

Refocusing Our Energy: Permitting Reform That Promotes Electrical Transmission



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Executive Summary

To meet clean energy goals, the United States needs to build out transmission lines to connect carbon-free energy sources to the communities that need that power.

Under the status quo, the Federal Energy Regulatory Commission (FERC) has broad authority to approve interstate natural gas pipelines, yet is hamstrung in approving interstate carbon-free energy projects. Relevant new laws in the past two years have either made only minor tweaks to improve the process or focused entirely on increasing development of fossil fuels. None have made holistic changes to streamline the transmission system needed to unleash carbon-free energy.

As a result, barriers to transmission permitting persist, such as a confusing patchwork of necessary approvals and a lack of clarity on how costs should be divided among many consumers. Meanwhile, recently enacted legislation has actually weakened environmental guardrails in fossil fuel development, pushing our country in the opposite direction of expanding carbon-free energy.

To tackle these problems, Congress should advance legislation that empowers FERC to approve electrical transmission expansion for carbon-free energy and restores environmental protections for fossil fuel projects.

Introduction

The Biden Administration has set a goal to “create a carbon pollution-free power sector by 2035 and net zero emissions economy by no later than 2050.”¹ **To meet these deadlines, the United States must accelerate the development not only of carbon-free energy sources, but also the transmission infrastructure required to provide the resulting carbon-free electricity to families and businesses.**

Geographic factors limit the possibilities for carbon-free energy production. Wind farms and solar fields are restricted to certain locations that may be different from fossil fuel power stations. As such, new electrical transmission lines are necessary to connect inexpensive carbon-free energy sources with the communities that need power.

The American electrical transmission system's age presents an additional hurdle. Most of our grid was built between the 1960s and 1970s, and over 70% of the electric grid is older than 25 years old, leaving it vulnerable to extreme weather events.²

For the United States to have a strong, stable, globally competitive economy powered by carbon-free energy, the federal government must make it easier to build electrical transmission lines. Yet, despite Republicans' claims that permitting reform is their “top priority,”³ the House majority in the 118th Congress has done little to streamline electrical transmission projects. Instead, they have focused on accelerating an already speedy process for fossil fuels.

This report charts a different path forward. We begin by outlining the existing permitting authorities, and we describe the challenges that warrant congressional action. Finally, we provide legislative recommendations that will help our country meet its carbon-free energy goals.

FERC: The Agency in Charge

The Federal Energy Regulatory Commission (FERC) oversees electricity, natural gas, hydropower, and some aspects of energy infrastructure. An independent agency

¹ “FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies.” *The White House*, 22, Apr. 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

² Clifford, Catherine. “Why America's Outdated Energy Grid is a Climate Problem.” *Consumer News and Business Channel*, 17, Feb. 2023, <https://www.cnbc.com/2023/02/17/why-americas-outdated-energy-grid-is-a-climate-problem.html>.

³ Siegel, Josh. “Schumer slams House GOP's energy permitting bid.” *POLITICO*, 15, Mar. 2023, <https://www.politico.com/news/2023/03/15/schumer-gop-energy-permitting-00087213>.

under the Department of Energy (DOE), FERC is responsible for maintaining our electricity infrastructure's reliability and security, promoting competition, and regulating the development of new energy projects.⁴

FERC reviews applications for the construction and operation of interstate natural gas pipelines and regulates and approves rates for wholesale electricity and interstate transmission. In passing the Energy Policy Act of 2005,⁵ Congress made administrative and procedural changes to how FERC reviews applications for interstate natural gas pipelines and clarified that FERC has exclusive authority for permitting liquified natural gas import and export terminals. By comparison, **little has been done to remediate administrative and procedural roadblocks for electric transmission line permitting.**

FERC's current procedures are designed so that the agency can hear stakeholder concerns and then quickly approve permit applications, expediting construction of interstate natural gas pipelines and associated infrastructure. The agency will even collaborate with applicants directly to resolve any concerns raised by communities, federal agencies, and other stakeholders.⁶

With this power, FERC has only rejected two out of 476 interstate natural gas pipeline projects submitted to the agency over the past two decades.⁷ This process is so streamlined as to risk being cursory or untrustworthy.

