 2015 must meet all the requirements of the Fifth Conto Energia, irrespective of which requirements applied to the original components at the time of the start of operations.

Lastly, and most significantly, the guidelines establish the rule that production increases resulting from improvements to the efficiency of a PV plant will not be entitled to the FiT. The GSE will instead determine a cap on the FiT in line with past production or productivity estimates, which will have the effect of disincentivising efficiency improvements.

The economic impact of some of the new rules is significant, and the reasonableness of many of the rules questionable. It is

also doubtful if the GSE actually has the power to introduce these rules, which partially derogate rights acquired under the previous Conto Energia; it would appear that such rules would have required a law or Ministerial Decree.

To avoid the communication of past modifications to the plant triggering the application of an annual cap on future incentives, plant owners are well advised to consider filing a request for interim protection before the Regional Administrative Court in Rome (TAR). While it would be ideal to file requests before 31 May 2015, the formal deadline is 60 days from the publication of the Guidelines, *i.e.*, 30 June 2015.

Modifications to a PV Plant

REPLACEMENT OF COMPONENTS

All components that are installed in PV plants must be new and must not have been previously used in other plants.

Modules and inverters purchased after 1 May 2015 must comply with the requirements set forth under the Fifth Conto Energia. Components purchased before this date must comply with the Conto Energia under which the PV plant started operations.

As a consequence, stocks of modules and inverters previously purchased by wholesalers or operations and maintenance contractors for the purpose of serving as spare parts for Conto Energia I – IV PV plants will now become obsolete. The warranty provided by a component manufacturer will no longer effectively compensate a plant owner for a defective component, as warranties typically provide for the replacement of components with those that are identical but do not necessarily have a specific FiT guarantee.

EU-MANUFACTURED COMPONENTS

Components manufactured in an EU or EEA country and installed in PV plants incentivised under the Fourth or Fifth Conto Energia must be replaced with components manufactured in an EU or EEA country. If this requirement is not met

- In situations where the European origin of the components gave rise to a premium on the applicable FiT rate, the FiT rate for the entire plant will be reduced by this premium.
- In situations where the European origin of the components represented a priority criteria in the ranking process for the award of incentives, the PV plant will lose its right to the incentives.

PROPER DISPOSAL OF REPLACED MODULES

In situations where modules are replaced, plant owners must provide the GSE with evidence of the destiny of the old modules.

- If the modules were stolen, the GSE must be given a copy of the police report.
- If the modules were damaged, the GSE must be given documentation relating to their proper disposal, relevant to the date of installation or purchase.
 - The proper disposal of modules installed in PV plants or purchased after 1 July 2012 is guaranteed by the producer's participation in a recycling scheme.
 - The proper disposal of modules purchased and installed before 1 July 2012 must be carried out by the plant owner in compliance with the applicable legal framework.
- In situations where the modules will not be disposed of, the GSE must be provided with evidence of the transfer of the modules to a third party, e.g., a sales invoice or evidence of the installation of the modules in a non-incentivised plant.

CHANGES TO THE ELECTRICAL CONFIGURATION

Changes in the electrical configuration of a PV plant are allowed if so required by a change in law or in order to enhance the efficiency of the plant. Any increase in production resulting from the change in configuration that exceeds the 2 per cent threshold described below will not receive the FiT.

VARIATIONS TO THE INSTALLATION PROCESS

Depending on the applicable Conto Energia, certain installation processes, such as the architectural integration of modules, could have granted either entitlement to the FiT itself (direct access) or to a premium. In the former, a variation to the installation process would result in the full loss of the FiT, whereas in the latter, a variation would result only in the loss of the premium.

Variations intended to increase the productivity of the plant, such as the transformation of a fixed mounting structure in a tracker system, are expressly forbidden.

CHANGES TO THE OWNERSHIP OF THE PLANT

Depending on the applicable Conto Energia and certain exceptional regulations, access to the FiT, or to a specific premium on the FiT, is conditional upon the ownership of the PV plant, or the land, by a public entity.

If the public entity transfers the ownership of the PV plant or the land to a private company, the GSE will need verification of the reason for this transfer. If the applicable legal framework has not been followed, the GSE may either reduce or revoke the FiT. In addition, the transfer of a PV plant to a Public Entity can never result in additional benefits.

RELOCATION OF A PV PLANT

The general rule provides that the relocation of a PV plant to a different location triggers the loss of the FiT incentives.

If, however, the PV plant is repositioned within the same cadastral parcel, the GSE will continue to pay the incentives, provided that the necessary authorisation was obtained and that the GSE is satisfied with the explanation of why the PV plant was repositioned.

MODIFICATIONS TO THE POINT OF CONNECTION

Any modification to the point of connection between the PV plant with the public grid, including the transformation of an ordinary rooftop PV plant into a *sistema efficiente di utenza* (SEU), must be authorised by the GSE.

Each PV plant must have its own, unique point of connection with the public grid. If it fails to fulfill this requirement, the plant owner will lose its right to the incentives.

CHANGES TO THE SALE OF ELECTRICITY REGIME

Plant owners are generally free to change the sale of electricity regime for the electricity the PV plant produces. For example,

many plant owners opt out of the *ritiro dedicato* system and prefer to sell the electricity to a utility or trader through a private power purchase agreement.

