

**OPPORTUNITIES FOR CONGRESS TO REFORM
THE PROCESS FOR PERMITTING ELECTRIC
TRANSMISSION LINES, PIPELINES, AND
ENERGY PRODUCTION ON FEDERAL LANDS**

**HEARING
BEFORE THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDRED EIGHTEENTH CONGRESS
FIRST SESSION**

JULY 26, 2023



Printed for the use of the
Committee on Energy and Natural Resources

Available via the World Wide Web: <http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

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CONTENTS

OPENING STATEMENTS

	Page
Manchin III, Hon. Joe, Chairman and a U.S. Senator from West Virginia	1
Barrasso, Hon. John, Ranking Member and a U.S. Senator from Wyoming	4

WITNESSES

Panel I

Stanek, Jason M., Former Chairman, Maryland Public Service Commission	5
Smyth, Antonio P., Executive Vice President, Grid Solutions and Government Affairs, American Electric Power	14
Teply, Chad A., Senior Vice President, Transmission and Gulf of Mexico, The Williams Companies	33

Panel II

Milito, Erik G., President, National Ocean Industries Association	74
Obermueller, Pete, President, Petroleum Association of Wyoming	87
Speakes-Backman, Kelly, Executive Vice President, Public Affairs, Invenergy	96

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

Air Products and Chemicals, Inc.:	
Letter for the Record	133
Barrasso, Hon. John:	
Opening Statement	4
Chart entitled “Average Annual Acreage of New Federal Oil and Gas Leases by President”	108
Business Roundtable:	
Letter for the Record	136
Dream.Org:	
Letter for the Record	138
King, Jr., Hon. Angus S.:	
Mother Jones article entitled “Yes in Our Backyards” by Bill McKibben, published May–June 2023	63
Manchin III, Hon. Joe:	
Opening Statement	1
Chart entitled “Transmission Permitting Reform: Eliminate Duplicative Reviews by Consolidating at FERC”	44
Chart displaying text from the Building American Energy Security Act of 2023	46
Milito, Erik G.:	
Opening Statement	74
Written Testimony	76
Responses to Questions for the Record	127
National Association of Manufacturers:	
Statement for the Record	140
National Electrical Manufacturers Association:	
Letter for the Record	143
NextEra Energy, Inc.:	
Letter for the Record	146

IV

	Page
Obermueller, Pete:	
Opening Statement	87
Map depicting lease ownership in a Wyoming basin	89
Written Testimony	91
Risch, Hon. James E.:	
Statement for the Record	131
Smyth, Antonio P.:	
Opening Statement	14
Written Testimony	16
Responses to Questions for the Record	124
Speakes-Backman, Kelly:	
Opening Statement	96
Written Testimony	98
Responses to Questions for the Record	128
Stanek, Jason M.:	
Opening Statement	5
Written Testimony	8
Responses to Questions for the Record	123
Teply, Chad A.:	
Opening Statement	33
Written Testimony	35
United South and Eastern Tribes Sovereignty Protection Fund:	
Statement for the Record	148
Western Governors' Association:	
Letter for the Record	153
Policy Resolution 2023–10	154
Policy Resolution 2022–01	157

OPPORTUNITIES FOR CONGRESS TO REFORM THE PROCESS FOR PERMITTING ELECTRIC TRANSMISSION LINES, PIPELINES, AND ENERGY PRODUCTION ON FEDERAL LANDS

WEDNESDAY, JULY 26, 2023

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in Room SD-366, Dirksen Senate Office Building, Hon. Joe Manchin III, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOE MANCHIN III, U.S. SENATOR FROM WEST VIRGINIA

The CHAIRMAN. The Committee will come to order.

Today we continue the important work of considering reforms to our energy permitting system and the state of energy on our public lands and waters. Permitting reform is essential for more reliable and affordable energy and to make our country more secure and competitive. Congress took a meaningful step forward in June with the Fiscal Responsibility Act—the debt deal—with several common-sense reforms that I know had bipartisan support from our Committee members. That included firm deadlines to complete reviews, requirements that agencies work simultaneously on a single environmental review, and several others, but there is still much more to do. Our Committee is uniquely situated to be able to make real progress by coming together in a bipartisan fashion around a targeted set of top priorities for both Democrats and Republicans.

We had a constructive hearing on overall energy permitting reform way back in May, and today we are going to drill deeper on some of our Committee members' top priorities based on the various permitting bills that have been referred to us. This includes responsibly addressing issues that are slowing down or blocking energy infrastructure critical for energy security and reliability, like pipelines and transmission lines. That discussion will be coupled with one on leasing and permitting of all types of energy on federal land and in federal waters, which is a tremendous energy resource and a critical piece of our jurisdiction.

Let me begin with transmission. Over the last year, there has been an attempt to paint transmission permitting reform as just another subsidy for intermittent renewable energy. If that were the case, that would be very hard for a lot of us to support, but this is simply not true. And we should not politicize infrastructure that

has long enjoyed bipartisan support. Here are the facts as I see them. Number one—big, interstate transmission lines just are not getting built. In 2021, we had the lowest build-out of extra high voltage transmission construction in the last decade. Number two—the process of siting, paying for, and planning large, interstate, and interregional transmission is different from other types of infrastructure and requires unique fixes. Number three—transmission is a key electric reliability tool, particularly during weather events that span hundreds of miles. Long-distance transmission and interconnectivity enables power to move to where it's needed. As we have seen in Texas and other parts of the country, the areas that need the power aren't just blue states with aggressive climate targets that some of us may not agree with. Of course, transmission infrastructure alone isn't enough for reliability—we also need dispatchable generation like coal, natural gas, hydropower, and nuclear. But without transmission, that generation has nowhere to go and it cannot help the areas that need it.

Let me be clear, states are currently in the driver's seat on transmission projects. And I believe, in most cases, that is where decisions should be made. But in the limited instances where there is a project that is in the national interest and it gets stuck at the state level, we need an efficient federal backstop to provide a pathway for the project to get the permits and be fairly paid for based on benefits received. The solution set for other types of energy projects looks different than transmission. One critical element which was not included in the debt deal that would benefit all types of energy projects—from pipelines to offshore wind, to mining projects—are judicial reforms. In my home State of West Virginia, just one project—the Mountain Valley Pipeline—has faced dozens of lawsuits in the five-plus years since they received all the necessary federal permits. While the debt deal shrunk NEPA review timelines down to no more than two years, as we all know, litigation on the back end can add many more years to the permitting process after agencies have completed their work.

There are three stages in the litigation process that we should look at streamlining—the filing, the case, and the remedy. On the first issue, right now, in many cases, parties can file suit and begin litigation up to six years—I repeat—up to six years after a permit has been issued. Allowing three times as long to challenge a NEPA review as we are allowing for agencies to issue one makes no sense at all. The second issue is the length of the court case itself. Given how behind we are building the energy infrastructure this country needs for our security, Congress should direct the course to expedite proceedings for these projects. Third is what happens if a court sends a permit back to an agency for more work. Usually, when a court sends a permit back, it identifies a few specific issues that must be fixed, yet we have agencies taking almost as long on these fixes as it took them to write the whole permit from scratch. All of these parts of the judicial process can and should be structured so that everyone gets their day in court, but project developers of all kinds have more certainty.

Our second panel today will discuss how we can bring some timelines, certainty, and efficiency to building and producing on federal lands and waters. We need to be clear about what we mean

by permitting here because the conversation tends to blur two distinct steps. Whether it's an oil and gas well in New Mexico, a solar project in Arizona, geothermal in Nevada, offshore wind off the California coast, or an oil and gas platform in the Gulf of Mexico, the first step is to navigate the Department of the Interior's leasing and right-of-way process. Then there is the separate process of getting permits to build or drill on that particular lease. Both steps have environmental reviews and approval processes, each with litigation risk. Energy producers on federal lands and waters, like those on private or state lands, want legal certainty about their leases, a steady flow of future sales to justify long-term investments, and infrastructure and skilled workforces. Continued production of these federal resources is incredibly beneficial, not just to our energy security, but also to fund western state priorities like education, and national priorities like the Land and Water Conservation Fund.

I have been concerned about efforts by the Administration to throttle back oil and gas leasing and production, so I made sure that the Inflation Reduction Act tied the ability to issue wind and solar leases to whether or not Interior is holding significant oil and gas lease sales, both on and offshore. And because that is now the law, the unprecedented delay in finalizing the next five-year offshore oil and gas plan is now putting both offshore wind and offshore oil and gas at risk.

On top of that, just last week, the Administration and environmental groups released a voluntary settlement agreement—negotiated behind closed doors—that would take 11 million acres in the Gulf off the table from leasing and impose restrictions that only apply to oil and gas leaseholders. If the settlement agreement goes through, you will have oil and gas vessels barred from operating at night or restricted to slow speeds, while commercial shipping, passenger vessels, and fishermen would be completely unaffected. I don't know if there is a better example of this Administration's targeting of American energy production than this—a domestic energy provider literally held back while a tanker ship importing foreign crude can cruise on by unrestricted.

Onshore, while they still have work to do, I am glad to see that the IRA has pushed BLM to finally resume holding lease sales, including New Mexico's record-setting sale back in May. But as I said, once you have a lease, you have then got to permit the project itself. I am interested to hear from our witnesses how Interior's permitting process affects each of their industries. I imagine there are a lot of common challenges, regardless of the energy type. As the superpower of the world, with abundant natural resources, a strong workforce, and the ability to produce cleaner than anyone else, there is no reason for us not to have a robust energy production program on our federal lands and waters. As the Chairman of this Committee, I am committed to continuing to convene my colleagues for open dialogue and negotiations on how to make more progress on permitting this year.

Let me end with some housekeeping, since we have two panels today with two separate topics. For the first hour and a half, we will have the opening statements and then ask questions of our first panel of witnesses on transmission lines and pipelines. Then,

we will hear the opening statements and ask questions of our second panel on energy projects on federal lands and waters.

With that, I am going to turn to my friend, Senator Barrasso, for his opening statement.

**OPENING STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Well, thanks so much, Mr. Chairman. Thank you for holding today's hearing, and I am so grateful that we continue to pursue meaningful, bipartisan permitting reform in this Committee.

Last month, Congress passed legislation to address spending and the debt ceiling. That legislation included important steps to expedite the review process under NEPA, the National Environmental Policy Act. It also authorized the Mountain Valley Pipeline. While the legislation was helpful, Congress's work is far from over. Congress still needs to fix the broken leasing and permitting process for oil, natural gas, and coal production on federal land, and we need to ensure that the Mountain Valley Pipeline is not the last major interstate natural gas pipeline ever to be built in America. Under federal law, the Secretary of the Interior is required—required by law—to hold quarterly lease sales in each state with federal oil and gas resources. Since President Biden took office, the Secretary of the Interior has held only two lease sales in these states. That is two lease sales in ten quarters. That means, when it comes to leasing, the Secretary of Interior is violating the law 80 percent of the time. It is a complete disgrace.

Oil and gas production on federal lands employs tens of thousands of people in Wyoming and throughout the West. In Wyoming, it pays for K–12 public education and other essential services. It is central to the economics and the economies of rural communities. By failing to hold robust lease sales each quarter, Secretary Haaland is setting our states up for failure in the future. That includes her home State of New Mexico, which is among the poorest states in the nation. The Secretary's decision is having a similar impact on coastal communities. Under current law, Secretary Haaland was required to finalize a five-year offshore oil and gas leasing plan by June 30, 2022. We are now beyond that date of 2023. Instead, she issued a draft plan which included the option of ending all offshore oil and gas leasing altogether. Since then, this Secretary has dragged her feet on taking further actions. That almost certainly means that 2024 will be the first year without any offshore oil and gas lease sales in the United States since the mid-1960s.

I do not support President Biden's radical and economically disastrous efforts to electrify everything almost immediately. One thing that is necessary is expanding transmission lines to improve the reliability of the electric grid. Such expansions will not happen without permitting. As I have told Chairman Manchin, I am willing to discuss changes to laws addressing interstate electric transmission lines. We must follow two principles. First, any changes to laws governing transmission must actually address electric reliability. The biggest threat to reliability is not the lack of transmission lines, it is the premature retirement of coal, natural gas,

and nuclear power plants. That is what we heard in this Committee at that table from experts, including NERC—the North American Electric Reliability Corporation, and FERC—the Federal Energy Regulatory Commission.

Second, any changes to laws governing transmission cannot be just another subsidy. Congress should not try to force electric customers in rural inland states, such as Wyoming and West Virginia, to subsidize ill-conceived policies of coastal states, such as California and New Jersey. If California, New Jersey, and New York want to rely on offshore wind, then their customers should pay for it. I suggest that we pursue permitting changes that actually put steel in the ground. We should pursue changes in law that will benefit all energy sources and projects, not just those favored by President Biden. And we should pursue changes that help ensure these projects are not defeated in the courts.

Mr. Chairman, I look forward to continuing to work with you and other members of this Committee on permitting reform. Together, we can improve our nation's economy, restore American energy dominance, and reduce the high cost of energy for American families. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Barrasso.

And I would like to welcome our first panel of witnesses to the Committee and thank you all again for coming today.

First, we are going to have Mr. Jason Stanek. Jason is former Chairman of the Maryland Public Service Commission.

Then, we are going to have Mr. Antonio Smyth, Executive Vice President, Grid Solutions and Government Affairs for AEP, American Electric Power.

And then third, we are going to have Mr. Chad Teply, Senior Vice President, Transmission and Gulf of Mexico with Williams.

So we will start with you, Mr. Stanek.

**STATEMENT OF JASON M. STANEK, FORMER CHAIRMAN,
MARYLAND PUBLIC SERVICE COMMISSION**

Mr. STANEK. Thank you.

Good morning, Mr. Chairman, Mr. Ranking Member, and members of the Committee. As the Chairman just noted, I am the recently departed Chairman of the Maryland Public Service Commission. I appreciate the opportunity to testify today on an issue of critical importance. As both a former federal and state utility regulator, I offer you the perspective of one who has seen how the current permitting process impacts and then oftentimes challenges the development of needed energy infrastructure in this country.

As our regional power grids face record demands, as our reliability incidents increase—seemingly weekly—and as our aging infrastructure nears the end of its useful life, attention to permitting reform can no longer wait. Whether it is developing offshore wind turbines or building new interregional transmission lines, the glacial pace of our approvals process is threatening the nation's ability to deliver reliable and affordable energy supplies to our citizens. Of course, when it comes to the permitting of large, major infrastructure projects, the federal and state governments have overlapping responsibilities. For its part, the state siting authorities have a responsibility to use best efforts to conduct a thorough review and to

make a final determination within a reasonable time frame. Project developers, likewise, deserve to know that their applications and proposals will be processed efficiently and without delay. Fortunately, state regulators have tremendous experience with reviewing energy projects and should be viewed as partners when evaluating the need for and siting of energy infrastructure.

In turn, it is equally important that federal authorities respect the state's jurisdiction and to provide deference to allow the state process to run its course, including electing not to exercise backstop authority or otherwise preempt the state from completing a review that is underway and moving toward a final determination. As I noted in my written testimony, if our reforms are to be successful, meaningful consultation and mutual respect between the state and federal regulators will best reflect the spirit of cooperative federalism. I think it will also be essential for permitting reforms to include clear language to include the roles of both the federal and the state regulator when reviewing proposals to site projects of national interest.

Beyond streamlining the federal permitting processes, there are other issues that are either slowing or inhibiting the development of energy infrastructure—namely, how we plan for new electric transmission lines and how we decide who will pay for them. As the former co-chair of the Joint Federal-State Task Force on Electric Transmission, I can testify that the need to modernize the way in which we conduct transmission planning ranks very high. Going forward, we will need to employ planning practices that can better project future load growth, that could incorporate state policies from the outset, and anticipate severe and increasingly unexpected weather events and threats to the power system, both cyber and physical. Improving this framework within planning regions and requiring closer coordination between neighboring regions will result in the most efficient development of new transmission lines at the lowest overall cost.

Equally important is answering the question of who is going to pay for these new projects. Determining which customers or which states should pay for a particular project has been a challenging exercise for many years. While cost-benefit reviews have historically focused on production cost savings, we now have experience in evaluating a range of other benefits, both broad and narrow, both quantifiable and harder to quantify. But by spreading those costs to a broader class of identified beneficiaries in a fair and equitable manner, I believe we can remove a formidable barrier to the development of needed transmission lines. I should also note that FERC has several rulemakings currently underway on all these issues and state regulators have participated at every stage of these proceedings.

Ultimately, the bottom line is that the current regulatory environment facing energy infrastructure developers is challenging under the best of circumstances. With increasing demands on our energy delivery networks, permitting reform is the first step to ensure that our nation can make timely investments to access reliable, affordable, and abundant energy supplies. I emphasize timely because I believe we are running out of time based on current projections and trends. Ultimately, having Congress establish proto-

cols that will facilitate state regulators and their federal counterparts to work cooperatively, while respecting each other's jurisdiction, will result in an efficient permitting process that will get projects built more quickly, while strengthening this nation's independence and energy security.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Stanek follows:]

Testimony of Jason M. Stanek
Former Chairman, Maryland Public Service Commission
Before the Senate Energy and Natural Resources Committee
Hearing to Examine Opportunities for Congress to
Reform the Process for Permitting Electric Transmission Lines,
Pipelines, and Energy Production on Federal Lands

July 26, 2023

Chairman Manchin, Ranking Member Barrasso, and distinguished members of the Committee, thank you for the opportunity to testify on an issue of critical importance to the well-being of our Nation — reforming federal permitting requirements to expedite the development of needed energy infrastructure. As a former state and federal energy regulator, I have witnessed the inefficiencies of the existing permitting processes which all too often result in viable projects being delayed by years, if not canceled altogether.

With our existing energy infrastructure reaching its capacity and our power grids experiencing record demand in the face of extreme temperatures and a trend towards greater electrification, attention to permitting reform cannot wait any longer. The Nation's need to enact updated laws to streamline environmental reviews, limit endless rounds of litigation and provide a reasonable level of certainty for project developers is critical. Without near-term reform, our current trajectory will threaten our energy independence and decrease energy reliability and affordability for all Americans.

My testimony will focus on the importance of federal and state authorities working together — cooperatively, efficiently, and in a *timely* manner to review and permit needed energy projects. While state regulators are sensitive to guard against any encroachment into their jurisdiction, with growing national interests at stake, we must advance the conversation and put a proper framework in place to ensure that vital and needed energy infrastructure is reviewed within a reasonable timeframe.

The Role of States

In most states, the public utilities commission serves as the local siting authority charged with ruling on applications to site and construct energy infrastructure projects, including high-voltage electric transmission lines and generating stations of all types. Historically, the siting of electric transmission facilities has been subject to the exclusive jurisdiction of the states.

State regulators take their siting authority seriously and have processes in place to carefully consider a range of factors. During the course of a state review, the siting

authority will typically evaluate the need for the project (including existing and projected future need), the project's overall costs and benefits, the location and routing of the project (along with alternatives), as well as any impacts on the natural environment. Further, the siting process allows for meaningful public input, including comments from local governments and the concerns of nearby landowners and citizens, along with any other project-specific considerations. In turn, the type, size and complexity of the proposed project will influence the amount of time that a state siting authority will need to process an administratively complete application. The proposal, if approved by the siting authority, is marked by the issuance of a certificate of public convenience and necessity (CPCN), or an equivalent permit, to the project developer.

In Maryland, for example, the time to process an application can range from a few months for a small, non-controversial project to a much longer period for a large project, such as a new high-voltage transmission line. During that time, the application undergoes a stringent review by the siting authority, relevant state agencies, interested parties and members of the public. This fully transparent application process culminates with a trial-type evidentiary hearing, followed thereafter by a written decision ruling on the permit application, and if approved, under what conditions. Time is used efficiently and effectively throughout the process without any intentional delay.

When infrastructure projects are more complex, involve routes through multiple states or are of national interest, the reviews can naturally take longer. However, the importance of these state reviews should not be diminished or dismissed. The permitting record developed by the states is detailed and extensive, and if a federal backstop becomes necessary as a last resort, much of the regulatory studies will have already been completed and well documented.

While state siting authorities clearly have a responsibility to use best efforts to deliver a determination with a reasonable timeframe, project developers should also have a realistic expectation that applications will be processed efficiently and timely. In turn, it is equally important that federal authorities respect the states' jurisdiction and provide deference to allow the state siting processes to run its course, including declining to preempt the state from completing a review that is already proceeding towards a determination on a reasonable timeframe.

Cooperative Federalism – Partnering to Overcome Looming Challenges

It is widely recognized that the federal and state governments share overlapping responsibilities, functions and powers when it comes to the permitting of energy infrastructure projects of national significance, including high-voltage interstate electric transmission lines. The spirit of cooperative federalism recognizes that this important relationship requires open communication, meaningful consultation and a mutual respect

of positions, regardless of policy differences, including differences between and among the states.

In the context of permitting energy infrastructure, having clear rules for siting national interest projects will result in defined lanes for both the federal and state regulators. Thus, once a state review proceeds and is completed, federal regulators will have a full understanding of what more needs to be studied, if anything. If a state review appears on track to justify a permit approval, the federal partners may find it advantageous to allow the state regulator some additional time to complete a review. Furthermore, providing a state with sufficient time to develop the record may ultimately result in less work for the federal regulators to perform in the event a backstop review becomes necessary. Such a framework would best reflect the tenets of cooperative federalism.

Fortunately, state utility regulators and their counterparts at the Federal Energy Regulatory Commission (FERC) have already initiated a public dialogue where pressing policy issues can be discussed in a way that improves coordination and understanding across the jurisdictional lines.¹ To date, the 15-member Joint Federal-State Task Force on Electric Transmission, has convened regular, semi-annual meetings to discuss a range of topics with the stated goal of improving the planning and development of needed electric transmission lines and technologies, which in turn, will assist with and likely expedite the future permitting of such infrastructure.

While it is appropriate for Congress to periodically examine the roles of FERC and the states in light of misalignments in the past, a renewed sense of meaningful and sustained collaboration between the federal and state regulators has developed in recent years. Based on a series of promising developments, I trust that these bodies will be able to resolve many jurisdictional challenges on their own, without immediate intervention.

It should be noted that cooperative federalism need not be limited to interactions between regulatory bodies. I would highlight the Department of Energy's recent Notice of Inquiry which suggests a process where states would have input prior to the designation of a national interest corridor routing. This precursor could set the process in motion in a deliberate manner and may serve to expedite project approvals and development.

Barriers to the Development of Electric Transmission

There is no question that constructing high voltage transmission lines has become increasingly difficult in recent decades. While securing the necessary state and federal approvals is a daunting challenge, the permitting process represents only one barrier, albeit a major one, to the efficient development of electric transmission. Planning for the

¹ 10 state utility commission chairs to FERC: Let's strengthen federal-state electricity regulatory relationships, *Utility Dive*, Stanek, J., et al. (Jan. 20, 2021).

future needs of an evolving grid and determining who will pay the costs of its buildout are complex issues that are under active consideration before FERC and the focus of intense scrutiny among industry stakeholders, including the regional power grid operators and state regulators.

