New high-power transmission lines have to run a regulatory gauntlet to get approved. One of the biggest barriers, however, isn't about whether the line can be built but who will pay for it. That has turned out to be a much knottier problem than you might think. A decision by the D.C. Circuit on Friday, however, has given the go-ahead for a rough-and-ready solution that's far from precise but eminently reasonable. Hopefully this will serve as a template for other power projects.

There's a general consensus that the cost — often in the billions — should fall on those who benefit from the line. The trickier part, however, is figuring who benefits and how much. The most obvious beneficiaries are utilities who were sometimes unable to buy power previously because of line congestion. Even when we can figure out who those utilities were in the past, it's not easy to know whether future generators would have run into congestion if the line had never been built, especially since other things are likely to have changed as well. More importantly, even people who don't use the line at all may benefit, because a new transmission line may eliminate strain elsewhere in the system.

If anything, the courts had complicated the task of dividing up the cost. FERC initially tried dividing up costs among all the users of transmission based on system benefits. In two opinions by Judge Richard Posner, the Seventh Circuit slammed FERC for ignoring the local benefits to users who were able to avoid preexisting congestion. Posner also seemed to set a very high standard for precision in calculating all of the line's benefits in monetary terms. In the meantime, the D.C. Circuit slammed FERC for ignoring system benefits in another case.

The D.C. Circuit's decision in *Long Island Power v. FERC* gives the agency the leeway to adopt sensible compromises rather than pretending there's some precise solution to the problem. The issue was how to divide up transmission costs between utilities in the eastern and western parts of the PJM grid service area, which stretches from Chicago to Baltimore. The lines are more useful to utilities in the eastern portion of the area, so basing costs solely on the presumed overall benefits to the grid would be unfair. It's harder to say, however, just what would be fair instead. Reviewing a settlement of the dispute, FERC approved a cost allocation based half on system benefits (so everyone on the system paid this part) and half on the use of the line. (There were some additional complications applying this system to older lines and to lines that were ultimately canceled, which I'm going to ignore here.)

Judge Katsas's opinion for the court upheld the 50/50 formula. Approval of the

formula, he said, “was undoubtedly reasonable given the various benefits of high voltage facilities” and was actually compelled by decisions that prohibited ignoring either regional or local benefits. And he pooh-poohed “any debate over the choice between a 50:50 ratio and, say, a ratio of 60:40 one way or the other” as a quibble. Katsas also rejected Posner’s call for cost-benefit analysis as mere dictum. Rather than seeking an unattainable degree of precision, “FERC must ensure only that there is ‘some resemblance’ between costs and benefits.”

This is a refreshing dose of common sense on a question that inherently resists any perfect solution. Let’s hope it provides a model for future disputes over cost allocation.