## States

#### States can do your aff – their solvency card is a proposal for California

Cervas ’12, Coordinator @ California Environmental Justice [Strela, 1/19, Solar for All,<http://caleja.org/wp-content/uploads/2012/01/SmallScaleRDGfitProposal_FINALv4.pdf>]

The California Environmental Justice Alliance (CEJA) proposes that legislation be introduced in 2012 supporting small-scale renewable distributed generation (RDG) through feed-in tariffs. This smallscale RDG legislation will give teeth to the concept of investing in communities most in need. This legislation specifically focuses on Governor Brown’s proposal to create 12,000 MW of distributed generation in California. In the 12,000 MW goal, we recommend three components:

THEIR CARD BEGINS

1 – Feed-in Tariffs (FiTs) for small-scale projects: A small-scale FiT allows solar installation in all communities. Renewable energy producers (which can be multi-family building owners, warehouse owners, small business owners, and farmers) get compensated for the cost of the renewable energy (solar) with a small, reasonable profit. This incentive has spurred dramatic growth of solar around the world.

### A2 No solvency Advocate/Not in the literature

#### States already starting to do FITs—it’s in the literature No abuse possible

Ferrey ’12 (Professor of Law at Suffolk University Law School and served as Visiting Professor of Law at Harvard Law School in 2003) Steven <http://www.vjolt.net/vol17/issue2/v17_i2_89-Ferrey.pdf> VIRGINIA JOURNAL OF LAW & TECHNOLOGY VOL. 17, NO. 02

Several U.S. states have begun to propose legislation, and a few have begun to adopt policies similar to European feed-in tariffs.161 The Solar Electric Power Association issued a report in late 2008 urging utilities to adopt feed-in tariffs,162 apparently not cognizant of the legal pitfalls and ramifications. As many as ten states have introduced actual feed-in tariff legislation, while a handful of others are considering feed-in tariff policies, and a few have adopted feed-in tariffs.

### A2 Federal Preemption

### IF they ignored the last line of the CP in the 2AC

#### The CP text solves. It mandates the federal government NOT preempt the CP. That was conceded in the 2AC as a legitimate part of the CP text. No new 1AR arguments. We made block decisions based on 2Ac answers and new 1AR on this issue crushes in round ground and is a voter for fairness, advocacy shift, and bad, late developing debates.

### If they say last line of CP is cheating

#### We can sever the last line of the CP and still advocate the rest of the CP. And, all of our “the fed. won’t preempt” ev. answers their arg.

#### It’s not fiat abuse. It’s a legitimate, nontopical spike out of a predicted 2AC argument—that’s both fair and strategic. Reward, don’t punish, smart CP texts like that.

#### No ground loss. The aff has more ground to read disads against the CP AND that ground is completely predictable given its their aff AND a completely predictable arg against the states CP.

#### Err neg on theory. 1st last speeches. Infinite prep. Few disads on the topic

#### Reject the plank, not the team. We can still go for the CP absent the last plank and it’s not topical and neg severance is NOT the same as aff, no abuse.

### Carded A2 Federal preemption

#### The CP is possible without any congressional action

Hempling, 10

(Law Prof-Georgetown & Fellow-National Regulatory Research Institute, Renewable Energy Prices in State-Level Feed-in Tariffs: Federal Law Constraints and Possible Solutions, NREL Technical Report, January)

For states relying on the PURPA mandate, certain feed-in tariffs are possible without any action by FERC or Congress. Currently, a state implements PURPA by establishing an avoided cost price, which the utility must offer to QFs. FERC precedent allows states to supplement this avoided cost payment (i.e., get the QF compensation exceeding avoided cost), in one of three ways: (a) assigning “renewable energy credits,”3 (b) making cash grants or paying production-based incentives (funded, for example, by taxpayers through the general budget, or by ratepayers through a "system benefits charge"), or (c) establishing a purchase price that exceeds avoided cost but granting the purchasing utility a tax credit equal to the excess. FERC has found that these forms of supplemental compensation fall outside of its PURPA jurisdiction, and therefore are not preempted. This PURPA mandate path is available to QFs of any size, but it is not available if the seller is not a QF.4

#### Courts empirically don’t preempt

Epstein, 7

(Law Prof-Chicago, June, “Federal Preemption: Principles and Politics,” http://www.aei.org/outlook/26296)

The inexorable expansion of the commerce power during the New Deal period brought that era to a close. "Dual" federalism and exclusive federal and state powers gave way to concurrent powers, in which the federal government, under the Supremacy Clause,[3] may decide whether to rule the roost alone or to share power with the states. So long as Congress makes its intentions clear, it may displace the states, either in whole or part, for any reason (except in some marginal cases). Modern preemption doctrine--the preemption doctrine of the New Deal--is a self-conscious attempt to counter the centralizing effects of a boundless Commerce Clause. Federal law preempts state law when the two are in actual conflict; that much follows straightforwardly from the Supremacy Clause. Likewise, federal law displaces state law when Congress has expressly provided for preemption. That, too, rests squarely on the Supremacy Clause. Beyond these two cases, however, courts will not "imply" federal preemption unless that is the intended result. The intent of Congress is the touchstone of post-New Deal preemption doctrine. Moreover, especially in areas of "historic" state powers (such as health and safety regulation), courts apply a "presumption against preemption": preemption must be clearly intended before courts will give the nod to Congress.

