

Feed-In Tariffs & FERC

California PUC, 132 FERC ¶132 61,047 (2010)

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FERC & the Feed-In Tariff

- **What** is California CPUC's feed-in tariff program?
- **Why** is FERC involved?
- **What** positions did the CPUC & other participants take?
- **How** did FERC respond to the CPUC's feed-in program?
- **Where** do the industry and state policy makers go from here?

What Is the CPUC Feed-In Program

- Authorized by California's AB 1613 Waste Heat & Carbon Emissions Reduction Act"
- IOUs must offer to purchase, for ten years, at price set by CPUC, electricity generated by CHP generators
- Eligible generators: 20 MW or less, grid connected, meet efficiency and emissions standards
- [Note: the CPUC program is characteristic of a "feed-in"
- compulsory purchase, set term, fixed incentive prices]

Why did FERC get involved?

- FERC has jurisdiction to set rates for wholesale transactions under the Federal Power Act which **preempts** states
- Exception: When a wholesale transaction involves a QF, state can set rates BUT rates cannot exceed avoided costs under PURPA.
- FERC can review whether state avoided cost rates comply with PURPA; rates exceeding avoided costs are **preempted**

Why did FERC get involved?

- FERC brought into the California case by two groups:
 - ◆ CPUC asks for a declaration that its feed-in program is **NOT preempted** by the FPA and PURPA
 - ◆ Southern Cal Edison, PG&E and Sand Diego Gas & Electric (CA Utilities) ask for declaration that CPUC program **is preempted** by both FPA and PURPA

What did CPUC argue?

- CPUC's Position:
 - ◆ States not preempted from adopting mechanisms to implement important environmental programs
 - ◆ CPUC not setting price for wholesale sale, but for offer to sale. Transaction not consummated into wholesale until buyer accepts
 - ◆ Says PURPA not basis for decision, but should be used as alternative justification for upholding feed-in program

What did the California utilities argue?

- California Utilities Position:
 - ◆ CPUC is setting a price, which is preempted by FPA
 - ◆ CPUC held that it was not relying on PURPA as basis for program and in any event, rates do not comply with avoided cost procedures.

How did FERC rule?

1. CPUC's requirement that utility offer to buy CHP power at state-set rates is wholesale price setting
2. FPA preempts states from setting wholesale price, so CPUC is preempted
3. States can order feed-in tariffs if (a) sellers are QFs and (b) if prices do not exceed avoided cost
4. If seller is not QF, state can still order the utility to purchase but it can't set the price.
5. Invites CPUC to seek guidance on how CHP generators can set rates compliant with FPA (n. 93)

Where do we go from here?

- CPUC files a petition for clarification, and alternative, rehearing.
 1. Can CPUC require retail utilities to offer different contracts that include different factors in the avoided cost calculation to promote more efficient CHP facilities? (reflecting long term commitments, short term commitments, efficiency of facility and location)
 2. Must full avoided cost be the lower possible avoided cost, and can it take into account limitations on alternate sources of energy imposed by state law? [state law imposes many environmental reqts on utility procurements which can increase utility's costs]
- Rehearing - reiterates arguments

Where do we go from here?

- California Utilities' response:
 - ◆ Clarifications are premature because CPUC never held an avoided cost hearing; cannot get approval of rates already set in AB1613 process
 - ◆ Environmental attributes cannot be included in avoided cost because they would compensate QF for more than just capacity and energy. Can only be included if they are real costs
 - ◆ With regard to transmission “adder,” needs to be discussion/evidence that it is a real cost

Final Comments

- Decision shows preference for mechanisms other than feed-in (perhaps national RPS and improved transmission policies?) to foster renewables
 - ◆ FERC declined to explore possible options (e.g., state set feed-in with FERC broad approval - Permian Basin)
- California adopts feed-in program for solar that compels purchase, but rates set through auction

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