- Transmission Planning

While demand for electricity has been relatively stable for the past decade, there is a reasonable expectation that demand will increase materially in the near future as our transportation and building stock move towards increased electrification.² Further, with the Nation's existing transmission infrastructure aging and approaching the end of its useful life, we are presented with an opportunity to comprehensively plan for large numbers of new transmission lines both within regions and between regions.

As a former co-chair of the Joint Federal-State Task Force on Electric Transmission, I evaluated the various planning processes in the U.S., as well as evidence that current planning processes are largely driven by the need to develop near-term reliability projects on a piecemeal basis rather than using a longer-term holistic plan.³ Instead, there is a bias towards making investments in smaller local and regional projects, which often come at an overall higher cost when compared to a larger interregional project.

While FERC is currently considering reforms to regional transmission planning, the evidence clearly reveals that traditional methods to plan the grid of the future has resulted in suboptimal projects being developed.⁴ To meaningfully improve transmission planning, we must *proactively*, not reactively, plan in a manner that reduces the risks and costs to both developers and customers. This entails projecting for future load growth, incorporating relevant state policies from the outset, and better anticipating severe and increasingly unexpected weather events and threats to the power system. Using a scenario-based planning framework within the regions – and requiring close coordination between neighboring regions – will result in the most efficient development of transmission lines at the overall lowest cost.

- Cost Allocation

Constructing energy infrastructure is not inexpensive, whether the project is designed to maintain reliability or to accommodate an influx of public policies at the state and federal

² How are we going to build all that clean energy infrastructure? Considering Private Enterprise, Public Initiative, and Hybrid Approaches to the Challenge of Electricity Transmission, Reed, L., *et al.*, Niskanen Center and Clean Air Task Force (August 2021).

³ Discussion of Incorporating State Perspectives into Regional Transmission Planning, Meeting of the Joint Federal-State Task Force on Electric Transmission in Louisville, KY (Nov. 10, 2021).

⁴ Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, FERC Docket No. RM21-17 (April 21, 2022).

level. The question of “who pays” has long frustrated the development of needed and properly planned infrastructure, and determining with precision which customers should pay for a particular project is always a challenging exercise. However, for equity and fairness, it is important to determine which ratepayers to assign the costs, especially when customers are already experiencing high inflation, increasing energy burdens and rising utility bills.⁵

As mentioned, optimal transmission planning will result in the most efficient projects being developed at the lowest overall cost. Once that cost is quantified, allocating the amount due should begin with an analysis of which customers will realize benefits from the projects. While reviewing benefits has historically been focused on production cost savings, we now have actual experience in various RTOs and ISOs that it is possible to evaluate a range of other benefits, both broad and narrow, both quantifiable (*e.g.*, reduced transmission losses, reduced planning reserves), and harder to quantify (*e.g.*, enhanced resilience).

That new transmission projects will yield a wide range of benefits should not discourage regions and neighboring states from exploring traditional and alternative methods to ensure that costs are allocated equitably to all beneficiaries while also adhering to the principle of cost causation. As seen in various areas of the country, addressing a host of benefits across a broader portfolio of projects, rather than on a project-by-project basis, presents the opportunities for synergies across a wider footprint. This rationalizes spreading out costs more broadly in a fair and equitable manner and removes a formidable barrier to the development of new transmission lines.

The Need for Comprehensive Permitting Reform and Recommendations

Resolving impediments to improved planning and cost allocation are critical, but it will not change the fact that the federal permitting process is broken. While we are aware of the projects that are pending review and those that have been canceled or delayed due to protracted litigation, we have no clear record of the number of projects that were never proposed by developers because of the substantial risks associated with securing the necessary permits. As such, it is difficult to quantify the lost capital investment, skilled jobs, and innovative infrastructure solutions that could have been developed, but were not.

In contrast, for those projects that are now being proposed — whether they are designed to support emerging resources or strengthen grid reliability — they will all inevitably face the same problem: potentially crippling years-long delays in securing the permits needed to begin construction. As such, the core elements of any comprehensive permitting

⁵ Utility regulator: Maryland must consider cost to ratepayers in setting clean energy goals, *Baltimore Sun*, Stanek, J. (June 26, 2023).

reform should respect the role of the states while expediting permitting determinations by imposing time limitations on environmental reviews and legal challenges.

- **Timely environmental reviews**

It is well documented that the environmental review processes under NEPA, when compared to state environmental reviews, is a very lengthy and bureaucratic endeavor, averaging 4.5 years.⁶ Expediting the existing processes without reducing the rigor or intent of the environmental review, or diminishing the current level of public input, can be accomplished using a substantially shorter timeframe. To make this possible, the relevant federal agencies charged with drafting the environmental documents, including FERC, will require additional resources to prepare and issue environmental impact statements and environmental assessments and more quickly.

- **Time limitations on litigation**

Stakeholders who are inclined to challenge aspects of energy infrastructure projects, whether it be offshore wind turbines or natural gas pipelines, have successfully utilized legal challenges in the federal courts to substantially delay the issuance of permits, or once granted, subsequently challenge the approval of those permits. This results in projects remaining in a state of limbo for an unknown length of time, oftentimes years. Similar to proposed reforms to limit the length of environmental reviews, time limiting the nearly endless opportunities for litigants to challenge a permit in court, while fully preserving the due process and rights of the litigants, will substantially reduce risk for project developers and speed the construction of needed energy infrastructure.

Conclusion

The regulatory environment to obtain federal approvals to develop energy infrastructure is challenging under the best of circumstances. With increasing demands placed on our energy delivery networks, permitting reform is urgently needed to ensure that our Nation can make *timely* investments to access reliable, affordable and abundant energy sources.

State siting authorities are partners that should be provided sufficient time to review any proposal to route an electric transmission line through their state prior to the invocation of any backstop siting authority. Establishing new protocols that facilitate state regulators and their federal counterparts to work cooperatively, while respecting each other's jurisdiction, will result in an efficient permitting process that will get projects built more quickly while strengthening our Nation's energy security and independence.

⁶ *Environmental Impact Statement Timelines (2010-2018)*, Executive Office of the President, Council on Environmental Quality (June 12, 2020).

The CHAIRMAN. Thank you, sir.
Now, Mr. Smyth.

STATEMENT OF ANTONIO P. SMYTH, EXECUTIVE VICE PRESIDENT, GRID SOLUTIONS AND GOVERNMENT AFFAIRS, AMERICAN ELECTRIC POWER

Mr. SMYTH. Good morning, Chairman Manchin, Ranking Member Barrasso, and members of this honorable Committee. Thank you for the invitation to testify at today's hearing. My name is Antonio Smyth. I serve as Executive Vice President of Grid Solutions and Government Affairs at American Electric Power, which is one of the largest electric utilities in the United States. We serve 5.6 million customers across an 11-State footprint, and we develop, own, operate, and maintain the largest electric transmission system in North America.

First, I want to thank you for your work to streamline and make our country's siting and permitting processes more efficient. We are grateful for your efforts. As you know, our nation's electric system is in the midst of a fundamental transformation, driven by an aging grid as well as changes in both the consumption and the production of energy. The confluence of these changes means far greater complexity for grid operators and planners as we seek to make long-term investments that balance system reliability with customer affordability and environmental sustainability. Maintaining a reliable electric grid is critical to the health and welfare of our customers, and affordable electric power is vital for economic growth and to uphold our nation's competitive advantage.

AEP is experiencing significant increases in demand in different parts of our service territory, due in part to the location and performance of our transmission system. For example, we have agreements in place to interconnect customers in Central Ohio that would double the demand we currently serve with additional demand beyond this currently under study. When we connect the pending demand, Columbus, Ohio will surpass New York City in electricity consumption. In the race to capitalize on technological transformation, industrial customers cannot wait for us to modernize our energy policies, and more forward-looking policies will allow us to make grid investments that will deliver value to all customers in the future.

Today, it can take ten or more years to plan, permit, and build transmission projects, and sound transmission investment requires three key elements. We call them the three P's—planning, paying, and permitting. We identify three priorities for Congressional action in these categories. First, Congress should encourage the Federal Energy Regulatory Commission to reform both regional and interregional transmission planning processes to (a) incorporate longer-term planning time horizons, (b) include more modern and expansive planning scenarios, and (c) incorporate a wider range of benefits over longer time frames to better reflect the true value of transmission investments to customers.

Second, Congress should encourage FERC to ensure that the allocation of costs of transmission investments are commensurate with the distribution of benefits and that all appropriate benefits are carefully considered. Benefit metrics used for both regional and

interregional projects need to be expanded to encompass all appropriate reliability, resilience, and economic benefits of the grid. In addition, benefits need to be measured over the useful life of assets, as opposed to the far shorter time periods used today.

And third, Congress should streamline the process for using federal backstop siting authority under the Federal Power Act by eliminating the requirement to utilize national interest corridors designated by the Department of Energy for transmission projects that provide significant regional or interregional reliability benefits. States play a lead role in the siting of transmission facilities, and we believe that they should continue to do so. However, it is important for federal law to provide a workable backstop siting process for projects that deliver important grid reliability benefits in the rare instances where this may be needed. AEP has primarily focused our transmission siting and permitting efforts on partnering with our states to obtain necessary permits. For most of the transmission projects we have built, permitting has not been a challenge that could not be overcome, but it can be time consuming and litigious. For example, we were recently denied state authorization in Pennsylvania for an important congestion relief project that was approved by both the grid planner—PJM, in this instance—and the State of Maryland. The project is currently in litigation.

In summary, more robust planning processes with better articulation of benefits, especially for multi-value transmission investments, could lead to better outcomes in the siting and permitting processes. If we proactively address these challenges with appropriate and targeted reforms, it will help us achieve a coordinated and reliable energy transition that benefits customers and advances our economy. We remain deeply committed to supporting this Committee's efforts in this regard and encourage you all to continue this important work.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Smyth follows:]



**Statement of Antonio Smyth
Executive Vice President, Grid Solutions and Government Affairs
American Electric Power Company
Before the
Senate Committee on Energy & Natural Resources
July 26, 2023**

Chairman Manchin, Ranking Member Barrasso, and members of the Senate Committee on Energy and Natural Resources, thank you for the invitation to testify at today's hearing. My name is Antonio Smyth, and I serve as the Executive Vice President of Grid Solutions and Government Affairs at American Electric Power Service Corporation, which supports the utilities of American Electric Power Company, Inc. (AEP). Collectively, AEP is one of the largest electric utilities in the United States. We serve approximately 5.6 million customers across our 11-state footprint, and we develop, own, operate and maintain the largest transmission system in North America.

I. Executive Summary

Our nation's electricity system is in the midst of a fundamental transformation, driven by changes on both the supply side and the demand side. Electric generation is becoming less predictable and less dispatchable. Existing power plants are aging, their performance is changing, and requirements are shifting to ensure higher degrees of reliability under extreme weather conditions. Utilities, including AEP, are bringing more clean, intermittent renewable resources online.

Simultaneously, the demand for electricity is changing, driven by customer preferences for cleaner energy resources, changing weather patterns, electrification of the economy, evolving technologies, and customer usage patterns. Demand is also significantly increasing throughout areas of the country, driven by economic and new business development. These changes in generation (supply) and load (demand) mean far greater complexity for grid operators and planners, as we seek to make investments that balance system reliability with customer affordability, and environmental sustainability.

Maintaining a reliable electrical grid is critical. The nation's transmission infrastructure is essential to the safe, reliable and affordable delivery of electricity to

households and businesses. The enormous value of reliable electricity service, in terms of meeting critical human needs and underpinning all aspects of our economy, is dramatically demonstrated by the hardships caused when significant disruption of electric service occurs.¹

In an ever-changing world, energy is vital for economic development and maintaining our competitive advantage as a nation. AEP is experiencing significant growth in demand due in part to the location and performance of its transmission system. As a result of the significant investments that AEP has made and continues to make in its system, we have been able to meet the aggressive timelines required to serve this new demand. In some instances, the demand of new customers seeking to interconnect to our system exceeds the amount of energy currently served by AEP in those areas. In the race to capitalize on technological transformation, industrial customers cannot wait for us to modernize our energy policies.² Sound policies will ensure that the grid of the future is reliable, affordable, and environmentally sustainable.

Today, it can take 10 or more years to plan, permit, and build transmission projects. Going forward, significant transmission investment will be needed to improve the resilience of the electric grid and meet future demand requirements. Without significant improvements over the next decade, our Nation's transmission system may fall short of the reliability standards our economy requires and will result in higher electricity costs to consumers.³

Sound transmission investment requires three key elements— (the three P's):

1. **Planning:** Forward-looking regional and interregional planning;
2. **Paying:** Reasonable cost allocation that corresponds to the distribution of expected benefits; and
3. **Permitting:** Permitting and siting frameworks that allow for timely project development.

¹ The economic cost of Winter Storm Uri alone is estimated at as much as \$130 billion. *See e.g.*, <https://comptroller.texas.gov/economy/fiscal-notes/2021/oct/winter-storm-impact.php>.

² *See* Zero Emissions, Reliability Optimized Grid Initiative, *available at*: <https://rmi.org/press-release/major-global-corporations-join-with-rmi-to-advance-electric-sector-transformation/>.

³ *See* Department of Energy's Draft National Transmission Needs Study, *available at*: <https://www.energy.gov/sites/default/files/2023-02/022423-DRAFTNeedsStudyforPublicComment.pdf>. The study finds that the highest value of new transmission is across the three electrical interconnections and during extreme weather events. *Id.* *See also* NERC 2023 Summer Reliability Assessment, *available at*: https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2023.pdf

Planning: Regional and Interregional

First, Congress should encourage the Federal Energy Regulatory Commission (FERC) to reform both regional and interregional transmission planning processes to: (a) incorporate longer-term planning time horizons (*e.g.*, 20-years), (b) include standardized and expansive planning scenarios, and (c) consider a wider range of benefits over a long timeframe to better reflect the value of the life of the assets being put into service.

Modernized transmission planning is key to unlocking the full benefits of the electric grid. The current grid is planned to meet minimum industry standards and criteria. While these standards and criteria were adequate in the past, they now need to be adapted to consider an aging grid and changing modes of consumption and production of energy. Longer-term planning time horizons will encourage development of, and reduce barriers to, transmission infrastructure investment.

In addition to longer planning horizons, more scenarios (called *sensitivities*) need to be considered to assess the grid's adequacy. These sensitivities should include significant changes in demand, generation, outages, technologies, weather, commodity prices, and other key drivers. Uncertainty increases as we lengthen the planning time horizon and the best way to hedge against different futures is using broad sensitivity assessments in planning.

Transmission planning and development is a lengthy and iterative process, and it is critical that the enhanced planning processes described above be put in place now to plan and develop system investments needed in the years ahead. FERC has proposed rule changes to potentially implement regional planning reforms,⁴ and the Committee should encourage FERC to act with all due haste to finalize and implement these needed changes.

In addition to forward-looking transmission planning, this Committee should encourage FERC to adopt policies to support needed interregional transmission expansion. Grid investments to interconnect the individual regions with each other have been insignificant.⁵ This lack of interregional transmission can create bottlenecks that prevent the transmission of lower-cost power to customers, and leaves regions and their customers needlessly vulnerable to shortages and outages during extreme weather events. Robust interregional interconnections are a valuable hedge against extreme weather events, and as a country, we need to better leverage our geographical expanse and diversity in this regard. During Winter Storm Uri, certain regions experienced significant

⁴ *Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation & Generator Interconnection*, Notice of Proposed Rulemaking, 87 Fed. Reg. 26,504 (May 4, 2022).

⁵ *See infra.* at n.3.

outages, even though they were importing energy from neighboring regions and beyond,⁶ demonstrating the need for additional transfer capability between regions. It was estimated that during this event, an additional 1,000 MW of transmission capacity between ERCOT and its surrounding regions would have saved \$1 billion over the course of only four days.⁷

FERC has an open proceeding to consider whether to establish minimum interregional transfer capability requirements between adjacent transmission planning regions.⁸ Additionally, Congress recently enacted a requirement for the North American Electric Reliability Corporation (NERC) to study the need for additional interregional transmission capacity between neighboring regions.⁹ If Congressional or FERC action creates a minimum transfer capability requirement, it should allow for customization of the sizing of the requirement across key electrical boundaries. This is important because the optimal amount of interregional transfer capability, from both a reliability and customer cost perspective, depends upon the degree to which better connecting two neighboring regions is cost effective and can take advantage of diversity benefits between the regions. Whether or not minimum transfer capability requirements are established, it will be critical for FERC to create well-functioning policies and practices for joint planning and cost allocation for interregional projects.

Paying (Cost Allocation)

Second, this Committee should encourage FERC to ensure that cost allocation is aligned with benefits. However, the benefit metrics used for both regional and interregional projects need to be expanded to encompass all reliability, security, and economic benefits of the grid. Expanding and defining benefit metrics will help optimize transmission investments across the country.

The costs for regional and interregional projects should continue to be allocated in a manner roughly commensurate with the distribution of benefits. We believe that

⁶ See

<https://spp.org/documents/65037/comprehensive%20review%20of%20spp%27s%20response%20to%20the%20feb.%202021%20winter%20storm%202021%2007%2019.pdf>.

⁷ M. Goggin, and J. Schneider, *The One-year Anniversary of Winter Storm Uri: Lessons Learned and the Continued Need for Large-Scale Transmission*, 2022, p. 7, Table 1. Available at:

<https://gridprogress.files.wordpress.com/2022/02/the-one-year-anniversary-of-winter-storm-uri-lessons-learned-and-the-continued-need-for-large-scale-transmission.pdf>. The value of expanding interregional transmission has also been estimated by the Lawrence Berkeley National Laboratory (LBNL). See <https://emp.lbl.gov/publications/empirical-estimates-transmission> and <https://emp.lbl.gov/news/latest-market-data-show-potential-savings-new>.

⁸ *Establishing Interregional Transfer Capability Transmission Planning and Cost Allocation Requirements*, Docket No. AD23-3-000.

⁹ H.R.3746 - Fiscal Responsibility Act of 2023, Section 322.

regional and interregional planning and cost allocation have a strong correlation. If we get planning and the assessment of benefits right, cost allocation is easier to implement. In our view, a well-defined set of common benefits, forecasted over the useful life of the assets under varying scenarios, will allow for clearer, consistent, and transparent determinations of cost allocation. Further, Congressional direction to FERC to undertake a rulemaking on interregional transmission planning and cost allocation would help drive needed action in that area.

Permitting

Finally, efficient, and effective siting and permitting processes are also needed. Reforms to streamline the issuance of federal permits are valuable, and we appreciate the work that this Committee and Members of Congress have undertaken to streamline federal reviews. Most of the projects we have been pursuing in the last decade have not required National Environmental Policy Act (NEPA) review. However, we support efforts to make the NEPA process more efficient and would welcome reforms to other federal permitting processes by establishing reasonable time limits for agency decisions, ensuring agencies have sufficient staff to review permits, and by initiating litigation reforms. Such reforms, designed to expedite the existing review processes, can be achieved without reducing the quality of the environmental review.

AEP has focused our transmission siting and permitting efforts on partnering with our states to obtain necessary permits. For most of the transmission projects we have built, permitting has not been a challenge that could not be overcome—although we recently were denied state authorization in Pennsylvania for an important congestion-relief project that was approved by both the regional grid planner (PJM) and the state of Maryland.¹⁰

States play a lead role in the siting of transmission facilities, and they should continue to do so. However, it's also important for federal law to provide a workable backstop siting process for transmission projects that deliver important regional or interregional reliability benefits. We urge Congress to streamline the existing backstop siting for such reliability projects under section 216 of the Federal Power Act¹¹ by removing the restriction that FERC can only use backstop siting authority for projects in National Interest Electric Transmission Corridors designated by the Department of Energy (DOE). Our recommendation here is intended to avoid and minimize duplicative

¹⁰ Order, *In the Matter of Applications of Transource Pennsylvania, LLC for approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection – East and West Projects in portions of York and Franklin Counties, Pennsylvania*, at 50, Docket No. A-2017-2640195 *et al.* (Pa. Pub. Util. Comm'n, May 24, 2021), available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.puc.pa.gov%2Fpdocs%2F1704597.docx&wdOrigin=BROWSELINK>. This decision is currently being challenged by AEP.

¹¹ 16 U.S.C. 824p (2023)(section 216 of the Federal Power Act).

processes regarding environmental and agency reviews, while maintaining the integrity and quality.

In sum, the Nation may face challenges with maintaining adequate supply to meet electric power demand, but if we proactively address these challenges with appropriate and targeted transmission reforms, we can achieve a coordinated and reliable energy transition. AEP supports this Committee's efforts to efficiently and effectively reform siting and permitting processes.

We ask the Congress to:

- (1) Encourage FERC to modernize and reform regional and interregional transmission planning to: (a) incorporate longer-term planning time horizons (*e.g.*, 20-years), (b) include standardized and expansive planning scenarios, and (c) consider a wider range of benefits over a longer timeframe to better reflect the value of the assets being put into service over their useful life;
- (2) Encourage FERC to implement cost allocation mechanisms for regional and interregional transmission projects that continue to align beneficiaries and payers, but expand and define the determination of benefits to account for a broad and defined set of common benefits, forecasted over a longer planning horizon consistent with the useful life of the assets; and
- (3) Streamline the process for using federal backstop siting authority under section 216 of the Federal Power Act by eliminating the requirement to utilize National Interest Electric Transmission Corridors designated by the Department of Energy (DOE) for projects that provide significant reliability benefits.

II. American Electric Power

AEP is one of the largest investor-owned electric public utility holding companies in the United States. AEP's electric utility operating companies provide generation, transmission, and distribution services to more than five million retail customers in Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia. AEP's subsidiaries operate an extensive portfolio of assets including approximately 225,000 circuit miles of distribution lines that deliver electricity to 5.6 million customers, approximately 40,000 circuit miles of transmission lines, including approximately 2,200 circuit miles of 765 kV lines, the backbone of the eastern interconnection of the United States. Additionally, AEP ranks among the nation's largest generators of electricity, owning nearly 26,000 megawatts of generating capacity in the United States.

AEP has a broad and unique perspective as it operates in four Regional Transmission Organizations (RTOs): PJM Interconnection, Southwest Power Pool, Midcontinent Independent System Operator, and the Electric Reliability Council of Texas.

III. Transmission Investment Is Key to Electric Reliability

Modern society depends on a reliable grid as an essential resource for national security, human health, and a productive economy. It is at the heart of our systems for communications, healthcare, finance, transportation, food, and water supply. The grid assures access to our basic needs—we all expect and require electricity at the flip of a switch.

