



Todarello & Partners

PV INSTALLATIONS ON PUBLIC BUILDINGS AND AREAS BELONGING TO THE PUBLIC ADMINISTRATION: EXTENSION OF DEADLINE FOR ENTRY INTO SERVICE PURSUANT TO THE FOURTH “CONTO ENERGIA” AND DEADLINE TO OBTAIN APPROVAL.

As is known, law n. 228/2012 - legge di stabilità 2013 - introduced a further extension of the incentives of the Fourth Conto Energia with regard to photovoltaic systems on public buildings or areas belonging to the public administration.

Article 1, paragraph 425, of the “legge di stabilità” (budget law) of 2013 (Law 228/12) provides that, in order to qualify for the incentives of the Fourth “Conto Energia”, “the deadline for entry into service” of photovoltaic systems, subject to the maximum limit of funds made available, “is extended exclusively for the installations to be built on public buildings and areas belonging to public administrations (...), for which authorization has been sought and obtained, to 31 March 2013, or for similar plants subject to the procedure of environmental impact assessment (...), to 30 June 2013. For these latter installations, if the authorization is granted after 31 March 2013, in order to allow their connection to the grid, the deadline for entry into service shall be extended no later than 30 October 2013”.

This provision, although clearly setting the date by which the mentioned installations should be in service in order to qualify for the incentives of the Fourth Conto Energia, is, however, ambiguous on the period within which the relevant authorization must have been “requested and obtained”.

Because of the impending deadline of 31 March 2013, date by which installations exempt from EIA (Environmental Impact Assessment) must become operational, many operators are wondering if the authorization will also be awarded within the same period or if, on the contrary, the extension covers only the installations authorized on the date of entry into force of the Act (1 January 2013) or the previous deadline for entry into service (31 December 2012).

In a note, the Electricity Services Operator (GSE), seems inclined to favour the first interpretation (“as long as on this date [i.e. 31 March 2013] the installation has been duly authorized”)¹.

Nevertheless, despite this explanation, there are still doubts as to the correct interpretation of the provision in question.

As seen above, the regulation introduces three different deadlines for the entry into service of the installations, in order to be able to further enjoy the incentives provided by the Fourth Conto Energia:

¹The note is available at <http://www.gse.it/it/salastampa/news/Pages/Conto-Energia-chiarimenti-richieste-accesso-incentivi-impianti-realizzati-su-edifici-e-su-aree-PA.aspx>

1. 31 March 2013, for installations whose authorization has been requested and obtained;
2. 30 June 2013, for installations subject to EIA;
3. 30 October 2013, for installations subject to EIA that have been authorized after 31 March 2013.



Todarello & Partners

As explained, on the basis of a simple reading of the provision, it could be argued that the terms stipulated by the law only relate to the date of entry into operation of the installations.

On the other hand, with regard to the installations referred to in point 1, nothing is said about the deadline for requesting and obtaining the authorization, which - considering that at the same time in relation to the installations subject to an EIA, the provision specifically refers to authorizations issued after 31 March 2013 - would lead to think that the authorization can be obtained at any time prior to 31 March 2013, as long as in a timely manner.

That said, a different, more restrictive interpretation seems, however, possible.

Indeed, the Fifth Conto Energia (DM 5 July 2012) had already extended to 31 December 2012 the deadline for the entry into service of PV installations on public buildings or areas, in order to access the more generous incentives of the Fourth Conto Energia. Thereafter, the “legge di stabilità” has extended this further by identifying, not one, but three different deadlines for the entry into service of the installations. In short, it appears the legislator may have wanted to provide an integration (to allow further enjoyment of the incentives and benefits of the Fourth Conto Energia) to the transitional period already introduced by the Fifth Conto Energia.

Furthermore, it is worth noting that before the entry into force of Art. 1, paragraph 425, of the legge di stabilità of 2013 (besides the installations requiring EIA) two instances could occur:

- authorization requested and obtained and installation not yet into service;
- authorization requested and not yet obtained.

Therefore, it is possible that the Legislator, in referring to the authorizations requested and obtained, wanted, in fact, to make a selection in order to identify the operators entitled to benefit from the further extension, restricting, however, the effectiveness of the provision exclusively to the hypothesis of installations already approved on 31 December 2012.

Hence, by adhering to this interpretation, the deadline of 31 March should refer only to the entry into service of the installations already approved on 31 December 2012, but not yet connected to the grid.

However, provided you wanted to favour the latter interpretation, a further element of uncertainty would arise with regard to the time limit for the finalization of the authorization procedure (in relation to the case of installations not subject to EIA): 31 December 2012, date of the expiry of the first extension, or 1 January 2013, the date of entry into force of the legge di stabilità (Article 1, paragraph 526).

In conclusion, in light of the problems herein exposed, clarifications from the legislator on this point would be desirable, also in view of the considerable potential relevance that the ability to take advantage of the substantial incentives of the Fourth Conto Energia may have at a time of crisis such as the current one.

*

The authors of this article are Massimo Colicchia, Nicolò Spizzico and Ciro Rolando. For further information or clarification on the issues discussed herein, please contact Mr Massimo Colicchia in our Milan office.

* * *

Todarello & Partners provides legal assistance on all issues relating to topics covered in this article. The lawyers of the Firm have significant experience in the related field, regularly assisting some of the major market players and representing them in legal proceedings before all competent courts.



©Todarello & Partners
Studio Legale Associato