



"Industrial companies are very interested in making their roofs available [for photovoltaic systems]," says Jordi Vidal, CEO of Sun Systems. Pictured above: Sun System's 1.4-megawatt-peak plant Valls in Tarragona.

A wave of lawsuits

Spain: A wave of lawsuits against the Spanish Government is welling up after the authorities applied retroactive tariff adjustments to existing photovoltaic systems. But the industry is still optimistic about the future. Solar panels on industrial roofs are gaining momentum. And a regulation for self consumption is on the horizon.

For Luis Atienza, it was a reason to be happy. "We are the world leaders in integrating renewable energies into the grid," the CEO of Spain's central grid provider Red Eléctrica de España (REE) recently announced. In the first four months of 2011, renewable energies covered about 40 percent of Spain's overall electricity consumption. Behind wind and water power, photovoltaics was the third largest renewable energy source, representing 2.6 percent. In April alone, the 55,000

installations with a peak capacity of 3.8 gigawatts provided 4.2 percent of the demand for electricity. This is the highest solar quota among all industrial nations. Even Germany only achieved two percent for the whole of 2010. However, this year Spain will lose its first place in the international solar energy industry. The market for new installations has been inactive for months. According to the National Energy Commission CNE (Comisión Nacional de Energía), 170 megawatts were

installed in 2010. By the end of February 2011, only another six megawatts had been added.

The reason behind this slack-off is continuous, short-term adjustments implemented by the government, which culminated in the retroactive revision of the existing feed-in regulations at the end of last year. The reimbursement period, which previously correlated with the lifetime of an installation, was limited to 30 years, and a limit was set for the number



Photo: Oliver Ristau

"We will file suits against the retroactive revisions both in national and international courts," announces Mischa Bechberger from the Renewables Association APPA.



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Attorneys like Piet Holtrop from the legal firm Holtrop S.L.P Transaction & Business Law are preparing class-action suits against retroactive revisions to the FIT.



Photo: Oliver Ristau

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of annual peak hours that could be reimbursed at the feed-in tariff (FIT).

When the Spanish Senate made only minor amendments to the government's revisions, the industry lost any hesitancy it had in pursuing legal action.

"We will file suits against the retroactive revisions both in national and international courts," said Mischa Bechberger, International Affairs Manager of the lobby group APPA (Asociación de Productores de Energías Renovables) in an interview with *pV magazine*. Law firms are also starting legal action. "We have already filed a case against the retroactive cuts to the reimbursement time period," says Carlos Mateu, Head of the legal firm Promein Abogados. However, taking action against the limit set on peak hours must wait until the end of the summer. Operators can only show clear evidence of the measure when plant annual production has reached 1,250 peak hours - the limit after which the FIT is no longer paid. "That is the moment when operators can appeal," says Mateu.

"Furthermore, the RDL 14/2010 is not consistent with the doctrine of the Court of Justice of the European Union (CJ) on legal certainty in the European Union," explains Piet Holtrop of Holtrop S.L.P Transaction & Business Law, a Barcelona firm specialized in international law. This is an issue that Spaniards affected by the regulations cannot directly resolve before the CJ in Luxemburg, but instead indirectly through a suit against

the National Energy Commission. Holtrop explains: "Spanish nationals have to raise a reasonable doubt on the interpretation of European law before the national judge, who is obliged to ask the CJ for a preliminary ruling. The question will then be resolved by the CJ and remitted to the national judge for its application." Currently, Holtrop's firm is preparing a class-action suit that is meant to help the smaller, less wealthy operators protect their rights. "We assume to represent clients who represent 120 megawatts. We have a unique scheme for the fees we are charging: four euros per kilowatt of installed power." Only those who are party to the suit also stand to receive a repayment of unjustifiably withheld fees if the suit is successful, he explains. However, it could take five to six years until the case is decided. At that point, some producers will already be bankrupt, says attorney Mateu. "In August/September 2011, many will no longer be able to meet their commitments when the limit on peak hours is reached." Many property owners and farmers number among the approximately 50,000 investors, who wield no insignificant amount of political weight in the individual Spanish states, the "autonomous communities".

It is no wonder that the largely agricultural state of Murcia, one of the states most affected by the new regulations, has filed a suit against the law with the Spanish Constitutional Court. The autonomous community of Valencia is

also plaintiff to the suit. Both states are governed by the largest opposition party in the Spanish parliament, the main political opponent to the current government.