AEP works to maintain, enhance, and expand its transmission system—the largest in North America, to serve the needs of its customers. Today, the transmission system is encountering a brand-new set of challenges. The system is used in new ways as aging generation is retired and new resources, including renewable resources, are interconnected. The grid faces new threats from physical and cyberattacks and is increasingly strained by more frequent and more severe weather events. Providing a reliable and resilient transmission grid is thus more important—and challenging—than ever.

Transmission investment is essential to maintain reliable grid performance and address new challenges, including aging infrastructure. The drivers for transmission planning fall into three broad categories: (1) investment needed to maintain reliability and improve resiliency for existing and new customers (load and generators); (2) investment needed to enable markets and improve market efficiency; and (3) investments needed to enable public policy. Often, transmission projects provide benefits in two or more of these categories.

AEP's transmission grid has evolved over the last century in waves, matching the load growth in its regions. Over a quarter of AEP's transmission network is already, or will be, beyond its useful life over the next 10 years. This portfolio of aging facilities requires the development and implementation of a thoughtful program of renovation or replacement to ensure that the existing infrastructure on which we rely remains in good working order. AEP constantly assesses the condition, performance, obsolescence, and risk of its existing assets to make timely revitalization decisions. As a result, our existing infrastructure is enabling critical economic development in the regions we serve.

AEP is building new transmission lines to serve new load and connect new generation resources. Consumption trends, including commercial and industrial economic growth, such as the growth of large data centers, and increasing electrification, are driving changes in the location, timing, and size of loads. For example, AEP's

current load in central Ohio is roughly 4,300 MW. We have agreements in Ohio to interconnect an additional 4,500 MW of demand, and there is another 8,800 MW of demand under study. When we connect all of the pending demand, Columbus, Ohio will surpass New York City in electricity consumption.

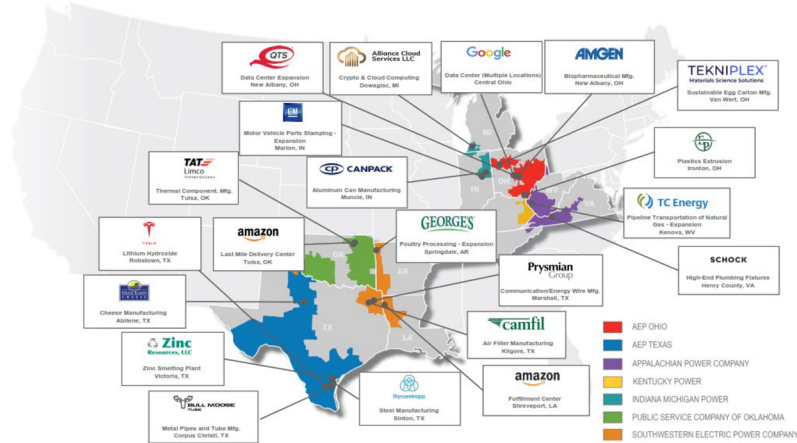


FIGURE 1

A snapshot of this growth is illustrated in the graphic above [Figure 1] and demonstrates that growth isn't limited to Ohio; we currently have requests to interconnect 7,000 MW of load in Indiana. The prospective load in Indiana will triple the demand that our company serves in the state. Additionally, the changes to generation mix—through plant retirements and the development of new resources, drive the need for both upgrading of existing facilities and new grid investment, especially where new generation is located more distant from load.

Generation capacity constraints can also present significant challenges for large loads that are deciding where to locate, underscoring the need for a thoughtful and orderly transition that considers dispatchable and renewable forms of generation, and balances system reliability, customer affordability, and environmental sustainability.

Nation-wide, transmission investment amounts to approximately \$25 billion annually as shown in the chart below [Figure 2]. The map inserted into the top of the chart also shows the individual transmission planning regions, with colored regions representing Regional Transmission Organizations (RTOs) or Independent System

Operators (ISOs). AEP is one of the largest transmission owners in three of these RTO regions: PJM Interconnection, L.L.C. (PJM) (shown in yellow), the Southwest Power Pool Inc. (SPP, shown in light blue), and the Electric Reliability Council of Texas (ERCOT, shown in dark blue).

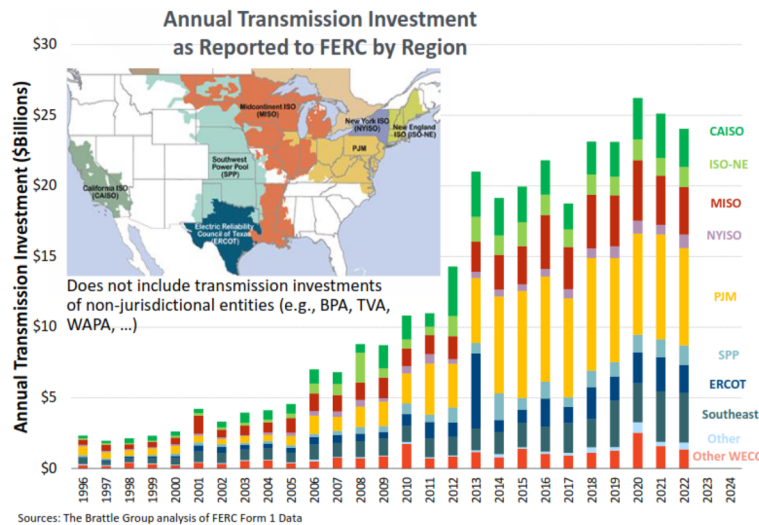


FIGURE 2

Despite this significant investment, the pace of interregional transmission investments that would expand the connections between regional markets has been very slow.¹² This lack of interregional transmission investment creates bottlenecks that hold up new generation investments, can prevent the transmission of lower-cost power to customers, can hinder economic growth, and leaves regions and their customers needlessly vulnerable to shortages and outages during extreme weather events.

IV. Congress Should Encourage FERC to Modernize and Reform Regional and Interregional Transmission Planning

With respect to transmission development, we would urge Congress to work with FERC to identify key regulatory obstacles to the cost-effective and timely development of needed transmission projects, and focus reform energies there. A well-designed

¹² See *infra.* at n.3.

regulatory framework is important to supporting the grid investments that the nation needs to support reliability, and transmission planning is the bedrock for such investment.

As Congress considers where statutory changes may be necessary, it is important to note that some key transmission-related reforms are under consideration at FERC. AEP has been an active participant in the ongoing FERC policy proceedings concerning regional planning and cost allocation, working to ensure that FERC policies support the transmission infrastructure investments we need for a safe and reliable transmission system.

In testimony before this Committee in May, FERC Chairman Phillips outlined recent actions related to maintaining the reliability of the grid, including cybersecurity standards, winter preparedness standards, supply chain standards, and incentives for certain cybersecurity investments. Chairman Phillips explained that “electric transmission is itself a reliability imperative. Transmission plays a critical role in facilitating the interconnection of new resources, while ensuring that the electric system remains reliable. And transmission is the key that can unlock the potential of so many of the energy security measures in the Inflation Reduction Act.”¹³

Long-term regional transmission planning process reform will allow transmission providers to go beyond the “just in time” approach to transmission planning that focuses on addressing specific system needs as they occur, to plan projects that address a multitude of needs that are anticipated to develop over a long-term horizon more efficiently and cost-effectively for customers. The existing transmission planning processes relating to needs driven by reliability and economic considerations would remain in place and an additional planning process—that is longer-term and for multi-value projects that meet long-term needs would be added.¹⁴

AEP also supports requiring at least three standardized, robust long-term scenarios as part of the long-term regional transmission planning process, including assessment of conditions associated with significant changes in demand, generation, outages, technologies, extreme weather, commodity prices, and other factors.¹⁵ Scenarios are a plausible set of parameters that are used in transmission planning to determine whether

¹³ *Full Committee Hearing to Conduct Oversight of FERC* (May 4, 2023); Witness Panel 1, The Honorable Willie L. Phillips, Chairman (<https://www.energy.senate.gov/hearings/2023/5/full-committee-hearing-to-conduct-oversight-of-ferc>).

¹⁴ See FERC description of proposed Long-Term Regional Transmission Planning Process, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 at P 68-78 (July 21, 2011).

¹⁵ These scenarios should be reassessed every three years because regular reassessment is necessary to reflect updated data as to changing technologies, resource mix, markets, and demand.

potential reliability violations warrant transmission expansion.¹⁶ A base case scenario is a “business as usual” scenario that can they be compared to alternative scenarios that are considered to be less likely to occur. These alternatives consider different assumptions.¹⁷ Proactive, scenario-based long-term planning assists planners to consider the many ways the future may unfold and how to respond effectively and flexibly as the future becomes reality. This allows for “least regrets” transmission planning and will better enable us to meet the challenges of our energy transformation.

The benefits of regional transmission facilities should be evaluated collectively—through a “multi-value” analysis—to ensure that projects that provide benefits in multiple categories are properly identified and justified in the planning process. While not all benefits can be monetized for comparison in transmission planning studies, a number of the benefits can be quantified, including reduced system losses, the value of increased system reliability (or reduced reserve margin requirements), access to lower-cost conventional and renewable generation, and increased wholesale-market competition, among others. To the extent feasible, all types of benefits – reliability, congestion, and public policy – should be considered in transmission planning to account for the true cost and benefits of transmission projects.

AEP supports the adoption of a minimum set of required benefits by each region to standardize transmission planning, while still allowing regional flexibility as to other benefits.¹⁸ These uniform benefits fall into the following five categories: (1) savings obtained due to avoided reliability or local reliability needs, (2) savings obtained due to reductions in planning and capacity reserve investments,¹⁹ (3) production cost savings

¹⁶ Scenario-based planning is a multi-step process: 1. Define scenarios of plausible futures by scanning the current reality, trends and forecasts, uncertainties, and important internal and external drivers 2. Develop a series of plans (initiatives, projects, policies, tactics) that support a certain scenario, work well in multiple scenarios, or are flexible and robust across all scenarios 3. Implement preferred plan and define indicators to alert planners that a certain future is likely to occur, so they can take action (e.g., change course to address the new developments).

¹⁷ AEP supports requiring minimum criteria and modeling requirements for evaluation of scenarios in the transmission planning process. Requiring all RTOs to use a similar baseline of metrics and criteria, would enable regional results of the transmission planning process to be consistent and more easily understood from region to region.

¹⁸ For example, benefits could include reduced loss of load probability, deferred generation capacity investments, access to lower-cost generation, avoided or deferred reliability transmission facilities and aging transmission infrastructure replacement.

¹⁹ As a result of a more robust transmission network, zones and regions can share generation resources to supply demand, thus reducing planning and reserve requirements, resulting in savings to customers. Planning and capacity reserve requirements are the amount of generation resources needed to provide resource adequacy under reasonably anticipated conditions.

associated with the generation of electricity,²⁰ (4) net energy cost savings to customers, and (5) increased interregional transfers.²¹

The current absence of effective joint planning for interregional transmission projects presents structural obstacles to grid development. In Order No. 1000, FERC required interregional coordination but declined to require joint planning. FERC also did not propose reforms to planning and cost allocation for interregional projects in the Transmission Planning and Cost Allocation NOPR issued last year.²² In the aftermath of major outages caused by extreme weather events, FERC Staff held a workshop in December 2022 to explore the possible establishment of minimum interregional transmission capacity requirements.²³

This Committee along with Congress should require FERC to take this effort to the next level and undertake a rulemaking to establish procedures and policies for reform of interregional transmission planning. The goal is to go beyond coordination and expressly require true, integrated joint interregional planning that results in efficient transmission infrastructure developed on the seams between planning regions. This would require neighboring regions to harmonize their interregional planning processes to ensure synchronization on lines that cross their seams.

The NERC study language in the recently enacted debt ceiling bill does not obviate the need for this rulemaking – interregional planning and cost allocation will be needed to determine what projects will be built and how costs will be allocated, whether or not there is a minimum transfer capability requirement.²⁴ In conducting regional planning, regions need to focus not only on the inward and immediate needs of their own single region, but also outwardly on the planning needs of neighboring regions, in recognition of the interconnected nature of the grid.

In addition to these reforms, every reasonable attempt must be made to leverage value out of the existing transmission system with the use of grid-enhancing technologies. AEP assesses the viability of all technologies to improve the efficiency of

²⁰ Transmission enables the supply of more economic generation, and this metric is intended to capture that value.

²¹ Some benefits are inherently more difficult to calculate than others; the benefits AEP proposes as standard for all regions maximizes the informative power of benefits in proportion to the burden of calculating them.

²² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 (July 21, 2011).

²³ *Establishing Interregional Transfer Capability Transmission Planning and Cost Allocation Requirements*, Notice of Staff-Led Workshop, Docket No. AD23-3-000 (Oct. 6, 2022).

²⁴ The Fiscal Responsibility Act of 2023 requires NERC to conduct a study of total transfer capability between transmission planning regions in consultation with regional entities and transmitting utilities. NERC will deliver that study to FERC in 18 months, following which the FERC will submit a report on its conclusions to Congress and include recommendations, if any, for statutory changes.

its grid while lowering costs. For example, AEP developed the Breakthrough Overhead Line Design (BOLD) to increase system transfer capability and maximize the use of existing rights-of-way.²⁵

V. Congress Should Encourage FERC to Allocate Costs for Regional and Interregional Transmission Projects in a Manner that is Roughly Commensurate with Benefits and Expand the Determination of Benefits

Cost allocation should align with benefits—therefore, in order to achieve alignment on cost allocation there must first be alignment on transmission planning. The reliability of the power grid and the services that it delivers have been, and should continue to be, the primary driver for policy and planning on transmission investment. Beyond reliability, other factors, such as the facilitation of competitive wholesale power markets that lower customer costs and the facilitation of generation mix changes that more cost-effectively move us toward environmental sustainability, are also important drivers in transmission planning.

Congress should encourage FERC to implement cost allocation mechanisms for regional and interregional transmission projects that continue to align beneficiaries and payers. However, as explained above, the determination of benefits should be expanded and include a defined set of common benefits, forecasted over a longer planning horizon, consistent with the useful life of the assets.

Understanding the many ways in which transmission planning benefits customers (*e.g.*, through generation and reliability related cost savings) can inform cost allocation to ensure that benefits are at least roughly commensurate with costs and reduce potential litigation. The benefits considered in planning and the benefits then used as a check for the reasonableness of cost allocation should be the same and should include all reasonable reliable and economic benefits under a multi-value approach, including: (1) savings obtained due to avoided reliability or local reliability needs, (2) savings obtained due to reductions in planning and capacity reserve investments, (3) production cost savings associated with the generation of electricity, (4) net energy cost savings to customers, and (5) increased interregional transfers.

With respect to interregional transmission, the ability to move power between regions can produce a variety of benefits for customers, therefore the criteria that defines how to identify an interregional “need” must be expansive and not be based on the needs of a single region alone. Cost allocation for interregional transmission facilities is particularly complex as the benefits of interregional transfer capability may fluctuate over the long-term, based on changing flow patterns and responses to events. Therefore, cost

²⁵ See <https://www.boldtransmission.com/>.

allocation for such facilities should reflect broader, shared benefits between planning regions and not simply depend on calculations of directional flows.

Under current Order No. 1000 cost allocation, FERC did not require each transmission planning region to have the same interregional cost allocation method(s) with each of its neighbors.²⁶ This lack of uniform cost allocation is a potential barrier to interregional transmission. Congress should encourage FERC to undertake uniformity in cost allocation reform that reflects these planning reforms and corresponds to the distribution of expected benefits. Congressional direction to FERC to undertake a rulemaking on joint interregional transmission planning and cost allocation would help drive needed action.

VI. Congress Should Continue to Undertake Efforts to Improve Siting and Permitting Processes

As Congress considers permitting reform proposals with the goal of streamlining the process for regulatory approvals for important infrastructure projects, we note that most of AEP's transmission projects move through the required state permitting and siting processes successfully, although these processes can take a significant amount of time to complete and can involve lengthy and costly litigation. That said, reforms to improve the issuance of federal permits are valuable, and we appreciate the work that this Committee and Members of Congress have undertaken to streamline federal reviews.

While we strongly support efforts to simplify and improve permitting processes, AEP does not believe that a wholesale shift of transmission siting responsibility from state to federal regulators is warranted. State siting authorities should also be provided with an appropriate amount of time to complete a review of proposals for siting of electric transmission facilities through their state prior to the initiation of any backstop siting authority processes.

AEP has worked constructively with state agencies to obtain necessary siting and permit approvals in almost all cases. However, there may be limited circumstances where state regulatory actions are, for instance, preventing the development of transmission projects that provide significant reliability benefits to the grid. For instance, the Pennsylvania regulator recently denied an AEP affiliate a certificate in Pennsylvania for a multi-state congestion-relief project with significant reliability benefits that had been approved as a necessary economic project by both the regional grid planner (PJM) and the Maryland regulator.²⁷ However, the Pennsylvania regulator found that the need

²⁶ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 at P 580 (July 21, 2011) (Order No. 1000).

²⁷ Congestion often drives economic and reliability transmission projects. When congestion is not resolved, economic projects can develop into reliability projects.

for the project had not been established as required under state law,²⁸ a decision which AEP is currently litigating.

While many of the projects we have pursued in the last decade have not required NEPA review, we support efforts to make the NEPA process more efficient and would welcome reforms to other key permitting processes by establishing reasonable time limits for agency decisions, ensuring agencies have sufficient staff to review permits, and by initiating litigation reforms.²⁹ Permit reform need not diminish the underlying environmental requirements and standards. Moreover, AEP remains firmly committed to working closely with local communities where energy infrastructure will be deployed, ensuring the full and meaningful involvement of our neighbors, customers, and local organizations as we build our clean energy future.

Finally, federal law should provide for a workable backstop siting process for transmission projects that deliver important regional or interregional reliability benefits. DOE corridor designation is duplicative of the RTO planning process for determining necessity, does not add value, and adds considerable time.³⁰ We urge this Committee to streamline the processes for using backstop siting under section 216 of the Federal Power Act by removing the restriction that FERC can only use backstop siting authority for National Interest Electric Transmission Corridors designated by the DOE.

VII. Additional Issues

The focus of this testimony has been on transmission investment and the regulatory framework in which such investment is made. But AEP wants to touch on two additional issues: (1) generator interconnection reform, and (2) recent EPA proposals.

²⁸ Order, *In the Matter of Applications of Transource Pennsylvania, LLC for approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection – East and West Projects in portions of York and Franklin Counties, Pennsylvania*, at 50, Docket No. A-2017-2640195 *et al.* (Pa. Pub. Util. Comm’n, May 24, 2021), available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.puc.pa.gov%2Fpdocs%2F1704597.docx&wdOrigin=BROWSELINK>.

²⁹ Permitting modernization must address both delays in approvals under statutes such as the Endangered Species Act (ESA) and the Clean Water Act, and reviews under NEPA. For example, AEP has been working with congressional staff to create an enforceable timeline for the US Fish and Wildlife Service (USFWS) to complete their ESA review process. The Army Corps of Engineers cannot issue a permit to commence construction until this required process of consultation with the USFWS is concluded. The lack of an enforceable timeline for these reviews has resulted in delays for AEP substation construction in West Virginia and elsewhere.

³⁰ Other reforms to address these timing concerns might include running the state review and FERC pre-filing process in parallel, not in sequence, and establishing reasonable deadlines for FERC action on the requested permit.

First, generator interconnection reform is a key step for enabling the additional generation resources to come online in a timely manner. FERC has proposed rule changes to shift from a first-come, first-served model for studying interconnection requests, to a first-ready, first served model.³¹ The FERC proposal would also rely on cluster studies, instead of one-by-one reviews.³² AEP generally supports these proposed changes as a constructive step toward reducing the delays associated with interconnection queues. However, additional reforms are necessary to ensure that load responsible entities can fulfill their obligations to customers. Interconnection queue reform should include a process to prioritize interconnection of resources owned or contracted by load responsible entities needed to meet reserve margin requirements to ensure reliability to end-use customers.

Second, we note that the EPA's recent proposals for new rules related to fossil-fueled power plants would drive further rapid changes in the generation resource mix, creating more challenges for reliable grid operation and likely more need for transmission investment. NERC observed in its recent testimony before this Committee that there is a risk that the pace of change is overtaking the reliability needs of the system.³³ NERC also noted that conventional generation is retiring at an unprecedented rate.³⁴ Given the critical importance of maintaining grid reliability, it will be important to ensure that any final actions by EPA are structured with assurances that rule implementation, and in particular retirement of resources needed to preserve grid reliability, can be scheduled in a manner that allows for reliable and affordable service to customers. Environmental regulation will not be sustainable if it, in practice, drives reliability problems.

VIII. Conclusion

AEP approaches transmission-related policy reforms with a customer-first focus and believes that reform should be limited to the elements of the current framework that present concrete, widespread problems. Existing institutional arrangements should remain undisturbed where there is not a problem to solve.

³¹ *Improvements to Generator Interconnection Procs. & Agreements, Notice of Proposed Rulemaking*, 179 FERC ¶ 61,194 at P 4 (2022).

³² *Id.*

³³ *Full Committee Hearing to Examine the Reliability and Resiliency of Electric Services in the U.S. in Light of Recent Reliability Assessments and Alerts* (June 1, 2023); Witness Panel 1, Mr. James B. Robb, President & Chief Executive Officer (<https://www.energy.senate.gov/hearings/2023/6/full-committee-hearing-to-examine-the-reliability-and-resiliency-of-electric-services-in-the-u-s-in-light-of-recent-reliability-assessments-and-alerts>).

³⁴ *Id.*

As discussed above, AEP identifies three priorities for Congressional action:

- (1) Encourage FERC to modernize and reform regional and interregional transmission planning to: (a) incorporate longer-term planning time horizons (*e.g.*, 20-years), (b) include standardized and expansive planning scenarios, and (c) consider a wider range of benefits over a longer timeframe to better reflect the value of the assets being placed into service over their useful life.
- (2) Encourage FERC to implement cost allocation mechanisms for regional and interregional transmission projects that continue to align beneficiaries and payers, but expand and define the determination of benefits to account for a broad and defined set of common benefits, forecasted over a longer planning horizon consistent with the useful life of the assets; and
- (3) Streamline the process for using federal backstop siting authority under section 216 of the Federal Power Act by eliminating the requirement to utilize National Interest Electric Transmission Corridors designated by the Department of Energy for projects that provide significant reliability benefits.

In summary, more robust planning processes with better articulation of benefits, especially for multi-value transmission investments, can lead to better outcomes in the siting and permitting processes.

The CHAIRMAN. Thank you.
Mr. Teply.

**STATEMENT OF CHAD A. TEPLY, SENIOR VICE PRESIDENT,
TRANSMISSION AND GULF OF MEXICO, THE WILLIAMS COM-
PANIES**

Mr. TEPLY. Thank you, Chairman Manchin, Ranking Member Barrasso, and distinguished members of this esteemed Committee. Thank you for the opportunity to provide my testimony before you today. My name is Chad Teply and I work for the Williams Companies as a Senior Vice President responsible for overseeing our interstate natural gas transmission pipelines and our operations in the Gulf of Mexico. Williams builds and operates interstate pipelines and the associated infrastructure throughout the country, including many of the states that are represented here today. On any given day, we handle approximately one-third of all natural gas delivered in the United States. Today, I am here to emphasize the pressing need for targeted and pragmatic permitting reforms for interstate natural gas pipelines.

