

Streamlining Energy Infrastructure Permitting

- The American Public Power Association (APPA) urges federal policymakers to streamline federal permitting and siting rules to help facilitate the construction of cost-effective energy infrastructure necessary to maintain electric reliability and to accommodate a changing resource mix.
- APPA supports conducting environmental reviews and permitting processes in a concurrent, coordinated, consistent, predictable, and timely manner sufficient to support sound decisions regarding federal agency actions, such as approving new infrastructure projects.
- APPA encourages the Federal Energy Regulatory Commission (FERC) to promote electric transmission siting and permitting by facilitating open and transparent transmission planning processes that prioritize reliably meeting the needs of public power utilities and other load-serving entities.

Background

Providing reliable and affordable electricity to American consumers requires an expansive infrastructure system, and the capital to plan, build, and maintain it. America's energy infrastructure includes power plants, hydroelectric dams, transmission and distribution wires, and fuel delivery systems, such as interstate natural gas pipelines. The need for cost-effective infrastructure to support reliable and affordable electricity is particularly acute today to balance intermittent resources. Rapid growth in wind, solar, storage, and distributed energy resources, and the need for flexible resources, such as natural gas-fueled generation, are all part of that quickly evolving generation resource mix. Electrification of the transportation sector and increased severe weather events are also driving more demands on the electric grid.

Streamlined environmental reviews under the National Environmental Policy Act (NEPA) are integral in ensuring that energy infrastructure projects move forward. NEPA requires federal agencies to consider the environmental impacts of proposed major federal actions as part of an agency's decision-making process. Environmental reviews and authorizations that involve multiple federal, state, and local agencies are common. These reviews are often time-consuming, fragmented, inefficient, and costly to project proponents. While state and local governments generally have authority over the siting and construction of electric power lines, federal policymakers can influence transmission, planning, permitting, and siting. In some cases, transmission siting authority resides with federal agencies, requiring NEPA review.

Electric generation resources, like hydroelectric power, are needed to maintain grid reliability and may also face significant permitting obstacles. Hydroelectric power makes up a large portion of the nation's emissions-free, renewable energy, accounting for 30 percent of domestic renewable generation and six percent of total electricity generation, according to the most recent Energy Information Administration data from 2021. Yet the current federal licensing process for hydroelectric projects constitutes a significant impediment to developing new hydroelectric facilities and relicensing existing facilities. FERC has primary authority for licensing and relicensing non-federal hydroelectric projects pursuant to Part I of the Federal Power Act (FPA). FERC's hydroelectric licensing process is required to comply with NEPA and considers numerous factors and sources of input. While it is appropriate to consider the broad array of potential impacts of a hydropower project, FERC must be given more authority to weigh costs and benefits and to impose timelines for resource agencies to weigh in (for more information, see APPA's issue brief, "Hydropower").

Natural gas-fired electric generation also plays an important role in the nation's resource mix. It is critical to the overall reliability of the bulk electric system as the resource mix transitions to more intermittent renewable energy. A reliable and affordable supply of natural gas depends on adequate interstate transportation infrastructure. Jurisdiction for siting and permitting interstate natural gas pipeline facilities resides primarily with FERC under the Natural Gas Act (NGA), and pipeline certificate applications are also subject to NEPA review. While FERC's review of pipeline certificate applications has long resulted in needed infrastructure being evaluated and approved in a reasonably efficient manner, recent policy changes proposed by FERC have injected significant uncertainty into the process.

A clear definition of what constitutes "waters of the United States" (WOTUS) under the Clean Water Act (CWA) also facilitates streamlined permitting for energy infrastructure projects. WOTUS is a key definitional term that defines the extent to which a project impacting WOTUS may need a federal CWA permit. Electric utilities routinely secure permits for pollutant point source discharges to a WOTUS. Utilities use various water features to manage, store, and treat water. Any change in converting these industrial water features from non-jurisdictional to jurisdictional will alter the point of compliance and create compliance issues, impose unwarranted new costs to public power utilities, and permit delays.

