FERC Ruling Seen Aiding California Bill For Clean-Energy 'Feed In' Tariff

from InsideEPA.com's "California Energy & Climate Report" July 23, 2010

A recent ruling by the Federal Energy Regulatory Commission (FERC) is expected to boost prospects for eventual passage of a California bill that would establish a so-called "feed-in tariff" requiring utilities to purchase renewable energy from generators at a set price. The legislation is intended in part to accelerate the state's efforts to cut greenhouse gas (GHG) emissions, according to proponents of the feed-in tariff program.

However, the proposal would likely still face substantial opposition from utilities and ratepayer groups, which fear the tariff would significantly raise the price of electricity by forcing utilities to purchase the renewable power at prices well above conventional energy.

On July 15, FERC issued an order laying out conditions for the California Public Utilities Commission (CPUC) to implement a narrow feed-in tariff for combined heat and power (CHP) generation. CPUC proposed the tariff to promote greater use of the more efficient generation process. FERC concluded that because the proposal sets rates "for wholesale sales in interstate commerce by public utilities," it is preempted by the Federal Power Act (FPA).

However, FERC also said that as long as CHP generators obtain "qualifying facility" status and that the rate CPUC sets for the tariff does not exceed the "avoided cost" of the utility that is purchasing energy, the proposal is not preempted by FPA, the Public Utility Regulatory Policies Act (PURPA) or commission regulations.

CPUC had petitioned FERC on May 4 to find that its feed-in tariff proposal -- which would require the state's utilities to offer to buy up to 20 megawatts of CHP at a specified rate -- would not be preempted by PURPA or the FPA, a move that drew legal challenges from the investor-owned utility industry.

Representatives of the Feed-in Tariff Coalition (FiT), an advocacy group for state feed-in tariffs around the country, say the FERC ruling should provide more momentum to

pass a major feed-in tariff bill next year in California.

One important issue FERC addressed is that preemption of state feed-in tariffs by federal law is not a problem as long as the renewable projects receiving the special contracts are under 20 megawatts and the tariff meets the two conditions for "qualifying facilities" and avoided cost rates, a FiT source said.

Avoided costs refer to the amount of money a utility would have to spend to provide the same amount of electricity as the proposed renewable project from traditional means, such as through a natural gas-fired power plant. If a renewable project developer can show a 20% avoided cost, for example, this is reflected in the price the utility must pay for the renewable power over a long-term contract.

Renewable power developers argue that their projects save money compared with traditional power plants for a variety of reasons, including that they are connected directly with utilities' power lines, and not the broader state electricity grid, the source said. This saves money on electricity being wasted due to "line losses" and grid congestion, and it also avoids the need to pay transmission access charges, the source said. FiT representatives argue the true avoided costs can be anywhere from 15% to 40%, but that many state regulators and utilities are not currently reaching the same conclusions through their calculations.

'Avoided Cost' Debate

The avoided cost issue is likely to be a matter of debate going forward, especially when the FiT Coalition pushes a major feed-in tariff bill in California next year, the source said. If these costs are not properly calculated, state feed-in tariffs may not meet the federal legal requirements and could be preempted, the source said. And the July 15 FERC ruling in the CHP case still leaves such cases under PURPA authority, the source noted.

"It's entirely possible some people might challenge" through FERC the avoided costs determined by states under a feed-in tariff, the source said. "We really wanted these projects not even to fall under PURPA."

But, FERC has determined that states have "fairly wide latitude to determine what the definition of avoided cost is," the source noted.

Proponents believe a feed-in tariff bill, coupled with California's stringent renewable portfolio standard (RPS), can significantly accelerate the state's GHG emission-reduction efforts, which aim to cut emissions to 1990 levels by the end of 2020. Utilities are expected to fail to meet the state's 20% RPS by the end of this year; they also face a proposed 33% RPS by the end of 2020.

The feed-in-tariff can "go a long way in helping to achieve that [RPS] goal, but more importantly can create a lot more jobs and tax revenue to the state, and a lot more

quickly than the current path," the source added.

The group is also touting a recent University of California-Berkeley study that makes a strong case for feed-in tariffs, in part by concluding that it would create three times the jobs in California than the RPS alone, the source said.

The FiT Coalition is currently shopping its own feed-in tariff legislative proposal to California state lawmakers to carry next year, the source said. The bill "will definitely be moving forward in the 2011 session and we've already begun the process of looking for the best author and building a coalition," the source added. "We feel more confident that with studies like the UC-Berkeley [one]. . . that more and more people and policymakers will really wake up to the idea that this is one of the best" policy paths.