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FERC strains to get big transmission plan moving

By Miranda Willson | 08/07/2023 06:35 AM EDT

Clean-energy supporters wonder how effective a plan to boost major power lines might be — if the Federal Energy Regulatory Commission takes action.



Francis Chung/POLITICO (FERC building); Varistor60/Wikipedia (transmission line)

After approving changes to help connect wind and solar to the grid, the Federal Energy Regulatory Commission faces another daunting task: getting more power lines built.

The agency is weighing a rule that would ensure planning for transmission lines keeps pace with a changing energy resource mix — while helping to settle who should pay for lines that cross multiple states.

If finalized, the plan could spur the development of more large power lines near renewable energy, from remote locations in the sunny Southwest to offshore wind farms on the East Coast. Building more transmission is also key to helping the United States transition to a carbon-free grid by 2035 in line with Biden administration goals, [according to \(https://www.nrel.gov/analysis/100-percent-clean-electricity-by-2035-study.html#:~:text=The%20scenarios%20apply%20a%20carbon,to%20economywide%20decarbonization%20by%202050.\)](https://www.nrel.gov/analysis/100-percent-clean-electricity-by-2035-study.html#:~:text=The%20scenarios%20apply%20a%20carbon,to%20economywide%20decarbonization%20by%202050.) the Department of Energy.

While the commission intends to finalize its proposed rule “as soon as possible,” according to acting Chair Willie Phillips, much has changed since the rule debuted in April 2022. Some clean energy advocates are now wondering when FERC will get the rule over the finish line and how effective it will be at transforming the grid.

“I’m sure they’ll get something done, and I have confidence that Phillips and the team will move the ball forward,” said Rep. Sean Casten (D-Ill.), a transmission supporter on Capitol Hill. “The question is, does it move the ball as far as we need to?”

FERC’s review could be shaped by everything from court cases to political fights outside of the agency’s control.

For one, the commission has had a vacancy for most of this year, with two Democrats and two Republicans currently on the panel. That could make it harder to finalize the proposed rule, which received four votes in favor from commission members at the time. The sole dissent last year came from Republican Commissioner James Danly.

Critics of the proposal from last year also now have a legal weapon. Two months after the transmission planning rule was proposed, the Supreme Court struck down (<https://subscriber.politicopro.com/article/eenews/2022/06/30/supreme-court-climate-ruling-may-chill-regulation-00043486>) the Obama-era Clean Power Plan on the grounds that it violated the burgeoning major questions doctrine. The legal theory holds that agencies cannot take action on major questions of public policy without explicit authorization from Congress.

In an unflinching dissent, Danly cast FERC’s planning proposal last year as an attempt to advance “narrow environmental policy objectives,” calling it a “boondoggle.” And last September, 17 Republican state attorneys general argued that the proposal also violated the major questions doctrine, in a comment to FERC (<https://subscriber.politicopro.com/article/eenews/2022/09/21/ferc-power-line-proposal-draws-fire-from-17-ags-00057739>) that repeatedly cited the dissent.

“The major questions doctrine has opened up everything now,” said Mike McKenna, an energy lobbyist who served as an adviser in the Trump White House. “Does FERC have authority over transmission? I think so. Can they compel somebody to pay for somebody else’s transmission? It’s not clear where in statute that exists.”

Any attempt by FERC to try to promote more transmission and dictate cost-sharing for large projects, McKenna continued, “is going to get challenged.”

A key vote for the proposal to move forward, according to some observers, is Commissioner Mark Christie. A Republican who voted for the April 2022 proposal, Christie has also made clear his view that no state should pay for transmission projects meant to serve another state’s clean energy policies.

To that end, FERC’s approach to cost-sharing for regional transmission lines in its proposed rule would give deference to states.

Broadly, the 2022 proposal said that utilities and grid operators must look ahead 20 years when planning regional transmission projects and factor in the changing energy resource mix. It also said that they should consider how multistate lines could improve reliability and advance states’ renewable energy goals, among other potential benefits.

