Roselle LLP

Jurisdictional Considerations in Establishing Policies to Spur Adoption of Advanced Transmission Technologies (ATTs)

IURC ATTs Virtual Stakeholder Meeting

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Jurisdiction over ATTs is shared by the States and FERC

FERC

- Exclusive authority over unbundled transmission rates and over practices directly affecting those rates
- Has chosen not to exercise jurisdiction over bundled retail transmission rates

States

- Integrated resource planning
- Siting of transmission infrastructure, and construction of facilities
- Bundled retail transmission rates
- Rates and siting of distribution infrastructure

Judicial precedent on the division between State and FERC authority

New York v. FERC U.S. 2002	FERC's determination not to assert jurisdiction over bundled retail transmission "represents a statutorily permissible policy choice."
ONEOK v. Learjet U.S. 2015	The target at which a state law aims must not be within FERC's exclusive sphere (e.g., states should not aim to set FERC-jurisdictional rates).
Hughes v. Talen U.S. 2016	States cannot set a FERC-jurisdictional rate.
Coalition for Competitive Electricity v. Zibelman 2d Cir. 2018	States can act within their own sphere of authority in ways that affect — and respond to — FERC-jurisdictional rates and regulation.
Transource Pennsylvania, LLC v. DeFrank 3d Cir. 2025	A state cannot substitute its own determination for FERC's and prevent the federal framework from accomplishing its objectives (siting denial based on the state's second-guessing of the economic analysis conducted by PJM in its FERC-jurisdictional planning process).

Note: the vast majority of state programs and frameworks are never challenged in federal court.

FERC precedent relevant to ATTs

Where FERC has acted

- Order 1920: regional planning must consider ATTs — advanced conductors, dynamic line ratings, transmission switching, advanced power flow control
- Order 2023: interconnection procedures must provide for consideration of a broad array of ATTs
- Order 881: line-ratings requirements; a 2024 NOPR would require DLRs, but to-date FERC has not proceeded with that rulemaking
- FPA § 219 transmission rate incentives — but no ATT-specific incentives to date

Where FERC has not (room for states)

- No detailed procedures or standards for local transmission planning (where costs recovered from a single service territory)
- FERC applies a “presumption of prudence” for local transmission investments, but in practice does not generally evaluate prudence or deny projects on this basis
- Has never claimed authority to direct utilities to make specific transmission investments, even for regional projects
- Does not regulate transmission siting outside the narrow context of backstop authority for projects located in National Interest Electric Transmission Corridors.

Program designs state regulators should avoid

1 **Do not explicitly provide for bulk transmission rate incentives**

2 **Do not regulate wholesale grid operations**

E.g., a state requirement that PJM implement topology optimization.

3 **Do not second-guess or overturn FERC regulation or an action taken pursuant to a FERC framework**

E.g., the Pennsylvania PUC's Transource decision — rejecting a project based on the state's own re-analysis of a FERC-jurisdictional planning determination.

(Note that states have greater space to regulate "local" transmission without causing conflict with FERC's regulation)

States retain broad authority and are using it to spur ATTs

Planning requirements

Many state IRP and other planning processes evaluate transmission investments. Recent laws require evaluation of ATTs in planning.

IN, MA, MN, NM, OR, SC, VA, UT

Siting & permitting

Streamlined siting processes for ATTs; evaluation of ATTs required as part of siting applications.

Streamlined: AZ, MT · In applications: CT, MT, OH

Retail rates & cost recovery

Bundled retail rate regulation providing specific direction for recovery of ATT investments.

MT, MN, UT

Engagement in FERC regional planning

Required development of plans for submission and consideration in the FERC regional planning process.

CA, IL

The Federal Power Act leaves room for more ambitious planning action

States could adopt up-front planning requirements with more teeth, such as:

1

Evaluate and direct investment through state planning processes

Require utilities to file local transmission and distribution plans (including ATTs where appropriate), and authorize the commission to order modifications to these plans, or even require specific facilities to be constructed.

2

Mandate ATT deployment targets

E.g., each utility must complete at least two high-performance conductor projects within a specified period, where consistent with the FERC regulatory regime — analogous to state authority over generation mix while FERC sets wholesale rates for those resources.

Questions?

Please reach out with any follow-up questions:

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