I would like to highlight the following three reasons that pipeline infrastructure is critically important: First, interstate pipeline infrastructure delivers our nation's abundant natural gas supplies to millions of households across the country, providing an affordable and reliable source of energy. Second, pipeline infrastructure ensures energy security and emissions reductions abroad. With reforms, we can export more liquefied natural gas to our European allies to reduce their dependence on imports from Russia, and to Asian countries, to reduce their dependence on higher-emitting forms of energy. Third, pipeline infrastructure is necessary for our transition to a lower carbon economy here at home. As our power sector adds increasing amounts of intermittent energy resources, it needs dispatchable natural gas-fired power to ensure grid reliability and affordability. In addition, increased use of both hydrogen and carbon capture and sequestration in our lower carbon economy will not be possible without the development and construction of new interstate pipelines to transport hydrogen to facilities and carbon dioxide to storage and utilization facilities where it is needed.

Currently, companies like Williams can construct an interstate, multistate pipeline in just six to nine months. However, the permitting for that set of pipelines and infrastructure takes approximately four years, and in some cases, can be halted completely. The flowchart attached to my written testimony illustrates the very extensive permitting review process and the requirements to construct an interstate natural gas pipeline. When Congress enacted the Natural Gas Act of 1938, it determined that when an interstate natural gas pipeline is deemed to be in the public interest, the permitting and review should be done at the federal level. Congress largely preempted state permitting over such projects, in part to ensure that one state could not block a pipeline project crossing its jurisdiction when that pipeline can serve and benefit a neighboring state.

Several decades later, Congress enacted the Clean Water Act, which had the sweeping goal of eliminating pollution in our na-

tion's waterways. One component of the Clean Water Act is the Section 401 certification process, which requires the developer of any project obtaining federal authorizations, such as an interstate natural gas pipeline, to obtain certification from a state that the proposed project will not violate water quality standards. For most states, this 401 certification process prompts a useful discussion between the project developer and the state about ways to site or design the project to mitigate or avoid water quality impacts. However, some states wield Section 401 as a one-state veto. For those states, there is no real discussion to be had about the design of the project or the siting. They are simply bent on rejecting it. This outcome is entirely inconsistent with Congressional intent and it has real consequences for energy affordability, reliability, and security, as well as for environmental protection.

Fortunately, the SPUR Act, introduced by Ranking Member Barraso, offers a solution. Section 3004 of the SPUR Act makes narrow but important reforms to restore state/federal balance. First, it directs any state that has water quality concerns about a proposed interstate natural gas pipeline to bring those concerns into the National Environmental Policy Act (NEPA) environmental review process. Second, having established that NEPA is the proper forum for the environmental impact reviews, Section 3004 removes such projects from the coverage of the Clean Water Act Section 401 certification process. Importantly, Section 3004 does not remove the interstate pipelines from the purview of the Clean Water Act, nor does it impact other types of projects covered under Section 401, just interstate natural gas pipelines.

Section 3004 of the SPUR Act solves the one-state veto problem for interstate pipelines while still preserving critical environmental protections for all states and communities under both NEPA and the Clean Water Act. This is a common-sense reform we need. The SPUR Act also proposes unlocking some of the most abundant supplies of natural gas we have in federally controlled onshore and offshore regions, making it possible for gas to contribute to our energy affordability and climate mitigation as well. Williams appreciates the efforts of this Committee to apply its expertise in this area and we stand ready to be a resource for your work.

Senators, thank you again for the opportunity to present here before you and I thank you for your time.

[The prepared statement of Mr. Teply follows:]

Statement of Chad Teply
Senior Vice President, Transmission and Gulf of Mexico
The Williams Companies
Before the Committee on Energy and Natural Resources
United States Senate
Hearing to examine opportunities for Congress to reform the process for permitting
electric transmission lines, pipelines and energy production on federal lands

July 26, 2023

Chairman Manchin, Ranking Member Barrasso, and Members of the Committee, thank you for the opportunity to testify today on the importance of natural gas infrastructure and the imperative for permitting reforms to ensure the continued development of natural gas infrastructure to serve our Nation's current and future energy needs.

My name is Chad Teply, and I am the Senior Vice President for the Transmission and Gulf of Mexico Area for The Williams Companies (Williams). I joined Williams in 2020, serving as Senior Vice President of Project Execution with responsibility for successfully delivering projects across the company's footprint through project development and execution, environmental permitting, regulatory engagement, and land management functions. I hold a bachelor's degree in mechanical engineering from South Dakota State University.

Demand for lower-carbon energy is rising, and natural gas is playing and will continue to play a fundamental role in moving the world to a lower carbon emissions future. At Williams, we believe that natural gas is critical to meeting our Nation's and the world's immediate need for reliable and affordable energy while also being a key fuel that will accelerate our transition to a more sustainable future. We believe that the next generation of energy is rooted in a strategic mix – natural gas, NextGen Gas, hydrogen, solar, wind, advanced nuclear, and other emerging technologies that can meet growing energy demand without sacrificing reliability, affordability, or safety. We recognize and embrace the challenge of meeting this growing energy need while at the same time reducing greenhouse gas emissions, ensuring energy security, and stimulating the technological growth required to build a vibrant economy.

Williams has taken essential steps to meet growing energy demand and achieve industry-leading emissions reductions. We were the first North American midstream company to establish a climate commitment. Williams has a near-term goal of a 56% reduction in greenhouse gas emissions from our operations by 2030 from 2005 levels, which aligns well with our Nation's Nationally Determined Contribution target of a 52% emissions reduction by 2030. In addition, Williams was the first North American pipeline company to join the United Nations Environment Programme's (UNEP) [Oil and Gas Methane Partnership 2.0](#) (OGMP 2.0), the global initiative designed to improve the energy industry's methane emissions reporting and to encourage progress in reducing those emissions. And we were a founding member of GTI's Veritas initiative, which was designed to measure and verify methane emissions reductions on natural gas systems consistently, credibly, and transparently. Williams is charting a path to net zero by 2050 involving immediate and long-term solutions, including decarbonizing the natural gas value chain while investing in renewables,

low-carbon solutions, and emerging technologies. We are also committed to growing the diversity and capabilities of our talented workforce, a workforce of team members dedicated to doing what is right every day of the year.

As one of the largest and most experienced midstream companies in the United States, Williams serves as the link between upstream energy producers and downstream users. We own and operate more than 30,000 miles of pipelines systemwide. Our pipelines include the following:

- Transco, the Nation's largest pipeline by volume, extends 10,500 miles in length and moves and delivers natural gas bi-directionally along the Gulf coast of Texas, Louisiana, Mississippi, Alabama, and Georgia and through the Atlantic seaboard states of South Carolina, North Carolina, Virginia, Maryland, New Jersey, and New York. Transco also extends into Pennsylvania.
- Northwest Pipeline is a 4,000-mile bi-directional system crossing the states of Washington, Oregon, Idaho, Wyoming, Utah, and Colorado, providing access to British Columbia, Alberta, Rocky Mountain, and San Juan Basin gas supplies. The pipeline system is the sole provider of significant interstate gas services to the Pacific Northwest market areas of Seattle and Tacoma, Washington; Portland, Oregon; and Boise, Idaho.
- MountainWest includes approximately 2,000 miles of natural gas transmission pipelines primarily located across Utah, Wyoming and Colorado as well as 56 Bcf of gas storage, including the Clay Basin underground storage reservoir.
- Gulfstream is a 745-mile pipeline delivering gas from the Gulf of Mexico to Florida.

Each day we handle approximately one-third of the natural gas used in the United States for power generation, residential, and industrial use. The natural gas that we gather and deliver has helped increase our nation's energy security while lowering utility bills and cutting emissions by displacing dirtier fuels along our footprint. And while we are focused on further decreasing the emissions intensity of the natural gas value chain, we are also placing an increased focus on unlocking the vast potential of additional low-carbon fuels such as renewable natural gas and hydrogen.

We appreciate you holding this hearing and the Committee's interest in providing regulatory certainty and fostering a regulatory environment that encourages infrastructure investment and lower-carbon energy deployment.

Importance of natural gas infrastructure

Natural gas is an abundant, reliable, and affordable energy source that eases high energy costs and energy insecurity, both domestically and abroad, and helps reduce emissions. Given that our more than 30,000 miles of pipelines already transport about one-third of the Nation's natural gas, Williams is well positioned to help the United States move into a lower carbon energy future. Our assets reach from the Northwest to the Gulf and into the Northeast, forming the backbone of American energy supply and putting Williams in a strategic location for continued growth. With

some thoughtful regulatory reform to help us move forward, natural gas can lead the way for low-carbon, utility-scale renewable electric generation across the country.¹

The U.S. is endowed with significant natural gas resources that could play a key role in addressing three challenges that the global energy industry—and the world—faces today. First, the U.S. could provide reliable, affordable energy to help counter price pressure across the U.S. and Europe. Since the Russian invasion of Ukraine, we have seen unprecedented energy price spikes and insecurity among our allies in Europe. Second, the U.S. could provide energy security by exporting liquefied natural gas (LNG) to U.S. allies in Europe that previously relied on Russian natural gas. Third, natural gas can continue to replace other higher-emission forms of energy to decarbonize the energy sector, particularly in countries like India and China. In addition to replacing power from higher-carbon sources, natural gas-fired electricity provides a vital complement to variable forms of renewable generation, enabling growth of the sector while ensuring reliability.

The U.S. has the potential to provide this low-cost, alternative energy source, and it could be activated quickly. Greater collaboration across the industry, regulators, and consumers could unlock this potential. Stakeholders could develop U.S. gas infrastructure, support reliable gas supply and commit to long-term offtake agreements. These measures will help keep U.S. gas prices low and facilitate increased exports, thereby maintaining U.S. energy independence and providing energy security.²

Overall, as a country, we need to continue working on permitting reform to ensure we have the infrastructure in place to provide safe, reliable and affordable energy to U.S. citizens and the world. A streamlined permitting process would allow for faster and more cost-effective development of infrastructure, lowering energy costs for people worldwide and helping to further reduce our nation's carbon footprint.³

The Permitting Reform Imperative

Williams is encouraged by the broad bipartisan interest in reforming permitting processes for our Nation's energy infrastructure.

Permitting reform is vitally needed, especially in the pipeline sector. Although it only takes 6-9 months to build a pipeline across multiple states, the regulatory process that precedes such a project currently takes about four years. Virtually every pipeline project encounters costly and time-consuming delays due to duplicative permitting processes, a lack of cooperation between agencies, and inadequate judicial review standards.

¹ Armstrong, A. (2023, May 15). *Who will power the power of tomorrow?*. Williams Companies. <https://www.williams.com/2023/05/15/who-will-power-the-power-of-tomorrow/>

² Dalena, M., Dedi, D., Fiori, L. D., & Stackhouse, B. (2022, November 16). *How North American natural gas could alleviate the global energy crisis*. McKinsey & Company. <https://www.mckinsey.com/industries/oil-and-gas/our-insights/how-north-american-natural-gas-could-alleviate-the-global-energy-crisis>

³ Armstrong, A. (2023, May 15). *Who will power the power of tomorrow?*. Williams Companies. <https://www.williams.com/2023/05/15/who-will-power-the-power-of-tomorrow/>

The reforms enacted through the Fiscal Responsibility Act of 2023 were a vital initial downpayment on the permitting reform effort. In particular, we were pleased to see the modifications to the National Environmental Policy Act (NEPA) procedures for environmental impact reviews. Williams is a strong believer in NEPA and the Environmental Impact Statement (EIS) process. We use the EIS process to engage with affected communities and understand their needs. And in our experience, the EIS process helps us identify modifications we can make to pipeline projects that will avoid or mitigate adverse impacts on the environment. The reforms in the Fiscal Responsibility Act will improve NEPA reviews by making them more efficient, effective, and focused on real measurable impacts.

In addition, Williams supports the long-overdue approval of the Mountain Valley Pipeline, which will be a critical natural gas artery for the Southeast.

Even so, the Fiscal Responsibility Act left significant unfinished business for reform of NEPA and for other federal permitting and review processes. We appreciate that Senators on this Committee from both parties – including the Chairman and the Ranking Member – are committed to pressing forward on more comprehensive reforms.

To that end, Williams strongly supports the “Spur Permitting of Underdeveloped Resources” (SPUR) Act, introduced by Ranking Member Barrasso. The SPUR Act will unlock the Nation’s full energy potential by eliminating inefficient bottlenecks in federal permitting and approval procedures. The SPUR Act includes vitally important reforms that will ensure the efficient development of our Nation’s substantial energy resources and the infrastructure necessary to delivering it to end-users, including the following:

- Section 1101 directs the Secretary of Energy to resume quarterly onshore oil and gas lease sales from federal lands and to undertake a process for determining whether a reduction in royalty rates for such sales is in the national interest.
- Section 1102 directs the Secretary of Energy to complete a long-delayed five-year plan for offshore oil and gas lease sales. Section 1102 also ensures that lawsuits will not impede such sales.
- Sections 1201-1205 establish a cooperative federalism approach for oil and gas development, recognizing the vital interests that states have in their subsurface resources.
- Sections 1301 and 1302 break through bottlenecks for approval of liquefied natural gas facilities, including directing the Secretary of Energy to act on applications for such facilities within 45 days.
- Title III includes a range of vital reforms to actions by the Federal Energy Regulatory Commission (FERC). Among other things, Title III directs FERC to adopt tariff provisions, rate treatments, and other reforms necessary to ensure the adequacy, affordability, reliability, and security of natural gas delivered by pipelines. Title III also reforms judicial review procedures. It requires a reviewing court to remand any federal or state agency denial of a permit for an interstate pipeline project if the permit denial is not supported by clear and convincing evidence.

In addition to these reforms, I want to highlight a provision in Title III that is critically important to the Nation's pipeline infrastructure: Section 3004 ("Promoting interagency coordination for review of natural gas projects").

Section 3004 goes a long way to restoring the federal-state balance of permitting and review processes contemplated by Congress when it enacted the Natural Gas Act of 1938. In that legislation, Congress affirmed that there is a public interest in interstate natural gas pipelines. Congress also recognized that interstate natural gas pipelines were a unique type of infrastructure because they cross multiple jurisdictions. To ensure that pipelines deemed in the national interest can be efficiently developed and constructed, Congress strengthened the federal oversight role and generally preempted state permitting. This approach was designed to prevent one state from "breaking the chain" of a needed multi-state pipeline project absent compelling reasons.

Even so, interstate natural gas pipeline projects remain subject to a vast complex of federal permitting and review procedures, as illustrated in Appendix A (*Regulatory Flow Chart*). A cornerstone of this complex is the NEPA review process, which, as discussed above, mandates a full analysis of a proposed project's environmental impacts—with ample input from federal, state, and local agencies.

Although Congress emphasized a relatively stronger federal oversight role for interstate pipeline projects, it carved out limited but important permitting roles for states in such projects. One of these exceptions to the Natural Gas Act's general preemption of state permitting is Section 401 of the Clean Water Act. Section 401, a federal program, authorizes a state to determine whether a federally authorized project of any kind will comply with the state's EPA-delegated water quality standards. Section 401 authorizes a state to condition or deny the proposed project if the state determines that it will be in violation of federal water quality standards.

Most states use their Section 401 authority as Congress intended—i.e., to work with project developers to ensure that the project is designed to avoid or mitigate adverse water impacts. However, a few states have abused their Section 401 authorities in the context of interstate natural gas pipelines—effectively using Section 401 as a one-state veto power over an interstate project. These states oppose almost all interstate natural gas pipelines. And they are using minimal—and, in some cases, temporary—projected water quality impacts as a pretense to block projects that would provide benefits to multiple states. Oftentimes, these states move the goal line for projects they do not like, applying a different standard to pipeline projects. In fact, their denials have been directed almost exclusively against pipelines that FERC has already determined are in the public interest and that do not, based on multi-agency NEPA environmental reviews, have the sort of water quality impacts that should prevent the project from moving forward.

Williams has firsthand experience with this sort of blocking action. Two pipeline projects proposed by Williams demonstrate the need for restoring the federal-state balance enshrined in the Natural Gas Act.

The Constitution Pipeline, proposed by Williams and its partners, natural gas producers in the Marcellus region, was a planned 124-mile natural gas pipeline originating in Pennsylvania and terminating in New York with connections to other major pipelines to transport the gas to

consumers in New England. After a comprehensive review that included an environmental analysis consistent with NEPA, the Federal Energy Regulatory Commission found that the project was required by the public interest and authorized the project. Other federal and state agencies, including state agencies in Pennsylvania, also issued the required permits for the project. The New York Department of Environmental Conservation, however, denied certification of the project using authority under Section 401 of the Clean Water Act for the first time to stop a federally regulated interstate pipeline project in the state. Although, FERC later ruled that New York's denial came too late and New York's authority had been waived, the time spent litigating the denial ultimately doomed the project. The project would have benefited New England by bringing natural gas from the Marcellus region—right on New England's doorstep—lowering natural gas prices and allowing some people and businesses to switch from dirtier and more expensive fuel-oil heating to clean-burning natural gas for the first time, ultimately reducing emissions.

Williams's Northeast Supply Enhancement Project, or NESE, has a similar and unfortunate story. NESE is an expansion of Transco's existing pipeline system in Pennsylvania, New Jersey, and New York designed to serve New York markets. The customer for the project, National Grid, will use the natural gas transported on the project to serve some of its 1.8 million customers in Brooklyn, Queens, Staten Island, and Long Island. One of the main drivers of the project is to allow National Grid, the largest distributor of natural gas in the U.S., to convert customers heating their homes and businesses with fuel oil to natural gas. FERC approved the nearly \$1 billion project in 2019, finding the project is required by the public interest. Despite this, the New York Department of Environmental Conservation has denied the Clean Water Act Section 401 water quality certification—twice—on dubious grounds. The NESE project will have demonstrated benefits, including generating over \$300 million in additional economic activity, preventing a natural gas moratorium in NYC and on Long Island, and facilitating oil-to-gas conversions for homes. In addition to providing a reliable source of energy for New York City and Long Island and helping National Grid meet its growing demand for natural gas oil-to-gas conversions, the project allows for the potential displacement of 900,000 barrels of heating oil and a 200,000-ton reduction of CO2 emissions. These numerous benefits to National Grid, its customers, and the general public have been delayed due to the unreasonable denial of certification by New York.

In both the Constitution and NESE projects, Williams made extensive good-faith efforts to address any concerns about water quality impacts, including through various modifications to the design of the project and the construction process. However, it became clear that the state was simply “anti-gas” and deploying its Section 401 authority as a veto power, denying the benefits of these projects to other states. Such actions are inconsistent with the intent of the Natural Gas Act.

These projects illustrate the need for permitting reforms in Section 3004 of the SPUR Act. Section 3004 does the following:

- Brings state reviews of interstate natural gas projects into the FERC-led NEPA environmental review process and removes them from the Section 401 process. Other intrastate activities that require federal permits and authorities remain subject to Section 401.
- Provides a state that has concerns about a project's water quality impacts with the right to be a participating agency under the FERC-led NEPA process—the proper forum to address such concerns.

- Authorizes FERC, based on state and EPA input, to include in any order or certificate for a project those terms and conditions that FERC finds are necessary to ensure the project's compliance with applicable water quality requirements—provided that the finding is supported by clear and convincing evidence.
- Under long-standing NEPA case law, the NEPA lead agency must give due consideration to input from states and other participating agencies. Long-standing case law requires any NEPA review to take a “hard look” at environmental impacts that could arise from a project. If a NEPA review ignores impacts that could result in a violation of federal environmental law, the review will fail the “hard look” standard. Accordingly, the NEPA process provides robust safeguards for water quality resources in any affected state.

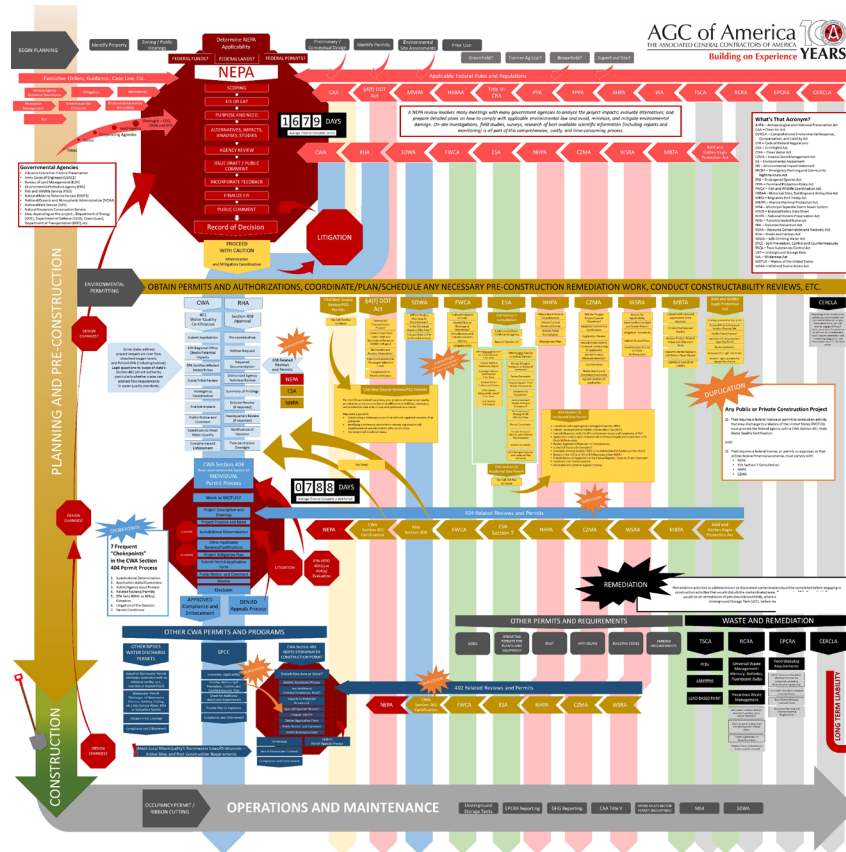
Accordingly, Section 3004 of the SPUR Act solves the one-state veto problem while still preserving critical environmental protections:

- States still get the benefit of NEPA review. States participate in, and recommend mitigation measures as part of, the NEPA review process.
- Interstate natural gas pipelines still have to comply with the Clean Water Act. Just because the SPUR Act removes proposed interstate natural gas pipelines from the purview of Section 401 certification, that does not mean it removes pipelines from the purview of the entire Clean Water Act. An interstate natural gas pipeline will still have to comply with all applicable water quality laws and mitigation measures.

For these reasons, Section 3004 is a common-sense reform that will provide continued assurances of water quality protection while serving the public's interest in building needed interstate energy infrastructure. We strongly urge the Committee to enact these reforms.

