Public Power Permitting Reform Principles

The American Public Power Association (APPA) is the voice of not-for-profit, community-owned utilities that power approximately 2,000 towns and cities nationwide. APPA represents public power before the federal government to protect the interests of the more than 55 million people that public power utilities serve across 49 states and five territories.

APPA supports efforts in Congress to streamline the federal permitting and siting process, eliminate excessive regulatory barriers, and ensure more predictable and timely decisions from federal agencies.

Despite abundant resources and potential projects to meet the rapidly growing demand for electricity, permitting red tape has slowed energy infrastructure development to a crawl and made projects more expensive.

Utility customers ultimately pay the high cost of slow, cumbersome permitting rules.

APPA supports the following principles and legislation to streamline federal permitting and siting processes:

General Reforms

- Congress should **prioritize infrastructure-neutral permitting** reform to ensure public power utilities have the clarity and certainty necessary to invest in the generation, transmission, and distribution infrastructure they need to continue providing reliable and affordable power to the communities they serve.
- Congress should **digitalize the permitting process** and create an interagency sharing portal for information that is secure and meets all agency firewall restrictions. This portal should enable file sharing, coordination, and notifications to all agencies simultaneously when a document is uploaded.
- Congress should provide **sustained funding and support training** to ensure agencies have sufficient resources and personnel to accelerate coordinated reviews and permits.

National Environmental Policy Act (NEPA) Reforms

Sensible reforms to NEPA will help public power utilities invest in generation and transmission infrastructure in a timely and cost-effective manner, while maintaining appropriate environmental oversight. The U.S. Supreme Court decision in *Seven County Infrastructure Coalition v. Eagle County, CO* (No. 23-975) affirms that NEPA proceedings should be narrowly focused on the effects of the specific "proposed action" under consideration and not future

projects that may be built as a result of the "immediate project under consideration." The decision also affirms that federal agencies have broad discretion to limit the analysis of environmental impacts of a project.

In December 2025, the House of Representatives passed by a bipartisan vote H.R. 4776, the Standardizing Permitting and Expediting Economic Development (SPEED) Act, authored by Representatives Bruce Westerman (R-AR) and Jared Golden (D-ME). APPA strongly supports this legislation and believes that Congress should:

- **Limit the Scope of Reviews:** An agency's scope of review under NEPA should be limited to major federal actions within the agency's authority and control.
    - The scope of effects should be tailored to the specific federal agency action under review, and effects analysis should only address effects that are caused by the proposed action and subject to the control and jurisdiction of the federal agency.
    - Alternative analysis could be never-ending if all possible alternatives must be evaluated. Instead, alternatives must be within the agency's authority and align with the project's purpose.
    - The validity of programmatic documents should be extended beyond five years to ensure regulatory certainty for project sponsors as deliverables are met.
- **Provide Clarification for Grant Recipients:** Congress should clarify that the provision of federal funds, through grants, loans, or other assistance, does not automatically constitute a "major federal action" and trigger NEPA.
- **Clarify Categorical Exclusions:** APPA appreciates the timelines and ability to adopt other federal agency categorical exclusions established by the Fiscal Responsibility Act of 2023. Congress should clarify that categorical exclusions passed legislatively are valid without an agency-specific rulemaking and limit legal claims against the establishment of categorical exclusions.
- **Define Reasonably Foreseeable:** Federal actions that are reasonably foreseeable should be defined as actions that are directly under the control or jurisdiction of the agency and have a close causal relationship to the proposed agency action.
- **Limit Unnecessary Litigation:** The constant threat of litigation creates excessive costs and needless delays in the permitting process. It also spurs excessive documentation as agencies seek to protect their decisions from potential litigation. Reforms should be made to limit unnecessary litigation, including:
    - Limiting litigation only to parties that provided substantive comments during the public comment period or hearing.
    - Limit judicial reviews to claims brought by parties who submitted a timely, sufficiently detailed, substantive, and unique comment raising the same issue during that comment period *(while preserving the ability to bring an Administrative Procedures Act challenge if the final agency action introduces a new issue that was not presented for public comment)*.
    - Establishing reasonable litigation timelines post-final action, excluding categorical exclusions, and for appeals following final judgment.
    - Defining "agency action" (5 U.S.C. § 551) to include rules, orders, licenses, sanctions, relief, denials, or failure to act, while specifically excluding environmental

assessments (EA) and environmental impact statements (EIS) as "final agency actions" under the Administrative Procedures Act.