Only regimes that are compatible with the Conto Energia applicable to the specific plant are, however, acceptable. For example, the *ritiro dedicato* or the *scambio sul posto* are both incompatible with the incentives under the Fifth Conto Energia. If a plant owner implemented one of these systems, it would lose its entitlement to the FiT.

(No) Incentives for Increased Production

Annex A of the guidelines contains the most controversial rule: where any of the variations to a PV plant described above create an increase in the productivity of the plant, the GSE will not pay the FiT on the increased production.

To verify whether or not an increase in production has taken place, the GSE establishes as its reference points either the highest annual production rate in the three preceding calendar years, increased by 2 per cent; or, in the event that the plant has not yet been active over three full calendar years, the expected annual production rate determined on the basis of estimates of production hours, as published each year by the Ministry of Economic Development.

The second of these creates the absurd result that an improvement in efficiency during the first three years of life of a PV plant can easily result in a reduction of the overall FiT payable, given the quite conservative estimates of average production hours published by the Ministry of Economic Development. Similarly, the replacement of inefficient modules that have caused a reduction in productivity for a period of three calendar years will not serve to reinstate the original level of annual incentives. Finally, PV plant owners that make improvements to their plants will never again be able to benefit from particularly sunny years that generate production hours higher than those the GSE has determined as the reference point for the plant's productivity.

The GSE has justified its refusal to pay FiT on increased productivity by making reference to the annual Euro 6.7 billion limit on incentives to the PV sector. The argument is not, however, very convincing, as the Euro 6.7 billion threshold has only triggered the end of the granting of incentives to newly installed PV plants, and does not constitute a hard cap on the annual FiT expense. It appears that the GSE has acted beyond its powers by introducing a limit on the FiT incentives that only the legislature or the Ministry could have enacted.

Notifying the GSE

ORDINARY PROCEDURE

The start of the works for the replacement of components or for any of the modifications outlined above, must be notified to the GSE upon commencement. Within 30 days of the completion of the works, the owner of the PV plant must inform the GSE.

These two notifications must be drafted in accordance with the samples provided by the GSE in the technical guidelines and delivered to the GSE by certified email to info@pec.gse.it, or by registered letter.

The notices must contain, *inter alia*, the description of the modification, the reason for it and the relevant permit issued by the competent administration (if needed).

After receipt of the works completion notice, the GSE will start its investigation, which must be concluded within 90 days of either the approval of the modification, the adjustment of the FiT, the determination of the maximum threshold of incentivised production (see above) or the revocation of the FiT.

EXEMPTION FROM START OF WORKS NOTIFICATION

A start of works notification is not necessary in relation to

- Urgent actions, aimed at restoring the safety and operation of the plant, completed within 15 days
- Minor changes to the plant that do not have an impact on the criteria for the award of the FiT incentives, e.g., replacements of wires, minor components, electric boards, etc.

In these cases, only the notice of the completion of the works has to be delivered to the GSE.

NOTIFICATION OF PREVIOUS MODIFICATIONS BY 31 MAY 2015

The new guidelines expressly provide for the obligation to communicate to the GSE, at the latest by 31 May 2015, any modification that was applied to the PV plant in the past but was not communicated to the GSE. It is our understanding that any such modification, even if it increased the efficiency of the PV plant, will not result in a limitation of the kWh of production receiving the FiT as described above.

PRELIMINARY EVALUATION REQUEST

The plant owner has the option of submitting to the GSE a request for a preliminary evaluation of any intended modifications in situations caused by force majeure events,

supervening public interests reasons or exceptional circumstances.

The plant owner must request a preliminary evaluation with respect to any action that is not expressly covered in the guidelines. The GSE must conclude its evaluation within 60 days of the receipt of the request for a preliminary evaluation.

NOTIFICATION OF DOWNTIMES

PV plant owners must inform the GSE of any stoppage in production for more than 15 days, within 15 days of the occurrence.

The GSE will suspend the incentives and start paying them again only once the owner of the PV plant has notified the GSE of the end of the downtime and the GSE has ascertained the compliance of the stoppage with the guidelines.

According to the various Conto Energia decrees, only stoppages caused by reasons relating to the safety of the national grid, or by natural disasters, entitle the owner to an extension of the incentives period. Voluntary stoppages to carry out works on the plant will not entitle the owner to an extension of the overall incentive period.

Administrative Fees

Pursuant to Ministerial Decree 24 December 2014, implementing article 25 of Law Decree 91/2014 (also known as the *spalma-incentivi* decree), any notification of changes to the PV plant, and any request for a preliminary evaluation submitted to the GSE, triggers administrative fees in the following amounts:

- Euro 50 (fixed); plus
- Euro 2/kWp for the first 20 kWp; and
- Euro 1/kWp for any kWp exceeding the first 20 kWp.

In relation to the replacement of PV modules, the guidelines refer the aforementioned power thresholds to the nominal power of the replace modules. In contrast, however, it would appear that the replacement of any other component triggers the above fees with respect to the nominal power of the entire PV plant, irrespective of how minor the change was.

Although not expressly mentioned in the guidelines, it may be assumed that the GSE will apply the reduced fees of between Euro 50 and 150 provided by the Ministerial Decree of 24 December 2014 for the communication of simple events, such

as a change of ownership, a change to the electricity marketing regime, the assignment of GSE receivables or other administrative changes.

AUTHORS

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

Carsten Steinhauer

+39 06 462024 1
csteinhauer@mwe.com

Riccardo Narducci

+39 06 4620 2451
rnarducci@mwe.com

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

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