FERC grid plan failed to fix transmission disputes – panelists

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By Kate Winston
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The Federal Energy Regulatory Commission's recent transmission notice of proposed rulemaking did not do enough to incentivize transmission owners and states to come to the table to participate in regional planning and cost allocation, an academic expert told state regulators.

"There is enormous consensus about the need for transmission right now," said Joshua Macey, an assistant professor of law at the University of Chicago Law School. "There are a couple of things about the transmission [notice of proposed rulemaking, or NOPR,] that were extremely disappointing," Macey said July 19 during a National Association of Regulatory Utility Commissioners meeting in San Diego.

After FERC's landmark Order 1000 on regional transmission planning, a lot of planning shifted to local projects because transmission owners did not want to participate in competitive solicitations that are required by the regional planning process, Macey said.

Transmission owners also have an interest in avoiding regional projects to protect the market power of their generators, Macey said. But overreliance on local projects is inefficient because larger lines can take advantage of economies of scale and scope, the assistant professor said.

FERC's NOPR (RM21-17) attempted to address this issue by partially resurrecting transmission owners' right of first refusal, Macey said. FERC was likely trying to incentivize those companies to participate in regional planning by telling them that they will not have competition, Macey said.

That helps reduce the incentive to do local projects instead of regional projects, he said. But to the extent transmission owners have a significant leg up in building transmission, they are not going to want to build transmission that would hurt their generators' market power, Macey said.

Free rider issues

FERC's decision to turn to states to find ways to deal with transmission cost allocation is good, but states are going to try to free-ride and get other states to help pay for their reliability needs or climate policies, Macey said. "The lack of a backstop, I think, will make it very, very difficult to get meaningful agreement on cost allocation."

Lauren Azar, an attorney and former member of the Public Service Commission of Wisconsin, agreed that a misalignment of interests exists between transmission owners and consumers.

"What ends up happening is the folks that have the financial interest in wanting to protect themselves and not necessarily the consumers, they end up trying to obstruct and thwart the activities of [regional transmission organizations]," Azar said. "We see this nationwide. We also see them trying to thwart the activities of developing an RTO."

FERC cannot change this misalignment, but it can mandate that modeling is conducted in a way that identifies projects that are in the best interests in the consumers, Azar said.

"If you really get deep down into how transmission planning is done, you figure out pretty quickly that you can put a few poison pills in just a few places and end up with a plan that will get you nothing," Azar said, adding that FERC needs to ensure that those poison pills are not put in the modeling.
States' role

Regarding the free rider issue, Kim Duffley, a member of the North Carolina Utilities Commission, applauded FERC’s NOPR for giving states a say in cost allocation at the beginning of the process. "The states, when they are given the opportunity to have input at the front end, they will be more accepting, and you don’t have the lawsuits at the back end,” Duffley said.

Joshua Burkholder, director of transmission policy at American Electric Power Co. Inc., stepped in to defend transmission companies. There have been a lot of local projects, for example in the PJM Interconnection LLC, since Order 1000, but that is because there is a need to revitalize transmission lines that were built in the 1930s, 1940s, and 1950s. "These assets have reached a point in their life that they just flat out need to be replaced,” Burkholder said.

If there are not enough regional projects, that is an issue with the planning process, Burkholder said, noting that some RTOs such as the Midcontinent ISO have been highly successful in developing regional projects. There are limited opportunities for regional projects to replace local projects, the director added, and there are also limited cost savings to be found through competitive solicitations because there is already so much competition among the entities that supply labor and materials to developers.

The conflicts over these issues have taken the eye off the ball of developing infrastructure, and the proposal to conditionally restore the right of first refusal under a model of cooperation can turn those incentives around and bring the sector together to focus on projects, Burkholder said.


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