Clean Energy Challenges

In contrast with the process for interstate natural gas pipelines, FERC generally cannot grant permits for electrical transmission lines. The agency also has far less authority during the stakeholder mediation process. **As a result, for industry actors to construct a new interstate electrical transmission line, they must work separately with each individual jurisdiction: states, counties, cities, tribes, and other local municipalities. This creates a jumble of disagreements without a federal regulator like FERC to sort through the thicket of objections.**

With some electrical transmission projects, FERC can unlock additional authority, but only if DOE designates an area as a National Interest Electric Transmission Corridor (NIETC). This happens if DOE finds a need to improve reliability and resilience and reduce consumer costs. Within a NIETC, FERC may then grant

⁴ Federal Energy Regulatory Commission. *What FERC Does*. <https://www.ferc.gov/what-ferc-does>.

⁵ Campbell, Richard. "The Federal Power Act (FPA) and Electricity Markets." *Congressional Research Service*, 10, Mar. 2017, <https://crsreports.congress.gov/product/pdf/R/R44783>.

⁶ "Natural Gas Pipelines." *Federal Energy Regulatory Commission*. <https://ferc.gov/industries-data/natural-gas/overview/natural-gas-pipelines>.

⁷ Giannetti, Gillian. "Correcting the record on FERC and pipelines." *Natural Resources Defense Council*, 10, Mar. 2022, <https://www.nrdc.org/bio/gillian-giannetti/correcting-record-ferc-and-pipelines#:~:text=Since%201999%2C%20FERC%20has%20approved,%2C%20while%20rejecting%20just%20two>.

permits for the siting of transmission lines, expediting the construction process. Currently, DOE has not identified any NIETCs, leaving this tool functionally unavailable.⁸

Recent Reforms: The Past Two Years

Since 2021, Congress has passed a number of bills relating to energy policy. The three most significant new laws are highlighted here.

Bipartisan Infrastructure Law (BIL)

The Bipartisan Infrastructure Law (BIL) updated FERC's existing authority for transmission lines by clarifying its role under "backstop authority"—that is, allowing FERC to override state opposition to the construction of transmission infrastructure if a given project takes longer than a year and is located in a DOE-declared NIETC.⁹

Inflation Reduction Act (IRA)

As the most sweeping climate legislation in U.S. history, the Inflation Reduction Act (IRA) did boost investment in the development of electrical transmission infrastructure. Transmission incentives included:¹⁰

- \$2 billion in direct loans for transmission projects located within NIETCs;
- \$760 million in grants for state and local authorities to take initial steps toward transmission projects, such as conducting project studies, examining alternate routes, and promoting economic development to mitigate community harm; and
- \$100 million to convene stakeholder analysis for the development of an interregional grid.

While the IRA made important investments to build more electrical transmission infrastructure, it did not fix underlying problems with FERC's permitting authority. In short, the IRA boosted funding but did not change the legal framework for electrical transmission.

H.R. 1 and Debt Ceiling Deal

House Republicans' proposed H.R. 1 is a giveaway to the oil, gas, mining, and other polluting industries that would jeopardize our environment and public health.¹¹ This

⁸ Lawson, Ashley. "Electricity Transmission Provisions in the Inflation Reduction Act of 2022." *Congressional Research Service*. 4 Jan. 2024. <https://crsreports.congress.gov/product/pdf/IN/IN11981>.

⁹ Ibid.

¹⁰ Ibid.

¹¹ "What's actually *IN* House Republicans' horrible climate and energy bill? We're about to find out." *The Wilderness Society*, 16, Mar. 2023, <https://www.wilderness.org/articles/blog/whats-actually-house-republicans-horrible-climate-and-energy-bill-were-about-find-out-0>.

legislation proposes to weaken protections in our bedrock environmental law, the National Environmental Policy Act (NEPA), by:

- Rubber-stamping the construction of new natural gas pipelines while shutting out environmental agencies, like the Environmental Protection Agency;
- Weakening enforcement of nearly all environmental and public health laws by restricting communities' access to the courts to challenge unlawful environmental permit decisions; and
- Prohibiting agencies from considering climate change and the cumulative harms of multiple sources of pollution in permitting decisions.

Key provisions of this legislation were incorporated into H.R. 3746, the 2023 compromise negotiated by President Joe Biden and then-Speaker Kevin McCarthy to raise the debt ceiling.