Conclusion

With its abundant natural gas supplies, the United States is perfectly positioned to move to a lower-carbon future with affordable, reliable and secure energy. Reforms to federal permitting and review processes will help us realize this future. Williams appreciates the efforts of this Committee to apply its expertise to these issues. We stand ready to be a resource in your work.



The CHAIRMAN. Let me thank all of you for being here today and sharing with us your challenges and your knowledge and some advice, maybe, in how we should go forward.

Let me start our questioning now.

We know the litigation process can create potentially endless delays of all types. You have been speaking about that—pipelines, transmission lines, and everything in between. Once a project has gone through years of federal agency reviews, Congress never intended there to be a review process in the courts that can take as long or longer than the overview of the project, whether this has merits or not. So I want to quickly ask each of you, and we will go through this very quickly, if you will, about the litigation reforms that we proposed, okay?

Would it be helpful to limit the amount of time parties have to bring a case? Yes, no, whatever.

Mr. STANEK. Yes, I think it's necessary, yes.

The CHAIRMAN. To bring a case, okay, so we know that we can bring that.

Would it be helpful to direct courts to set energy project litigation for expedited review?

Mr. TEPLY. Yes.

Mr. SMYTH. Yes.

Mr. STANEK. It is necessary.

The CHAIRMAN. Okay.

Would it be helpful to set hard timelines on how long agencies can take to fix permit issues identified by the courts?

Mr. TEPLY. Yes.

Mr. SMYTH. Yes.

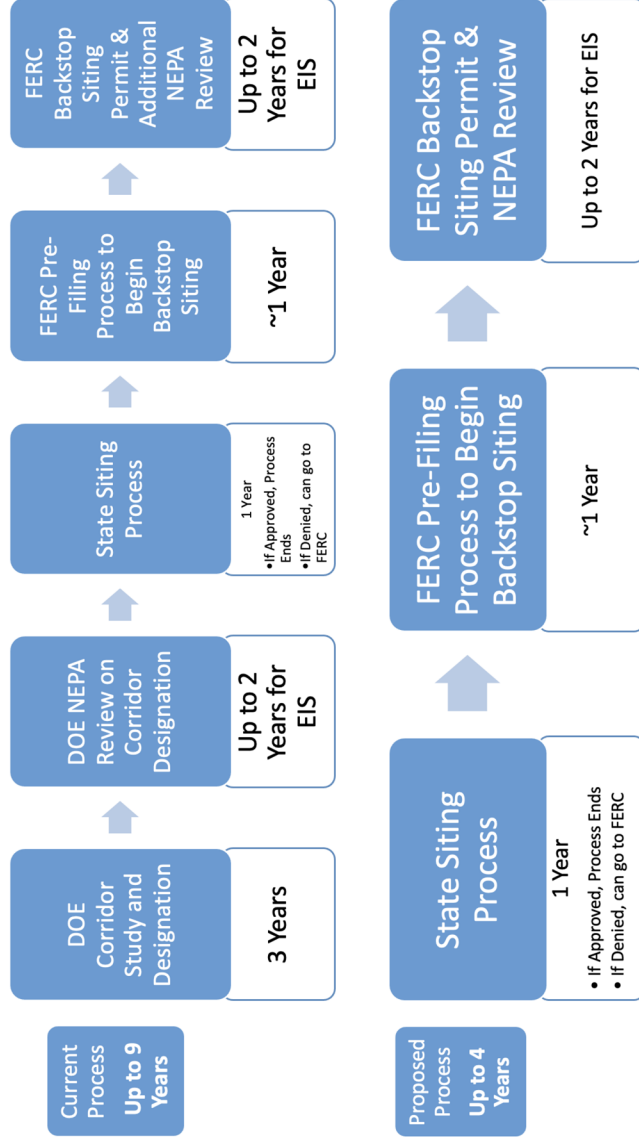
Mr. STANEK. Most definitely.

The CHAIRMAN. Now, I want to go to this chart up here. Let me show you what we are dealing with in America.

[The chart referred to follows:]

Transmission Permitting Reform

Eliminate Duplicative Reviews by Consolidating at FERC



The CHAIRMAN. Usually it's nine years—normally nine years right now if you go through this process, and the bills that we have been talking about and think that we should be passing would take us down to four years—cut it in half. It would be great for transmission. It would be great for all types of energy because you have got to move electrons, okay? People say they want transmission, but no pipelines. Some people say they want pipelines, but no transmission. We need everything. And this would give us a process of how we would do it more quickly and expedite things.

So do you think we should consolidate a federal backstop siting process so there is a single environmental and national interest review at FERC?

Mr. STANEK. Yes.

Mr. SMYTH. Yes, we do.

The CHAIRMAN. And any comments on that would be welcome, if you have on that how some of your personal experiences—what you have run into and how we can cut this down.

Mr. STANEK. I would say that currently, the process would entail two EIS reviews, two NEPA reviews, for conceivably the same project, and that is the understanding that the courts have explained out in the Ninth Circuit. Consolidating the process into one EIS, one NEPA review, just makes a lot of sense, saves a lot of time, and there is no redundant use of resources.

The CHAIRMAN. Let me go through one more chart here that I have, and I want to show you—this chart here shows a portion of the transmission reform proposal that I put up, which specifies the benefits of transmission that FERC can require users to pay for.

[The chart referred to follows:]

Building American Energy Security Act

of 2023

Quantifiable, Electrical Benefits for National Interest Transmission Projects

No Costs Without a Benefit

46

SEC. 201 (f)(2) COST ALLOCATION PRINCIPLES.—The Commission shall require that tariffs filed under this subsection fairly reflect and allocate the costs of providing service to each class of customers, including **improved reliability, reduced congestion, reduced power losses, greater carrying capacity, reduced operating reserve requirements, and improved access to generation**, in accordance with cost allocation principles of the Commission.

The CHAIRMAN. The goal was to include quantifiable electric system benefits that previously were accepted by FERC and supported by courts. The biggest thing, basically, is, who pays? So if you are coming through the State of West Virginia, we are a net exporter of power. We don't need any more power coming in, making us pay for reliability. You just need, maybe, to go through our state.

So here, basically, if you can see this, it shows you what the bill does. Before there can be any cost allocations whatsoever, you have to show that it has improved reliability—so if you didn't have a reliable system. You have to have reduced congestion, reduced power losses, greater carrying capacity, reduced operating reserve, and it requires an improved access to generation. Some states might not need any of this, but it has to have a pathway forward. Also, what we allowed in our bill is to have every state with a PSC, even if FERC requires it to be a national concern, or of national interest, to go one year to work with the PSC and the local provider, such as AEP. You would make a determination. Do you want that or not? Do you want to be part of it or just basically say no? But you have one year to work with your PSC to make sure that you're not burdening your customers or burdening your company and your bottom line, if you will, to make a decision—is that good for our business? Is it good for our customers, or not?

We think that was a reasonable approach and we are trying to get that so that the cost allocation does not become a cumbersome thing to where everyone says, well, it has to be states' rights. You can't do this and that. John doesn't need—Senator Barrasso doesn't need—he is a big powerful state with a lot of power. He is like my state. We produce a lot of power, but you might need our pathway through. So we are looking at some of that. So any comments you have on that, very quickly, of how that would work.

Mr. STANEK. I would quickly say that that list of highlighted language reflects quantifiable benefits that are used by PJM and others. So that is a generally accepted list of benefits that we could put a price tag on with relative ease.

The CHAIRMAN. Anybody else on that?

Mr. SMYTH. Yes, I mean, we are proponents of including all reasonable reliability and economic benefits when it comes to the allocation of cost. I think you have captured many of them there in your language today.

The CHAIRMAN. Mr. Teply, of all that, same as transmission for gas lines and pipelines too, right?

Mr. TEPLY. The timeliness of reviews and the timeliness uncertainty—

The CHAIRMAN. Your biggest obstacle right now, I mean, I know with MVP.

Mr. TEPLY. Yes.

The CHAIRMAN. How that can—it's just unbelievable.

Mr. TEPLY. Very much so correlated.

The CHAIRMAN. So what is your biggest obstacle you have right now in any type of pipelines? What would you say is your biggest obstacle?

Mr. TEPLY. Our biggest obstacle is permitting certainty and then the subsequent judicial reviews.

The CHAIRMAN. Got you.

Senator Barrasso.

Senator BARRASSO. Well, thanks so much, Mr. Chairman.

Mr. Teply, just following, Williams transports natural gas produced in Wyoming all across the United States. So how important is it to your company and to you and to our nation to have a reliable source of production from federal lands in Wyoming?

Mr. TEPLY. It is extremely important. Our operations in Wyoming, in particular, are in the Wyoming checkerboard that you are very familiar with. You know, efficient development of that resource drives—not only from a timeliness perspective, to certainty around project development, but ultimately also costs in the marketplace. Certainty around efficiencies in development in the federal land is extremely important.

Senator BARRASSO. So it seems to me that a few states have abused federal statutes to block the construction of new pipelines. The State of New York blocked the Constitution Pipeline and the Northeast Supply Enhancement Project. Both of these pipelines would have brought much-needed natural gas to New England. It seems every year we hear about how expensive natural gas is in New England. We have Senators on this Committee from those areas. New York blocked these pipelines, even though FERC, the Federal Energy Regulatory Commission, found that both projects were actually in the national interest.

Can you expand on how New York abused its authorities under the Clean Water Act to halt these important projects that would be so helpful in bringing affordable energy to so much of our country?

Mr. TEPLY. Thank you, Senator.

The experiences we had in our Constitution Pipeline and our NESE Pipeline in particular were varied. With respect to the Clean Water Act permitting processes, the issues ranged from administrative requirements for completeness of application to short-term construction-type impacts that would not have carried through to the broader project's lifetime. The impacts, they are obviously from a constituency perspective. Disallowing those projects requires that the New England states that would have been served by these pipelines ultimately continue to burn heating oil. They are not only more expensive, but also have higher polluting characteristics than other sources of energy.

Senator BARRASSO. So worse for the environment because they blocked these things and higher costs for consumers. It seems like——

Mr. TEPLY. That is correct.

Senator BARRASSO [continuing]. A lose-lose.

So what impact did this decision have specifically on, say, natural gas prices and stability of the grid in New England?

Mr. TEPLY. I think from a stability perspective, the issues that you see in New England—obviously, a lot of that energy served from LNG. Because of the lack of pipeline infrastructure in that area, causing significant concerns with respect to both reliability and cost on an annual basis as we, in particular, are heading into the heating seasons for that area.

Senator BARRASSO. I mean, sometimes you hear natural gas prices in New England at \$18 versus Pennsylvania at \$3, and they are not that far apart.

Mr. TEPLY. That is correct.

Senator BARRASSO. Now, Mr. Smyth, the Committee has recently heard testimony about the increasing risks to electric reliability in the United States. From that table, we have heard from FERC, the Federal Energy Regulatory Commission, and also the North American Electric Reliability Corporation. They agree that the country is potentially running into a reliability crisis. They also agree that the principal reason for the problem is the premature retirement of coal, natural gas, and nuclear power plants before there are replacement energies available.

Do you agree that the primary problem right now is the premature retirements, and not lack of transmission?

Mr. SMYTH. Yes, you know, I think as you look at the NERC data, that is what it will clearly tell you. Transmission does play an important part in this, and we would like to see more transmission developed. We think that can be, you know, very constructive insofar as, you know, solving some of these future potential reliability issues going forward.

Senator BARRASSO. So FERC has specific authority to site, Mr. Smyth, the interstate electric transmission lines within the national interest corridor. Corridors are established by the Department of Energy. Do you believe Congress can improve the Department of Energy's process for establishing a national interest corridor?

Mr. SMYTH. Yes. Yes, we do. In particular, for projects that provide significant reliability benefits, you know, we think that process can be streamlined to one set of processes without reducing the quality of the environmental reviews.

Senator BARRASSO. So should Congress ensure that states and regions and other experts have more of a say in establishing the corridors?

Mr. SMYTH. Yes.

Senator BARRASSO. Okay. So would improving opportunities for state input in streamlining the process remove some of these barriers that we talked about?

Mr. SMYTH. We believe so.

Senator BARRASSO. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

And now we are going to have Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman.

This hearing is happening when millions of people in this country, as well as around the world, are suffering through record-breaking heat, following on the hottest June ever recorded. And literally, when you see people being injured just by stepping on sidewalks, et cetera, you see the enormity of the concerns. So we are on a path towards even more intense heat, wildfires, and extreme weather unless we reduce our greenhouse gas emissions by shifting to solar power and other lower-cost, zero-carbon sources. Democrats in Congress passed the Inflation Reduction Act to help speed the transition to clean energy, and we need to build new clean sources of energy in a fair manner and at a pace that reflects the severity of the global warming we are facing. So I thank you, Mr. Chairman, for holding this hearing.

For Mr. Teply, your testimony states your company “is a strong believer in NEPA and the environmental impact statement process. We use the EIS process to engage with affected communities and understand their needs. And in our experience, the EIS process helps us identify modifications we can make to pipeline projects that will avoid or mitigate adverse impacts on the environment.” My question to you—do you think Congress should consider federal grants to state, tribal, and local agencies and to community-based organizations to increase their capacity for completing state, tribal, and local environmental reviews?

Mr. TEPLY. Thank you, Senator, for the question.

At Williams, we are very focused on stakeholder engagement throughout our project development processes, including engaging our environmental justice community, our tribes in areas that we operate in and have infrastructure that affects those folks. We spend a lot of time through the early project development engaging, identifying potential workarounds, including re-siting where important or where possible and practical. So we do think that the engagement at the stakeholder level is extremely important, and we think that we are doing a good job of ensuring—

Senator HIRONO. Well, actually, the question was whether you think that these stakeholders should increase their capacity to engage in the process, because these are complicated issues. And in fact, Senator Carper proposed such a grant program to enable these stakeholders to better engage in the process. I think that that is probably a good idea.

Mr. TEPLY. Yes, I think, as an example, we have engaged with the FERC Office of Public Participation, which is very similar to what you are describing, very early on, as that department was stood up with a keen interest in having a seat at the table with them as that process plays through FERC.

Senator HIRONO. And providing some funding for them could maybe even shorten the entire process of review.

For Mr. Smyth, in Hawaii, we have smaller capacity transmission lines compared to your company’s lines. How much benefit to the capacity and reliability of the grid can come from upgrading the lines and existing transmission pathways?

Mr. SMYTH. Yes, thank you for your question.

I think that, you know, you can see benefits when you up-size transmission lines, but you want to right-size transmission lines as well. So it really depends upon the use case, but generally speaking, as demand increases, and supply changes, up-sizing the capacity of transmission lines can drive good outcomes for customers.

Senator HIRONO. And then, to change the transmission lines, we are talking about a pretty expensive proposition. So do electric companies, utility companies, have the right incentives to invest in upgrading existing lines compared to building new lines?

Mr. SMYTH. Yes, we believe they do.

Senator HIRONO. You think that they currently have those kinds of incentives?

Mr. SMYTH. Yes, I do believe the incentives are there. I do believe that we need to modify the planning processes. We need to modify cost allocation. We need to do things that make it easier to move through the processes.

Senator HIRONO. So speaking of cost allocations, can you elaborate on how you think regulators should measure and determine the public benefit of new transmission lines and how that going to new transmission lines expenditure should be allocated to the rate-payers as opposed to the utilities?

Mr. SMYTH. Yes, you know, we believe that beneficiaries and payers should be aligned. We think that benefits should be calculated in a broad manner that includes all reasonable reliability and economic benefits and the cost should be distributed accordingly.

Senator HIRONO. That may be easier said than done, because Hawaii, for example, I think still pays the highest rates in the country for electricity. So anytime there is a potential for increasing those costs, there are going to be concerns raised.

Mr. SMYTH. Sure.

Senator HIRONO. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Lee.

Senator LEE. Thank you. I am going to pass for now. Thank you.

The CHAIRMAN. Okay.

Senator Hyde-Smith.

Senator HYDE-SMITH. Thank you, Mr. Chairman and thank you to the witnesses for being willing to be here and serve in this capacity. It is truly appreciated and I know it's not always easy.

But currently, the permitting process that we are all so concerned about is centered around the cumbersome bureaucratic process that delays and hinders so many energy products, as we are well aware, especially in Mississippi, in my Gulf State. The lengthy and unpredictable permitting procedures have led to increased project costs, which discourages investment, as we well know, and hampers the path to regain energy independence. In addressing these permitting reform issues, we will be crucially looking into unlocking the country's potential for sustainable growth and prosperity in domestic energy production. That is my goal, at least.

Mr. Teply, this question is for you. Just a simple yes or no and any comments that you want to make. Do you agree that cutting red tape and enforcing strict timelines for permitting energy projects will help ensure electric reliability for local power companies in my State of Mississippi and across the country?

Mr. TEPLY. Yes, and I will correlate that to the natural gas infrastructure that we would build to support those power projects. Ultimately, our goal there being certainty of outcome, understanding that the requirements of our permitting and review processes are thorough and we are willing to work in that environment, but the certainty of timing is critically important to getting these projects done and maintaining your investors' interest in such projects.

Senator HYDE-SMITH. And do you agree that a streamlined permitting process would provide more certainty for utilities and would therefore benefit customers and economic development as well as increase the safety and reliability of the natural gas industry?

Mr. TEPLY. Yes, absolutely. And the streamlined permitting process, with respect to customer impacts, drives directly to cost. For projects that are stalled, delayed, and ultimately canceled, there is

still a cost to that development activity. Over time, customers can bear that cost, whether that be from affordability, also reliability, and potentially safety.

Senator HYDE-SMITH. And natural gas and LNGs have emerged as critical energy resources that the United States can produce domestically on a large scale. Mr. Teply, how abundant is our domestic supply of natural gas?

Mr. TEPLY. Yes, we definitely—thank you for the question. We definitely don't have a supply concern with respect to natural gas in the United States. What we have is an infrastructure problem—getting infrastructure built to tap into the abundant resources across our country to serve not only domestic loads affordably and reasonably and cost effectively, but also the potential to serve international loads, like I had mentioned earlier.

Senator HYDE-SMITH. A good position.

Mr. TEPLY. Yes, a very good position.

Senator HYDE-SMITH. In light of the Administration's goals to decrease greenhouse gas emissions, do you consider the Administration a willing partner in permitting and developing the pipeline infrastructure necessary for maximizing production of our domestic natural gas supplies?

Mr. TEPLY. Thank you for the question.

I think right now we have challenges to production and infrastructure development across the country. Whether I would deem that a willing partner, that would be hard to say right now, but I would say with the permitting reforms that we are talking about, ultimately, those types of steps, taken by this body and others, can continue to move our country forward, as well as the globe forward. With respect to emission reductions, it can be supported by natural gas infrastructure.

Senator HYDE-SMITH. I want to transition to the importance of investments for the natural gas industry in these pipelines. What effects have the continuous delays due to the current permitting process had on the investment opportunities?

Mr. TEPLY. Thank you for the question.

The continuous delays, ultimately, since 2016, if you look at some of the major projects across the country, including the two that I used as examples in my testimony, resulted in cancellations. So ultimately, those are projects that were intended to provide benefits to certain constituencies and customer groups that were not delivered. So that increases the risk around reliability and service, particularly in heating seasons. It also impacts cost effectiveness of growth in those areas. So there are a number of different types of impacts that play through delays and cancellations of major infrastructure projects.

Senator HYDE-SMITH. Thank you very much. My time is up.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

And now, we will go to Senator Hickenlooper.

Senator HICKENLOOPER. Thank you, Mr. Chair.

Thank you all for your work and for being here today. Let me start with Mr. Stanek. I want to commend you for leading a diverse task force of ten state utility regulators from across the country in public dialogues with the FERC Commissioners on electric trans-

mission over the last couple years. This concept of minimum transfer requirements, which would require regions to be able to move some share of their peak load with their neighbors, proved a popular idea among state regulators from Kansas to Arkansas, to your own Maryland. Can you speak to how minimum transfer requirements could help address current reliability shortfalls on the grid while maintaining autonomy for states to chart their own energy futures?

Mr. STANEK. Thank you, Senator, and thank you for recognizing the good work of the 15 members of the Federal-State Task Force. We advanced the dialogue, for sure.

I had been on record as stating that having some minimum transfer capacity between regions is important, and it is important, not only for reliability and resilience, but it is important for assisting neighbors during times of need. We have seen the effects of Winter Storm Uri. We saw the effects more recently of Winter Storm Elliot, when PJM desperately relied on the assistance of one of our neighbors, New York ISO, to export power. The fact is, there is no minimum standard currently, and by including a minimum standard, we will ensure that, across the country, regions will be able to either import or export power to their neighbors.

With respect to the role of the states, it is important that states have a say in the designation and selection of these transmission lines, but at the end of the day, the states also have exclusive jurisdiction over the siting of generation and determining what resources they would like to connect to those transmission lines. So I think it's an important issue. I know that FERC is looking at it now, but I am glad that this body is as well.

Senator HICKENLOOPER. Right. The nice thing is, I think this—we talk a lot about making sure that our transition to a new energy system is as inexpensive and as reliable as our existing one—obviously, we want it to be cleaner. But I think that reliability and the ability to deal with extreme weather events and other intrusions into normal life, this notion of having some minimum level of transferability is important.

Do you have a range of prices or a range of percentages of, like what percentage would make sense in something like that?

Mr. STANEK. It would always be hard to determine a specific number, and you want to ensure that a number is not so high where you are going to be including additional costs and expenses. I view it very much as an insurance policy. You hope you don't need the transfer capacity from your neighbor, but in a desperate time or dark hour, you need that. I would be hard pressed—I am not a system engineer—to determine what a specific number is, but I do believe there is wisdom in picking a number as opposed to having a multi-year process at FERC to determine what that number should be.

Senator HICKENLOOPER. Got you. I appreciate that.

Mr. Smyth, AEP is the largest transmission-owning utility nationwide, so you know firsthand the challenges of getting large projects completed. As a matter of fact, in the last decade, all of North America has builders nearing completing just seven gigawatts of large-scale, interregional lines—seven gigawatts. In South America, over the same time period, it's not seven, that

number is 22 gigawatts. In Europe, it's 44 gigawatts. China recently built a single interregional transmission line that carries 12 gigawatts in one line, almost twice the figure for the entire North American continent. Do you think we would benefit from a minimum transfer requirement to jolt our system out of its current slumber, its lethargy? I mean, what's your sense on that?

Mr. SMYTH. Yes, thanks for your question. You know, and I agree with what Jason said, I mean, when regions get in trouble, they can borrow from each other and that can provide a great deal of help when it comes to system reliability.

When it comes to a minimum bulk power, you know, transfer capability thresholds, that is something that I think can be very useful and supportive insofar as addressing reliability between regions. We do believe, though, that customization of a threshold is important just to really account for and make sure that we are aligning benefits and costs appropriately.