#### Jurisdiction is muddled – err against pre-emption

Perkins 9 (John, J.D. Golden Gate University School of Law, "Overcoming Jurisdictional Obstacles to Feed-In Tariffs in the United States," 40 Golden Gate U. L. Rev. (2009), http://digitalcommons.law.ggu.edu/ggulrev/vol40/iss1/5)

Though the boundaries of FERC jurisdiction may seem simple, this simplicity is misleading. The division between federal and state jurisdiction over electrical energy is **not as clear as the statutory language might imply, nor is it absolute**. This section demonstrates some of the flexibility and complexity of the rules of jurisdiction over electrical energy transactions.

#### States will work around obstacles

Dorsi, 12

(Fellow, Phillips & Cohen LLP & JD-Harvard Law School, “Clean Energy Pricing and Federalism: Legal Obstacles and Options for Feed-in Tariffs,” Spring, 35 Environs Envtl. L. & Pol'y J. 173)

This Article argues that obstacles rooted in the federal system present risks to state feed-in tariff policies. However, current law provides opportunities for states to carefully craft policies that comport with statutory requirements by making use of prior federal authorization. Also, if states are faced with situations where Congress or the courts could reshape the relevant legal landscape, states will have the opportunity to raise arguments that, if successful, would result in greater autonomy in energy pricing policy.

### States can do FIT

#### States can do FIT

Bloom et al ’11

David is a Partner at Mayer Brown's Washington, DC, office, where he concentrates his practice on transactions in the energy sector. Paul Forrester is a Partner in Mayer Brown's Chicago office, where his practice is especially focused on energy. Nadav Klugman is a banking and finance Associate at Mayer Brown in the Global Project Finance, Securitization and Global Leveraged Finance groups. “State Feed-in Tariffs: Recent FERC Guidance for How to Make Them FIT under Federal Law,” The Electricity Journal, Volume 24, Issue 4, May 2011, pages 26-33

First, there appears to be considerable room to craft future FIT programs into the PURPA guidelines established by FERC.¶ Second, states could take a direct route to support such projects. Nothing in the decision affected the ability of a state to provide “supplemental payments” to eligible facilities as authorized by FERC if the related funds to make the supplemental payments are collected separately from a utility's general rates – e.g., through a special charge to customers or if the utility is “made-whole” by a tax credit or other effective taxpayer-funded means[13](http://www.sciencedirect.com/science/article/pii/S1040619011000960#fn0065) for any above-avoided-cost payments. Indeed, FERC has specifically allowed such payments, but widespread use of such supplemental payments seems unlikely given the revenue constraints faced by many states and the general opposition to new taxes that might support such payments.¶ Third, FERC's orders left unaddressed (because not raised) another key issue – whether a FIT program could work outside of PURPA. FERC has jurisdiction over the sale for resale of electricity in interstate commerce, which practically means any sale to a utility (outside of certain areas in Texas, Alaska, and Hawaii). Any entity that seeks to make such sales must have a tariff on file with, and approved by, FERC. While many such tariffs, particularly for traditional utilities, reflect traditional cost-of-service ratemaking, most new generation is developed on the assumption that FERC would authorize the generator to charge market-based rates.[14](http://www.sciencedirect.com/science/article/pii/S1040619011000960#fn0070) This raises the question of whether a state could require its local utilities to source a portion of their respective supply portfolios from FIT sources, establish the rates to be paid such sources, and then require each participating generator to obtain contract-specific or market-based rate authority from FERC. In this manner, the states would not be circumventing the “avoided cost” limits of PURPA, and they also would not be exercising FERC's exclusive jurisdiction under the FPA to regulate wholesale rates. This would impose greater burdens on participating utilities, as compared to the regulatory burden imposed on QFs selling under a PURPA-implementing program.

