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8. ENERGY CORRIDORS: Western line could be first test for federal siting powers (07/26/2007)

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The rejection by regulators of the Arizona portion of a planned high-voltage transmission line into Southern California may become the first test case of federal "back stop" power-line siting authority, as established by the Energy Policy Act of 2005.

However, 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 for possible approval of the 500-kilovolt Devers-Palo Verde No. 2 (DPV2) project as part of a Western National Interest Energy Transmission Corridor.

Acting under EPOA, the Department of Energy this spring proposed two corridors, including an area covering most of Southern California and stretching partly into Nevada and on to the Phoenix area. The other covers a huge expanse of states in the East and Middle Atlantic region, also leading to concerns about the effects of corridors on national heritage sites, including prominent Civil War battlefields ([Land Letter](#), May 3).

In late May, the Arizona Corporation Commission voted unanimously to deny Edison's proposal for the 230-mile power line, saying that the project would unfairly benefit California energy consumers at the expense of Arizonans -- despite findings of an energy imbalance in the region.



The siting of high-voltage transmission lines has become even more controversial under terms of the Energy Policy Act of 2005. Transmission corridors designated by the Energy Department are bound for a court challenge, experts say. A California-to-Arizona project could be the first case to go to federal regulators. Photo by Sean Ramsay. Courtesy of the Energy Overseer.

Speaking to the "LSI Energy in the Southwest" conference in Santa Fe, N.M., this month, Arizona Commissioner Jeff Pierce admitted, "We know Southern California is suffering from a power shortage, and DOE had identified excess capacity in the Phoenix area." But the commission openly worried about how quickly such a surplus might dissipate in the face of accelerated population and load growth.

In her statement opposing the line, Commissioner Kris Mayes called DPV2 "an extension cord for California" that would drain energy and water from Arizona while leaving behind unwanted environmental consequences. Commissioner Bill Mundell chimed in, "I don't want Arizona to become an energy farm for California. This project, if we approved it, would use our land, our air and our water to provide electricity to California."

"My focus is on the long-term needs of the people of Arizona," added ACC Chairman Mike Gleason. "We are going to need this power."

In addition, evidence presented in the case indicated there would be a \$450 million net gain for California but a \$252 million loss for Arizona, and that wholesale power prices at the Palo Verde transmission hub would go up by 5 percent. Another unfavorable aspect of the project noted by the regulators would be construction of up to 80 new transmission towers within the Kofa National Wildlife Refuge.

While Edison has appealed the decision, Arizona regulators went even farther in their opposition to the proposed Western corridor in July 6 comments to DOE, asking that the entire process be invalidated.

"The ACC believes that the state of Arizona is in the best position to determine the need for transmission projects in Arizona and the impact of such projects on the reliability and economy of the regions' electrical transmission grid," the five members of the agency wrote. "Any decision by the Federal Energy Regulatory Commission or other federal agency ... to overturn an ACC decision is inappropriate and circumvents state jurisdiction and authority," they wrote.

Arizona is just one of the parties lining up behind a potential legal challenge to the entire corridor designation process, said Fred Eames, partner with the D.C.-based firm Hunton & Williams.

Environmentalists and public interest groups are likely to file suit against DOE on the grounds that the corridor designation violates both the Environmental Policy Act and the National Heritage Preservation Act, Eames explained. However, the resulting case may be based on the Civil War sites, rather than Arizona's economic concerns.

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 effects on Eastern heritage sites, Eames said.

Plaintiffs will probably seek an injunction against DOE finalizing the corridors, then turn to challenging DOE's decision last year to appoint FERC as lead agency for coordinating federal authorizations and environmental reviews of corridor cases.

The agency's likely defense would be that its designation of the corridors was clearly set out by Congress and that merely drawing lines on a map does not constitute a proposal for significant action, Eames suggested.

FERC's views molded by members' perspective

At this point, it is uncertain how FERC members would treat an application from Edison seeking to overturn Arizona's decision.

"No cases have been filed with FERC on the backstop authority," said Marc Spitzer, FERC member and until a year ago a former member of the ACC. "It is my hope that there won't be any cases filed and that applicants will work out their differences with states or consortium of states."

Spitzer is just one of the members of the federal agency who arrived in Washington, D.C., with a strong background in Western states issues. Former New Mexico regulator Suedean Kelly has expressed misgivings about FERC wielding its new line-siting authority. Kelly recently dissented strongly from a majority decision on an interpretation of the corridor rules in which the majority determined that a corridor candidate's rejection by a state agency qualified for FERC appeal -- even though the wording of EPAAct specifies "withholding" of approval for a year or more, not outright refusal.

Also, FERC member Jon Wellingshoff from Nevada has committed himself to promoting renewable energy and distributed resources while with the commission.

Spitzer said that regardless of their past history, members will look at national considerations, not narrow state perspectives. "If called upon, we will faithfully implement the laws of the United States," he said.

First, however, he would carefully review the record of decision from Arizona to ensure that FERC jurisdiction should be invoked, Spitzer added.


Mitigations possible?

Although the 5-0 votes by ACC members to deny DPV2 seems to represent an intractable, populist opposition by the elected regulators, Pierce -- the newest ACC member -- differentiated himself somewhat from his colleagues by focusing less on the rate impacts of the line and more on quantifiable environmental impacts that might be mitigated by the utility.

"I object to California exporting its external NOx emission and water demands," Pierce said. "I suggested that Edison reapply with mitigations, like buying Colorado River water and transferring it to Arizona. Similar mechanisms could and should be devised to internalize the impacts of this line on Arizona's land and air shed."

That could potentially alleviate concerns enough to head off a corridor application to FERC, he said.

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