Remaining Roadblocks: Where Congress Needs to Focus

These recent legislative changes solved some issues, left some work undone, and in the case of H.R. 3746, created new problems that future legislation should address. There is still a massive bottleneck to carbon-free energy transmission, and Congress should restore environmental protections that minimize the harms of fossil fuels.

Siting Authority and Regional Planning

For most electricity transmission projects, states have the authority to grant site approvals.¹² If a transmission line crosses state lines, a proposed project would need permission from each state along the line's path, as well as requisite local government approvals. An objection from any one entity would terminate the entire project unless it is in a NIETC.

This cumbersome approval process hinders project sponsors from building new electrical transmission infrastructure to deliver carbon-free energy, especially to communities that are located at great distances from carbon-free energy sources. Consider a hypothetical proposed wind farm in Kansas being commissioned to serve residents in Chicago, Illinois. Transmission lines would have to travel through at least one other state, several counties, and even more municipalities. These jurisdictions would not directly receive electricity from the project, providing little incentive for them to approve a project designed to benefit residents of Chicago.

¹² Lawson, Ashley. "Electricity Transmission Permitting Reform Proposals." *Congressional Research Service*. 11 Oct. 2023, <https://crsreports.congress.gov/product/pdf/R/R47627>.

More broadly, there is no centralized authority spearheading proactive planning of large-scale interstate transmission projects. FERC does require utilities to participate in regional transmission planning and to coordinate with neighboring jurisdictions on a regular basis.¹³

“There is no centralized authority spearheading proactive planning of large-scale interstate transmission projects.”

principle to large scale regional transmission projects often causes delays.¹⁵

However, problems persist due to insufficient leadership in regional transmission organizations and limited trust among states and utilities.¹⁴

Cost Allocation

Regulators commonly dictate that whoever receives the energy should foot the bill for the construction of necessary infrastructure. Applying this

principle to large scale regional transmission projects often causes delays.¹⁵

The courts have added complications to the cost allocation process for regional transmission lines. In *Long Island Power Authority v. FERC*, the U.S. Court of Appeals for the D.C. Circuit affirmed that FERC has significant authority when assigning transmission costs to regions and customers. However, the court also restricted FERC from spreading costs evenly across any given region, instead requiring the agency to perform a comparison of costs, burdens, and benefits.¹⁶ In a separate case, the D.C. Circuit found that energy regulators cannot assign all costs locally.¹⁷

To achieve clarity on both cost allocation and regional transmission planning, FERC began the process of rulemaking in 2022.¹⁸ Over a year later, the agency still has not finalized the rule.

¹³ Ibid.

¹⁴ Pfeifenberger, Johannes P., Kasparas Spokas, J. Michael Hagerty, and John Tsoukalis. "A Roadmap to Improved Interregional Transmission Planning." *The Brattle Group*, 30, Nov. 2023, https://www.brattle.com/wp-content/uploads/2021/11/A-Roadmap-to-Improved-Interregional-Transmission-Planning_V4.pdf.

¹⁵ Ibid.

¹⁶ Tabak, Gabe. "The 'Goldilocks' Approach to Transmission Cost Allocation." *State Energy and Environmental Impact Center - NYU School of Law*, 24, Mar. 2022, <https://stateimpactcenter.org/insights/the-goldilocks-approach-to-transmission-cost-allocation>.

¹⁷ Ibid.

¹⁸ "Explainer on the Transmission Notice of Proposed Rulemaking." *Federal Energy Regulatory Commission*, 21, Apr. 2022, <https://www.ferc.gov/explainer-transmission-notice-proposed-rulemaking>.

Eroded Environmental Protections

The National Environmental Policy Act (NEPA) has safeguarded human and environmental health from pollution, including from fossil fuel projects.¹⁹ It has exposed devastating harms of dredging wetlands, protected Native American cultural artifacts from drilling, and prevented carcinogens from leaking into drinking water.²⁰ With H.R. 3746, House Republicans weakened this foundational law in the 118th Congress, threatening communities' wellbeing.

The evidence contradicts Republicans' claims that the legal standards of NEPA are the main source of permitting delays. A U.S. Forest Service analysis spanning 16 years of data found that "two important sources of delays in reaching final decisions under NEPA are the lack of staff generally and the lack of staff with expertise in environmental reviews."²¹ Congress already began tackling these problems by providing \$1 billion in the IRA for additional staff for environmental reviews, though vacancies remain due to a hiring backlog created during the Trump Administration.²² Weakening NEPA is merely greenlighting fossil fuel projects, not solving the transmission permitting problems.