Senator HICKENLOOPER. Got it. Well, I am out of time. Maybe I will come back. And this notion of—I always want to ask what is the cost of continuing to not build interregional projects, what's that going to cost us down the road—but we will worry about that later.

I yield back, Mr. Chair.

The CHAIRMAN. Thank you, Senator.

And now, we are going to go to Senator Cassidy.

Senator CASSIDY. Thank you.

Mr. Stanek, I don't expect you to comment on pending litigation, but I understand that the State of Pennsylvania is blocking a transmission line that would go from Maryland through Pennsylvania, despite being approved by everybody else. So let's not—and I only use that to set up that it is real life, but I am going to ask about the theoretical. The federal/state management boards of which you speak and praise and say we need more of—what additional teeth do they need in order to avoid a theoretical situation where somebody may—or Pennsylvania may—approve a project and want to ship it into Maryland and Maryland says no?

Mr. STANEK. Well, the board that I spoke of does not have any legal authority right now. It's a collaboration between the federal and state authorities. But the example that you speak to is a very important Transource transmission line where the Maryland Public Service Commission found a genuine bona fide need to bring power into Maryland and Washington, DC, the nation's capital, because of reliability violations that PJM has determined. Unfortunately, my colleagues north of the border in Harrisburg decided that the line was not needed. That is an example of an interstate line where states have come out on two totally different sides of whether or not the line is needed. And that is a situation where the Federal Government may need to step in.

Senator CASSIDY. So is that the solution? Because earlier, my Chair, Senator Manchin, spoke of judicial review—kind of a shot clock—you have got to finish, you can't go on forever. Are you favoring a solution like that, that would have, okay, circumscribed—we are going to complete the decision-making process by this time—would you be in favor of that?

Mr. STANEK. I think a shot clock is important. Legal due process for the state who is out of favor—it is important to have their review reviewed by the court. But that should not go on ad infinitum, for potentially years at a time. So I think a statute of limitations is necessary.

Senator CASSIDY. Sounds good.

Mr. Smyth, just for the record, I know AEP is attempting to lower their carbon footprint. How much—whatever unit you wish to express—has AEP lowered their carbon footprint by converting coal-fired plants to natural gas?

Mr. SMYTH. Yes, you know, we do have carbon reduction goals, as you mentioned. And you know, what is of first and foremost importance to us is balancing system reliability—

Senator CASSIDY. Got to hurry because I have limited time.

Mr. SMYTH. Sure, sure.

Senator CASSIDY. So how much have you all lowered your CO₂ emission profile relative because of conversion from one type of fuel to the other?

Mr. SMYTH. I don't have a specific number with me today, but I am happy to circle back with you on that.

Senator CASSIDY. Now, in your testimony, you speak about having sensitivities. The more sensitivities you have, the more robust your analysis. But on the other hand, I could also see where you ended up sticking ratepayers—my constituents—with a lot of cost for theoretical things which may occur. It may be that Louisiana needs electricity, although, almost always we don't, but in that nth-degree possibility that we do, we are going to charge you for a potential of an interregional transmission line which principally is being built to benefit other people.

Does that make sense?

Mr. SMYTH. Yes, your question makes sense. We are, you know, again, proponents of ensuring that reasonable benefits are included—known and measurable—more known and measurable benefits are included in those benefit calculations.

Senator CASSIDY. Now, you are also, as I understand, converting to a lot of renewables. In your testimony, you speak of renewable energy. In Mr. Stanek's testimony, one of his references speaks to the fact that it can cost more to have renewable energy, and you imply that it contributes, and we have seen other examples where it has contributed to so-called energy poverty. People are paying so much for their utility bill they don't have money for other essentials because of the increased cost of the renewables. How are you all balancing that in your portfolios? Is this all being driven by mandates? Is it—you know, I am representing people who, again, they don't have enough money to pay any bill. Inflation has been killing them. And inflation in the utility bill—as your testimony, Mr. Stanek, speaks to—is concerning. So how do we balance all these different factors so that the customer still can afford her bills?

Mr. SMYTH. Yes, you know, we go through an integrated resource planning process to determine what generation is most economic for our customers. And so, it is a least reasonable cost generation portfolio that emerges from that process, including in Louisiana, which we are going through that process now.

Senator CASSIDY. But I assume that at some point you accept the higher cost because of legal mandates.

Mr. SMYTH. No, I believe that we move forward with the least reasonable cost portfolio, notwithstanding, you know, any mandates. Of course, if there is a state that has a renewable portfolio standard that we have to meet, you know, of course, we comply with the law.

Senator CASSIDY. Sounds good.

And then, just in my remaining time, Mr. Teply, you speak of the cost of initiating a project that is never completed because of litigation and other things that would either thwart or prolong, even if it is eventually done, and how that cost is passed on to the ratepayer. I presume that is a real cost?

Mr. TEPLY. Thank you for the question. Yes, that is a real cost.

Senator CASSIDY. And one in the margin, in the aggregate, ends up making my patient just—my patient—I'm sorry, I am a doc, so it comes to mind. Methane means something different to a gastroenterologist, but nonetheless.

[Laughter.]

Senator CASSIDY. The point being is that that marginal cost actually is more likely to contribute to the individual's propensity to go into energy poverty than if that cost actually was not there. I mean, it just kind of begs itself.

Mr. TEPLY. In general terms, yes.

Senator CASSIDY. Yes, I yield. Thank you.

Senator CANTWELL [presiding]. Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Mr. Chairman, and the Ranking Member, thank you. Clearly, such an important conversation. Thank you to the panelists for being here. I am glad we are really continuing to work on and are addressing the permitting reform discussion.

You know, I just had a subcommittee hearing here that I chaired and I talked about a perfect example of this. We have an industrial park in southern Nevada. We are trying to build out. We have companies coming there. Unfortunately, in Nevada, over 80 percent of the land is owned by the Federal Government. So for each company that wants to bring infrastructure to that site, they have to get a permit from the Department of the Interior, which takes at least three years. That is each company, including a utility to lay the same right-of-way, the same pipe, the same fiber. They each have to get it.

I mean, we have gotten really out of control here when it comes to permitting. We need to streamline and we need to work together for the very reasons that we are talking about. And in Nevada, we need to work together so that we can continue these clean energy projects. Nevada is the number one solar economy in the country. We have the potential here to really lean into our clean energy and renewables and we can't really slow it down by not having this efficient permitting that is necessary and faster permitting. So I am all about having this conversation and I thank you all for being here.

Mr. Stanek, let me ask you this. In your written testimony, you touched on your experiences with the Joint Federal-State Task Force on Electric Transmission. And stakeholders in my State of

Nevada have spoken to the benefits of this collaboration and coordination and it has really produced efficiencies that we have all been talking about. My question to you is, as the permitting reform conversation continues, can you elaborate on further opportunities to ensure that states maintain a strong position in future transmission siting decisions?

Mr. STANEK. Thank you, Senator, for that question.

The state task force has made a lot of progress, and one of the charter members supporting it was your chairman in Nevada, the PUC there. This has been an issue where the states have historically had exclusive rights to site energy infrastructure projects, particularly electric transmission in their states. There is some concern that there is a potential power-grabber preemption of state authority. So it's a needle that state regulators are very sensitive to thread and be mindful of. I am a former regulator now by about four weeks, but it's an issue that I know they are thoughtful of. They are working with their counterparts at the Federal Energy Regulatory Commission to discuss these issues every couple of months. They just had a meeting last week on transmission technologies.

So it's an active engagement. We all want the same goal—more streamlined, efficient permitting processes of energy infrastructure because, as I stated at the outset, we can't wait anymore. This yellow flashing light is soon going to be a red flashing light.

Senator CORTEZ MASTO. Right.

And while I have you, can you talk a little bit about—elaborate on your scenario-based regional planning framework. What is that? What do you mean by that?

Mr. STANEK. For too long, the transmission and grid operators have been planning just in time for reliability needs to make sure that the lights stay on, which is very important, but planning for a longer-term horizon—let's say 20 years, and looking at various options and scenarios that could occur based on a 100 percent clean energy environment, a 50 percent clean energy environment—is not what the RTOs, ISOs, and transmission authorities have generally done. We have discovered now that that is very important. FERC's current rulemaking is examining that. But looking at different scenarios and trying to pick the one that we most expect to occur on the horizon will allow us to be more efficient with the dollars spent where the projects are actually built.

Senator CORTEZ MASTO. Thank you.

Mr. Smyth, you outlined some near-term steps that industry and policymakers should consider taking to accelerate the pace of new generation transmission. You talked about the three P's. Can you elaborate a little bit more on that and why that is important?

Mr. SMYTH. Yes, you know, and we think it all starts with permitting, and I agree with what Jason just said with respect to modernizing and expanding planning scenarios. We think that is important because of the changes in supply and the changes in demand that are occurring. Weather is changing. We need to include more expansive weather scenarios in this planning process. And you know, in the end, if we have a longer planning process, it will drive more efficient outcomes. Shorter planning processes tend and can result in a piecemeal grid, which, you know, if we are thinking

about long-term investments and thinking about, you know, customer affordability in the long-term, it is important to lengthen that planning timeline.

Senator CORTEZ MASTO. Thank you.

And then, very quickly, Mr. Teply, because you know the West very well. I am from southern Nevada, where temperatures are 114 degrees. What should we be thinking about in this extreme weather that we are seeing in the western states? How can we enhance that transmission planning or better thinking about the weather as it impacts what we need for our transmission needs?

Mr. TEPLY. Unfortunately, Williams is not in the business of building electric transmission, so I am not sure that I can give you a good answer for that.

Senator CORTEZ MASTO. Okay. Thank you.

Thank you, Mr. Chair.

The CHAIRMAN [presiding]. We have some cool temperatures in West Virginia that we could help you with.

[Laughter.]

The CHAIRMAN. We now have Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman. Thank you and the Ranking Member for holding this hearing. I want to follow on my colleague from Nevada, because I, too, believe that we need to, as western states, as we look at new supply coming from many different directions, whether it is renewables, like wind and solar, or small modular reactors or just what might be coming with geothermal or other types of energy—we need to plan. What do you think is the best way for us to plan across the various RTOs? What would you suggest that we undertake here as a discussion point? I do want to follow up on smart grid technology in general because I also think as a part of the country that has very cheap electricity, and seeing it continuing to build over and over again, there are efficiencies in the system that, I think, the continued implementation of both transmission capacity, like we just saw with BPA's decision to build, and the technological implementations of things like middle-mile, where utilities and telcos are working together, are good things.

But what do we need to do to plan across RTOs? What is it that you think needs to happen?

Mr. SMYTH. Yes, I can take a crack at that first. You know, I think integrating the planning processes a bit more is going to be really valuable and helpful, if today there is a commitment to coordinate, but the planning processes in regions are by and large very separate. And so, I think if you truly integrate those processes in each region to account for interregional planning, that will go a long way insofar as, you know, moving needed interregional transmission along.

Senator CANTWELL. And who do you think takes the lead on that?

Mr. SMYTH. I think the RTOs, ISOs, or the grid planning authorities should do that.

Senator CANTWELL. I'm sorry, you are saying inter or intra?

Mr. SMYTH. Yes, inter-regional, yes.

Senator CANTWELL. Okay.

Mr. SMYTH. So that the planning authorities, whether it's, you know, if you are in an area where there is an RTO or a balancing authority.

Senator CANTWELL. But if we are looking at this now as this really big and important opportunity for the United States of America to lead on grid technology, I just think of it almost as an operating system, coming from a software state too, that you realize the operating system can deliver you efficiencies. The grid is at this capacity where it can move power around, and we want it to. Recently, with these big heat waves, you could move electricity around, but you need to have that kind of grid built, which means it needs to be built across an entire system.

So where do you think that discussion lies? Do you think we need somebody to lead that at the federal level?

Mr. SMYTH. Yes, we agree, and I think that would be led at FERC.

Senator CANTWELL. Okay.

Mr. Stanek.

Mr. STANEK. Senator, you raise a good point, because in this country we don't have a national transmission planner. DOE does not plan transmission. FERC does not plan transmission. They do have some oversight authority. So we leave it to the grid operators to work together between regions—interregional communications. And they have done that, but at the same time, they are running their own grids on a daily basis and they have a lot to do. Order No. 1000, which was FERC's attempt to promote competition between regions, has not worked. It has effectively been a failure over the past 12 years. There were some interregional requirements in that order, but they have not come to fruition. So there is some reform that is necessary there. I believe the current FERC Commission is looking at that right now and hopefully they will promulgate some new rules, but it is of critical importance that the regions work more closely together to transfer resources, to transfer technologies, to ensure reliability as well.

Senator CANTWELL. Well, let me be clear, I'm not a huge fan of RTOs in the context of like, yes, we are going to sell more expensive power onto the grid and whoever, you know, is the highest bidder gets to sell their power. I'm not for that because what we want to do is drive down electricity cost. That's what we really want to do. And again, as a state that has benefited from a great history there, but it seems to me your notion of a national transmission planner, if that's, you know, that isn't just at FERC, or maybe, maybe it is at FERC, but we need to have both the scope of what that gets us as we think about transmission capacity, and also the oversight at FERC.

So it seems to me that we are still missing somebody in addition there, whether you think that that is at a White House Executive level or over at DOE. But I don't know if you have a comment on that.

Mr. STANEK. There is one proposal out there coming from FERC determining whether or not we need something called an ITC, an independent transmission coordinator. That is currently under discussion. There are not a lot of details at this point, but there are supporters of the concept saying well, we do need one independent

body, aside from FERC, to look at transmission, ensure that the regions are actually working together to build out transmission in a thoughtful fashion.

Senator CANTWELL. Well, I will just take a nod on this. I would assume everybody agrees that this is a huge opportunity and we need to have more planning and more coordination.

Mr. STANEK. Yes.

Senator CANTWELL. Yes, okay. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate the panel here and just the opportunity for yet another round, a second opportunity, to be talking about permitting and permitting reform. We have made a little bit of headway, but we all know that there is so much more room and we need to get going yesterday.

Mr. Stanek, I appreciate your mentioning of cooperative federalism in your written testimony, this idea that the state and federal agencies have overlapping responsibilities and functions and powers. One of the problems that we face in a state like Alaska, where we are not part of the Lower 48 grid, as you all know, we are our own islanded world up there, but oftentimes, we see the permitting process that contains Alaska-specific requirements for regulatory agencies. This comes under ANILCA, the Alaska National Interest Lands Conservation Act, and they govern how the Transportation Utility Systems (TUSs)—whether it's broadband powers—how they all proceed through the permitting process.

So you have got ANILCA that sets aside lots of areas, huge sections of land for conservation, for parks and wildlife and the like, but it mandates these unique protections for access that all agencies are required to use. And you know, it's not a bad idea. You are trying to balance the conservation here on the one hand with the needs of those in these small and very remote villages that have significantly underdeveloped infrastructure. So given your focus on this, how do you propose permitting reform address some of these state-specific issues where you have federal agencies that are just—maybe they are dragging their feet, maybe it's non-compliance, but what effectively happens is, the projects are stopped or they are made so prohibitively cost-expensive that you just can't move forward. How do we reconcile this? Because it is a big, big issue in my state.

Mr. STANEK. Well, we see that in every state. It is unique—obviously, yours is very different than those in the Lower 48. States obviously want to have the first and last opportunity to review any infrastructure project. They know their local communities best. They know their needs best. At the same time, if the process is open-ended and there is no time limitation, the state commissions or state siting authorities could either run out the clock or indefinitely delay the siting of a project.

Senator MURKOWSKI. Right.

Mr. STANEK. Whether it be for local interest or national interest. We have never seen state backstop authority used in the past 18 years. And hopefully, going forward, if legislation is passed to provide some type of federal backstop, states will understand. There

will be motivation for the states to officially process the permit, whether they approve or deny. But at the same time, it will give the states the respect of their jurisdiction to determine the needs for their citizens.

Senator MURKOWSKI. It is something that I think we talk about and we can make it flow on paper. It's just harder in practical application. I don't know whether this question has already been asked and answered, but you all are professionals in your areas, and have given a great deal of thought to how you could design a better permitting process throughout this country that would allow for the efficiencies and the protections that everyone is looking for. In your perfect plan, what's your number one—what is the number one thing that we could do to put into place, in terms of regulatory policy, that could make a difference when it comes to enhanced permitting for this country?

And since I just picked on you, Mr. Stanek, let's start with you, Mr. Teply, and just go down.

Mr. TEPLY. Thank you for the question.

I think our number one priority—we touched on it today—really is to find, to re-find that balance between state and federal permitting obligations as it relates to natural gas infrastructure, in particular. The Clean Water Act provisions that we talked about in the SPUR Act get us part way there. That becomes a very clear line of demarcation as to who is ultimately responsible for not only the timelines, but the reviews, and ultimately the success of that permitting process. So I think that is Number one for Williams.

Senator MURKOWSKI. I would agree.

Mr. Smyth.

Mr. SMYTH. Yes, number one for us is getting the planning process right, getting the cost allocation right, and then we believe that permitting and siting become a lot easier when you get those first two steps right in the first place.

Senator MURKOWSKI. Yes, when people are not arguing over the cost allocation, that does allow for easier conversation.

Mr. Stanek.

Mr. STANEK. Limiting the timeline for environmental reviews without degrading them. I think it will be very important to get these EIS and environmental assessments issued by FERC and other agencies done quickly.

Senator MURKOWSKI. Okay. See, Mr. Chairman, Mr. Vice Chairman, here, it's really easy. We got three ideas. We just build the bill and we are done.

Thank you.

The CHAIRMAN. I agree.

Senator King.

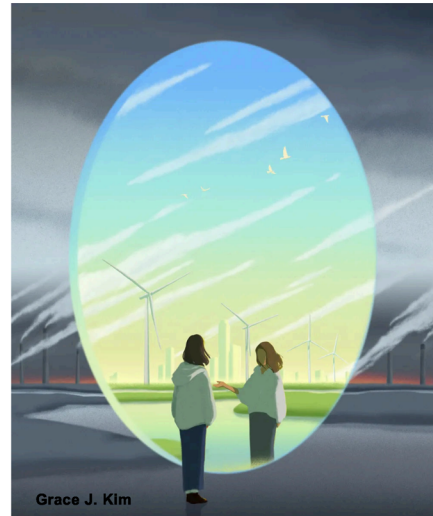
Senator KING. Yes, Mr. Chairman, I think it's important to begin to think about this issue from the point of view of environmental protection. And for years, the orientation of the environmental community is to say "no." And in order to electrify the United States and develop a true green energy future, we are going to have to start saying "yes." And I would submit for the record, Mr. Chairman, the article by Bill McKibben in a recent edition of Mother Jones. The title of the article is "Yes in Our Backyards." Because he chronicles his journey from—he's one of the most outstanding

environmentalists in the country—to the realization that in order to achieve the future we want environmentally, we are going to have to build things, including a lot of new transmission. So I think that's an important context to this hearing. This isn't just about getting rid of environmental regulations because we don't like them. This is trying to streamline a process, not the underlying policy, but the process in order to achieve the kind of future that we all want.

[The article referred to follows:]

ELECTRIFY EVERYTHING
Yes in Our Backyards
*It's time progressives like me learned to
 love the green building boom.*

BILL MCKIBBEN MAY+JUNE 2023
 ISSUE



Grace J. Kim

The United States is on the brink of its most consequential transformation since the New Deal. Read more about what it takes to decarbonize the economy, and what stands in the way, [here](#).

I'm an environmentalist, which means I've got some practice in saying no. It's what we do: John Muir saying no to the destruction of Yosemite helped kick off environmentalism; Rachel Carson said no to DDT; the Sierra Club said no to the damming of the Grand Canyon. We're often quite good at it, and thank heaven; I'll go to my grave satisfied by, if nothing else, having played some part in stopping Big Oil from building the Keystone XL pipeline 1,700 miles across the heart of the continent. Right now I'm deeply engaged with American colleagues in trying to stop our big banks from funding fossil fuel expansion, and rooting on friends in Africa as they battle the giant EACOP pipeline, and watching with admiration as European confreres fight plans to expand coal mines at the expense of forests and villages. In a world where giant corporations, and the governments they too often control, ceaselessly do dangerous and unnecessary things, saying no is a valuable survival skill for civilizations.

But we're at a hinge moment now, when solving our biggest problems—environmental but also social—means we need to say yes to some things: solar panels and wind turbines and factories to make batteries and mines to extract lithium. And

Yes in Our Backyards – Mother Jones

new affordable housing that will make cities denser and more efficient while cutting the ruinous price of housing. And—well, it's a long list. And in every case there are both benefits and costs, all played out in particular places with particular histories. But what interests me is the search for some general principles that might make these disputes easier, at least for people of good will. I'm thinking of people like me: older white people, a class particularly used to working the system, and perhaps psychologically tilted toward keeping things the way they are.

Is there some way to calculate when the balance tips one way or the other? Some way to figure out when we should protest change and when we should just be quiet?

Let me start the search for such a rule by telling two stories about one place. I lived most of my life deep in rural America, and much of it in a red, hardscrabble, and very beautiful pocket of upstate New York, the southeastern Adirondacks. You can get a quick sense of its culture by knowing that it's represented in Congress by Elise Stefanik, though as always, it's more complicated than that.

First story. Three decades ago, in the early 1990s, our county decided it wanted to build a vast new landfill. Even though our tiny town was 30 miles from the city where almost all the waste was generated (Glens Falls, home to big paper mills), county officials chose a site in our remote township of Johnsburg, under the mountain where we lived, knowing we weren't likely to fight back—because we were poor, and few in number, and would probably just decide there was no use. But we did fight back. We organized meetings, held bake sales, had the kindergarten class draw pictures of the mountain. One local musician penned a good lyric:

They make the garbage in the south

And truck it to the north.

The workingman pays the tax

To ship it back and forth.

At the climactic meeting of the regional planning board, the Reverend Daisy Allen, longtime local preacher, rose and told the story of weak and whiny King Ahab, who, on the advice of evil Queen Jezebel, took a vineyard he coveted from a man named Naboth, by having him murdered to acquire the deed. “And he went to take possession,” Daisy said, staring at the planning board. “But God spoke through his prophets and said ‘Where Naboth's blood has been licked by dogs, so will yours be licked.’” And then she sat down. And then we won.

As it turned out, and as we suspected, the landfill was entirely unnecessary; it was a corrupt scheme sold to the county board by consultants who, it turned out, once we'd defeated their grand plan, had also sold a landfill to the county next door, and they were desperately happy to rent some of it to us. Our mountain remained mostly untroubled.

A little more than a decade later, another plan arose. There's a played-out garnet mine in Johnsburg, at the top of a hill on the edge of a vast state wilderness. And the owners of the mine wanted to put up 10 big wind turbines to generate clean power—this was in 2005, and it would have been one of the first big such developments in New York state.