Clean Water Act (CWA) Reforms

Electric utilities require water to cool their generation facilities, ensuring the facilities remain operational to meet electricity demand. Streamlining the CWA permitting process to prevent delays and increase regulatory certainty when constructing new infrastructure or maintaining existing infrastructure will ensure public power utilities can reliably provide electricity while remaining stewards of the nation's waterways.

In December 2025, the House of Representatives passed by a bipartisan vote H.R. 3898, the Promoting Efficient Review for Modern Infrastructure (PERMIT) Act, authored by Representative Mike Collins (R-GA). APPA supports this legislation and encourages Congress to:

- **Clarify Section 401 Permitting Requirements:** APPA supports limiting the scope of section 401 State Water Quality Certification reviews to only cover direct discharges into navigable waterways. States should only be able to review the direct effects of a project on water quality.
- **Codify the Longstanding WOTUS Exclusion for Waste Treatment Systems:** The Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers have excluded waste treatment systems, an important part of an electric utility's management of water, from the regulatory definition of waters of the United States (WOTUS). APPA supports codifying this exclusion to ensure regulatory certainty for future reviews of the WOTUS definition.
- **Modify and Expand the Nationwide Permit Program:** The Nationwide Permit Program (NWP) authorizes the U.S. Army Corps of Engineers to issue permits for specific activities with minimal environmental impact, such as a utility line crossing a body of water, without having to issue an individual permit for each project. APPA supports modifying the acreage threshold for NWPs to allow larger projects to qualify and extending the validity of NWPs from five to ten years, thereby increasing regulatory certainty for projects as deliverables are met.
- **Limit Unnecessary Litigation:** The bill contains similar provisions to the SPEED Act that would set timelines for challenges and appeals to a CWA section 404 permit, limit litigants to issues raised and to those who submitted sufficiently detailed comments during the comment period (*while preserving the ability to bring APA challenges if final agency action introduces a new issues that was not presented for public comment)* and prevent courts from revoking permits unless there is an imminent threat to human health or the environment.

Endangered Species Act (ESA) Reforms

When proposing to construct electric infrastructure, public power utilities must consider whether ESA listed species and designated critical habitats are present in the project area and, if so, what procedural steps and substantive measures are necessary to comply with the ESA requirements. While the ESA serves important conservation goals, ambiguous definitions and complex

regulatory processes have increased both the time and cost required for public power utilities to complete infrastructure projects.

APPA supports H.R. 1897, the ESA Amendments Act of 2025, authored by Representative Bruce Westerman (R-AR), and believes Congress should:

- **Clearly Define Habitat:** Congress should adopt a statutory definition of habitat to provide clarity, consistency, and predictability on the scope of areas designated as "critical habitats." The definition of habitat should only cover areas that are actually habitable at the time of critical habitat designation. Regardless of whether a habitat is currently inhabited by a protected species, it should, at the time of a critical habitat designation, display the presence of physical or biological features that can support one or more life stages and, ultimately, the conservation of that protected species.
- **Allow Agencies to Authorize Only Minimal Offset Measures That Occur beyond Action Area Boundaries:** The U.S. Fish and Wildlife Service should not be able to require federal agencies or project applicants to fully mitigate or offset impacts to listed species outside of the project area caused by their actions.
- **Align Permitting Deadlines with Other Federal Environmental Review Processes:** Congress should impose deadlines for ESA informal section 7 consultations, section 10 permitting, and National Historic Preservation Act section 106 compliance (APPA suggests aligning deadlines with the NEPA EIS and EA timeframes). For section 10 permits, Congress should require deadlines for the federal agencies upon receiving a permit application to deem it complete and process the permit within a reasonable timeframe or provide a written response identifying the deficiencies. Congress should also require federal agencies to establish a timely dispute resolution process and appeals process to resolve disagreements.

Electric Transmission Reforms

Transmission planning and permitting are distinct issues. Planning involves determining which transmission projects are needed to deliver power to communities reliably. Transmission planners nationwide have already identified dozens of new, regional, and interregional transmission projects that will cost hundreds of billions of dollars to build. Most of these projects are necessary for electric reliability and load growth. These planned transmission projects must obtain permits from federal, state, and local authorities before construction. If trends persist, one-third of projects needing federal permits will face litigation, likely over alleged NEPA violations.[1]

Congress can facilitate new electric transmission by reducing federal permit roadblocks, including reforming NEPA.

