

5. **ELECTRICITY: Supreme Court dashes hopes of backers of federal transmission siting** (01/20/2010)

Katherine Ling, E&E reporter

The expansion of electric transmission needed to meet U.S. goals for renewable energy and reliability will be up to Congress after the Supreme Court refused yesterday to review a lower court's decision that narrowed federal authority over transmission siting.

The Supreme Court rejected a request from Edison Electric Institute (EEI) for review of the 4th U.S. Circuit Court of Appeals' decision that the 2005 energy law failed to authorize Federal Energy Regulatory Commission "backstop" authority for transmission siting if a state had denied a project. Many lawmakers, utilities and independent transmission companies say states are holding up a greater expansion of transmission.

"It's pretty clear that the only solution to this is legislative," said James Hoecker, outside counsel to the pro-transmission association WIRES.

"There is no hope under current law; if a state vetoes a project, they are perfectly able to do that. It is certainly not a recipe for an upgrade of the transmission system," Hoecker said. WIRES supports states' rights to site transmission, but it believes there should be federal backstop authority on every transmission proposal, Hoecker said.

Jim Owen, a spokesman for EEI, agreed that the decision curbs FERC's already limited authority on transmission siting. "It's a disappointing outcome that certainly it will reinforce the probability that we will have continued gridlock," he said.

State regulators welcomed the Supreme Court's rejection of EEI's petition. "The decision is good news because it ensures that those who know the local and regional geographies and economies best -- the state regulators -- remain responsible for siting and planning transmission lines," said Robert Thormeyer, spokesman for the National Association of Regulatory Utility Commissioners.

The Senate Energy and Natural Resources Committee already moved to address the 4th Circuit's decision and the need for transmission in the energy bill passed last June. A central part of the bill is a transmission planning, siting and cost allocation piece that provides even greater siting authority for FERC, although states would still have the ability to review the project first.

But the bill is currently intertwined with the fate of the climate bill, and many doubt the Senate has the political willpower to pass the controversial measure this session.

The urgent need to build transmission and the Supreme Court's decision could push interested groups and lawmakers to carve out the transmission title from the energy bill, as others have advocated for provisions like the Clean Energy Development Administration.

Owen said EEI is examining how to proceed on transmission policy, but the next step is not clear. The Supreme Court decision, he said, "will in some way shine a brighter light on that, but not in ways I can predict right now."

But Bill Wicker, a spokesman for Sen. Jeff Bingaman (D-N.M.), chairman of the Energy and Natural Resources Committee, said taking transmission out of the energy and climate bill doesn't seem likely.

"There is no other legislation that is expected to come up soon in the Senate on which transmission can travel -- transmission is not health care, it's not Wall Street reform, it's not a jobs bill," he said.

He added, "Transmission -- unless you want to carve out a week or two of floor debate -- I don't think you can bring it up as a stand-alone."

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SPOTLIGHT

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