



Solar Feed-in Tariff Pricing in the U.S.

**Practical Approaches to Establishing Wholesale Programs
at the State Level**

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Interstate Renewable Energy Council

Who is IREC?

- Nearly 30 year history
- Appeared before over 30 state public utility commissions.
- Net metering, interconnection, and financing of distributed resources.
- Community metering programs.
- Model rules on net metering and interconnection (www.irecusa.org)
- Smart grid, electric vehicles, energy storage.
- Support wholesale procurement.
- No position on policy used.

IREC's Interest

- Energy markets are heavily regulated.
- Jurisdiction is important consideration.
- Net Metering.
 - Basic netting
 - Monthly excess
 - Annual excess
 - Third-party financed systems
- Interconnection.
- Questions arising with feed-in tariffs.

Power Sale Issue

- Power sales are heavily regulated.
 - Focus on how power is used
 - Not RECs, GHG credits, etc.
- How is the power used?
 - Serve onsite needs (net metering)
 - Sold to retail user (retail PPA or SSA)
 - Sold to wholesale purchaser (PPA)
 - Storage?
- Key Questions:
 - Who regulates?
 - What regulations apply?

Power Sale Issue

- Power sales are heavily regulated.
 - Focus on how power is used
 - Not RECs, GHG credits, incentives, etc.
- How is the power used?
 - Used onsite to serve own needs (net metering)
 - Sold to retail user (retail PPA or SSA)
 - **Sold to wholesale purchaser (PPA)**
 - Storage?
- Key Questions:
 - **Who regulates?**
 - What regulations apply?

Legal Analyses

- National Renewable Energy Laboratory
 - Hempling, et al., *Renewable Energy Prices in State-Level Feed-in Tariffs: Federal Law Constraints and Possible Solutions*, NREL/TP-6A2-47408 (January 2010)
- Oregon Department of Justice
 - *Oregon Department of Justice Interoffice Memo*, filed in Staff Comments, OR PUC Docket No. AR 538 and UM 1452 (filed December 19, 2009)
- California Attorney General
 - *California Attorney General's Response to ALJ's Request for Briefs Regarding Jurisdiction to Set Prices for a Feed-in Tariff*, CA PUC Docket No. R.08-08-009 (filed June 25, 2009)

**The Federal Energy Regulatory
Commission has exclusive jurisdiction
to regulate wholesale power sales in
most of the United States**

Wholesale Power Markets

- The *Federal Power Act*
- FERC has jurisdiction over wholesale sales in interstate commerce that involve public utilities
 - Any sale of electric energy to any person for resale
 - “in interstate commerce”
 - Includes almost all wholesale sales in the U.S.
 - Includes sales on distribution systems
 - Excludes Hawaii, Alaska and Texas
 - “public utilities” do not include agencies of the United States, States, political subdivisions of a State, or agency or instrumentality thereof.

Wholesale Power Markets

- The *Public Utility Regulatory Policies Act*
 - Delegates to states the ability to set avoided cost rates for QF purchases
 - FERC responsibilities
 - Exclusive authority to determine QF eligibility
 - Determines parameters states must use in setting QF avoided cost
 - State responsibilities
 - Establish interconnection standards
 - Set contract terms and conditions
 - Determine utility avoided cost

Wholesale Power Markets

- **U.S. Supreme Court**
 - “Congress meant to draw a bright line easily ascertained, between state and federal jurisdiction, making unnecessary case-by-case analysis. This was done in the Power Act by making FPC [now FERC] jurisdiction plenary and extending it to all wholesale sales in interstate commerce except those which Congress has made explicitly subject to regulation by the states.”
 - *Federal Power Commission v. Southern California Edison Co.*, 376 U.S. 205, 214 (1964)

Wholesale Power Markets

- **Federal Energy Regulatory Commission**
 - *Order Granting Petition for Declaratory Order, Connecticut Light and Power Co., FERC Docket No. EL93-55-000 (January 11, 1995)*
 - Connecticut Law
 - Municipality-owned solid-waste QF facility
 - Wholesale purchase at retail rate
 - FERC's order preempted the state law

Wholesale Power Markets

- **Federal Energy Regulatory Commission**
 - “First, if the facility addressed by the Connecticut statute is a qualifying facility (QF) under PURPA, the Commission has responsibility for the QF’s rate for sales for resale. Rates maybe established by the state but only pursuant to and consistent with this Commission’s regulations under PURPA. Second, if the facility addressed by the Connecticut statutes is not a QF but the seller is a public utility within the meaning of the Federal Power Act (FPA), this Commission [FERC] has exclusive jurisdiction over its rates for resale in interstate commerce. Finally, if the facility addresses by the Connecticut statute is not a QF and the seller is not a public utility, but, for example, instead is a governmental entity within the scope of section 201(f) of the FPA, this Commission does not have jurisdiction over its rates.”

Wholesale Power Markets

- **National Renewable Energy Lab**
 - “A wholesale sale of electricity triggers one of two federal statutes – the Public Utility Regulatory Policies Act of 1978 (PURPA) or the Federal Power Act of 1935 (FPA). Each of these statutes does in fact limit the discretion of state-level tariff designers.” p. iv

Wholesale Power Markets

- **Oregon Department of Justice**
 - “FERC addressed the legality of state statutes establishing or authorizing incentive rates for wholesale sales of energy generated by renewable resources and concluded that the statutes are preempted, unless the rates are for QFs and established in accordance with the avoided cost rules promulgated under PURPA.” p. 6
- **California Attorney General**
 - It is a “truism that the FERC generally sets rates for electricity sales at wholesale in interstate commerce.” p 7

State legislatures and commissions can design policies to facilitate wholesale distributed generation markets.

Wholesale Market Options

- Net metering
- Hawaii, Alaska and Texas
- Government entities and publicly-owned utilities
 - Gainesville
 - SMUD
- Voluntary or utility proposed
- Avoided cost
 - Purchase obligations may be suspended
- Renewable Attributes (RECs)
 - State law on creation of RECs by QFs

Wholesale Market Options

- **National Renewable Energy Laboratory**
 - Avoided cost
 - RECs
 - Tax credits, loans, incentives or tax credits
 - Must offer (as opposed to must buy)
 - QFs under 20 MW (requires change in law)
- **Oregon Department of Justice**
 - Avoided Cost
 - Net metering
 - RFP
- **California Attorney General**
 - Avoided Cost
 - RECs

Questions?

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