

FERC Ruling Clears Way For Greater State Adoption Of Feed-In Tariffs

Posted: October 25, 2010

A recent FERC ruling on a California feed-in tariff program to promote clean-energy generation sets a national precedent and gives other states a road map to move ahead with similar efforts, according to proponents of feed-in tariffs, who say that the commission's decision clears the way for widespread adoption of the tariffs.

FERC's [Oct. 21 order](#), which clarified how the California Public Utilities Commission (CPUC) could implement a narrow feed-in tariff for combined heat and power (CHP) generation, gives greater clarity and leeway for states in how to create feed-in tariff programs that are compliant with FERC regulations and the Public Utility Regulatory Policies Act (PURPA), says a source with the FIT Coalition, a nationwide advocacy group for feed-in tariffs. Calling the ruling "a huge win," the source says FERC's decision gives states "a fair number of options and extreme flexibility in how they set their feed-in tariff prices."

Feed-in tariffs, which have been widely used in parts of Europe to expand solar and other renewable energy resources, provide generators -- including buildings and homes that install the technologies -- a guaranteed payment for their surplus electricity that utilities are required to purchase at the payment rate over a set period of time. While the programs are gaining traction at the state level, they have faced implementation hurdles due to concerns about the constraints of PURPA and the Federal Power Act (FPA). The FIT Coalition source says that the recent ruling is a strong validation of their arguments that these programs are possible under PURPA, noting that the concerns about PURPA have been "one of the biggest roadblocks" to wider implementation of the programs. The source sees the ruling "as FERC taking that roadblock away."

FERC's action aimed to clarify [its July 15 ruling](#) stating 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, PURPA or FERC regulations. 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.

A FERC source says the Oct. 21 ruling provides states with more guidance on how to create a compliant feed-in tariff, and responds to specific requests for clarifications in CPUC's [Aug. 16 filing](#) for clarification or rehearing. The CPUC in particular sought clarification on if it "may require retail utilities to consider different factors in the avoided cost calculation in order to promote development of more efficient CHP facilities" -- the so-called multi-tier approach, according to FERC's ruling. CPUC also wanted to see if "'full avoided cost' need not be the lowest possible avoided cost and can properly take into account real limitations on 'alternate' sources of energy imposed by state law," according to the ruling.

Under the order, FERC clarifies that states can develop different avoided cost levels for different types of capacity -- e.g., one level for wind and a different level for solar -- the FERC source says. The FIT Coalition source as well points out that FERC allows for avoided costs to take into account other states' laws, including Renewable Portfolio Standard (RPS) requirements, which results in avoided costs being calculated against a similar resource. "That's a huge potential change," the FIT Coalition source says, making the comparison that if a state has a "carve-out" in its RPS for solar resources, the avoided cost level can be calculated against solar instead of against a natural-gas fired plant.

In its ruling, FERC says that "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" -- e.g., for specific amounts of renewables in an RPS. The orders continues, stating that under these conditions, "generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement."

A FERC source also says the order answers CPUC's request to create an "adder" or bonus for CHP facilities "sited in transmission constrained areas because the adder reflects the avoided cost of distribution and transmission upgrades that would otherwise be necessary." The FERC source says that it would not actually be an adder because the actual costs of the foregone transmission upgrades could be factored into the avoided cost amount, with the caveat that it would have to be a real cost that could be demonstrated. Likewise, the ruling states that "if the CPUC bases the avoided cost 'adder' or 'bonus' on an actual determination of the expected costs of upgrades to the distribution or transmission system that the [qualifying facilities under PURPA] will permit the purchasing utility to avoid, such an 'adder' or 'bonus' would constitute an actual avoided cost determination and would be consistent with PURPA and our regulations."

A FIT Coalition source notes that, historically, environmental benefits and transmission costs could not be applied to avoided costs, and that congestion charges and transmission access charges could potentially be added into feed-in tariff programs as a result of the ruling. Also noteworthy, the FIT Coalition source says, is that states have the "complete latitude" to compensate at higher rates than avoided costs through a renewable energy credit or other such provision. All total, these provisions clear "the path for states to design feed-in tariffs," the source says, delivering not only the clarification that CPUC sought but also opening up the possibilities for how interested states can structure programs.

Looking ahead, the FIT Coalition source says they are working on a broader tariff proposal in California and also working to pass a national feed-in tariff bill from Sen. Bernie Sanders (I-VT) that the source says would provide wider leeway for states to pursue such programs.

In a statement to *Energy Washington*, a CPUC spokesman called the ruling “a great order for California and all states trying to implement renewable energy policies,” and noted that the ruling gives states more flexibility to consider renewable and other environmental attributes in calculating avoided cost.