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**FERC'S Green Agenda**  
**BY JAMES H. MCGREW**

The Federal Energy Regulatory Commission (FERC) supports the current green agenda within the limits of its jurisdictional powers. Unfortunately, the regulation of energy in the United States is a patchwork quilt of federal, state, and local agencies, many of which have jurisdiction over a discrete segment of the energy industry and none of which regulates an entire industry. FERC is a "creature of statute," whose enabling statutes give it jurisdiction only over the licensing of non-federal hydroelectric projects; some (but not all) aspects of the sale for resale and the transmission of electric energy in interstate commerce; the transportation of natural gas in interstate commerce; and the rates, terms and conditions of the interstate transportation of oil by pipeline.

The American Recovery and Reinvestment Act (ARRA) allocated billions of so-called "stimulus" dollars to projects that will need, and will probably receive, FERC's approval or support. These ARRA-sponsored projects include the development of renewable energy resources, the development of smart grid technologies, and the expansion and improvement of the electric grid. As discussed further below, a smart grid delivers electricity from suppliers to consumers using two-way digital technology to increase reliability and transparency, to save energy, and to control appliances.

Moreover, Congress may expand FERC's jurisdictional powers relevant to environmental goals. The Waxman-Markey climate change legislation (HR 2454) would permit FERC to regulate national Renewable Portfolio Standards (RPS) requiring electric utilities to include minimum percentages of renewable resources in their energy portfolios. Many states already have RPS requirements, and federal legislation would most likely supplement, rather than replace, the state requirements. Congress may also expand FERC's statutory authority over the permitting and siting of electric transmission lines. Such additional authority would allow FERC to implement more aggressively the improvement and expansion of the interstate transmission grid. On the political side of the issue, jurisdiction over the permitting and siting of transmission facilities is a zero-sum game: To the extent Congress gives FERC more authority in this area, it will effectively take away authority from individual states. As a result, the issue of who (FERC or the states) should have authority over permitting and siting of transmission facilities has been and will continue to be a highly contentious political issue.

Whether or not Congress gives FERC more regulatory authority, the Agency is fully committed to pursuing a green agenda. FERC currently has extensive jurisdiction over non-federal hydroelectric projects. The United States currently gets approximately 5-6 percent of its electricity from hydroelectric projects. (Norway, in contrast, obtains about 99 percent of its

electricity from hydroelectric projects and has the world's greenest electric supply.) Unfortunately, for engineering and environmental reasons, the United States will probably not be able to significantly expand the percentage of electricity generated by hydroelectric projects; most of our large rivers have already been dammed to the maximum extent practicable. However, FERC will approve projects that increase the efficiency or expand the capacity of existing hydroelectric projects, thereby helping to promote development of renewable resources.

FERC has recently devoted a great deal of attention to a new type of renewable resource, hydrokinetic projects. Hydrokinetic projects generate electricity from waves, tides, or currents. FERC has determined that its licensing jurisdiction extends to hydrokinetic projects, even those offshore. FERC has entered into a Memorandum of Understanding with the Minerals and Management Service (MMS) with regard to hydrokinetic projects located in the Outer Continental Shelf to allow project developers to obtain both a lease from the MMS and a license from FERC in an expedited manner. Although experimentation with hydrokinetic projects is in its early stages, the combination of hydroelectric projects and hydrokinetic projects could generate as much as 20 percent of the total electricity supplies if hydropower achieves its full potential.

Even though regulation of electric transmission facilities is balkanized, FERC has taken significant actions within its jurisdictional limits to improve the transmission grid. FERC lacks authority to order utilities to construct transmission facilities, but the Energy Policy Act of 2005 added Section 219 to the Federal Power Act to permit FERC to provide ratemaking incentives for investor-owned utilities proposing to build transmission facilities that will improve reliability or reduce congestion. Acting pursuant to Section 219, FERC has issued several orders allowing rate incentives for the construction of new transmission facilities.

The need for new long-distance, high-voltage transmission facilities is particularly acute because of the nature of renewable resources. Wind and solar resources are often located far away from load centers, and the United States will need thousands of miles of transmission lines to bring the power to those load customers. Geothermal and biomass resources may also require significant increases in transmission facilities. To build the infrastructure required to meet this important environmental goal, either Congress will have to give expanded jurisdiction to FERC in this area, or the states will have to coordinate and expedite their review of permitting and siting applications.

