Published on *The National Law Review* https://natlawreview.com

When Are We Going to Get This Transmission Thing Right? Installations of Wind Turbines in the Second Quarter of 2010 are Down by Nearly 70%.

Article By:

Energy Practice Michael Best

According to information on the American Wind Energy Association website installations of wind turbines in the second quarter of 2010 are down by nearly 70% and projected to be 25% to 45% less at year's end. One would think with the impending sunset of the section 1203 treasury grants at the end of this year there would be significant efforts to get projects in the ground. So what gives?

While there are a number of reasons fro this downturn including reduced power demand and expiration of short term incentives, two issues — money and transmission siting authority — are central to the long term prospects for renewable energy.

At Windpower in Dallas this year one couldn't turn around without bumping into representatives of various investors seeking good projects in which to invest equity. The problem is that most of that equity money chasing projects is looking for mature projects which are close to actual construction. Obtaining early stage investment dollars for renewable projects in today's market conditions is difficult at best. Also, given the current economic crisis, until the credit markets loosen up, the debt side of the equation will be difficult to come by. Money, however, is not the entire story. Indeed in the long term the biggest impediment to meeting the nation's goal to increase our reliance on renewable energy is transmission.

Everyone seems to understand that the country's transmission system is overtaxed. The system was never intended to transport large amounts of bulk power around the country. Rather, it was built to ensure reliability by interconnecting various parts of the system so that if one line serving an area went down there was a redundant feed to keep the lights on. The over taxation of the transmission system is only going to get worse. DOE's Energy Information Administration projects electricity demand is going to increase by 30% by 2030.

Meantime at least 29 states have passed some type of renewable portfolio standard and there is a strong possibility over the next few years that a federal RPS will be implemented. Renewable sources of energy tend to be in abundance in areas without substantial infrastructure well distanced from the load centers that need the energy. The Energy Policy Act of 2005 ("EPACT") required DOE to conduct a national study on electric transmission congestion and constraints every three years. Subsequently in the American Reinvestment and Recovery Act of 2009 DOE was required to study

significant potential sources of renewable energy that are constrained by a lack of adequate transmission capacity.

There is clearly a business opportunity here. In its December 2008 order approving the Tallgrass and Prairie Windtransmission projects in Oklahoma and Kansas FERC, relying on authority in EPACT, authorized numerous incentives to the developers of those projects including a 200 basis point incentive adder on the return on equity. Although FERC's reasoning involved numerous considerations the decision clearly signaled the Commission's intent to support large transmission projects designed to transmit significant amounts of renewable energy.

Arguably, if FERC is willing to authorize ROEs in the 12 to 14% range for transmission developers with secure revenues due to the low risk customers (utilities) using the lines, money should be flowing in to do these projects. Regrettably that is not happening. If we as a country want to see the Midwest's wind energy and the West's solar and geothermal energy delivered to load centers much more transmission is needed. Despite significant financial reasons to invest in private transmission lines little investment activity is occurring. A significant reason is regulatory risk.

The nation's current system leaves to the states the construction and siting authority for transmission projects. While that may make sense for generation projects, the transmission system is national and crosses state borders in numerous places. State commissions are expected to look out for the utility customers in their respective states. Naturally the Minnesota Commission should question whether a transmission line emanating from North Dakota and being built to serve Chicago is in the best interests of Minnesota consumers. The Wisconsin Commission would likely wonder the same. What to do?

This is not rocket science. The model for planning and building national infrastructure already exists. The state by state balkanized planning and construction authority needs to be abolished in favor of a federal system. Would the interstate highway system have ever been built if it were left to the states? Probably not. The FERC has planned and sited certain types of infrastructure for decades—principally hydroelectric plants and pipelines.

Since 1920 the FERC has overseen the development of 1600 hydro projects capable of producing over 54 gigawatts of renewable energy. For over six decades they have overseen an extensive pipeline grid of approximately 215,000 miles capable of transporting 95 billion cubic feet of natural gas per day. This system would likely never have been built if left to state level approvals.

Congress came close to fixing this problem in EPACT but fell short when it only authorized backstop authority for FERC to site and approve construction of transmission projects. That minimal authority has been further eroded in the federal courts.

It is time to fix this most obvious of problems. FERC needs to be given direct authority to plan for and approve high voltage transmission projects. If Congress does this we as a country have a good chance of meeting our goals to increase reliance on renewable energy. If they do not we will not be able to build the interstate transmission system necessary to deliver the renewable energy to our load centers. Further, once Congress fixes this issue, and assuming FERC continues its policy to incent transmission projects designed to transmit renewable energy, the money and capital will flow that is ultimately necessary to get the system built.

The elections are upon us please vote accordingly.

National Law Review, Volume , Number 258