



July 15, 2010

Docket Nos. EL10-64-000 and EL10-66-000

California feed-in tariff petitions

The Federal Energy Regulatory Commission (FERC) today clarified how a California measure known as a feed-in tariff could be consistent with federal laws governing sales for resale of electric energy in interstate commerce by public utilities.

Feed-in tariffs typically are designed to encourage the use of certain types of generation resources by offering a guaranteed purchase price under a long-term contract for electricity produced by those resources. California adopted a feed-in tariff by enacting the California Waste Heat and Carbon Emissions Reduction Act (AB 1613). That state law requires investor-owned electric utilities to purchase, at a price set by the California Public Utilities Commission (CPUC), electricity generated by eligible combined heat and power (CHP) generators and delivered to the power grid.

The first petition addressed in FERC's order, filed by the CPUC, asked that FERC find that sections of the Federal Power Act (FPA) and the Public Utility Regulatory Policies Act (PURPA) do not preempt a CPUC decision on feed-in tariffs issued pursuant to AB 1613. The second petition, filed by three investor-owned California utilities (Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company), asked FERC to find the CPUC decision is preempted by the FPA.

FERC affirmed in its order that its authority under the FPA includes the exclusive jurisdiction to regulate the rates, terms and conditions of sales for resale of electric energy in interstate commerce by public utilities. FERC also explained that the role of States in setting wholesale rates is limited to determining "avoided cost" rates for qualifying facilities pursuant to PURPA. FERC thus found that the CPUC's decision under AB 1613, including the CPUC-set price, would be consistent with these federal laws as long as it satisfies certain requirements:

- The CHP generators must be QFs pursuant to PURPA.
- The CPUC-set price must not exceed the avoided cost of the purchasing utility.