In addition to requiring more long-distance transmission lines to transmit power to urban centers, renewable resources such as wind and solar will need to initially connect with the grid, i.e., to transmit power the short distance from the generation facilities to the main grid itself. FERC has jurisdiction over the rates, terms, and conditions of interconnection *service* (but not permitting and siting) and has initiated policies to expedite the review of those interconnection services that will bring new wind and solar power to the grid.

FERC has promulgated various rules governing priorities of transmission service for different types of generation resources. Generally resources that are considered "firm" have transmission priority over resources that are considered "non-firm" or "interruptible." By their nature, renewable resources such as solar and wind are not firm. FERC has modified its rules to

provide incentives for transmission service for renewable resources and to remove transmission impediments to their development.

To the extent that ARRA provides money directly for transmission facilities, FERC can and will act quickly to review and, if appropriate, approve the ratemaking aspects of such projects. On Nov. 19, 2009, FERC approved a plan under which Western Area Power Administration will help finance construction of the 214-mile, 230 kilovolt Montana-Alberta Tie Ltd. Project from Great Falls, Montana to Lethbridge, Alberta, through a \$161 million loan made available through ARRA. The new transmission project is scheduled to begin commercial operation by late 2010.

FERC is also committed to support of the development of the “smart grid.” The existing grid was mostly constructed before the digital age and needs to be adapted to the information age. With improvements, different parts of the grid can communicate with each other to direct the flow of power, to interrupt the flow of power, or to alert operators about line failures. As it evolves, the “smart grid” will conserve electric energy by improving efficient use of existing power sources. FERC issued a final Smart Grid Policy statement on July 16, 2009 and has initiated several research projects and technical conferences to evaluate FERC’s role in the development of the smart grid. (However, many of the smart grid initiatives must come from state regulators that have jurisdiction over distribution facilities and retail sales.) ARRA has allocated billions of dollars to support the development of the smart grid. On Nov. 24, 2009 the Secretary of Energy announced the award of \$620 million for thirty-two projects to demonstrate advanced smart grid technologies.

Conservation of energy is also an important goal of environmental policy. One component of conservation is so-called “demand response” or “consumer energy use management.” These services allow consumers to curtail their use of electricity when supply is short or unreasonably expensive. Optimistic estimates of demand response programs assert that they can potentially reduce total consumption of electricity by as much as 20 percent. Recently FERC proposed new rules for measuring and verifying the performance of demand response services. FERC is also working to develop a National Action Plan on Demand Response. As with the smart grid, much of the initiative for demand response must come from state regulators.

Although much of the focus of the environmental goals and programs of the Obama administration and Congress has been on the electric utility industry, companion efforts must be made in the natural gas industry to further overall environmental goals. Even if the most ambitious goals of RPS are achieved, the United States will still need fossil-fueled generation plants. If 30 percent of electric energy comes from renewable resources, then the remaining 70 percent must obviously come from other resources. Because wind and solar resources cannot produce power at will, they require backup from other types of generation. The United States will continue to rely on fossil-fueled generation for the foreseeable future to meet total demand. The cleanest burning fossil fuel is natural gas, which will serve as a bridge fuel for decades to come.

In sharp contrast to its limited jurisdiction over electric transmission facilities, FERC has comprehensive permitting and siting authority over interstate natural gas pipelines. FERC is fully

committed to supporting proposals to construct and operate new natural gas pipelines whenever such projects are in the public interest. Proposed pipeline construction must comply with applicable state and federal environmental laws, and FERC maintains a large staff of environmental specialists to review proposals for new pipelines and to coordinate with other agencies. On Nov. 19, 2009, for example, FERC approved a proposed \$2.5 billion expansion of a natural gas pipeline in Florida to transport the fuel for gas-fired electric generation in that state.

FERC does not have jurisdiction over the production of natural gas. Although most of the natural gas consumed in the United States is also produced in the United States, some natural gas is imported in the form of liquefied natural gas (LNG). FERC has jurisdiction to approve proposals for the construction and operation of LNG terminals and has approved several such proposals. As with pipelines, FERC's review of proposed LNG terminals includes a thorough environmental review and coordination with numerous state and federal agencies.

In summary, FERC is committed to implementing a green agenda within its existing statutory authorities. FERC would actively welcome the expansion of its statutory authority by Congress to play an even greater role in implementing national environmental goals.

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