### State Debates Good-FIT

#### State debates are key in FIT discussions

Dorsi ’12

Michael is a fellow at Phillips and Cohen LLP and has a J.D. from Harvard Law School, “Clean Energy Pricing and Federalism: Legal Obstacles and Options for Feed-in Tariffs,” 35 Environs Envtl. L. & Pol’y J. 173, lexis

Although potentially challenging in the current Congress, establishing legislative authorization for a feed-in tariff could resolve most of the issues presented in this Article. A federally regulated feed-in tariff may be politically infeasible, and would be undesirable because of the variety of state and regional systems where it would need to apply. The need to take into account regional differences within a federal feed-in tariff scheme only adds to the political challenge. Additionally, since state commissions control the administrative infrastructure that implemented avoided cost rates for QFs under PURPA, state commissions could serve well again for feed-in tariffs. A simple legislative option to authorize feed-in tariffs would be to amend PURPA to permit states to set rates above avoided cost for particular units. Federal permission for state regulation carries the strongest defenses against court challenges because it waives the dormant Commerce Clause while displacing any federal preemption. Additionally, because the activity ultimately rests with the state, it does not risk a commandeering challenge. Such legislation would also render moot any utility's opportunity to challenge FERC's decision.¶ If the federal government sought to direct state policy rather than to simply permit states to act, the federal government is limited, but has two primary options. First, the federal government could condition the grant of reasonably related funds to states on implementation of feed-in tariffs. The Court upheld this type of fiscal federalism with regard to highway funds and drinking age laws in South Dakota v. Dole. n125 Given current political conditions, such a policy seems politically challenging. A second option would be a cooperative federalism arrangement similar to the Clean Air Act. n126 Such an arrangement escapes the commandeering challenge by providing a backstop of federal [\*197] implementation should a state elect to not act. n127 Cooperative federalism in the model of the Clean Air Act, which codifies state plans in federal statutes, would also provide the opportunity to seek enforcement in federal courts. n128 However, in those instances where a state does not act, this policy would have the same faults as a federal feed-in tariff. What the federal government cannot do is require states to adopt feed-in tariffs. Given the recent treatment of FERC v. Mississippi, it is unlikely that the Supreme Court would even permit Congress to require that states consider establishing feed-in tariffs.¶ Advocates should not pin their hopes for renewable energy policy on the federal government. Congress, rather than exploring these policies, has recently discussed the possible relaxation or abolition of efficiency standards in order to ensure that customers can continue to purchase incandescent light bulbs. n129 At the same time, states have expanded their support for renewable energy. For example, in April 2011, California Governor Jerry Brown signed new legislation requiring California utilities to obtain a third of their energy from renewable sources. n130 Given the greater promise of state-level commitment to environmental policy, it is worth exploring the options for states to act if the federal government stands still.

### States Solve- Qualifying Funds

#### States solve- qualifying funds

Hempling et al ‘10

Scott is with the National Regulatory Research Institute, “Renewable Energy Prices in State Level Feed in Tariffs: Federal Law Constraints and Possible Solutions,” <http://www.nrel.gov/docs/fy10osti/47408.pdf>

¶ Since 1978, PURPA has offered certain renewable energy producers and cogenerators a ¶ way to require utilities to purchase their output. The seller first must receive FERC certification ¶ as a “qualifying facility” (QF). (FERC rules limit this certification to a subset of renewable ¶ energy technologies and project sizes.) A QF is exempt from most FPA price regulation (see ¶ “Federal Power Act” below), but its pricing still is constrained: it can sell only at a price (a) ¶ established or approved by the state commission or (b) reached through negotiation with the ¶ utility. That price, if mandated by the state, cannot exceed the utility's "avoided cost." (Prices ¶ negotiated with the utility can exceed avoided cost.) Avoided cost is the cost the utility would ¶ have incurred had it self-supplied, or bought from a third party, the products and services (such ¶ as capacity and energy) it is buying from the QF. The problem for state-level feed-in tariff ¶ designers is that a utility’s avoided cost is likely to be lower than the price necessary to attract ¶ and sustain the renewable seller.¶ For states relying on the PURPA mandate, certain feed-in tariffs are possible without ¶ any action by FERC or Congress. Currently, a state implements PURPA by establishing an ¶ avoided cost price, which the utility must offer to QFs. FERC precedent allows states to ¶ supplement this avoided cost payment (i.e., get the QF compensation exceeding avoided cost), in ¶ one of three ways: (a) assigning “renewable energy credits,”¶ 3¶ (b) making cash grants or paying ¶ production-based incentives (funded, for example, by taxpayers through the general budget, or ¶ by ratepayers through a "system benefits charge"), or (c) establishing a purchase price that ¶ exceeds avoided cost but granting the purchasing utility a tax credit equal to the excess. FERC ¶ has found that these forms of supplemental compensation fall outside of its PURPA jurisdiction, ¶ and therefore are not preempted. This PURPA mandate path is available to QFs of any size, ¶ but it is not available if the seller is not a QF.¶ 4

### A2 RPS Kills State Fits

#### They say RPS blocks state FITs programs. False, they’re complementary – six reasons

Cory et al 09

(Karlynn Cory, Toby Couture, and Claire Kreycik; This report was prepared as an account of work sponsored by an agency of the United States government; March, “Feed-in Tariff Policy: Design, Implementation, and RPS Policy Interactions,” Technical Report, NREL/TP-6A2-45549 – Kurr)