- **Congress Must Maintain—and Not Expand—the Federal Energy Regulatory Commission's (FERC) Authority over Non-Jurisdictional Utilities, as Defined under**

[1] Bennon, Michael, and Devon Wilson. 2023. "NEPA Litigation over Large Energy and Transport Projects." *Environmental Law Reporter* 53 (10836) available at https://fsi9-prod.s3.us-west-1.amazonaws.com/s3fs-public/2023-09/nepa_litigation_over_large_energy_and_transport_infrastructure_projects.pdf.

Section 201(f) of the Federal Power Act: For a hundred years, Congress has appropriately allowed not-for-profit public power utilities, electric cooperatives, and the federal power marketing administrations (collectively, "non-jurisdictional utilities" under section 201(f)) to implement their own procedures and establish their own rates consistent with their own governance procedures. Because non-jurisdictional utilities have a unique public service mission and are accountable directly to the people they serve, section 201(f) of the Federal Power Act excludes non-jurisdictional utilities from FERC's general ratemaking oversight.

- **Each Region of the Country Is Best Suited to Determine whether Interregional Transmission Will Improve Reliability at the Lowest Reasonable Cost**: Congress should allow transmission planners to continue to identify cost-effective, reliability-enhancing interregional transmission projects rather than imposing a one-size-fits-all mandate for each region to maintain a minimum level of transfer capability with its neighbors.
- **Congress Should Maintain the Existing Beneficiary-Pays Cost Allocation Principle:** FERC and the courts have consistently interpreted the Federal Power Act to require the costs of a transmission project to be allocated to beneficiaries in a way that is roughly commensurate with the estimated benefits. The Federal Power Act does not allow costs to be allocated to customers who will not benefit. Congress should not modify that commonsense principle, except to clarify that benefits must be quantifiable, measurable, and should not lead to significant increases in transmission costs for public power utilities and their customers.

Hydropower Licensing Reform

Hydropower is a reliable and non-emitting source of baseload energy critical to the stability of the electric grid. Nearly half of the nonfederal hydropower fleet, responsible for providing 17 gigawatts of clean, flexible power to approximately 13 million U.S. homes, will be up for relicensing by 2035.[2] On average, relicensing an *existing* hydropower facility takes between seven and ten years to complete and can cost millions of dollars. The current process is uncertain and expensive, and many hydropower asset owners are in the process of deciding whether to extend or surrender their licenses.

The country cannot afford to lose existing hydropower capacity without impacting reliability. APPA encourages Congress to:

- **Limit Mandatory Conditions to Address Project Effects Only:** Amend sections 4(e) and 18 of the Federal Power Act so that mandatory conditions and fishway prescriptions address only direct project effects, like those from the construction, operation, or maintenance of the licensed project. This would prevent conditions addressing unrelated watershed impacts and reduce uncertainty and cost of the licensing process.
- **Clarify that Routine Maintenance & Minor Alterations Are Not New Federal Actions:** APPA supports S. 3518, the Fair Licensing for Operations of Water Structures (FLOWS) Act, introduced by Senators Lisa Murkowski (R-AK) and Angus King (I-ME). APPA believes that Congress should clarify that minor alterations and routine maintenance at FERC-licensed hydropower projects are not new federal actions requiring prior FERC environmental review

[2] May, Brittney. 2023. "The Importance of Streamlining Hydropower Licensing." NHA Powerhouse. National Hydropower Association. June 5, 2023, available at https://hydro.org/powerhouse/article/the-importance-of-streamlining-hydropower-licensing-reform/.

and approval under NEPA and other federal programs. This would help avoid unnecessary and lengthy delays for activities already captured in the license and approve much-needed, minor adjustments. This would also help ensure that asset owners can immediately respond to maintenance needs at their facilities.

- **Modernize Trial-Type Hearings & Alternative Conditions Procedures:** Update federal regulations implemented under section 241 of the Energy Policy Act of 2005 to extend trial-type hearing rights to alternative conditions under section 33 of the Federal Power Act. This would help ensure fairness in the trial-type hearing process and require agencies to give equal consideration to power and non-power values whenever exercising mandatory conditioning authority under sections 4(e) or 18 of the Federal Power Act.