Grid planners would also need to establish clear methods for how transmission lines are selected and paid for by consumers in various states. They would be compelled to seek agreement on cost-sharing from states, according to the proposed rule.

Yet what would happen if a state opposed a cost-sharing plan for a large transmission line? It’s not entirely clear.

That uncertainty has drawn criticism. In a letter to FERC (<https://subscriber.politicopro.com/eenews/f/eenews/?id=00000189-894f-d7a2-abfd-edff3ed80000>) last month, for example, Senate Majority Leader Chuck Schumer (D-N.Y.) urged the commission to adopt more guidance for how to “fairly share the cost of needed transmission when agreement cannot be reached.”

Cost allocation, or the idea of determining how much different states should pay for a regional transmission line, has been a hotly contested issue in recent years, said Karen Onaran, CEO of the Electricity Consumers Resource Council. The trade group represents large industrial customers of electric power. Onaran also previously spent a decade at the Edison Electric Institute, a trade group for utilities.

“I think there needs to be more detail and more guidance from FERC on how we identify exactly who the beneficiaries [of transmission lines] are, what the benefits are and how that is potentially calculated,” Onaran said, adding that more guidance could help avoid disagreements over costs.

Given the difficult issues included in the proposal, it’s not surprising that the commission is taking time to issue a potential final rule, said Larry Gasteiger, executive director of the Wires Group. The trade association advocates for the development of high-voltage transmission lines.

“My sense is there are enough issues with enough disagreement among the commissioners that it’s difficult for them to move forward now,” Gasteiger said. “If that’s the case, it might require a change in [commission] composition.”

FERC is not required to finalize proposed rules within a specific time frame, if at all. But in a statement Friday, Phillips said that the U.S. needs “a substantial buildout of our transmission system” to ensure access to planned energy projects.

“Forward-looking planning not only ensures a reliable and sustainable grid, it makes good financial sense by encouraging the efficient use of capital, reducing costs for consumers,” Phillips said.

Christie, costs and 'optional' benefits

Last month, the commission [unanimously approved changes](https://subscriber.politicopro.com/article/eenews/2023/07/28/ferc-approves-historic-rule-to-address-renewables-backlog-00108483) (<https://subscriber.politicopro.com/article/eenews/2023/07/28/ferc-approves-historic-rule-to-address-renewables-backlog-00108483>) to the grid connection process that could help clear the growing backlog of predominantly solar, wind and battery storage projects seeking to come online. Seeing those changes through was a top priority for Phillips, a Democrat who took over as chair in January.

Now, clean energy advocates are eager to see how FERC approaches transmission planning and cost issues. Developing more long-distance transmission lines, they argue, could further reduce the backlog of projects by creating more spaces for them to connect to the grid.

"The fundamental problem with interconnection and why we have such backlogs is that there is not an adequate transmission system," said Brett White, vice president of regulatory affairs at North Carolina-based Pine Gate Renewables.

Still, one argument raised by critics of FERC's planning and cost allocation proposal is how it might affect consumers' electricity bills.

Research from Princeton University and elsewhere has found that the United States will need more long-distance transmission lines to transition away from fossil fuels. In the last few decades, getting such projects permitted, paid for and built has taken 10 years or more in some cases, and transmission advocates say the pace of development must increase.

At the same time, electric utilities across the country are increasingly spending more on power delivery or transmission-related investments, said Travis Kavulla, vice president of regulatory affairs at NRG Energy Inc., a major Texas-based power company. There is evidence that much of that spending is on smaller, local projects, as opposed to the multistate lines that are the focus of FERC's proposal, he added.

As of now, FERC's proposal does not fully grapple with how potential changes to the transmission planning process could further raise consumers' bills, Kavulla said. He noted that Christie has called for more scrutiny of transmission investments to protect consumers.

