

States vs. Feds

NATIONAL TRANSMISSION CORRIDORS CHALLENGED

BY KEN SILVERSTEIN

TWO LAWSUITS INTEND TO DE-energize parts of the energy act of 2005.

Environmental and conservation groups are saying that broad transmission corridors that have been authorized by the law are illegal, claiming they allow utilities to bypass state jurisdiction, environmental standards and private property rights.

By expanding the national infrastructure, policymakers also hope to modernize it and bring it in line with a 21st century economy.

According to the National Transmission Grid Study released a few years ago, the demands on the network will grow by 20 percent in the coming decade, but the capacity to carry electrons will only increase by 6 percent. At the same time, it is expensive to build transmission lines, estimated to cost at least \$1 million a mile.

The lawsuits take specific aim at proposals to build multi-state transmission projects in the Southwest and mid-Atlantic regions, both designated by the U.S. Energy Department in October as “National Interest Electric Transmission Corridors.” They are therefore eligible to be reviewed by the Federal Energy Regulatory Commission if the states take more than a year to review.

Critics of that policy say that it overreaches and allocates more land than is necessary to improve reliability. They want the courts to invalidate the Energy Department’s designations. They also want to force the department to consider alternative routes that are not as environmentally sensitive and to consult with the U.S. Fish and Wildlife Service with respect to better protecting endangered species.

For their part, utilities are trying to allocate scarce resources across all business lines. That fact, coupled with the daunting task of getting transmission projects approved by the appropriate authorities and landowners, has delayed growth in this area. Furthermore, the historic rate of return that the FERC has allowed transmission owners to earn on investments in networks has been low when compared with the risk of completing a project. Capital, therefore, has been driven to other areas of the economy.

That’s why Congress got involved. The 2005 energy act gave the FERC more authority to permit vital transmission lines. If the states do not approve such projects or they do not act within one year, the agency can intervene. The law also provides incentives to get utilities to invest in their transmission infrastructure.

ALTERNATIVE SOLUTIONS

In the early part of 2008, the Center for Biological Diversity filed one of the suits in the U.S. District Court for the Central District of California challenging the newfound authority of FERC. It says that the fast-track

permitting process would allow utilities to run roughshod over 77,000 square miles in Arizona and Southern California and put at risk national parks and monuments as well as threaten endangered species.

Meantime, 11 regional and national environmental organizations filed a lawsuit in the Middle U.S. District Court in Pennsylvania. The groups, led by the National Wildlife Federation, the Sierra Club and the Piedmont Environmental Council, made similar allegations about the mid-Atlantic route covering 116,000 square miles.

“The Energy Department must ensure that the environmental impacts of creating such an expansive electric transmission corridor are closely analyzed and documented before any designation takes effect,” says Megan Anderson of the Western Environmental Law Center, lead attorney on the Southwest Corridor case. “By failing to do so, the Energy Department is giving inefficient, transmission-based electricity an unfair advantage over conservation and more locally based energy production – an unwise choice that we cannot afford in this era of climate change.”

Allegheny Energy is one of the utilities trying to build a 240-mile, 500-kilovolt line through three mid-Atlantic states, Ohio, West Virginia and Virginia. It says that the line is needed to accommodate an annual growth in electricity consumption along the East Coast of 1.6 percent over the next decade.

But at least West Virginia’s public utility commission staff has – for now – recommended to its commissions to vote against the line, arguing that it would harm pristine surroundings and accrue mostly to the benefit of those in other states. West Virginia, which would oversee 114-miles of the project, must ultimately determine if the line navigates the concerns of both environmental and economic interests.

Allegheny Energy says that the transmission line respects that “balance” and emphasizes that it is committed to working with all of the states. In making its case, it is urging the states to view themselves as part of the national and regional economic pictures and not as isolated entities. As such, transmission development along the designated corridor keeps commerce humming everywhere. To use a Band-Aid approach to fix inadequate transmission capacity would not only serve to prolong the economic risks but would also necessitate more upgrades down the road.

“Given the fact that our expected in-service date is June 2011, we need to get our application successfully through the states,” says Holly Ackerman, director of Allegheny’s transmission projects. “To fall back on the FERC would delay that start time. FERC doesn’t just automatically step in. You have to go through a process and it would be as rigorous as the one in the states.”

RESOLUTION NEEDED

Federal officials have also said the Southwest needs more transmission to ease congestion there. San Diego Gas & Electric has responded by proposing a \$1.4-billion line that would stretch 150 miles.

California's Public Utility Commission, which has been reviewing the Sunrise Powerlink transmission line for more than one year, says that it will make its final decision by the end of summer. The state's commission is taking longer than expected, forcing the utility to say that it may well appeal its case to FERC – all to enhance the economic viability of the region as well as to keep the cost of its power affordable.

The state commission is trying to weigh the concerns over reliability with those of opponents who say that the designation is invasive and too broad. "The Energy Department cannot turn southern California and western Arizona into an energy farm for Los Angeles and San Diego without taking a hard look at the environmental impacts of doing so," says Amy Atwood, staff attorney with the Center for Biological Diversity.

While FERC is sympathetic to the need to create more transmission, it says that it will scrutinize any appeal made to it. By law, the agency is obliged to ensure that any proposed transmission line within a designated corridor must be used for interstate commerce and significantly reduces transmission congestion. Whether

the feds or the states are involved, the review process must be inclusive, thorough and transparent.

FERC is trying to remain above the fray, saying that it expects those issues to be resolved at the state level in most instances. It also says that it would be a mistake for any party to assume what its ultimate decisions would be.

At this point, there are more questions than answers concerning FERC's backstop authority. The lawsuits involving the Southwest and mid-Atlantic transmission corridors seek to get some resolutions – answers that would benefit all participants. Those stakeholders, for instance, still don't know how long it would take FERC to review their cases or exactly what stipulations the federal agency can put on new construction.

Under any circumstances, more clarity is needed. But advocates of an expanded and modernized infrastructure say that the underlying point of the energy act of 2005 should not be lost – to improve reliability in an effort to bring economic prosperity to all regions of the country while also respecting the natural habitat.

"National transmission corridors are necessary because demand-side management and conservation by themselves cannot meet future electrical needs," says Jack Halpern, director of transmission services for consulting firm Louis Berger Group. "They will create some successes but not the kind that will cut out the need for new transmission."

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