Also, under the CWA, the U.S. Army Corps of Engineers (Corps) can issue general permits to authorize activities with minimal individual and cumulative adverse environmental effects. The power sector relies extensively on these nationwide permits (NWP) to provide timely and reliable installation of transmission and distribution powerlines and to perform maintenance on those lines, which are critical to their reliability. A streamlined NWP process supports the secure integration and delivery of a balanced mix of central and distributed energy resources.

Congressional and Agency Action

The Infrastructure Investment and Jobs Act (IIJA)(P.L. 117-58) provides over \$70 billion in energy infrastructure investment. It also includes provisions to streamline the NEPA review process for "major projects" funded by the act. Specifically, the IIJA requires: (1) that one agency lead the NEPA process for each project; (2) the creation of a joint project schedule; (3) the completion of the review process within two years; and (4) the production of a "record of decision" within 90 days of the issuance of a final environmental impact statement. Finally, the IIJA reauthorizes and amends parts of the Fixing America's Surface Transportation Act to streamline the review of certain large infrastructure projects, including the Federal Permitting Improvement Steering Council.

In February 2023, the new Republican majority in the House began a process of putting together a comprehensive energy production and permitting reform package for consideration. This process led to the introduction and passage of H.R. 1, the Lower Energy Costs Act. While primarily focused on fossil fuel and mineral production, it included language from the Building U.S. Infrastructure through Limited Delays & Efficient Reviews (BUILDER) Act, a bill introduced by Representative Garrett Graves (R-LA). The BUILDER Act sets timelines on project permits for NEPA, interagency coordination, and judicial review deadlines that were generally supported by public power and the electric sector. H.R. 3746, the Fiscal Responsibility Act, a two-year budget deal to lift the debt limit through 2024, includes the text of the BUILDER Act. Both parties have expressed a desire to continue to negotiate on additional permitting reform measures.

Over the years, the courts, the Corps, and the Environmental Protection Agency (EPA) have sought to develop a durable WOTUS definition. In January 2023, the agencies finalized the "Revised Definition of Waters of the United States," which adopts a definition "founded" on the pre-2015 WOTUS definition (the 1986/88 regulations defining WOTUS) updated to reflect their broad interpretation of multiple U.S. Supreme Court decisions and guidance. However, due to litigation, the rule is not in effect in certain states. Additionally, on May 25, 2023, the U.S. Supreme Court issued a decision in *Sackett v. EPA* (No. 21-454) limiting the scope of WOTUS under the CWA. The court found that the CWA extends to only those "wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right," so that they are "indistinguishable" from those waters. The decision suggests that many of the provisions in the 2023 WOTUS rule are invalid and will likely require additional rulemaking and/or guidance.

FERC has also undertaken several actions that are likely to impact the siting and permitting of energy infrastructure. FERC is currently considering changes to its policies for evaluating interstate natural gas pipeline certificate applications under the NGA, including a greater focus on greenhouse gas emissions in NEPA reviews. FERC's proposed policy changes have generated a great deal of uncertainty and opposition among natural gas companies and other key stakeholders. FERC has also proposed changes to its rules for regional electric transmission planning and cost allocation. While not specifically applicable to transmission siting and permitting,

the perceived reasonableness of FERC's rules governing transmission planning and cost allocation can have an impact on state and local decisions to permit and site new transmission facilities. FERC's proposed rule changes include a mechanism to encourage joint ownership of transmission facilities. APPA has long believed that some of the obstacles to transmission permitting and siting could be mitigated if new transmission lines were jointly owned, with some partial ownership by public power utilities where feasible (see APPA's issue brief, "Electric Transmission Policies").

Separately, the IIJA revised and clarified FERC's "backstop" siting authority for electric transmission facilities under section 216 of the FPA, which gives FERC authority to site electric transmission facilities in corridors designated by the Department of Energy if states do not or cannot act on transmission siting applications. APPA has supported FERC backstop siting authority and FERC recently proposed rules to implement the IIJA's amendments to section 216.

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The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government and protect the interests of the more than 49 million people that public power utilities serve and the 96,000 people they employ.