How FITs Can Complement RPS Policies Several challenges to new renewable project financing (not always addressed using RPS policies) may be addressed using FIT policies. In fact, FIT policies can be used to help meet RPS policy targets, as described below. It is important to note that considerable research is still required concerning these interactions, and that few actual designs have been tested.10 1. Project-financing support. Not all states have RPS design elements that support new project financing, such as a requirement for long-term contracts or centralized state procurement (Wiser and Barbose 2008). Without long-term support to secure investment, renewable projects will likely have difficulty securing financing (Cory et. al. 2004), which could result in a shortage of supply to meet RPS demand. FIT policies provide the revenues that project investors require and can ensure that enough supply will come online. 2. Cost-effective procurement mechanism. Due to the guaranteed contract terms and the stable investment environment created by FITs, these policies appear to be a cost-effective procurement mechanism for renewable energy development. They could be used alongside competitive solicitations; or, provided the FIT payments are differentiated to account for economies of scale, they could be used to replace competitive solicitations to meet government-established renewable goals, similar to what is done in countries such as Germany and Spain. 3. Hedge against project delays and cancellations. Among other things, project siting and access to transmission can challenge even the best and most economical renewable projects (Wiser et. al. 2005). If a utility’s renewable procurement process does not consider the likelihood that a project will be developed (and just looks at lowest cost, for instance), then it is likely that not all of the projects under contract will be built – the utility, therefore, is less likely to meet its RPS. Rather than having the utility determine which projects go forward (i.e., with whom it will sign contracts), the government or utility can establish eligibility criteria as well as a payment level under a FIT – anyone who qualifies and is interested in investing in RE technology can do so and obtain a standardized utility supply contract (without the transaction costs or any potential gaming). This can help ensure that the best portfolio of projects moves forward. 4. Focus on “reasonable-cost” renewables. Similar to other power production, utilities must justify their costs for RPS compliance, whether through power purchase agreements or utility-owned projects. While the focus on “least-cost” principles attempts to minimize ratepayer costs, they may pressure utilities to negotiate contract prices for renewable projects that are inadequate to secure financing (and fail to adequately address investor risks). Instead of focusing on least cost, FIT policies focus on estimates of the actual costs required to build renewable projects based on technology and other project-specific considerations. If designed well, the FIT can ensure that a variety of projects receive just enough to cover their costs and a reasonable return.11 5. Assured support for emerging technologies. New or emerging technologies11 may not be able to secure financing, even with long-term utility contracts. The projected revenues need to be high enough to support the additional investment risk faced by investors. This higher risk requires higher-equity returns than commercially available renewable energy projects. Appropriately structured FIT policies will include this risk premium for emerging technologies (paid for by the ratepayers) and provide the long-term assurance that investors require. 6. Provide ratepayer backing. Regulated utility generation is sometimes subject to “prudence” reviews of investments and contracts after projects are built. If costs are deemed to not be prudent, the utility will have to cover the costs itself instead of relying on ratepayers, sometimes retroactively. Ultimately, this means that utilities may be uncertain as to whether they will be able to recover the costs from a contract or the ownership of new renewable projects. Overall, the FIT structure can provide more certainty, because the FIT payments are backed by the ratepayers and typically are not subject to retroactive regulatory prudency review. This certainty can help utilities become interested in FIT policies, particularly if the utilities are eligible to participate as project owners. Overall, decision makers have several options to consider when considering FIT policies. They can be used in parallel and wholly separate from RPS policies, they can replace a part of the current mechanism (perhaps to support a solar carve-out, or distributed generation), or they can be used to entirely replace RPS mechanisms. Of course, they can also be used by states with voluntary renewable energy goals to advance renewable energy development.

## Topicality

### \*\*2NC FITS not T MUST READ\*\*

#### FITS is indirect incentive like RPS and net metering, doesn’t exist on the federal level, incentivizes CONSUMPTION, is contextually distinct from direct incentives which merely encourage behavior AND there’s a topical version of it—just remove federal restrictions and the states will do it

Williamson & Sayer '12 (assistant attorneys general in the Water & Natural Resources Division of the Wyoming Attorney General’s Office)

Jeremiah & Matthias Natural Resources and Environment Vol 27, No. 1 [http://www.americanbar.org/publications/ natural\_resources\_environment/2011\_12/summer\_2012/federalism\_renewable\_energy\_policy.html](http://www.americanbar.org/publications/%20natural_resources_environment/2011_12/summer_2012/federalism_renewable_energy_policy.html)