In many ways it was the perfect site: There was already a road up the mountain, it had a big power line, and it was zoned industrial. But the turbines were indeed big—they would have been clearly visible even from deep in that very wild wilderness area. I knew those woods as well as anyone—I'd skied and hiked and paddled there for many years, I knew where the bear and coyote and martens lived. I'd found lost hikers deep in its trackless reaches, and I'd found much of my own love of wild places out there too. It meant as much to me as any place on Earth.

Most local people were okay with the plan—it would have created some jobs, and they were already worried about global warming; I had a neighbor who printed up buttons that just said “In My Backyard.” But the region's biggest environmental group, supported mainly by people who lived at a distance and vacationed here, was opposed, on aesthetic grounds. The sight of those turbines would degrade the wilderness, they thought. They also, of course, came up with a bunch of spurious

Yes in Our Backyards – Mother Jones

arguments—at one hearing their representative argued that in a big storm the turbines might spin right off their support towers and then roll down the mountainside several miles and crash into the school. Which is not how wind turbines work.

It forced me to think more deeply than I had before. All things being equal, I'd just as soon not have to look up at those towers when I scaled some wilderness peak. But all things, I knew, *weren't* equal. Having written the first mainstream book on what we then called the greenhouse effect, I understood that the far deeper threat to this forest was that if we didn't quickly stop burning fossil fuels, then there wouldn't be a real winter to den up the animals; that if it kept warming, the birch and beech and maple that blazed red and yellow and orange in the early autumn would be replaced, at best, by drab hickory and elm. That the challenge to the character of the place I loved came from *not building* these wind turbines.

I wrote a piece for the *New York Times* saying just that, and earned in the process the enmity of some of the region's professional environmentalists (and they won the fight; there are no wind turbines). But it felt as if I'd been true to the place by saying no to one plan, and yes to another. The dump was just a stupid idea; the wind turbines, though they came with drawbacks, were a necessary one.

Electrify Everything

Here are more stories on why we need to, and how we could, electrify everything:

- Yes in Our Backyards. *It's time progressives like me learned to love the green building boom.*
- Think Globally, Build Like Hell Locally. *How can we decarbonize the economy when we can't even build housing?*
- The Little City That Could. *For Chelsea, Massachusetts, a new microgrid means energy resilience.*
- What "Electrify Everything" Actually Looks Like. *Get ready for a US building spree not seen in generations.*

Right now we're at a moment when we need to build in a way we haven't for quite a while, maybe since the days of the New Deal and the Second World War. The consensus among scientists and engineers who study this stuff is that we need to replace about a billion machines in America alone—regular cars with EVs or e-bikes, furnaces with heat pumps. And to run them on clean power, we need to build out lots of solar panels and wind farms and battery arrays. The factories to churn these things out are going up fast, in response to the incentives in the Inflation Reduction Act. But once this stuff has emerged from the factory, it needs to go in someone's basement, someone's kitchen, someone's...backyard. Transmission lines have to cross fields; railroad tracks need to be built through rights of way. Some NIMBY passion will need to be replaced by some YIMBY enthusiasm—or at least some acquiescence.



Grace J. Kim

So how do we decide where to put up a fight, and where to let the future proceed? It's quite possible that situational and instinctual reactions are the best we're going to ever do with such questions. But what follows are a few thoughts in search of a more general principle. And they derive from what I think is the most bottom line of bottom lines for this century: We are in an unprecedented and dire emergency, with the planet's temperature increasing quickly and dangerously; if we can't bring it under control, then it poses an existential risk to poor and vulnerable people around the planet, and then to everyone else—not to mention most of the other species, and all the generations that come after us. This is not some alarmist screed—it's the official policy of virtually every country on Earth, as enunciated in the Paris climate accord, but governments of course apply it haphazardly at best, still subsidizing fossil fuels even as—with instruments like the Inflation Reduction Act—they try to spur new clean energy developments, or with laws like California's SB 9 they try to create denser, more efficient cities.

So there's one general rule you could derive: If something makes climate change worse, then we shouldn't do it. That's the logic that Barack Obama used when he finally rejected the Keystone XL pipeline: "America is now a global leader when it comes to taking serious action to fight climate change. And frankly, approving this project would have undercut that global leadership." It's the rule that Joe Biden ignored this winter, when his administration approved the Willow Project, a massive new oil development in the Alaskan wilderness.

But if that rule helps you decide when to say no, it's a little less effective when figuring out the times to say yes. Here are a few frameworks that have helped me as I've tried to sort this out.

1) We don't live only in our backyard; we also share one.

It's utterly fine to protect your own community, your own neighborhood. If you don't do it, no one else will.

But we don't just live in a community; we also live on a planet where carbon crosses jurisdictional boundaries shortly after we spew it into the air. And so protecting one's backyard from any change has to be balanced against the cost it will impose on the larger whole. Imagine a community considering a new wind turbine or solar farm, or thinking about denser housing along transit corridors. These are the cheapest ways to cut carbon, and if we don't build lots and lots and lots of projects like this, then we won't be able to keep the temperature from climbing dramatically. And that in turn means utterly destroying some other backyard, indeed destroying all our backyards. This is not merely a possibility; it's a certainty, the stuff of daily headlines. For instance, because warm air holds more water than cold, we have bigger rainfalls than we've ever seen before. Last autumn Pakistan saw what may have been the greatest deluge since Noah, and tens of millions of people were affected. Mud houses simply melted away. Maybe you don't want to look at a solar panel, but no one wants to look at the scenes from that hideous flood, or contemplate a similar calamity befalling your own community. So the benefit of the doubt goes to saying yes, especially when you recollect that the damage from runaway global warming isn't confined to some faraway place with poor people you'll never meet. Their plight should be enough to make the moral case—but if it isn't, by this point we know that it's our own places at risk as well. California used to be the world's ideal—the Golden State. Now it's increasingly a cautionary tale, of the wildfires that break out when you don't control the temperature, of “bomb cyclones” that dump a year's worth of rainfall in a month, and of the homeless camps that inevitably arise when the only houses still available are too expensive for most people to afford. And if the fate of California or Florida or Texas doesn't worry you that much—if you think that it's “their fault for living along the Gulf,” rest assured that climate change (not to mention the migration it sets off) will bring upheaval everywhere.

2) We don't live only in our own moment—we're accountable for past behavior.

All of us focus on the present and the future, but sometimes that's a way of avoiding accountability for the past; replacing your gas furnace with an electric heat pump is a wonderful step, but it doesn't magically erase all the carbon that poured out of that furnace over the decades, carbon that produces a very real debt. Every corner of America has poured huge amounts of carbon into the atmosphere, over several generations. The United States, which now makes up 4 percent of the world's population, has put 25 percent of the entire world's CO₂ into the atmosphere, which continues to do damage: The carbon from the tailpipe of my family's Plymouth Fury when I was practicing for my driver's license in the 1980s is up there still.

Some NIMBY passion will need to be replaced by some YIMBY enthusiasm—or at least some acquiescence.

We don't get to pretend that isn't relevant—that we (and especially the affluent “we” of the American suburbs) haven't built up a carbon debt that will be paid by people of future generations, a debt that in fact is being paid right now by the people watching as their homes disappear in forest fires, or the Atlantic floods their streets at every storm. In the same way, we know—or should know—that a big reason some places are leafy suburbs and some places are not is because the government helped “redline” communities nearly a century ago, with effects that are still playing out. (A crazy fact: The neighborhoods that the government graded D back in the 1930s, essentially setting them off limits to investment, are now 5 or 10 degrees hotter than the places that the government graded A.) That's our history—and if we fight to keep affordable housing out of our communities, we deny the reality of that history.

Again, I think, the benefit of any doubt goes squarely to saying yes. But it's important to remember that history cuts both ways, of course: Proposing new developments on, say, land that's all that Native Americans have left of the continent they

Yes in Our Backyards – Mother Jones

once possessed should warrant a much harder look; ditto for Black and Latino communities that have been systematically stuck with everything others don't want. If Indigenous groups don't want a lithium mine on sacred territory in Nevada, that's a reasonable argument; repeating the mistakes of our history at this point is truly unforgivable. And of course all this is complicated by the fact that if we can't make a quick energy transition, then the impact of *that* will be felt most by the poorest; when we think about coastal flooding, we should think less about Miami Beach and more about the low-lying deltas of Asia—the Mekong, the Brahmaputra. They could be wiped out by rising tides, but they lack political power, and hence we don't pay them much attention.

In general, more Americans have been winners than losers from our history, at least in global terms; if we fall into that category, that should temper our defensiveness.

3) Idealism involves realism.

Sometimes figuring this one out is easy, because sometimes idealism is fake. If someone who has never worked on affordable housing suddenly opposes a new development because it's not 100 percent affordable, then that's a tell. And sadly those someones are the most likely to have access to lawyers who know how to make “environmental laws” do things their authors never envisioned. Laws like the National Environmental Policy Act and the California Environmental Quality Act were written in the hope of making America *as a whole* a cleaner place, and a fairer one; that they're too often used to delay the transition to a greener energy system, or to enshrine existing housing patterns, goes beyond irony (see *The Green Movement's Best Weapon Has Become a Problem*.)

But those cynical fights are the easy calls. Often it's a harder call, because we live in a world with deep problems, many of them crosscutting and all of them worthy of attention, and because people of good faith understandably want to take them on. In January, a researcher I admire—Providence College professor Thea Riofrancos—published a trenchant study on the future of renewable energy. Riofrancos, who has done much work in Latin American mining regions, described the havoc that lithium extraction may wreak, and then explained that we'd need a lot less of it if Americans would simply drive smaller cars and take the bus more. “An exclusive focus on greenhouse gas emissions and vehicle efficiency could lead to burden shifting from one impact and particularly affected communities to a different impact affecting different communities,” she and her collaborators write. “This report intends to empower people and policymakers across the country with the arguments, evidence, and proposals they need to advocate for a maximally just transportation future.”

Everything that she describes is correct—car culture is dangerous and inequitable, and anyone who's traveled to Europe is instantly reminded that you can successfully run a continent with small cars and good trains. But remember, Americans start from the point where public transit accounts for only a sixtieth as many vehicle miles traveled as cars and trucks; we could increase its share by 10 times (which we should, and which will not be easy) and we'd still have almost all our travel conducted by private cars and trucks. There are promising signs that e-bikes could help too—plans like Denver's subsidy of e-bike purchases should spread across the nation. But we've built a physical landscape—sprawling suburbs—that is uniquely hard to convert to sane transit quickly.



Grace J. Kim

Riofrancos knows all that, and her report doesn't call for a ban on lithium mining (though it may be used to that end). But the report also doesn't try to calibrate the relative costs of delay—that slowing down lithium mining likely means extending the years we keep on mining coal, that more than 6 million people a year die from the effects of breathing the byproducts of fossil fuel combustion, and that we're dancing on the edge of the sixth great planetary extinction. I had an inspiring conversation with Riofrancos, who argues that we can figure out ways to overcome the identification of masculinity with oversize vehicles, that Gen Z is ready for a new transport paradigm, and so on; it truly is ridiculous that the White House has Joe Biden posing with an electric Hummer. But I also know how hard this is—I think I may have organized the first big demonstration against SUVs in this country more than two decades ago, and there's no campaign I've ever been involved in that's been less successful. So it's a daunting thought that the new Ford F-150 Lightning pickup has to be an adversary instead of an ally as we try to change the emissions profile of the most carbon-intensive population the world has ever known.

Idealists like me, and those who have fought for everything from affordable housing to wild condors, have to figure out for themselves what an acceptable level of realism looks like—not giving up the fight for systemic change, but also not letting lovely goals overwhelm the gritty needs. One way may be to back up a little and think of the slightly longer term. Hence:

4) Emergencies demand urgency.

If you build, say, a solar farm now, it doesn't need to be forever; in a generation, if we've actually started using less energy, or we've actually figured out cheap, safe fusion reactors, then the people who come after us can take it down. But if we

Yes in Our Backyards – Mother Jones

delay, then we won't get to that moment intact—we will break the planet, and those people who come after us will have lost their options (except the option to curse us out). Because climate change is the perfect example of a *timed test*: The Intergovernmental Panel on Climate Change has explained that unless we can cut emissions in half by 2030, even the tepid targets we set at Paris will go by the board.

So the general tactic used by the opponents of projects—delay it until it goes away—is in effect a form of climate denial. Making the perfect the enemy of the good is, in such a case, more like making the perfect the enemy of anything at all. When you're in an emergency, acting at least gives you a chance; not acting guarantees an outcome, and not a good one.

Sometimes this is not just sad but truly despicable: The futurist Alex Steffen coined the term “predatory delay” to describe the ways that some make money off foot-dragging, sometimes masquerading as environmental impact studies. Think of an oil company squeezing a few more years out of its business model. But even its more innocent form is...not always so innocent. If you figure out how to slow down a new housing project for four or five years, then the value of your home may go up, but someone else gets to live that four or five years under a bridge.

Most of these factors (global impact, history, timing) lead one to saying yes to some new projects right now, if they can start to alleviate the very real crisis we face. In the largest sense they're a way to prevent disastrous change. But it's often hard to see the big picture, and on a smaller scale almost all of us have an attachment to the status quo, and a reluctance—an innate and useful conservatism—to seeing things change. We like, for instance, the landscapes we know, and resent intrusion on them. In Vermont, where I live now, the public service commission recently rejected an 8-acre solar farm, solely on “aesthetic” grounds; in the even bluer San Francisco Bay Area, well-intended environmental review laws have been twisted to endlessly delay the housing development desperately needed to keep people from sprawling out into fire-prone mountain towns. If we're going to avert climate catastrophe, that can't be standard practice, and yet that instinct can come from a good place. We've learned to love the world around us, and to value thriving urban neighborhoods; that's been a core hope of environmentalists from the start, be they Aldo Leopold or Jane Jacobs.

If you figure out how to slow down a new housing project for four or five years, then the value of your home may go up, but someone else gets to live that four or five years under a bridge.

But we can use that love to develop a new aesthetic, I think, if we let ourselves be fully open to the moment in which we live. Vermont, for instance, has a lot of cornfields; in the valley where I live now, they're the most common use of open ground. Of course, they themselves were once a dramatic break with the past, when forests covered this land. And if you squint, they take on a different appearance. What is a corn plant, after all, but a solar collector of a different sort? And actually a remarkably inefficient one: You have to dump a lot of nitrogen fertilizer on them to make them grow, which quickly washes into Lake Champlain, causing enormous and expensive algae blooms. And the corn gets fed to dairy cows—but we have more milk than we need, so we have to prop up the price, and the big farms depend on cheap labor from other countries. It's not a great system.

Electrons, by contrast, are a crop we badly need. And a solar array on one of those fields doesn't actually damage the soil; if anything, it helps the soil retain moisture and nutrients. And farmers (who can get a steady price for this new harvest of clean power) are also learning to graze goats in between the panels, or to raise vegetables beneath their shade. Growing the wrong crop is not just a Vermont story. In Iowa, corn capital of the world, nearly 60 percent of the crop currently goes to make ethanol for cars—we're already growing energy, just inefficiently, since you could get the same mileage from EVs by installing solar panels on a small fraction of the acreage.

Yes in Our Backyards – Mother Jones

So maybe we could learn to think a little differently—maybe we could gaze up at wind turbines on the ridge and take pleasure in seeing the breeze made visible. And in seeing ourselves taking responsibility for something we need—energy—instead of pawning the costs off on poorer people somewhere else, or on the people who will come after us. My backyard is somewhat dominated by a moderately ugly steel stalk from which sprout a dozen solar panels; I would be lying if I said it was beautiful, but I’ve retrained my eye to see it as pretty in its own way. (And oddly, other creatures don’t seem to mind it—among other things, it boasts some truly epic wasp nests.) It’s not easy to retrain our eyes, but it’s easier than altering the laws of physics.

None of these considerations infallibly spit out a default answer; every plan and project will be a little different. But all of these factors, I think, should incline us toward supporting—perhaps grudgingly, and against our first impulse—new developments that address present crises and past injustice. To go back to my earlier examples, a new landfill in a poor part of the county would have done nothing much for anyone (except the consultants with the contract to build it), but a new wind turbine, though it came with costs, could justify them. It would have helped the local economy a little, and the world a lot; it would have paid down a substantial carbon debt, and taught us a slightly different way to look at the world.

There have been many times when we’ve needed to say no; progressive values have demanded it, and those values have been in easy congruence with the part of each of us that’s naturally, and properly, conservative, which is to say suspicious of change. Saying no is relatively simple, and sometimes right. But we live in a moment when our future—and the future of everyone and everything—depends on sometimes learning to offer a resounding yes.

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Senator KING. The second suggestion I have is, we ought to have James Madison at this hearing because we are really talking about some very deep issues of federalism and the relationships between the federal and the state. Interestingly, as I have been listening—in both pipelines and transmission—in pipelines we are talking about federal backstop authority on the state's ability to block a project under Section 401. That is a problem you just identified. On the transmission side, we are talking about states' ability to permit transmission, but there needs to be a federal backstop in order to be sure—your term I love, Mr. Stanek—motivation for the states to efficiently process.

Mr. Stanek, do you agree that we have got to find—there has to be some federal backstop, I believe, in both cases, but we can't do it in just one and not the other.

Mr. STANEK. There has to be a middle ground going back to cooperative federalism, where the—

Senator KING. That is a nice term. Madison would have liked that term, I think.

Mr. STANEK. I think he would approve.

And we are moving in that direction. We have had backstop siting authority since EPOA 2005. It has not been used for a number of reasons. Changes have been made in the recent IIJA legislation. But motivation is important, otherwise state agencies, like any other agency, have resource limitations, and these are very expensive, comprehensive reviews that need to be undertaken. Some agencies, like my former agency, only 160 employees—it could take 6 months, 12 months, 18 months or longer to conduct a review. However, if there is a federal law, that would effectively allow this—

Senator KING. A year.

Mr. STANEK. A year. It would depend on the project. If it's a simple solar project, we could get that done in 16 months. If it's offshore wind turbines or interstate transmission lines, it could take longer than a year, but at the same time—

Senator KING. Does the term cooperative federalism, to you, mean there would be a backstop at some point, whether we don't—whether it's a year, 18 months, two years, but there has to be some incentive to the state to do its duty on these projects?

Mr. STANEK. As I stated a moment ago, the motivation needs to be there. So yes, I think a deadline needs to be in place at some point.

Senator KING. Thank you.

Mr. Smyth, I don't want to spend a lot of time on this, but one of the delays now in developing the grid is not permitting reform, necessarily, but interconnection issues. I have talked to developers that are in line forever, not with the PUC or the FERC, but with the ISO. Is that an issue that you see, that something—I don't know whether we need to address it, but that is a bottleneck, is it not?

Mr. SMYTH. Yes, Senator, it is a major bottleneck that you have identified there. So in some regions there are, you know, hundreds of thousands of megawatts queued up seeking to interconnect and we need to move through those processes faster. In addition to that, you know, we would like to see a prioritization of projects in

that queue for load-responsible entities such as ourselves who have an obligation to serve end-use customers.

Senator KING. Thank you.

Mr. Stanek, I am running out of time, but one of the things that bothers me is the incentive toward building as opposed to non-wires alternatives, or reconductoring—that is a wires alternative, but you know what I mean—storage, all the ways that we can minimize the capital cost. It bothers me that the incentive to a utility is to maximize the capital cost because they make a greater return on the invested capital. They don't make a rate of return on a demand-side management program. Talk to me about that.

Mr. STANEK. Obviously, we have a lot of other technologies now, all these grid-enhancing technologies that could often come in as—

Senator KING. Here's one right here (the Senator holds up a small conductor in his right hand). This is a new conductor that will double the volume of power that will be carried. It's more expensive, but it would cut line losses, double the amount, you don't have to build new towers. That's the kind of thing that I am talking about.

Mr. STANEK. And state regulators have been looking at that carbon core fiber technology as well. You could do it at a fraction of the cost of building a green line transmission.

Senator KING. Right.

Mr. STANEK. So you take down the old lines. You put up the new line. At the end of the day, state regulators want to be cost-effective because I could tell you that the only thing customers hate more than their utility bill is not having reliable electricity.

Senator KING. Of course.

But is there—should we be talking about a federal policy that says before you start talking about a major capital investment, you have to show us that you have exhausted your non-wires alternatives?

Mr. STANEK. That has been in the discussion. I know FERC is currently—

Senator KING. Some states have that policy.

Mr. STANEK. States do have that policy. We do review the transmission projects and we want to make sure they are cost-efficient as well as delivering the reliability needs. So there is some oversight at the state level as to the need—do we need this project? And if so, what type of a project? What type of infrastructure? Obviously, the most intrusive is building a new green fill transmission line.

Senator KING. Got it. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Okay.

The first panel discussion will come to an end now. I want to thank you all. It has been very helpful. We have got to do something. We all agree on that, and we are all trying to do something in a bipartisan way, working together, with the concerns we have, but also, the security of our nation's energy.

So with that, I want to thank you all. This first panel will be adjourned.

And the second panel, if they will come forward, we will get started.

The second panel will come to order and we are going to get started again here. And I want to thank you all for being here and sharing with us your expertise, and we are going to start now with our opening statements. We will have Mr. Milito. He is President of the National Ocean Industries Association.

Then, we are going to have Mr. Pete Obermueller, who is President of the Petroleum Association of Wyoming.

And then, we will have Ms. Kelly Speakes-Backman, Executive Vice President—Public Affairs—

Ms. SPEAKES-BACKMAN. Invenergy.

The CHAIRMAN. Invenergy. Invenergy.

Okay, so first we will start with Mr. Milito.

**STATEMENT OF ERIK G. MILITO, PRESIDENT,
NATIONAL OCEAN INDUSTRIES ASSOCIATION**

Mr. MILITO. Thank you. Chairman Manchin, Ranking Member Barrasso, and members of the Committee, thank you for inviting me to testify today. My name is Erik Milito. I am the President of the National Ocean Industries Association, or NOIA. At NOIA, we represent all segments of the offshore energy industry. This includes oil and gas, wind, offshore minerals, and offshore carbon sequestration. Our membership includes energy developers, but also the entire supply chain of companies that make up the offshore energy system. This includes fabricators, vessel service companies, marine construction companies, offshore subsidy engineering companies, and many others. The offshore energy sector is a proven leader in solving energy challenges and delivering diverse sources of energy to the global economy. The offshore industry has unparalleled expertise and experience deploying and scaling technologies at levels necessary to produce foundational energy sources and to achieve decarbonization objectives.

As we move forward and work together to build the energy system of tomorrow, we should focus on securing our oil and gas from low-emission basins, like the Gulf of Mexico, which has among the lowest carbon intensity barrels of the producing regions of the world; promoting a pathway for U.S. leadership in offshore wind; and removing roadblocks to investment in and the build-out of carbon capture and storage projects. One of the most promising opportunities for CO₂ storage in the U.S. can be found in federal waters, particularly in the Gulf of Mexico. However, government policy out of Washington plays a central role in the ability of our industry to make the investments and build the projects to sustain the American economy. We appreciate the continued efforts of the Chairman, Ranking Member, and members of the Committee to work together and develop solutions to streamline the pathway for investment in U.S. energy and infrastructure projects, whether it's oil and gas, wind, or carbon storage, companies need certainty and predictability in leasing, permitting, and regulation in order to commit the funding and resources to projects that often cost billions of dollars to construct.