“The evidence contradicts Republicans' claims that the legal standards of NEPA are the main source of permitting delays.”

Legislative Recommendations: Cleaning Things Up

For some of the above issues, Congressmembers have proposed bills to ease the development of carbon-free energy transmission. For others, new legislation is needed.

Clarifying FERC Leadership Role

Congress needs to codify FERC as the lead agency with transmission siting authority, empowered to coordinate with entities across federal, state, and local governments. In the status quo, both FERC and DOE must give input in federal

¹⁹ Pepper, Elly. "Never Eliminate Public Advice: NEPA Success Stories." *Natural Resources Defense Council*, 1, Feb. 2015, <https://www.nrdc.org/resources/never-eliminate-public-advice-nepa-success-stories>.

²⁰ Ibid.

²¹ Greene, Nathanael and Cullen Howe. "Down to the Wire: Progressive Permitting Reforms Will Accelerate Renewable Energy and Transmission Buildout and Help Meet U.S. Climate Targets." *Natural Resources Defense Council*, 6, Sep. 2023, <https://www.nrdc.org/sites/default/files/2023-08/down-to-the-wire-renewable-energy-permitting-ib.pdf>.

²² Ibid.

transmission siting.²³ This has led to fragmentation between various agencies, failure to secure support from stakeholders, and incomplete applications—all contributing to unnecessary delays in transmission project approval.

Congress should also consider legislation that empowers the agency to site and permit high-voltage transmission lines that cross state lines or fall under DOE's NIETC designation.

Providing Certainty on Cost Allocation

Congress should lead in creating cost allocation policy. While FERC's current endeavor to update cost allocation rules is welcome, Congress must do its part to ease the development of carbon-free energy transmission. Former FERC Commissioner Richard Glick has commented that it is "hard politically and legally for FERC to [make the final decision on cost allocation] unilaterally."²⁴ He goes on to state that it "would be helpful from [his] perspective if Congress... would clarify [how FERC should allocate costs commensurate with benefits]."

Representatives Sean Casten (D-IL) and Mike Levin (D-CA) have introduced the *Clean Electricity and Transmission Acceleration (CETA) Act*. This bill clarifies the standard FERC should use when allocating the costs of regional transmission facilities and defines the transmission benefits that FERC should consider.²⁵

Restoring NEPA Protections

As policymakers debate permitting proposals, they should avoid weakening NEPA in ways that threaten Americans' health and environment and fail to address actual permitting reform needs. By allowing dirty energy developers to write their own environmental reviews, completely exempt natural gas pipelines from the NEPA process, and block harmed communities from seeking relief in the courts, H.R. 3746 moved federal energy policy away from promoting sustainability.

Moving forward, Congress should also consider legislation that would repeal the fossil fuel company giveaways in H.R. 3746 that worsen pollution.

²³ Reed, Lisa. "What to Keep and What to Fix in Manchin's Permitting Proposal." *Niskanen Center*, 25 Oct. 2022, <https://www.niskanencenter.org/what-to-keep-and-what-to-fix-in-manchins-permitting-proposal/#:~:text=Federal%20transmission%20siting%20requires%20involvement,transmission%20if%20states%20did%20not>.

²⁴ Morehouse, Catherine. "Cost allocation remains a key challenge for FERC ahead of transmission reform, Glick says." *Utility Dive*, 20, Jul. 2023, <https://www.utilitydive.com/news/cost-allocation-remains-key-challenge-for-ferc-ahead-of-transmission-reform/603597/>.

²⁵ "The Clean Electricity and Transmission Acceleration Act of 2023: Section-by-Section Summary." *Sustainable Energy & Environment Coalition*, 12, Oct. 2023.

Conclusion

If done thoughtfully, permitting reform will benefit Americans by streamlining the electrical transmission necessary to support the clean energy economy of the future. As House Republicans push legislation that fast-tracks fossil fuel projects at the expense of community input and environmental protection, Democrats should not cede permitting reform as a “Republican issue.” Instead, Democratic lawmakers must advance the affirmative case for permitting reform that empowers FERC to speed up development of electric transmission lines and refocus permitting reform on changes that will expand the use of carbon-free energy.