Indirect Incentives¶ Indirect incentives have taken a variety of forms and continue to evolve. Thirty-one states and the District of Columbia have adopted some form of renewable portfolio standard (RPS), requiring utilities to produce a specified fraction of their electricity from renewable sources, with another eight states employing voluntary renewable energy goals. Most states have enacted net-metering requirements providing retail credit to consumers for a portion of the electricity they generate. A handful of states and local governments have adopted or are considering feed-in tariffs (FITs) under which producers are paid a cost-based price for their renewable electricity. And a number of state and regional schemes (considered in more detail below) have emerged to price carbon emissions and create a market for trading emission credits.¶ Net-metering schemes abound and have certainly advanced renewable development, but their overall effect on renewable growth, while increasing, has been marginal in comparison to RPS programs. FITs are viewed by many as potentially effective but have seen limited use due largely to prohibitive provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA) and the Federal Power Act of 1935 (FPA), which operate to limit the feasibility of, if not entirely preempt, state-level FITs.¶ Of the various state-level efforts, RPSs have been the primary impetus behind new renewable generation. In its basic form, an RPS establishes a renewable energy purchase obligation for retail electricity providers, expressed in megawatts (MW) or as a percentage, requiring those providers to obtain a specified minimum quantity of renewable energy and imposing some form of penalty for noncompliance. Typically, an RPS requires the provider to gradually increase the amount of renewable energy in its fuel supply until it reaches the specified target. Additionally, many RPS schemes create and allow for the trading of renewable energy credits or certificates to reduce compliance costs, allowing retail providers to demonstrate compliance by purchasing credits in lieu of electricity from renewable sources.¶ While a federal RPS has seen much debate and garnered a fair amount of traction, it is only at the state level that RPS policies have been implemented. In 1983, Iowa became the first state to implement an RPS with passage of its Alternative Energy Production Law. Iowa Code §§ 476.41–476.45. The law required investor-owned utilities to purchase a shared total of 105 MW per year of in-state renewable generating capacity. Iowa has since met the 105 MW goal and has moved to a voluntary target of 2015 MW by 2015. The Iowa RPS stood alone until the late 1990s when Nevada, New Jersey, Texas, and Wisconsin enacted their first RPS initiatives. A majority of states passed RPS legislation after 2000, in response to growing concern over the projected economic and environmental costs of climate change, as well as the need for job creation, diversification of energy sources, and improved air quality.¶ State RPS targets and standards are getting more stringent. While few standards adopted prior to 2005 called for greater than 10 percent renewable generation, the majority of those adopted since call for at least 20 percent renewable capacity within the next decade. Texas’s initial RPS, established in 1999, set 2,000 MW as a target to be achieved by 2009. Having reached that benchmark, the state is now working toward a new goal, set in 2005, for 5,880 MW by 2015. As of the end of 2008, total installed renewable capacity in Texas exceeded 7,100 MW.¶ Of the state RPSs, Michigan’s and Wisconsin’s call for the least renewable generation, albeit on a fairly short schedule, requiring 10 percent generation by 2015. Some other RPSs have a slightly higher target but allow more time to achieve that goal; for example, Massachusetts and Washington both have 15 percent as a target but allow until 2020 to reach the mark. Arizona also calls for 15 percent generation but not until 2025.¶ The most aggressive RPS was signed into law April 12, 2011, in California and requires California utilities to provide at least one-third of their electricity from renewable sources by 2020. Cal. Pub. Util. Code §§ 399.11–399.20. While the California RPS is the most aggressive in terms of both target and timing, a few other states are not far behind—Connecticut calls for 27 percent renewable generation by 2020; Minnesota requires that Xcel Energy, which generates about half of the state’s electricity, obtain 30 percent of its power from renewable sources by 2025, while the rest of the state must meet 25 percent by 2025; Oregon requires that its largest utilities obtain 25 percent of their power from renewable sources by 2025; and Illinois also requires that 25 percent of its power derive from renewable sources by 2025.¶ Although the various RPSs present varying standards of both renewable generation and the aggressiveness with which the states attempt to meet their respective standards, it does appear the standards are driving the proliferation of renewable generation. Between 2001 and 2006, one-half of total wind energy installations were a product of state renewable standards. See Ryan Wiser et al., Renewable Portfolio Standards: An Introduction to Experience from the United States, Lawrence Berkeley National Laboratory, NCSL Clean Energy and Air Quality Working Group (May 3, 2007). Given existing standards, it is projected that state RPSs will provide almost 80,000 MW of new renewable power by 2025. Union of Concerned Scientists, Renewable Electricity Standards at Work in the States, (Feb. 2009).¶ Net metering initiatives have also seen broad state-level acceptance. As of January 2011, some form of net metering was allowed in forty-five states and the District of Colombia. Unlike an RPS, net metering is a relatively simple policy option. Net metering effectively allows the electricity customer’s meter to run backwards, crediting the customer for self-generated renewable electricity. Under net metering, one kilowatt-hour (kWh) of power generated by the customer has the exact same value as one kWh consumed. Net metering policies differ in many ways, but key differentiators include technologies considered eligible, an individual customer’s capacity limits, and the amount of credit given for renewable generation.¶ Drivers of net metering initiatives include the improving economics of small-scale solar generation, as well as provisions of PURPA that assure private power producers the ability to sell power back to a utility at a cost known as “avoided cost,” generally defined as the cost the utility would have incurred had it supplied the power itself or obtained it from another source. Iowa and Minnesota adopted the first net metering policies in the early 1980s. In the late 1990s, net metering policies began to see broader appeal—between 1996 and 2009, the number of states with a net metering policy went from six to more than forty. While recent studies indicate the existence of a state net metering policy correlates, over time, with increased nonhydroelectric renewable electricity generation, there is currently little evidence that the policy actually leads directly to increased renewable, particularly solar, development. The lack of evidence is due in part to the relative novelty of net metering policies, as well as the fact that net metering is often part of a broader policy package promoting renewable development. In any event, net metering policies have found a home in the majority of states and will likely continue to be a part of state indirect incentives.¶ FITs operate similarly to net metering, crediting the electricity customer for self-generation of renewable electricity. Unlike net metering, where a single meter runs forward for consumption and backward for generation, a FIT requires two meters, one to measure electricity consumed and one to measure electricity produced. The customer pays one price for power consumed and is paid a different, higher price, as set by the policy, for the renewable electricity produced and fed back into the system. FITs are less prevalent than net metering efforts due largely to uncertainty of the policy’s legality under the FPA and PURPA, which preempt certain state feed-in tariff policies. Despite the uncertainty, a number of states, including Vermont, Oregon, Rhode Island, and Washington, and various cities, such as Gainesville, Florida, and Sacramento, California, have adopted some form of feed-in tariff, and many other states and municipalities are considering following suit.¶ There are no corresponding federal-level RPS, net metering, or FIT programs in place or on the immediate horizon. The closest Congress has come to passing a carbon pricing and emissions trading scheme was the American Clean Energy and Security Act of 2009 (ACES). ACES was a robust cap-and-trade scheme that passed the U.S. House, but failed in the Senate. In the absence of a federal carbon pricing and emission credit trading scheme, several regional carbon pricing efforts have been born but have yet to generate significant renewable development. On the whole, carbon pricing efforts have seen relatively little acceptance and implementation.

