Blogs
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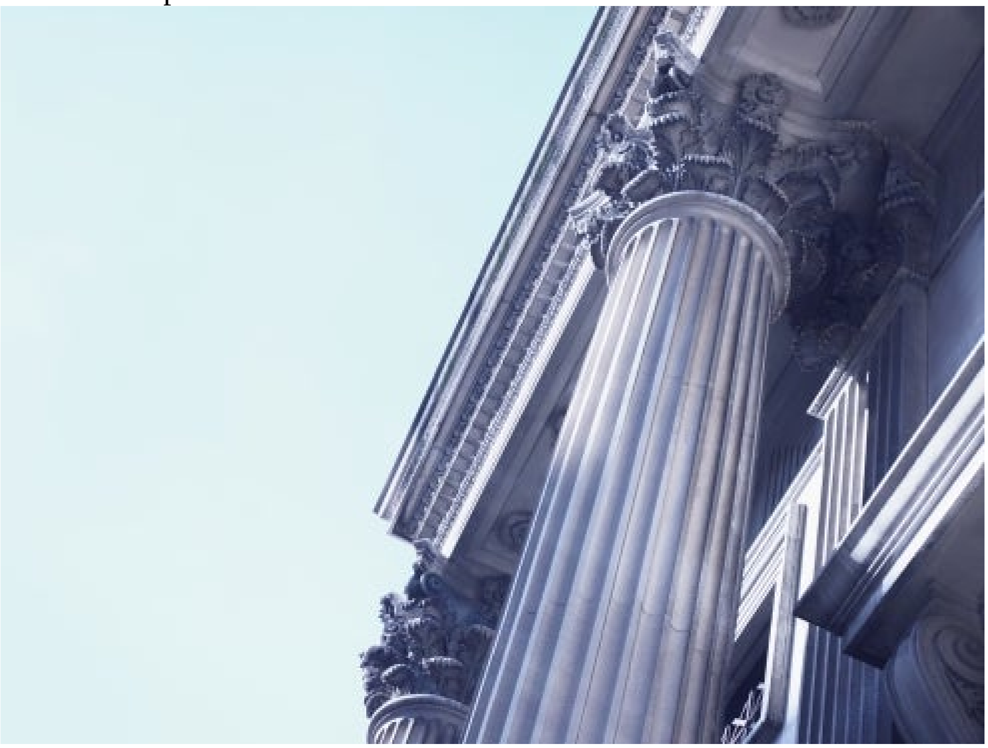
Executive Order Seeking to Scale Back the Decision-Making Authority of Independent Agencies May Have Profound Impact on FERC



On February 18, 2025, President Trump issued ***Executive Order 14215***, entitled "Ensuring Accountability for All Agencies," aimed at increasing direct presidential oversight of independent agencies and commissions.

Unlike most executive agencies, which are subject to direct presidential control, independent agencies and commissions are intentionally designed by Congress to retain a degree of insulation from the Oval Office. This executive order represents the latest attempt by the Trump administration to shake up executive decision-making, centralize power, and scale back agency independence, affecting a wide range of policy matters. The directives in Executive Order 14215 were described in a prior blog post here.

This post focuses on Executive Order 14215's potential implications for one independent agency, the Federal Energy Regulatory Commission (FERC). FERC oversees, among other things, electric transmission planning and rates, interconnection of utility-scale electric resources to the transmission grid, wholesale electric markets, electric reliability, and natural gas pipeline rates and certification. Decisions by FERC directly impact critical issues facing the United States today, including how the transmission grid will be expanded to accommodate a new energy resource mix and rapidly growing loads (such as from manufacturing and data centers); how interconnection queues will be processed to connect new energy resources in a fair, timely, and efficient manner; and how the reliability and security of the grid will be maintained in the face of an aging grid and growing threats from cyberattack.

Executive Order 14215 could have profound implications for how FERC tackles these and other issues.

- *Delay in Major Policy Adoption.* If you've read a FERC order or participated in a FERC rulemaking, you know they are complex, nuanced, and highly technical proceedings. (See FERC's new transmission and cost allocation rule in Order No. 1920 and Order No. 1920-A, which collectively run over two thousand pages and carefully balance a multitude of competing industry perspectives and policy priorities on highly technical issues of transmission planning and how the cost of new transmission infrastructure should make its way into transmission rates). While FERC has, in the past, submitted major regulations that have economic impacts to the Office of Information and Regulatory Affairs (OIRA), requiring FERC to send all proposed and final FERC rules to OIRA and possibly the president for review and approval is likely to, at minimum, result in delays (given the sheer volume and content) but also could upset the delicate policy balance that FERC is often able to achieve through its independent decision-making processes. If OIRA, OMB, or the president revise draft rules or otherwise set top-down policy direction that dramatically tips the scales in one direction or another (for example, favoring certain energy technologies over others), it will almost certainly lead to increased litigation over potentially unduly discriminatory outcomes. These factors breed uncertainty that is chilling to investment.

- *Uncertainty in Adjudication*. A key function of FERC is to adjudicate matters within its jurisdiction, which inherently involves the interpretation of legal concepts. The final section of the executive order, which declares that the president and attorney general will provide "authoritative interpretations of law for the executive branch," is broadly drafted and open to interpretation but could potentially cloud FERC's ability to act timely on various individual filings and/or the content of such decisions. In fiscal year 2024, FERC fielded over 9,000 filings by participants in the electric, natural gas, and oil industries according to its annual report, including thousands of filings requiring interpretation of law applicable to electricity market rule changes; approvals for market-based or cost-based rates; adjudication of complaints over jurisdictional rates and service; and petitions for declaratory orders clarifying the application of requirements under statutes FERC administers. Even assuming FERC continues to process such filings without disruption, the extent of the president's direct or indirect influence through the mechanisms described in the executive order remains to be seen, and the directive presents a challenging landscape for FERC commissioners and staff to untangle.
- *Impacts to Apportionments*. FERC's budget is approved by Congress, but the executive order seeks to invoke power to shape congressional apportionments, including the ability to "prohibit independent regulatory agencies from expending appropriations on particular activities, functions, projects, or objects . . . ." Whether the president can take such an action is a question bigger than FERC—it ties back to the fundamental separation of powers and congressional control over matters of budget and spending—but if the administration is ultimately successful in impacting appropriations, it would gain another tool to drive policy and priorities. In the case of FERC, a shift in apportionments could impact, for example, resources for FERC's efforts at community outreach regarding public participation in FERC proceedings, consultation and engagement with tribal governments, and removal of barriers to participation by members of the public who are underserved, such as environmental justice communities.

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