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Federal Regulator Blasts Open Door to Differentiated Feed-in Tariffs in USA

By Paul Gipe, Contributor | October 25, 2010

FERC decision clears the way for multi-tiered state FITs.

In a ruling 21 October 2010, the Federal Energy Regulatory Commission (FERC) effectively cleared the way for multi-tiered feed-in tariffs for various renewable energy technologies, like the programs found in Ontario, Canada and across Europe. FERC's ruling "clarified" an earlier decision that had roiled proposed feed-in tariff policies at the state level in the US.

The ruling affects state policies that order utilities to pay for a certain percentage of generation from a particular technology, in this specific case, the state of California's policy on Combined Heat and Power.

FERC's action should put to rest claims that differentiated feed-in tariffs based on the cost of generation, as found in Germany, France, Switzerland and a host of other countries, are prohibited for much of the continental US.

The federal decision also casts doubt on the justification for the much-hyped Renewable Auction Mechanism proposed in California. The auction--or bidding system--is predicated on the necessity of complying with federal law. Bidding systems for developing renewable energy have been widely abandoned in Europe in favor of feed-in tariffs in part to better control costs and the pace of development.

Feed-in tariffs (FITs) had become the most recent battleground in the thorny relationship between the rights of states to enact laws governing state policy, and the federal government's constitutional role in regulating interstate commerce.

Opponents of feed-in tariffs had charged that the federal government "pre-empted" states from setting feed-in tariffs other than one rate based on the "avoided cost" of conventional generation. If true, states could not set tariffs that varied from one technology to another or from one application to another.

The "pre-emption" claim arises from the 1978 National Energy Act in the Jimmy Carter-era and one of

its provisions: PURPA (The Public Utility Regulatory Policies Act). PURPA was extensively litigated in the 1980s and 1990s by utilities opposed to developing renewable energy and especially to opening their markets to independent power producers.

PURPA, and the subsequent legal decisions, limits what state regulatory commissions can order utilities to pay for renewable energy to the "avoided cost", that is, the cost of generation the utility would have otherwise avoided but for the renewable generation. States, such as California, have often determined that the "avoided cost" is that of generation from a conventional gas-fired power plant.

Proponents of feed-in tariffs have sometimes characterized them as "PURPA on steroids" because programs such as those in Ontario specify tariffs that are based on the cost of generation from each technology in each of several different sizes and sometimes in different applications. Ontario, for example, offers specific tariffs for both wind energy on land as well as offshore.

Feed-in tariff advocates had speculated that PURPA may permit states to order utilities to buy generation from specified renewable technologies and, thus, the "avoided cost" is the renewable generation that the utility would have "avoided" purchasing itself. However, until FERC's order clarifying its July 15th 2010 decision in the CPUC case, such an approach was mere conjecture.

The California Public Utility Commission (CPUC) had gone to FERC to clarify the earlier decision and ask FERC specifically how to meet federal requirements. The CPUC's action resulted from FERC's ruling that appeared to bar the state from implementing AB 1613, the California Waste Heat and Carbon Emissions Reduction Act. In response to AB 1613, the CPUC had ordered utilities to offer fixed price contracts for Combined Heat and Power projects less than 20 MW.

In the [Order Granting Clarification and Dismissing Rehearing](#), FERC explained its decision in more detail. In doing so, FERC explicitly states, ". . . a state may appropriately recognize procurement segmentation by making separate avoided cost calculations." Moreover, FERC says ". . . the concept of a multi-tiered avoided cost rate structure is consistent with the avoided cost requirements set forth in section 210 of PURPA" and in FERC regulations.

Though expressed in the awkward legal language of the federal bureaucracy, the significance of these statements cannot be overemphasized. The following passages from the FERC order clarify the principle further.

". . . Avoided cost rates may also 'differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies' . . .

". . . We find that the concept of a multi-tiered avoided cost rate structure can be consistent with the avoided cost rate requirements set forth in PURPA and our regulations. Both section 210 of PURPA and our regulations define avoided costs in terms of costs that the electric utility avoids by virtue of purchasing from the QF. The question, then, is what costs the electric utility is avoiding. Under the Commission's regulations, a state may determine that capacity is being avoided, and so may rely on the cost of such avoided capacity to determine the avoided cost rate. Further, in determining the

avoided cost rate, just as a state may take into account the cost of the next marginal unit of generation, so as well the state may take into account obligations imposed by the state that, for example, utilities purchase energy from particular sources of energy or for a long duration.⁵¹ Therefore, the CPUC may take into account actual procurement requirements, and resulting costs, imposed on utilities in California. . .

". . . permitting states to set a utility's avoided costs based on all sources able to sell to that utility means that where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement. . ."

What the order says, in effect, is that states can order utilities to buy a certain amount of renewable energy from each of several specific technologies. Thus, a feed-in tariff program under this ruling will differ from those in Ontario or in Europe because the amount of generation will also have to be specified.

For example, Ontario offers six different feed-in tariff tranches for solar photovoltaics. Ontario only specifies the price that will be paid for each tranche.

Under this ruling, an American state could offer a tariff for the same six tranches. However, the American state would also specify the amount of MW or TWh that would be purchased in each tranche.

In the following example, the state would order purchases of up to 60 TWh per year of generation from a mix of solar PV of various sizes in both rooftop and groundmounted applications. For scale, California consumes about 300 TWh per year and 60 TWh per year represents 20% of consumption.

Hypothetical US State Feed-in Tariff			
	Years	USD/kWh	TWh
Photovoltaics			
MicroFIT			
Rooftop <10 kW	20	0.782	10
Groundmounted <10 kW	20	0.626	5
FIT			
Rooftop >10 kW<250 kW	20	0.695	15
Rooftop >250 kW<500 kW	20	0.619	20
Rooftop >500 kW	20	0.526	5
Groundmounted <10 MW*	20	0.432	5
		Total	60

Jennifer Gleason of the Environmental Law Alliance notes that FERC's decision "creates another way for states to design strong feed-in tariff programs" while complying with federal law. "If these avoided cost rates will not themselves be enough to create a strong FIT program, FERC made it perfectly clear

that 'a state may separately provide additional compensation for environmental externalities . . . in addition to the PURPA avoided cost rate, through the creation of renewable energy credits (RECs)'."

"This ruling is a huge victory for clean energy as it provides states with clearly defined flexibility in implementing comprehensive Feed-In Tariffs," says Craig Lewis of the [California] FIT Coalition. "We've long argued that states have significant flexibility in setting avoided costs and pricing bundled RECs to support Feed-In Tariff design at the state and local levels."

According to Sue Kateley, Executive Director of the California Solar Energy Industries Association (CalSEIA), "The FERC decision clears the way for State utility regulatory commissions to implement FITs and we look forward to working with California utilities to implement FITs in a responsible way that creates local jobs and clean renewable generation."

See also [NREL: Feed-in Tariffs Legal in USA When Certain Conditions Met](#).

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<http://www.renewableenergyworld.com/rea/news/article/2010/10/federal-regulator-blasts-open-door-to-differentiated-feed-in-tariffs-in-usa>

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