### FITS not direct financial incentive

#### Financial incentives include funding and loan guarantees; tariffs are non-financial incentives

Czinkota et al, 9 **-** Associate Professor at the McDonough School of Business at Georgetown University (Michael, Fundamentals of International Business, p. 69 – google books)

Incentives offered by policymakers to facilitate foreign investments are mainly of three types: fiscal, financial, and nonfinancial. **Fiscal incentives** are specific tax measures designed to attract foreign investors. They typically consist of special depreciation allowances, tax credits or rebates, special deductions for capital expenditures, tax holidays, and the reduction of tax burdens. **Financial incentives** offer special funding for the investor by providing, for example, land or buildings, loans, and loan guarantees. **Nonfinancial incentives** include guaranteed government purchases; special protection from competition through tariffs, import quotas, and local content requirements, and investments in infrastructure facilities.

#### FITS is distinct from direct incentives for energy production

**Doris, 12** – National Renewable Energy Laboratory (Elizabeth, “Policy Building Blocks: Helping Policymakers Determine Policy Staging for the Development of Distributed PV Markets,” Paper to be presented at the 2012 World Renewable Energy Forum, 5/13-5/17, http://www.nrel.gov/docs/fy12osti/54801.pdf)

Feed-in-Tariffs. This incentive type reduces investment risk by providing fixed payments for projects based on the levelized cost of renewable energy generation. This (among other design characteristics) distinguishes feed-in-tariffs from production-based incentives, which are based on monetizing the value of the electricity to the grid or the value to the electricity purchaser.

#### FITS is indirect

#### Meinerzhagen ’11 (RWTH Aachen University, Germany)

Ann-Kathrin http://iea-retd.org/wp-content/uploads/2011/11/RETRANS2-Annex-Final.ppt.

Current RES-E policies strengthened with EVs

RES-E target as % of electricity demand

Direct incentive

Absolute target value increases with electricity consumption from EVs

Feed-in tariffs or premiums

Indirect Incentive

Preferential charging improves profitability

More RES-E supported with same subsidy budget

Certificate systems

Enabling role

Transparency for EV owners

Cap and trade systems

Indirect Incentive

Increased CO2-price helps RES-E and other low-carbon electricity

#### FITS is indirect

IEA RETD ’10 (Renewable energy technology deployment)

http://www.globalbioenergy.org/uploads/media/1003\_IEA\_RETD\_-\_RETRANS.pdf

Feed-in tariffs or premiums – indirect incentive

Assuming a limited total budget for feed-in tariffs or premiums, increased electricity demand through electric vehicles is no direct incentive for RES-E. However, electric vehicles do provide an indirect incentive. Vehicle charging during the night, increases night-time electricity demand, thereby raising the relatively low electricity price for wind generated power during the night. Consequently, electric vehicles indirectly improve the profitability of wind power, implying that more capacity can be installed with a given total subsidy budget.

