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Overseer's Undercurrent: Transmission Black Sheep

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Depending on timing and regulatory reticence, the Devers-Palo Verde 2 transmission project may become the first test case of federal "back stop" power line siting authority, established by the Energy Policy Act of 2005.

This is a matter of timing because there are multiple factors that would dictate if and when project applicant Southern California Edison might be able to bring a case to the Federal Energy Regulatory Commission. Regulatory reticence comes in because it is equally uncertain whether FERC would accept the case.

At this point, it seems a sure bet that the Arizona Corporation Commission would go to the mat with Edison over the project. But, the agency prefers to have the entire National Interest Electric Transmission Corridor designation, which underlies federal regulators' backstop authority, eliminated.

So I suspect that we are in for another long-running energy market soap opera, with various players taking on the mantle of hero or villain at various times until everyone goes to the U.S. Supreme Court--or at least to the D.C. Circuit Court of Appeals.

Unless, of course, those involved decide to agree on a revised transmission project plan that allays Arizona's worst fears, answers Edison's real reliability and market needs, and finds a way to leave the Bighorn Sheep of the Kofa National Wildlife Refuge indifferent.

How likely is that? I wonder.

The sheep may be the least of the issues.

Timing--I previously projected that the NIETC designation would likely not apply to DPV2 because its approval would be granted well before the energy corridors take effect. With the ACC's unanimous rejection of the Arizona portion of the line, the project could be dead long before the energy corridors are implemented.

Fred Eames, a partner with the D.C. firm Hunton & Williams, told those of us at this past week's LSI "Energy in the Southwest" conference in Santa Fe that challenges to the NIETC provisions of EAct are almost a certainty. But the case might have little to do with DPV2.

Environmentalists and public interest groups are likely to file suit against the Department of Energy on the grounds that the corridor designation violates both the Environmental Policy Act and the National Heritage Preservation Act, he explained. It is evident that their concerns will be less about the Bighorn sheep than about the specter of transmission towers marching across the graves of Civil War soldiers at Gettysburg and a score of other heritage sites located in the proposed Eastern corridor.

The formal comment period on the twin designation of energy corridors ended July 6, with DOE taking in 1,300 comments--with the vast majority complaining about the potential impacts on Eastern heritage sites.

Just a year ago, Marc Spitzer moved from Arizona to D.C. with his family to become a member of FERC. He cited the "hysteria" of people in Northern Virginia about protecting the Manassas Battlefield Monument and preventing the desecration of Stonewall Jackson's statue.

That's another factor.

Depending on how long it might take Edison to get through an ACC appeal and a possible side trip to the Ninth Circuit over the application of the Interstate Commerce Clause to the DPV2 case, the utility could lose the horse race to FERC to a galloping Stonewall Brigade.

Regulatory reticence--If the Western project does make it to FERC on appeal from Arizona (or San Francisco) what will FERC do?

Spitzer seemed like a good person to ask, given his past as an ACC president and his future as a corridor permit adjudicator. He said he wasn't going to lose sleep over the matter. "If called upon I will faithfully implement the laws of the United States," he said, indicating small sympathy for vitriolic people who would obstruct the public interest.

But first, he intends to pore over the Arizona trial record to see whether the DPV2 case meets all the criteria for FERC consideration.

How his colleagues will respond is uncertain because there is as yet no experience. "No cases have been filed with FERC on the back stop authority," he said. "It is my hope that there won't be any cases filed and that applicants will work out their differences with states or consortiums of states."

Remember that several other FERC members arrived in D.C. relatively recently with solid backgrounds in representing state or regional interests, rather than those of the federal bureaucracy. Suede Kelly, in particular, has expressed misgivings about FERC wielding its the line siting authority. She even dissented strongly from a majority decision (a rare instance) on an interpretation of the corridor rules.

Eames said the issue was whether a corridor candidate's rejection by a state agency qualified for FERC appeal because the wording of EPCA specifies "withholding" of approval for a year or more, not outright refusal.

Then there's commissioner Jon Wellinghoff, who should he still be serving at FERC when a corridor docket arrives. Wellinghoff has already committed himself to promoting renewable energy and distributed (not far flung) resources while with the commission. He is also a market-savvy Westerner, who recognizes both the value of transmission lines to the renewable future and the long-standing animosities between California and its neighbors over energy matters.

That makes three skeptical votes if and when an Edison application reaches FERC's docket office.

Possibility of compromise--Although the 5-0 votes by ACC members to deny DPV2 seems to represent an intractable, populist opposition by the elected regulators, closer reading of the record of decision and the surprisingly personal statements by regulators indicates there might be some room for compromise.

ACC member Jeff Pierce, who won Spitzer's former seat, recounted the stated opposition to DPV2 because the cost/benefit analysis was clear in Edison/California's favor. "We know Southern California is suffering from a power shortage, and DOE had identified excess capacity in the Phoenix area," he said. How quickly such a surplus might dissipate in the face of accelerated population and load growth clearly troubled the commissioners, he added. Then there is the widely reported comment by commissioner Kris Mayes that DPV2 is really just a long extension cord from California, which indicates just part of the hostility from regulators.

The evidence in the case suggested that wholesale prices at Palo Verde hub would go up by 5 percent, Pierce said. There would be a \$450 million net gain to California but a \$252 million loss for Arizona, the commission found.

Still, Pierce differentiated himself from colleagues, declaring that a sole fixation on rate impacts would be "parochial."

What he objected to in the case was that use of the transmission line by Edison would possibly result in an increase of air pollution and water use within Arizona. "I object to California exporting its external NOx emission and water demands."

Other Arizona parties share that concern, with Arizona Public Service vice president Warren Kotzmann observing that the ACC rejection of DPV2 has everything to do with water. "Arizona doesn't want to and cannot afford to ship water to California by wire," he said.

Moving the argument out of personal territory and into quantified economic and environmental potentials offers an opportunity to explore environmental and economic mitigations that could overcome the opposition. "I suggested that Edison reapply with mitigations, like buying Colorado River water and transferring it to Arizona," Pierce offered. "Similar mechanisms could and should be devised to internalize the impacts of this line on Arizona's land and air shed," he added.

Compromise might require outside intervention of a different kind than a FERC corridor appeal. Spitzer and FERC members all have an opportunity to play mediator rather than adjudicator and bring needed peace to the energy markets they oversee.

Others also have a stake.

New Mexico's chief regulator Ben Lujan admitted that his state might well need DPV2 in order to fulfill its goal of exporting clean energy to California and other states. Transmission planners and system operators, who are devoted to reliability and grid integration, also have something to say in the possible refocusing of the DPV2 project.

Even Gov. Schwarzenegger could bring his substantial influence to reaching a post-partisan deal.

Like Spitzer, I'd prefer to see this issue worked out before it becomes a test case because I think it could work to the general satisfaction of all parties and in the best interests of the region.

Although there remains the nagging question about how to keep the sheep happy.

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