"It's hard for me to see how a deal with the current commission would not include a coming-together of consumer protections with the goals of regional transmission planning/cost allocation," Kavulla said in an email.

Another point of debate is exactly how prescriptive FERC should be in its planning rule — and how much to leave up to states and regional grid operators.

Existing regulations dictate that transmission projects should only be paid for by consumers in states that benefit from them. Under the proposed new rule, however, grid planners and utilities would be able to consider a broader range of potential benefits when determining how to plan projects and allocate their costs. Benefits of a line could include improved access to low-cost power resources, mitigation against extreme weather events or reduced likelihood of a rolling blackout, for example.

Many large electric utilities have asked FERC for flexibility when it comes to how they consider transmission needs. Tony Clark, a former FERC commissioner who is now a senior adviser at Wilkinson Barker Knauer LLP, stressed that new requirements from the commission shouldn't interfere with states' own energy priorities.

"That's the tension with a lot of this. How strong should the federal role be?" said Clark, who was a Republican member of FERC.

Clean energy trade associations, however, argue that FERC didn't go far enough by merely suggesting the potential benefits of transmission. They argue that most regional transmission lines result in multiple benefits, from access to renewable energy to improved competition.

"We think [those benefits] should not be optional," said Elise Caplan, vice president of regulatory affairs at the American Council on Renewable Energy. "We think that requirement is essential to getting a good, solid transmission plan."

Danly and legal challenges

In his letter to FERC last month, Schumer called on the commission to "expeditiously" finalize its rule. But one person who could affect the commission's calculus on timing is Danly, the commissioner who dissented on the original proposal last year, FERC watchers said.

Danly's term on the commission expired June 30, but he is allowed to stay on board until Congress adjourns at the end of the year. That's assuming he is not nominated and confirmed by the Senate for another term, which is a possibility. He has not said publicly whether he would like to stay on board.

Asked about the FERC nomination process Thursday, White House spokesperson Emilie Simons said the administration has "no personnel announcements to make at this time."

The commission would not necessarily need Danly's support for a final rule to move forward. But if the commission were to issue the rule while Danly was still at FERC, it's likely that he would issue a passionate dissent, given his position on the proposed rule, said Ari Peskoe, director of the Electricity Law Initiative at Harvard Law School.

Danly's expected dissent, in turn, could "set the stage" for a broader lawsuit from the attorneys general who criticized the proposal, Peskoe said. The likely goal would be to bring the case up to the Supreme Court, on the argument that FERC was in violation of the major questions doctrine.

Decisions issued by FERC over a dissent can increase the likelihood of a court overturning them, legal experts say.

"If you wait until January 2 or whatever, then you won't get that sort of dissent from Danly," Peskoe said, assuming that the Republican commissioner is gone by then. "So I'm not sure what the issues are behind the scenes [at FERC]."

Danly's office had no comment on Peskoe's remarks.

The commission's consideration of the rule comes as the Department of Energy is also assessing regional transmission needs nationwide. The department issued a [draft study \(https://subscriber.politicopro.com/article/eenews/2023/02/24/doe-calls-for-historic-grid-expansion-to-meet-climate-goals-00084310\)](https://subscriber.politicopro.com/article/eenews/2023/02/24/doe-calls-for-historic-grid-expansion-to-meet-climate-goals-00084310) earlier this year in which it concluded that there is a "pressing need for additional electric transmission infrastructure."

If FERC waits until next year to finalize the planning and cost allocation rule, there's no guarantee that it will be in January or February, according to Gasteiger of the Wires Group.

That's because by next year, there could be at least one new commissioner on board to fill the currently vacant seat and possibly Danly's seat, he said.

"There is always an incredibly steep learning curve for anyone new coming onto the commission," said Gasteiger, who previously served as chief of staff at FERC. "If you're talking about a rule of this magnitude or this potential impact, it's going to take some time for them to get up to speed on this rule before they can act on it."

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