### A2 We Meet

#### Plans must directly target energy production with financial support—reducing barriers and regulations are distinct

O’Brien, Minister of State, Department for Energy and Climate Change, UK Parliament, 11/18/’8

(Mike, “Clause 20 — Terms and conditions,” <http://www.theyworkforyou.com/debate/?id=2008-11-18b.159.3>)

I have quite a lot still to say, so I shall try to give as full a reply, and as brief, as possible. Amendment (b) to Lords amendment No. 42 suggests we replace the term "financial incentives" in proposed new subsection (2)(a) with "payment". The use of the term "financial incentives" clarifies that the general purpose of the scheme is to incentivise low-carbon electricity generation through financial incentives, as **opposed to other means such as a regulatory obligation or barrier-busting support**, such as help with the planning system. We believe that such **clarity** is helpful in setting out beyond any doubt the **primary purpose** of the scheme. However, to give additional reassurances about our intentions, I would point to the powers under proposed new subsection (3) that specifies the term "payment" in all the key provisions that will establish the scheme. In others words, it is explicit that we are dealing with payments to small-scale generators. What is proposed will be a real feed-in tariff scheme.

#### That makes the plan a nonfinancial incentive

Shapiro, associate – Energy, Environment & Public Utilities Practice Group @ Cozen O'Connor, publisher – Green Building Law Blog, ‘11

(Shari, “Code Green: Is 'Greening' the Building Code the Best Approach to Create a Sustainable Built Environment?” Planning & Environmental Law 63:6, p. 3-12)

The explosion of state and local green building regulations has been extraordinary and has led to interesting regulatory experimentation. Many state and local governments begin by mandating green building practices for public buildings. Some local governments have expanded that mandate to require green building practices for both public and private development, often for new construction over a certain square footage. Others have sought to encourage green building practices through financial incentives. Still others have used non-financial incentives **like expedited permitting or increased density** to encourage the development of green buildings.

Mandatory green building requirements work very much like traditional "command and control" environmental regulations, the Clean Water Act and the Clean Air Act being preeminent examples. Direct regulation may mandate specific green building practices or the achievement of a green building standard such as the USGBCs Leadership in Energy and Environmental Design (LEED) standard.3 Green building codes such as CALGreen, discussed in detail below, fall into this regulatory category.

**Financial incentives** have taken the form of direct grants from government entities,4 tax incentives, and rebates.5 Other forms of financial incentives for green buildings are rebates of the typical government-related costs of building, such as application fees.6

Local governments are also experimenting with **nonfinancial incentives** for green building practices. These incentives are often attractive to municipalities because they **do not deplete public finances directly** and are therefore easier to get passed in difficult financial times or with teluctant constituencies.7 Examples of nonfinancial incentives include increased floor-to-area ratios for green buildings8 and expedited permitting processes.

### A2 Counter Interp

#### No overlimiting impact

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(Rustin P., 27 J. Land Resources & Envtl. L. 345)

A. Available Incentives for Implementing Clean Renewables

**Many studies** have considered the benefits and achieved results of the available renewable energy financial incentives. While studies agree that these incentives are effectively promoting business integration of renewable energies, it is questionable whether the incentives encourage private adoption of renewable energy technology. n55 The incentives for implementing clean renewable power generation fall into two main categories: financial incentives and policy [\*354] incentives. These incentives can be provided at federal, state, and municipal levels.

A laundry list of **financial incentives** include: corporate equipment rebates, energy efficient mortgages, accelerated corporate depreciation schedules, corporate tax credits, corporate production incentives, corporate and personal tax exemptions, personal tax credits, federal grant programs, USDA renewable energy systems and energy efficiency improvements loan programs, green power purchasing or aggregation, corporate tax incentive, industry recruitment incentives, property tax incentives, state public benefit funds, and state sales tax incentives. n56

Some of the **policy incentives** encouraging the use of renewable energies include: construction and design policies, contractor licensing, equipment certifications, generation disclosure rules, net metering rules, renewables portfolio set asides, required utility green power option, and solar and wind access laws. n57 In addition to these policy incentives, many states have adopted portfolio mandates or portfolio standards, which require certain percentages of energy come from renewable sources.

