Policy Backgrounder: FERC Rules to Streamline Transmission Expansion

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The Federal Energy Regulatory Commission (FERC) recently approved two final rules to promote expansion of interstate power transmission capacity and increase clean energy production in the face of rising electricity demand and concerns over the reliability of the grid.

- Order 1977 provides FERC the authority to make permitting and siting decisions for interstate transmission projects if a state fails to act on an application within one year; the rule was unanimously approved and aligns with proposed bipartisan Congressional efforts to streamline reviews and approvals, particularly for multi-state projects.
- The more contentious Order 1920 will require transmission providers to submit long-term planning and cost-allocation, assessing regional transmission needs and opportunities over a 20-year horizon, with a mandatory six-month engagement period with state agencies and required filing of a default cost-sharing plan covering all stakeholders.
- Critics argue these rules unfairly preempt state authority and prioritize renewable energy at higher costs to consumers, while supporters emphasize the urgent need for grid expansion and modernization to meet future electricity demands, including from AI and data centers.
- The rules come after a year-long effort in Congress to streamline the expansion of transmission and grid capacity; however, many of those efforts have stalled despite bipartisan support, with diminishing prospects for additional legislative action this year.

FERC Transmission Rules Approved

On May 13, FERC approved two final rules reforming interstate electricity transmission to promote expansion and bring more clean energy production to the US power grid. FERC Order 1977 was unanimously approved and provides FERC authority to make permitting and siting decisions for interstate transmission projects if a state fails to act on an application within one year.

FERC's more contentious Order 1920 focuses on long-term planning and cost-allocation for transmission projects. It was approved by a 2-1 vote; Commissioner Mark Christie's dissent termed the rules "pretext for enacting a sweeping policy agenda that Congress never passed" and alleged they are a blatant violation of the major questions doctrine and a violation of the Federal Power Act — signaling likely litigation from opponents.

Order 1920 requires transmission providers to produce 20-year plans to assess regional electric transmission needs and opportunities for modification of the current grid and requires review of the plans every five years. Plans for new facilities must weigh seven prescribed benefits to determine if a proposal meets long-term needs and is cost effective. Project participants must also submit plans for cost-allocation, giving states and interconnection customers the opportunity to fund all, or a portion, of the cost for regional transmission facilities that would not otherwise meet the transmission provider's selection criteria. Prior to submission of a plan for a new facility, the project's proponents will be required to hold a

mandatory six-month engagement period with state agencies in affected states. The Order also provides operators the ability to reevaluate projects in the case of cost overruns or delays. Notably, Order 1920 does not apply to the Electric Reliability Council of Texas (ERCOT), which is largely isolated from the US power system.

The new rules have been under development for nearly two years. Order 1920 was the largest public record FERC ever considered, receiving 15,000 pages of formal comments from nearly 200 stakeholders. Critics warned that the new requirements are intrusive and favor renewable energy projects at the expense of consumers and taxpayers. House Energy and Commerce Committee Chair Cathy McMorris Rodgers (R-WA) stated that the rule "tramples on states' authority over their energy infrastructure and will force some states to shoulder the costs for transmission lines with no actual benefits for their own communities."

However, a broader coalition of groups has spent months applying pressure on FERC to finalize its rules. More than 100 Members of Congress, over 200 state legislators, and coalitions of private companies submitted letters to FERC underscoring the need to streamline transmission expansion. FERC Chairman Willie Phillips commented that the rule "cannot come fast enough," noting that the two rules "mark the first significant FERC action on transmission policy in more than a decade." Following the approvals, Phillips stated that the country "is facing an unprecedented surge in demand for affordable electricity while confronting extreme weather threats to the reliability of our grid and trying to stay one step ahead of the massive technological changes we are seeing in our society," highlighting the growing demand from expanding data centers, industrial and manufacturing growth, and adoption of electric vehicles.

A Department of Energy (DOE) report in October 2023 projected that meeting anticipated 2035 transmission demand will require the US to more than double regional transmission capacity and expand interregional transmission capacity more than five-fold. However, DOE estimates show that installation of new transmission lines has fallen sharply since 4,000 miles were added in 2013; dropping to 1,000 miles or fewer completed in recent years. Tax incentives under the 2022 Inflation Reduction Act (IRA) have added to a backlog of power generation projects awaiting a connection to the electric grid; the backlog stands at 2,600 gigawatts — twice the current amount of US power plant generation.

FERC's final siting and planning rules are aimed at ensuring that the dozen fragmented US regions adopt long-term plans to bring more transmission online. They also add to the growing number of initiatives to streamline transmission expansion. Earlier in May, DOE announced its initial list of 10 high-priority "national interest corridors" for accelerated transmission expansion; the designation grants FERC additional authority over permitting and siting to help expedite projects. In April, DOE also finalized a rule on energy efficiency standards for distribution transformers to improve grid reliability, support domestic manufacturing, and lower energy costs. The efficiency standards were generally well-received, with the National Electrical Manufacturers Association encouraged by DOE's revisions to add flexibility to its final rule, yet the association highlighted concern "that a five-year compliance timeline will challenge the industry's ability to retool a critical supply chain, further delaying transformer deliveries."

Over the past year, Congress has also focused on expediting grid and transmission expansion. In a Senate Energy and Natural Resources Committee hearing after approval the FERC rule approval, Chairman Joe Manchin (D-WV) commented the rules "are using the tools FERC currently has and are not a replacement for Congressional action. [They] help with one aspect of one part of a bigger set of grid permitting problems, but [are] a Band-Aid on Congress's inaction." Proposals from both Democrats and Republicans seek to quicken processes, including the SPEED and Reliability Act and the FASTER Act, which would codify FERC's authorities over high-impact interstate transmission projects and expedite reviews. Similarly, the RESTART Act and Building American Energy Security Act aim to streamline environmental reviews and permitting. However, prospects for final action in Congress this year appears dim. Senate Majority Leader Chuck Schumer (D-NY), who had urged the new FERC rules as a Plan B option if Congress did not act, commented that the "FERC [rulemaking] was the necessary and nearly

only way to go . . . . it's going to be virtually impossible to get anything done; [perhaps] things will change after the election."

Conclusion

While Congressional efforts to streamline grid expansion have stalled in recent months, FERC's approval of two rules to improve planning and expedite the buildout of transmission capacity represent a significant push to advance construction and interconnection of energy resources. Proponents, supported by the Department of Energy's projections, stress the necessity for grid modernization to meet current and future demands, while addressing growing concerns over the resilience of the grid. While the rules signal the Administration's determination to begin address the backlog of connecting electricity infrastructure investments to the grid, it also underscores how limited its tools are without further Congressional action. Regulators still have limited authority to grant final approval to projects stymied by disputes, particularly those involving different states affected by a proposed transmission project. CED has long argued that no single state should have the right to veto an interstate transmission project.

The charge in the dissent that Order 1920 violates the "major questions doctrine" virtually invites a legal challenge to the rule given the important role that the relatively new doctrine has played in major recent Supreme Court cases including *West Virginia v. EPA*. Critics also argue the rules infringe on state authority and favor renewable energy. Still, the nation needs more transmission capacity quickly, not least to ensure that the benefits of emissions reductions efforts in the Inflation Reduction Act are not lost, as a Princeton study suggests they could be without major expansion of transmission capacity. The best and arguably the only way to address any concerns over the major questions doctrine would be for Congress to make its intent for greater FERC authority clear. However, despite bipartisan and bicameral efforts in Congress, continuing disagreements on the nature of environmental reviews make further progress extremely unlikely this year.

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