

Commissioner Tony Clark on Platts Energy Week, Part 2

Chris Newkumet: We're back, and I'm joined by FERC Commissioner Tony Clark. Order 1000 is the Commission's landmark rulemaking on power transmission cost allocation and planning. You are deep in the compliance phase of this now Tony; how is that working? You have any concerns?

Commissioner Clark: Well it has been a long, hard slog. These documents associated with order 1000 are voluminous, there are a lot of regions across the country and the information that the Commission has been asking for in its compliance phase is substantial. We are for the most part through the intra-regional filings stage and now we are heading toward the inter-regional filings. In other words, how the different regions will be talking to each other as they plan for transmission. What I've said with regard to order 1000 is, to the degree that order 1000 is about ensuring that there are proper cost allocation principles in place before lines get built or to the degree that there is an encouragement for greater intra-regional or inter-regional planning, that's a very good thing. There's a lot transmission projects that are probably need across this country, and facilitating that is very important. Where I've laid out some of my concerns with where the Commission may be going – has been laid out in a few partial dissents and dissents that I've issued through the course of the compliance filings – is really with regard to what degree does the Commission take into consideration those other state and local laws, and other federal laws that may drive how these transmission lines get built. In my mind I've had some concerns that the Commission perhaps is not allowing those regional planning entities enough latitude to take those other state and local and other federal laws into consideration as they plan for the transmission grid.

Newkumet: That was a fundamental premise of Order 1000; OK, we are laying out some broad-stroke rules here but you guys are going to implement it. You've had some criticism come back at you saying, well wait a second, you said we implement it, we come up with an idea and you say no, that's no good. You either mean that or you don't mean that. Is that what you are saying?

Clark: Right, it's really how much flexibility are you going to give to those planning entities that are under the Commission's authority to ensure that they can take all of those other laws that are still on the books – remember they have, FERC does not have sole authority over transmission, in fact it has just a few very small portions. States still site transmission lines. States site generation. In many states across the country they are planning on an integrated resource planning basis the generation and how it is going to serve the load itself. So what I have stressed through the course of the dissents is we really need to ensure that those planners can take all of those things into consideration as well, and grant them the flexibility that they are going to need to be able to make wise decisions with regard to transmission. Because if we don't, what we may end up with is a situation where there is lots of litigation fighting over what's federal law, what's state law and does FERC have jurisdiction over that – that's just money spent on lawyers and litigation as opposed to money spent on actually getting transmission built.

Newkumet: Gas/electric coordination is another ongoing initiative in which the Commission is trying to explore and promote ways whereby we'd have more efficient sale and transportation of

gas to electric utilities all in the interest of reliability. It has been over a year since the last public conference on this. Is the Commission losing its steam here?

Clark: On gas/electric we've actually had quite a few technical conferences at the very least within the last year, and I don't think it is losing its steam really at all. In fact, if anything, I think we are starting to move into the phase where we are starting to see some things come to fruition, which hopefully will prevent concerns that are out there. It is a highly regional issue, how the gas/electric interdependency really plays out. The biggest, probably, concern that most folks have identified is in the Northeast part of the country in New England, where you have a market that is very dependent on gas. It is a mostly market region, it is a restructured region so you don't have that state regulatory authority sort of commanding that certain things get built.

Newkumet: Also, under-piped.

Clark: And it is under-piped. So it's a very highly constrained region of the country. And it is also a region of the country that depends on gas for heating and for other uses because it is in a cold-weather part of the country. So you have all these things coming to a confluence in New England, and there is a fairly immediate concern there. We are starting to see some of the tariff filings come through their independent system operator in response to a lot of what has gone on in these technical conferences that FERC has had. But there will be other work to do in other parts of the country. In the Midwest, the issue is maybe more in the three-to-five-year time frame, where you have significant coal plant shutdowns probably happening because of environmental laws and regulations. Those will be converting over to natural gas, and then there will be concern there in that mid-term to ensure that there is gas availability for those generators that will be switching over.

Newkumet: Turning back to market monitoring and enforcement, you expressed great concern about a March DC Circuit declaration that basically said the Commodity Futures Trading Commission has exclusive jurisdiction over futures trading. You are worried that leaves some vulnerabilities, some holes in the fence, maybe?

Clark: What it really is is when we have these cross-market manipulation schemes, which is what a number of them actually have been. The DC Circuit court decision was on one that was fairly specific to that particular case, but nonetheless could have some ramifications. The concern would be that we want to have as many cops on the beat as we can in these cross-market issues, where FERC has authority over physical markets and the CFTC has authority over the futures market, but they can interplay with each other in very complex ways. The DC Circuit decision is what it is. I would have probably preferred that the court found a way to ensure that both agencies could have had full discretion to enforce those matters. Nonetheless, we need to move forward. It might mean that Congress perhaps needs to tweak the law a little bit to ensure that both agencies...

Newkumet: And you've suggested this before.

Clark: We've suggested that. On the other hand, there are things that in the interim the FERC and the CFTC should probably be doing, including coming together and getting an MOU signed, which has always been envisioned in the law to make sure that there are as few gaps as possible.

Newkumet: Come fall, the Commission will be under new leadership. Chairman Jon Wellinghoff is leaving and former Colorado regulator Ron Binz has been nominated to take up the gavel. What might that mean for the direction at FERC, for the agenda, for the workload there?

Clark: Hard to say, probably. On one hand FERC has a long tradition, I think, of having fairly stable sort of view with regard to, on the macro level, exactly where the energy industry is going. We have a very professional, highly competent technical staff there at FERC, which will continue to do the work that it does. So to that degree I don't know that you are going to see huge sea-change in direction or philosophy or anything like that. That's been the case between Republican and Democrat administrations...

Newkumet: Not a very partisan agency...

Clark: Not a partisan group, it really isn't. So on that hand, I don't know that it will be a huge difference regardless of who the next chairman is. But every chairman brings in their own perspective and their own probably goals with regard to what they'd like to accomplish in the near term and short term. Everyone has a little bit different personality in how they might like to structure staff and how the work flow and things like that go. So, that's yet to be determined.

Newkumet: FERC Commissioner Tony Clark, always fun, always interesting, thanks for coming.

Clark: Absolutely. Good to be here.