#### Alternative interps include policy incentives that affect market conditions—explodes limits allowing the worst effects-T affs like fixing the economy

Bird et al., ‘05 Energy Analysis Office @ National Renewable Energy Laboratory, Colorado, ‘5

(Lori, “Policies and market factors driving wind power development in the United States,” Energy Policy 33, p. 1397–1407)

Federal tax and financial incentives have played an important role in encouraging wind power development. The most notable and effective of these incentives has been the Federal Production Tax Credit, which is an inflation-adjusted per-kWh credit applied to the output of a qualifying facility during the first 10 years of its operation. During calendar year 2002, qualifying wind generators earned an inflation-adjusted production tax credit of 1.8 /c/kWh. Originally created under the 1992 Energy Policy Act, the Federal Production Tax Credit was initially available for projects installed between 1994 and June 30, 1999 (Gielecki et al., 2001). The credit was subsequently extended to December 2001 and then again to December 2003. As of the time of writing, Congress has failed to adopt new energy legislation to extend the credit. The impact of the tax credit on the wind energy industry is evident in the boom-bust cycle of development in recent years. Wind energy installations have peaked in years when the credit was scheduled to expire (i.e., 1999, 2001, and 2003) as developers rushed to complete projects in time to take advantage of the credit. In the off years, development has lagged because of the uncertainty surrounding the Production Tax Credit extension and the lead-time necessary to plan and complete projects (see Fig. 2). The Renewable Energy Production Incentive, also created under the 1992 Energy Policy Act, provides an inflation-adjusted cash production incentive (also currently at 1.8 /c/kWh) to wind (and other renewable energy) projects owned by publicly owned utilities and cooperatives that do not have Federal tax liabilities, and therefore are unable to take advantage of the Federal Production Tax Credit. However, funding for the Renewable Energy Production Incentive is subject to Congressional appropriations each year, so there is significant uncertainty regarding the annual availability of the incentive. This has limited its effectiveness as a driver of wind power development because eligible public utilities cannot rely on this revenue stream when financing projects.

**Other Federal policy incentives** that contributed primarily to the early development of the wind energy industry, particularly in California, have included the Public Utility Regulatory Policies Act (PURPA, which in California provided a ‘‘feed-in tariff’’ of sorts), investment tax credits, and accelerated depreciation (Gielecki et al., 2001). Of these, the five-year accelerated depreciation schedule for wind energy investments is still available and most relevant today. The Job Creation and Worker Assistance Act of 2002 expanded depreciation incentives by allowing owners of wind (and other) projects to take an additional 30 percent depreciation in the first year for assets purchased after September 10, 2001, and before September 11, 2004, and placed in service by January 1, 2005. In May 2003, the Job Creation and Tax Relief Reconciliation Act of 2003 increased the first year depreciation bonus from 30 to 50 percent for qualifying projects placed in service between May 6, 2003 and January 1, 2005.

3. **Broad market drivers**

Recently, market forces have also played a role in increasing the cost-effectiveness of wind generation. During the past several years, natural gas prices have experienced unprecedented volatility, which has driven up the cost of electricity from natural gas-fired generators and helped to close the gap between the cost of power from wind and conventional sources. During the 1990s, prices for natural gas averaged about $2/thousand cubic feet (Mcf) ($0.07/cubic meter) at the wellhead and varied by about 35 percent during seasonal peaks. Then in the winter of 2000/2001, wellhead prices reached a new peak of more than $8/Mcf ($0.28/cubic meter) and climbed even higher during the winter of 2002/2003 (EIA, 2001). In good wind regimes, wind energy generation has been shown to be cost-effective with natural gas at prices of $3.50/Mcf ($0.12/cubic meter) (Lehr et al., 2001).

Wind energy generation costs have also dropped with the movement toward larger, more efficient turbines. Since 1995, generating efficiencies have improved by more than 15 percent; current efficiencies are approximately 1050 annual net kilowatt-hours (kWh) per square meter (Cohen, 2003). Further, high wholesale electricity prices—resulting not only from high natural gas prices but also from supply demand imbalances associated with the Western energy crisis—have improved the relative competitiveness of wind energy generation.

With the recent downturn in the US economy, and the energy sector in particular, growth in the wind industry has been tempered to some degree. Access to capital has become restricted because many energy companies are already burdened with excessive amounts of debt and have sub-par credit ratings. The slowdown in the economy has also reduced demand for electricity, causing many developers to shelve plans for new power plants of all types. On the other hand, low interest rates have prevailed in the sluggish economy, reducing the cost of financing for project developers who are able to obtain it.

#### AND—their interp includes terrible K affs

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(Yael, 28 UCLA J. Envtl. L. & Pol'y 435)

n87 Wilson, supra note 16, at 1779. In addition to the **direct financial incentives**, these support programs could also contribute to the expanding of wind energy production by creating social norms, which effectively influence the private sector. See Victor B. Flatt, Act Locally, Affect Globally: How Changing Social Norms to Influence the Private Sector Shows a Path to Using Local Government to Control Environmental Harms, 35 B.C. ENVTL. AFF. L. REV. 455, 457 (2008).