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Glick Aims to Work With, Not Second Guess, States in Power Market Transition

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Adhering to a strict reading of the Federal Power Act, FERC Commissioner Richard Glick said the Commission should not second guess state resource decisions as wholesale and retail power markets experience transitions. He vowed to coordinate and consult with states as FERC faces a host of issues stemming from federal and state policy preferences.

Those policy preferences can include generation decisions, renewable portfolio standards, and compensation for nuclear units through zero emission credits at the state level, but also tax decisions, encouragement of energy storage resources and other items at the federal level, Glick said October 30 at the Energy Bar Association Mid-Year Energy Forum.

One of the roles of FERC is to eliminate barriers for resources to be used to enhance wholesale power markets while ensuring the grid remains stable and reliable. Sometimes transitions with distributed energy resources and uses of new technologies can be “a bit rocky,” with winners and losers as markets evolve, he said.

Managing the transition without impinging on state authority can be tricky, especially when state decisions affect wholesale markets, but the Commission should provide some deference to states and collaborate with them, Glick said. He related that stakeholders often approach FERC and ask the Commission to override a state policy. But the FPA is pretty clear that states have authority to make resource decisions, not the federal government, and crafting perfect competitive markets that account for all externalities in the power sector is nearly impossible, he said.

Many state resource decisions are centered around addressing greenhouse gas (GHG) emissions, and the federal government at this point does not have a coherent policy to address them. Given that dynamic, “you don’t want to prevent the states from pursuing policies that they think are appropriate,” said Glick.

The U.S. Supreme Court has put limits on state authority and FERC needs to honor that. But “at the very least, I think we need to figure out a way to accommodate these policies” and collaborate with states on both federal and state decisions, said Glick, a Democrat who came to the Commission from the Senate Energy and Natural Resources Committee.

Responding to questions following his prepared remarks, Glick emphasized the importance of retaining FERC’s independence and not letting partisan politics – by either Republicans or Democrats – affect the decision-making process. When asked by Jonathan Schneider, partner at Stinson Leonard Street LLP, if FERC is immune from the

partisan fervor in Washington, Glick said FERC has had a “stellar reputation” as an independent agency, with votes that do not very often come down along party lines.

He referenced comments by FERC Chief of Staff Anthony Pugliese that were “ill-advised” and generated questions from Capitol Hill about FERC’s role in relation to the Trump administration’s efforts to support coal and nuclear generation facilities. After an interview with Breitbart news that raised concerns, Pugliese spoke at the American Nuclear Society in August, indicating that FERC staff is working with the Department of Energy (DOE), Department of Defense, and National Security Council to identify power plants deemed critical for maintaining electricity to military bases and other critical facilities, which did not sit well with some people who follow FERC.

“We need to show our independence” and not do the business of the Trump administration or Democrat leaders in Congress, Glick said at the EBA forum.

When reached after he asked the question, Schneider said it is his “profound hope” that FERC continues to operate on a nonpartisan basis. The proposed rule from DOE to improve compensation for coal and nuclear generation facilities raised concerns. DOE is an arm of the Trump administration and Energy Secretary Rick Perry was entitled to propose the rule under the law, Schneider said.

The Commission’s rejection of the proposal in a 5-0 vote was a positive sign that the “firewall” between DOE policy preferences and FERC’s consideration of the issues is intact, Schneider said. Former Chairman Kevin McIntyre “did a wonderful job of bringing everyone together” for the unanimous vote, and “we all hope that that continues” under the leadership of Chairman Neil Chatterjee, he said.

Glick said he is looking forward to having McIntyre back at the Commission, and he committed to work with Chatterjee to ensure his role as chairman is a success.

Following the rejection of the proposed rule from DOE, FERC began a notice of inquiry (NOI) on grid resilience issues and took comments on how and whether the Commission should address issues around power plant retirements, grid reliability and fuel assurance. “This is not a new issue,” as grid operators and the North American Electric Reliability Corp. have been examining power plant retirements and generation changes for some time, but not using the rubric of grid resilience, Glick noted.

With the comment deadline closed, Glick said he has not seen anything in the record of the NOI proceeding to suggest there is a problem that FERC needs to address, especially if it involves bailing out certain generation facilities and passing the costs on to consumers. If there are concerns about grid reliability tied to natural gas pipelines, FERC and stakeholders should figure out a way to protect them as critical infrastructure, he said, noting that he and Chatterjee have expressed a shared view on how best to do that.

In the middle of 2018, the White House suggested that DOE address coal and nuclear power plant retirements and there was a leaked document with a plan to use the Defense Production Act or other steps under the cover of a national security need. Both political parties tend to overuse the term national security to meet their needs, but for DOE to be linking it with power grid reliability issues “there seems to be more going on” that could be a concern, said Glick.

The approach of using the Defense Production Act may be waning if press reports are to be believed, but Glick said fuel security for power plants could be a means to achieve similar results for coal and nuclear plants with fuel on site.

Speaking with reporters after his remarks, Glick noted that PJM Interconnection was due to issue a fuel security analysis November 1 and there are pending cases at FERC where such issues are being addressed, limiting his ability

to comment. The increased use of gas-fired generation in New England and other regions, along with the growth of renewables, is placing more emphasis on fuel security and availability by independent system operators.

However, Glick said he does not want to see fuel security substituted for resilience as a reason for rewarding certain power plants. “At the very least, I think we need to be dubious when we hear people use the term ‘fuel security’ in the same sentence as ‘resilience,’” he told reporters.

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