The claims of international financial investors against Spain will also be argued before the European Court of Arbitration. According to press reports, there are at least a minimum of 15 large international financial investors demanding that the retroactive measures be withdrawn. Their investments in the Spanish solar sector total approximately four billion euros. They are being represented by the London corporate law firm of Allen & Overy.

So far, the legal attacks haven't gotten any reaction from the responsible government agency, the Ministry of Industry headed by Miguel Sebastián. EU Energy Commissioner Günther Oettinger and EU Commissioner for Climate Action Connie Hedegaard both expressed their concerns about the Spanish retroactive measures in a letter to Sebastián. "Since then, there have been no new developments," Oettinger's spokesperson Marlene Holzner told *pV magazine*.

However, there has been progress in the investigation by the CNE on the legality of timely connections of solar installations by the deadline set forth in the Real Decretos 661/2007, which was in effect from May 2007 to September 28. The law provoked an enormous boom given its high subsidies, particularly

for ground-mounted systems. The CNE had requested proof of compliance from a total of 9,000 installations. From the 2,000 installations reviewed in the first half of May, the Commission found irregularities in more than 600 installations for which compensation was temporarily suspended. The owners are being asked to pay back the amount of the FIT paid out thus far. These operators would only then have the option to sell solar electricity on the wholesale market.

Many companies in the sector were not able to cope with the slump of the last one and a half years. "Ultimately only companies with a strong presence abroad or a focus on other activities are able to survive the market fall off," says APPA Manager Bechberger. Jesus Lopez Muñoz from the Spanish solar module manufacturer Solaria agrees. "In the past year, we have launched PV plants in Italy, Germany, Greece and the Czech Republic, enabling us to shore up our earnings. Exports represent about 77 percent of revenues, compared to 15 percent at the end of 2009 and 37 percent after the first quarter 2010." At the same time, the company is hanging on to its domestic production in Puertollano. "In the first four years of production, we have lowered our costs by 70 percent by applying our own engineering solutions."

Falling prices are at least one reason for part of the industry to be optimistic. "Contrary to all forecasts, I believe Spain will be in a good position within

the next year," says Jordi Vidal, from Sun Systems in Tarragona, a project developer specialized in industrial rooftops. Spain still offers a reliable market, thanks to its quarterly call for bids. "That's not the case in France or in the speculative environment of Italy." It is still an interesting market, although the government sharply cut the tariff rate in the second quarter, Vidal explains, adding, "Huetos solares, the ground-mounted systems, do not make sense anymore." Their FITs are only at about 13 cents. It is a different story for large rooftop installations, which this year earned 20 cents per kilowatt-hour. Vidal's company is planning six megawatts of installations for industrial roofs in the coming year. Projects for another 15 megawatts are in the pipeline. "Industrial companies are very interested in making their roofs available. They receive seven percent of the total revenues as rent. We are expecting an additional price drop for systems. Even with a 20 cent rate, we can offer investors a return of eight to nine percent."

Roberto Valdivieso, Head of Communications for the project developer Parques Solares de Navarra in Pamplona, is also optimistic. "The prices have halved in the last two years," he says in an interview with *pv magazine*. "This trend will continue. The projects that we are planning in the next three years are economically feasible with the current tariffs." The company, located in Northern Spain, is currently offering investors a return of

ten percent for participating in a solar industrial roof project in Valencia. The reason behind this attractive opportunity is a FIT of 30 cents granted to the Northern Spaniards for their project. "It came about from the call for bids from the third quarter 2010," explains Valdivieso.

Currently a number of such projects are entering the market, as they were approved during an earlier bidding round. "Many have not yet been implemented, because the companies are waiting for prices to drop. But the companies only have one year, otherwise the approval expires," says Sun Systems head Vidal.

Companies are also interested in self consumption. "It is expected that the government will soon issue a regulation on this topic," says APPA Manager Bechberger.

The regulation will likely not offer a financial bonus for self consumption of solar electricity - there will only be the possibility to set it off against the volume of purchased electricity. Yet Bechberger is not unhappy about that, as currently it is not possible in Spain to both connect to the grid and use self consumption. An additional regulation could create momentum, says Bechberger, for instance, "load-dependent electricity rates are being discussed." This would enhance solar power's competitiveness during peak consumption times all at once.

So, there is hope that Spain will maintain its lead in the integration of renewable energies in the future. ♦ Oliver Ristau

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