New FERC Chair's Record May Hold Clues To His Plans

By **Mark Kalpin and Brendan Connors** (February 16, 2021)

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On Jan. 21, President Joe Biden named Richard Glick, a member of the Federal Energy Regulatory Commission and an ardent advocate of renewable energy, to be the commission's next chairman.

Before joining FERC, Glick acted as the general counsel for the Democratic members of the U.S. Senate's Energy and Natural Resources Committee, serving as senior policy adviser on various issues encompassing electricity and renewable energy. Former President Donald Trump nominated Glick to be a FERC commissioner in August 2017, and the Senate confirmed him on Nov. 2 of that year.

Glick's term at FERC will expire on June 30, 2022. With the recent confirmations of Democrat Allison Clements and Republican Mark Christie, FERC's five-person commission is now fully seated for the first time since December 2018.

During his tenure as a FERC commissioner, Glick has focused on a number of policy items — often in lone dissent from the Republican-led commission over the past few years — that provide insight into his likely priorities as chairman. His ability to effect his desired policies, however, will depend on FERC's fluctuating composition, currently dominated by Republican appointees, and his ability to enlist fellow commissioners to support his positions.

Climate Change and Pipeline Construction

One area in which Glick has been particularly vocal is the need for FERC to scrutinize greenhouse gas emissions in the siting and construction of natural gas pipelines. He has repeatedly stated that both the Natural Gas Act and the National Environmental Policy Act, or NEPA, require FERC to consider the climate change implications of constructing and operating pipelines.

In support, he has cited several decisions of the U.S. Court of Appeals for the District of Columbia Circuit, in which the court criticized FERC for refusing to identify and consider the reasonably foreseeable greenhouse gas emissions caused by the downstream combustion of natural gas transported through interstate pipelines.

For instance, in April 2020, Glick objected to FERC's authorization of the Transcontinental Gas Pipe Line Co. LLC's proposed Northeast Supply Enhancement Project. In his partial dissent to the commission's denial of rehearing in this case, he said:

> In light of this undisputed relationship between anthropogenic [greenhouse gas] emissions and climate change, the Commission must carefully consider the Project's contribution to climate change, both in order to fulfill NEPA's requirements and to determine whether the Project is required by the public convenience and necessity.

He condemned FERC for "simultaneously stating that it cannot assess the significance of the Project's impact on climate change, while concluding that all environmental impacts are acceptable to the public interest [as required under NEPA]."

He has voiced similar objections to other pipeline projects in the years since he joined the commission, including National Fuel Gas Supply Corp.'s FM100 project in Pennsylvania, and Northwest Pipeline LLC's North Seattle Lateral Upgrade project in Washington. As chairman, he will almost certainly continue this opposition.

Price Floors in Wholesale Electric Markets

Glick has been skeptical of buyer-side mitigation rules — including, particularly, price floors — aimed at diluting the participation of state-subsidized renewable electricity resources in the organized electric wholesale markets operated by regional transmission organizations, or RTOs, and independent system operators, or ISOs.

This can be best seen in his sharp dissent to FERC's controversial December 2019 order expanding PJM Interconnection LLC's minimum offer price rule, or MOPR, to nearly all state-subsidized capacity resources within the RTO's ambit, including renewables. In his dissent, Glick criticized what he called FERC's "sweeping definition" of what qualifies as a subsidy triggering the MOPR, as well as the various exemptions to the rule "that will have the principal effect of entrenching the current resource mix."

He has opposed similar measures proposed for implementation within the New York Independent System Operator Inc. and ISO New England Inc. markets. As he noted in his dissent to NYISO's application of buyer-side market power mitigation rules to electric storage resources, he believes that "the Commission's use of MOPRs also has the unmistakable effect (and, recently, the intent) of slowing the transition to a cleaner, more advanced resource mix."

Based on this, Glick has condemned FERC's "misguided belief that it must 'protect' capacity markets from the influence of state public policies," arguing that the states, not FERC, have jurisdiction under the Federal Power Act to shape their respective generation resource mixes.

Ultimately, Glick has contended that FERC should reserve any market mitigation rules it implements to only those buyers with actual, substantial market power. Applying them to renewable resources that receive state subsidies is, in his mind, impermissibly arbitrary and capricious on FERC's part.

In a more recent dissent to a FERC order addressing another challenge to PJM's MOPR, Glick accused his fellow commissioners of "thoroughly weaponiz[ing] [MOPRs] as a tool for increasing prices and stifling state efforts to promote clean energy." He concluded that the expanded MOPR "is an unsustainable construct that will eventually collapse under its own weight." Based on this history of dissents, reversing the commission's acceptance of MOPRs will clearly be a priority of his as chairman.

Incentives for Renewable Energy Transmission Projects

During his term as a commissioner, Glick has championed the development of renewable generation resources, such as solar and wind, and has promoted FERC's role in incentivizing the construction of new electric transmission lines to more fully integrate these resources into the electric grid.

In his March 2020 partial dissent to FERC's proposed rule on transmission incentives, Glick highlighted the need for transmission infrastructure to accommodate "the rapid shift away from large, central-station resources located close to customers and toward renewable resources, such as wind and solar, that are often geographically constrained."

He favored employing the commission's incentive authority under the Federal Power Act to entice utilities to build such transmission — possibly through additions to the rate of return on equity that such utilities are permitted to receive through their FERC-authorized rates.

In criticizing FERC's proposed rule for omitting any such incentives, he promised that he "would continue to advocate for an incentive regime that is more forward-looking and better accommodates the grid's evolving needs," and he encouraged outside parties to submit comments supporting renewable transmission incentives, regardless of whether such incentives are incorporated into FERC's final rule on the subject. It is fair to expect that Glick will continue to pursue this stated ambition as chairman.

Boosting Distributed Energy and Pricing Carbon

Relatedly — and in a break from his frequent dissents — he has ardently supported FERC's seminal Order 2222, issued in September 2020, which is intended to dramatically lessen existing barriers to the participation of aggregated distributed energy resources, such as batteries, thermal cells, electric vehicles and solar panels, in RTO/ISO wholesale markets.

Compliance plans are due in July of this year, and one can expect that Glick will play an active role in shepherding them through the process of implementation. Furthermore, he has been generally supportive, albeit more ambivalently, of FERC's recent exploration of carbon pricing in wholesale markets.

In his comments on FERC's October 2020 policy statement encouraging carbon pricing, Glick complimented the proposal as a useful counterweight to FERC's MOPR orders, as well as its ongoing refusal to consider greenhouse gas emissions in its pipeline approvals. However, he had earlier expressed concern that regional carbon pricing could be indirectly used to subvert state clean energy programs.

Prospects for Implementing Agenda

In line with this analysis, Glick recently announced that, if appointed as chairman, he would focus on "updating transmission policy, reassessing capacity market operations in relation to their impacts on state policies, and continuing to lower barriers to nascent clean energy technologies." With respect to natural gas, he stated that FERC "should rethink how it assesses greenhouse gas emissions and more seriously review environmental justice impacts when approving gas infrastructure."

What chance does Glick have to implement his agenda? He may be limited, at least in the short term. By law, one party can only occupy, at most, three out of the five seats on FERC. At the current time, three of those seats are occupied by Republican appointees, with Glick and Clements being the only Democratic appointees.

The term for Commissioner Neil Chatterjee, a Republican, expires on June 30, 2021, at which time Democrats will then have an opportunity to recapture the majority on the commission. In the meantime, however, it is expected that Glick will receive some level of bipartisan support on his transmission reform, carbon pricing and renewable generation integration initiatives from Chatterjee and Christie.

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