Congress has a central role in helping to overcome the obstacles that often arise in a regulatory process and oftentimes in litigation

for energy projects. For the foreseeable future, our economy will depend upon affordable and reliable supplies of oil and gas. The U.S. Gulf of Mexico oil and gas sector supports more than 350,000 good-paying jobs located throughout the country, and it produces among the lowest carbon intensity barrels in the world. For our energy security and national security, the Gulf of Mexico should be a no-brainer as a preferred choice for securing our oil and gas supplies. Unfortunately, in June 2021, the Administration implemented a pause in offshore oil and gas leasing that was contrary to law and served to block investment in U.S. energy projects. To compound things, the Administration allowed the leasing program for offshore oil and gas to expire at the end of June 2022, putting in place the first-ever gap in offshore leasing programs, further jeopardizing the long-term prospects for U.S. energy production.

More recently, just five days ago, on Friday, July 21, the Administration entered into a settlement agreement with opponents of U.S. energy production that will remove ten million-plus highly prospective acres from the forthcoming offshore lease sale in the Gulf of Mexico. This is an apparent end-around of the requirements of the Inflation Reduction Act, and it completely circumvents the established regulatory process for governing the issues that were raised in litigation. Congressional efforts should be considered to restrict these types of sue-and-settle, or regulation-by-litigation tactics that bypass Congress and the public process and jeopardize U.S. energy production. Also, under the Inflation Reduction Act, periodic offshore oil and gas lease sales are now required in order for Interior to issue offshore wind leases. Many of the same companies that built the offshore oil and gas sector are now participating in the build-out of the offshore wind sector. A steady stream of offshore oil and gas and offshore wind lease sales is needed for the supply chain to fully realize these incredible opportunities before us. We encourage this Committee to consider legislation that will serve to preserve the future of offshore leasing for both oil and gas and wind.

The good news is that the members of this Committee have introduced and supported legislative proposals to help overcome the administrative roadblocks to energy investment. The Offshore Energy Security Act of 2023, the Building American Energy Security Act of 2023, and the SPUR Permitting of Underdeveloped Resources Act, are all examples of smart legislation that could help knock down barriers to investment. Whether it is in West Virginia, Wyoming, or the Gulf of Mexico, our future energy security depends upon a reasonable, workable, and streamlined federal regulatory framework for all forms of energy.

Thank you for the opportunity to testify. I look forward to your questions.

[The prepared statement of Mr. Milito follows:]



**TESTIMONY OF ERIK MILITO
PRESIDENT, NATIONAL OCEAN INDUSTRIES ASSOCIATION
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
“HEARING TO EXAMINE OPPORTUNITIES FOR CONGRESS TO REFORM THE
PROCESS FOR PERMITTING ELECTRIC TRANSMISSION LINES, PIPELINES, AND
ENERGY PRODUCTION ON FEDERAL LANDS”
JULY 26, 2023**

Chairman Manchin, Ranking Member Barrasso, and members of the committee, thank you for inviting me to testify today. My name is Erik Milito, and I am President of the National Ocean Industries Association, or NOIA. For more than 50 years, the National Ocean Industries Association (“NOIA”) has represented the interests of all segments of the offshore energy industry, including offshore oil and gas, offshore wind, offshore minerals, and offshore carbon sequestration. Our membership includes energy project leaseholders and developers and the entire supply chain of companies that make up an innovative energy system contributing to the safe and responsible exploration, development, and production of energy for the American people.

The offshore energy sector is a proven leader in solving energy challenges and delivering diverse sources of energy to the global economy. The offshore industry brings together the companies that produce foundational energy sources such as oil and gas, while leading innovation and investment in energy sources and technologies that will drive decarbonization efforts well into the future. The offshore energy sector has unparalleled expertise and experience deploying and scaling technologies at levels necessary to achieve decarbonization objectives. Companies throughout the offshore industry continue to lead the way in innovating low emission solutions that include offshore wind, carbon capture and storage, hydrogen, and geothermal, among others.

However, government policy out of Washington plays a central role in the ability of our industry to make the investments and build the projects for supplying the energy Americans rely upon to maintain a high quality of life. The federal bureaucracy makes it challenging to build things in the U.S. Companies must maneuver a web of federal agencies, statutes, and regulations every step of the way towards attempting to complete a project. Companies need certainty and predictability in the regulatory system in order to commit the funding and resources to projects that often cost billions of dollars to construct. Some progress has been made through the passage of recent legislation such as the Infrastructure Investment and Jobs Act and the more recent debt ceiling bill, but further efforts at permitting reform are required to inject greater certainty into the federal process. Whether it is in West Virginia, Wyoming, or the U.S. Gulf of Mexico, our future energy security depends upon a reasonable, workable, and streamlined federal regulatory framework for all forms of energy.

For the foreseeable future, the offshore industry will play an integral role in shaping an energy system that promotes the production of affordable and reliable energy while continuing to

reduce environmental impacts, including emissions. Importantly, for the coming decades, oil and gas supplies will remain a vital energy source for Americans and our allies around the globe, while we simultaneously integrate and add low carbon sources into the mix.

A system of reliable, abundant, and affordable energy is essential for meeting basic societal needs, including healthy living conditions, health care, education, and mobility, economic or otherwise. Oil and gas fill the fuel tanks of passenger vehicles and airplanes. They are transformed into the essential building blocks of smartphones, clothing, and medical equipment. They are in so many products we use every day that they underpin the conveniences of modern life.

Natural gas is recognized as a key energy source for providing electricity, heating, cooling, and clean cooking. More than 750 million people around the globe do not have access to electricity, which leaves entire communities at a severe and fundamental disadvantage. According to the World Health Organization (WHO), “Access to energy is critical when it comes to the functionality of health-care facilities and the quality, accessibility and reliability of health services delivered. Electricity is necessary for the operation of critically needed medical devices such as vaccine refrigeration, surgical emergency, laboratory and diagnostic equipment, as well as for the operation of basic amenities such as lighting, cooling, ventilation and communications.”¹

Globally, 2.6 billion people do not have the means for clean cooking and must use solid fuels such as wood, crop wastes, charcoal, and dung in open fires and inefficient stoves. The WHO attributes 3.8 million premature deaths each year to indoor air pollution caused by the fumes and soot generated by inefficient and dirty cooking.

The tragic impacts of energy insecurity are not only experienced abroad; 44 percent of low-income American households experience energy insecurity, spending 10 percent to 20 percent of their income on energy expenses². Energy insecurity has adverse consequences on both physical and mental health. Millions of Americans are faced with the “heat or eat” dilemma, regularly having to choose between paying utility bills and paying for food³.

Energy production in the U.S. Gulf of Mexico demonstrates that it is possible to develop offshore resources while adhering to the highest safety and environmental standards. A multitude of companies involved in offshore energy development are working collaboratively to shrink an already small carbon footprint. From electrifying operations to deploying innovative solutions that reduce the size, weight, and part count of offshore infrastructure – thus increasing safety and decreasing emissions – the U.S. Gulf of Mexico hosts a high-tech revolution.

Currently, global oil consumption is approximately 100 million barrels per day. Various scenarios forecast global oil consumption volumes through 2050 and beyond, and nearly all of them predict substantial oil production will be necessary through at least 2050. The facts, data,

¹ <https://www.who.int/activities/accelerating-access-to-electricity-in-health-care-facilities>

² <http://large.stanford.edu/courses/2020/ph240/radzyminski2/>

³ S. Jessel, S. Sawyer, and D. Hernández, “Energy, Poverty, and Health in Climate Change: A Comprehensive Review of an Emerging Literature,” *Front. Public Health* 7, 357 (2019).

and our experience make clear that we should focus on the U.S. offshore region, and the Gulf of Mexico in particular, for securing those vital resources.

Oil produced from the U.S. Gulf of Mexico has a carbon intensity about one-half that of other producing regions.⁴ The technologies used in deepwater production – which represents 92 percent of the oil produced in the U.S. Gulf of Mexico – place this region among the lowest carbon intensity oil-producing regions in the world⁵. A recent study by ICF International, and commissioned by NOIA, found that that U.S. Gulf of Mexico has a carbon intensity 46% lower than the global average outside of the U.S. and Canada, outperforming other nations like Russia, China, Brazil, Iran, Iraq, and Nigeria⁶.

Emissions reduction is a global challenge. As analysts at Wood Mackenzie explain, “Removing or handicapping a low emitter [i.e., the U.S. offshore sector] hurts the collective global average.”⁷ Removing a proven, stable supplier such as the U.S. Gulf of Mexico would be a poor choice with devastating consequences. The better choice is to institute government policies that promote cleaner and safer domestic production, less reliance on higher-emitting foreign suppliers like Russia and China, and the preservation of hundreds of thousands of American jobs.

Efforts to restrict U.S. energy development could eventually lead to Americans of every walk of life having to contend with the issues Europe has been experiencing as a result of disrupted supply from Russia, including potential industrial curtailment and families having to make difficult choices between heat and food. Our energy reality makes it clear that U.S. energy policy should support U.S. energy production of all types, including offshore oil and gas and wind. Government policies play a substantial role in the ability to develop energy in the U.S., whether onshore or offshore, and whether the energy source is oil and gas, wind, hydrogen, or another resource. Obstructive government policies inevitably lead to adverse consequences for our energy security, national security, economic security, and decarbonization efforts.

Oil and natural gas touch every part of our daily lives. Fundamentally, “Everything that is fabricated, grown, operated or moved is made possible by hydrocarbons.”⁸ The U.S. Department of Energy states:

Oil and natural gas play an essential role in powering America’s vibrant economy and fueling a remarkable quality of life in the United States. Together, oil and natural gas provide more than two-thirds of the energy Americans consume daily, and we will continue to rely on them in the future. In addition to meeting our energy needs, oil and natural gas are integral to our standard of living in ways that are often not apparent. Several key advances in technology enabled a dramatic increase in domestic oil and natural gas production over the past 20 years. This increased production provides energy security and economic benefits to the entire country,

⁴ Motiwala, and Ismail, “Statistical Study of Carbon Intensities in the GOM and PB,” ChemRxiv, April 13, 2020.

⁵ <https://www.woodmac.com/news/the-challenge-of-negative-emissions/>

⁶ <https://www.noia.org/new-report-u-s-gulf-of-mexico-oil-gas-production-leads-with-lower-emissions-including-methane/>

⁷ <https://www.woodmac.com/news/opinion/could-restricting-oil-production-in-the-us-gulf-of-mexico-lead-to-carbon-leakage/>

⁸ Mark Mills, Wall Street Journal, January 8, 2019

and ongoing technology advances will help us to enjoy those benefits into the future.

Oil and natural gas are used in many ways that are familiar to consumers. Petroleum products power transportation, providing fuel for cars, trucks, marine vessels, locomotives, and airplanes. Natural gas generates more than one-third of the electricity needed for dependable heating, air conditioning, lighting, industrial production, refrigeration, and other essential services, and tens of millions of Americans rely on oil and natural gas to heat their homes directly and on clean burning natural gas to cook their food. But petroleum products do so much more than fuel our cars and power our homes and businesses.

While perhaps less recognized, oil and natural gas also play critical roles in supplying essential products and materials, increasing agricultural productivity, and supporting the expansion of new energy sources.

Oil, natural gas, and natural gas liquids are building blocks for a range of modern materials used to produce life-changing prosthetics, energy-efficient homes, safer cars that go farther on a gallon of gasoline, and hundreds more consumer products that Americans use every day. Plastics and chemicals derived from oil and natural gas make our food safer, our clothing more comfortable, our homes easier to care for, and our daily lives more convenient.

Natural gas is also a key ingredient for chemical fertilizers, helping increase crop production and yield per acre planted, and powering many important operations on the farm like crop drying.⁹

According to the United Nations, access to affordable, reliable, and sustainable energy is critical to achieving many international development goals, specifically, the eradication of poverty through continued improvements in education, health, and access to water.¹⁰ Oil and natural gas play a central role in eliminating poverty and raising the standard of living for millions by serving as a key form of abundant and affordable energy.

The cost of energy is fundamentally driven by supply and demand and, recently, global markets have been disrupted by a supply crunch in both the oil and natural gas markets. The energy paradigm has shifted over the past decade, with the United States rising to a position of energy power and emerging as the leading producer of both oil and natural gas in the world.

Vice Chairman of IHS Markit Daniel Yergin explains how things have changed:

According to the old script, United States oil production was too marginal to affect world oil prices. But the gap today between demand and available supply on the world market is narrow. The additional oil Saudi Arabia is putting into the market will help replace Iranian exports as they are increasingly squeezed out of the market by sanctions.... But if

⁹ U.S. OIL AND NATURAL GAS: *Providing Energy Security and Supporting Our Quality of Life*, U.S. Department of Energy, September 2020, p. 4.

¹⁰ <https://unstats.un.org/sdgs/report/2016/goal-07/>

America's increase . . . [in oil production] . . . had not occurred, then the world oil market would be even tighter. We would be looking at much higher prices – and voters would be even angrier.¹¹

Mr. Yergin made this point in 2012 at the outset of the shale revolution, but the significance of U.S. production for global energy markets is as important as ever today. In fact, Mr. Yergin reiterated this very point in February 2022 in the aptly title op-ed in the *Wall Street Journal*, “America Takes Pole Position on Oil and Gas.”

Analysts recognize that the downturn in the oil and natural gas industry from 2014-2020, combined with ill-conceived policies and investment approaches, led to significant underinvestment in oil and natural gas exploration and infrastructure. According to Simon Flower, Chairman, Chief Analyst at Wood Mackenzie and author of a weekly column called *The Edge*, in 2021, “Underinvestment in oil supply will lead to a tight oil market later this decade. It’s a narrative that’s gained increasing traction as capital expenditure on upstream oil and gas has shrunk. Spend in 2021 is half the peak of 2014 after slumping to new depths in [2021’s] crisis.”¹²

Mr. Flowers poses the question, “How much *new* oil supply does the world need?” His answer is, “A lot - we reckon about 20 million b/d from 2022 to 2030.” According to Flowers, “This is the ‘supply gap’, the difference between our estimate of demand in 2030 and the volumes we forecast existing fields already onstream or under development can deliver.”¹³ If his numbers are correct, a huge amount of new oil is needed to close the expected gap between the supply and demand and help bring stability and affordability to oil and petroleum product prices.

Rystad Energy echoes the concern about the supply gap and the huge amount of investment needed to close it. According to Rystad, more exploration for oil and gas is needed to supply the volumes needed worldwide by 2050.¹⁴ In fact, it will take massive investment just to keep pace with growing demand. Rystad suggests capital expenditures of at least \$3 trillion will be required to replenish declining production from currently producing assets around the world to meet expected global demand in 2050.

We are fortunate in the United States that our Gulf of Mexico region is up to the task of delivering the oil and gas the economy needs. Production numbers from the U.S. Gulf of Mexico place it in the company of some of the largest oil producing countries. If the Gulf of Mexico were its own country, it would be one of the top eleven oil producing countries:

¹¹ Daniel Yergin, “America’s New Energy Reality,” *The New York Times*, June 9, 2012

¹² <https://www.woodmac.com/news/the-edge/is-the-world-sleepwalking-into-an-oil-supply-crunch/>

¹³ <https://www.woodmac.com/news/the-edge/is-the-world-sleepwalking-into-an-oil-supply-crunch/>

¹⁴ <https://www.offshore-mag.com/drilling-completion/article/14188804/exploration-overdrive-urgently-required-rystad-energy-report-claims>



Source: U.S. Energy Information Administration.

Offshore energy is truly a story of accomplishing more with less – creating more energy with less environmental impact. Offshore production platforms are incredible edifices of continuously evolving technology that allow enormous amounts of energy to be produced through a relatively small footprint. Incredibly, 18 deepwater facilities, which equate to about the size of only nine city blocks, produce about the same amount of oil as the entire state of North Dakota.¹⁵

In short, the U.S. and world depend upon reliable supplies of oil and natural gas for a high quality of life and to lift people out of poverty, and U.S. offshore production should be the basin of choice for producing that energy because of demonstrably lower GHG emissions and environmental impacts for an energy source we will continue to need for years to come.

In the report titled “How the Gulf of Mexico can further the energy transition,” McKinsey describes four key factors that give the deepwater Gulf of Mexico a “low carbon advantage”:

First, in contrast to other regions where flaring natural gas without a market is more commonplace, most of the natural gas produced in the Gulf of Mexico is sold to local markets, which results in minimal routine flaring and, consequently, less GHG emissions.

¹⁵Director Scott Angelle, BSEE Director, BSEE Presentation to the Deepwater Technical Symposium, November 13, 2020.

Second, the facilities have efficient, modern designs that minimize methane leakage. Third, wells and production facilities have a high throughput, minimizing the number of energy-intensive processes required to bring on new supply, such as drilling. And fourth, operators have made active decarbonization efforts to stay in line with environmental sustainability goals and in compliance with regulations.¹⁶

McKinsey estimates production from the U.S. Gulf of Mexico could decrease by about 800,000 barrels per day by 2040 without additional projects beyond those that have already been sanctioned. In that situation, McKinsey expects lost production would be made up by substitutions from other parts of the world without much oil demand destruction. Our country would be able to import sufficient oil, but it would come from higher-emitting basins, resulting in an increase in greenhouse gas emissions globally:

This supply reduction would have to be offset by alternative sources to meet global demand, which could hinder net-zero goals significantly. Because many other oil producing regions globally have total unit costs similar to those in the Gulf of Mexico, global oil price increases or substitution with other energy sources wouldn't be expected, and global demand for oil would remain unchanged. Instead, the reduced Gulf supply would be offset by production increases from other sources, such as other deepwater basins, shale, and OPEC. Based on the higher emissions per barrel of this new supply, global emissions would increase by 50 million to 100 million metric tons of CO₂e through 2040.¹⁷

The offshore energy sector is also playing a central role in the build-out of vast amounts of wind power generation capacity. As a leading advocate for offshore wind, NOIA continues to promote policies to enable the build-out of new offshore wind resources in federal waters. That support extends to efforts to pursue offshore wind leasing and development on the Outer Continental Shelf ("OCS") in the Gulf of Mexico and along the Atlantic and Pacific coasts. Offshore wind projects are vital to the economic growth of this country and efforts to meet climate goals for the 21st century and beyond. According to a recent report by the American Clean Power Association, expanded offshore wind development could spark \$120 billion¹⁸ in investments.

NOIA and several other allied organizations commissioned a study that examined the net economic benefits of future offshore wind opportunities. That study by Wood Mackenzie found that by leasing areas in places like offshore New York, New Jersey, the Carolinas, the Northeast, and California, offshore wind development could support 80,000 jobs per year through 2035, in addition to bringing in billions of dollars to the Treasury in the form revenue generated from new lease sales.¹⁹

¹⁶ Brown, Di Fiori, Smith, and Yanosek, "Deepwater Gulf of Mexico's role during the energy transition," McKinsey, September 2022, at pages 3-4.

¹⁷ Brown, Di Fiori, Smith, and Yanosek, "Deepwater Gulf of Mexico's role during the energy transition," McKinsey, September 2022, at page 6.

¹⁸ See American Clean Power Association, et al., *Federal Revenue and Economic Impacts from BOEM Offshore Wind Leasing* (December 2021), <https://cleanpower.org/resources/federal-revenue-and-economic-impacts-from-boem-offshore-wind-leasing/>.

¹⁹ https://www.noia.org/noia-reports/#flipbook-df_217504/7/

Clearly, offshore wind development in federally managed waters offers enormous economic and environmental benefits and will help meet renewable energy goals. The Administration has set a goal of 30 GW of offshore wind power by the year 2030. The Administration continues to take important steps to accomplish that objective, including scheduling of lease sales, processing and approving construction and operations plans, and modernization the regulatory framework. However, improvements are still needed to reduce timelines and protect against excessive litigation.

From a regulatory standpoint, federal government policy must serve to eliminate potential roadblocks to investment in energy projects, including offshore wind. The recent debt ceiling agreement included important changes that will hopefully help streamline the permitting process. The National Environmental Policy Act (NEPA) is a bedrock law for guiding the federal decision making process with due consideration of the potential environmental impacts. However, as with any rule or regulation, it is important that we take the time to review and improve rules and regulations as necessary to promote efficiency and effectiveness in regulation. The inclusion of various provisions in the debt ceiling agreement to enhance NEPA was a positive step toward streamlining the permitting process. We remain hopeful that Congress will continue to work together to refine and improve all aspects of permitting.

We remain concerned about potential delays for the leasing and permitting of projects by the Administration. As the Administration reviews and reworks regulations and energy programs, it will be important to ensure changes to the regulatory framework are done in a way that promotes U.S. energy development of all types. Environmental stewardship and energy progress are not mutually exclusive; members of NOIA have consistently been leaders in both arenas. Promulgating rules that balance the need for energy development with effective environmental stewardship will provide the certainty to attract and secure the massive investment commitments required for offshore energy projects.

The implementation of NEPA by federal agencies will ultimately determine the timeline and pathway for many U.S. energy projects. Timely and transparent NEPA processes are of significant importance to project developers, investors, employees, and contractors whose jobs and livelihoods are tied to projects subject to NEPA reviews. Preconstruction delays for projects typically add costs and delay the delivery of the benefits that projects can bring. Delays and associated cost increases can even result in projects being canceled altogether. In today's globalized economy, where there is a high level of competition for the world's investment, increasing uncertainty and delays in the federal permitting process can serve to drive investments elsewhere.

Lack of clarity in the NEPA process not only impacts the time it takes a federal agency to act, but also increases litigation risk. Because of its broad applicability across sectors and agencies, NEPA is often at the center of project opponents' litigation strategy in seeking to delay and block energy and infrastructure projects. In response to the threat of litigation, agencies prepare NEPA analyses in defense of potential litigation, attempting to anticipate every possible objection that could be raised in court, however insignificant and however detached from the intent of NEPA. The result is that over time NEPA has become less about informing agencies

and the public of environmental impacts of significance, and more about agencies attempting to avoid lengthy and costly litigation. Several NEPA-related legal challenges have already been filed over the approvals of the construction and operation plans for the early-mover offshore wind projects. Congress should continue to consider permitting legislation to streamline the NEPA process and reduce investment and litigation uncertainty. From a policy standpoint, it will also be critical for the U.S. Treasury Department to implement the available tax credits for renewable and CCS projects with flexibility so that the credits can be fully realized.

In order to fully unleash American energy potential, federal policy must promote consistency and predictability in leasing, permitting, and regulation. In an unprecedented fashion, the Administration has paused and delayed offshore oil and gas leasing and has failed to timely develop a new leasing program for U.S. federal waters, putting into jeopardy U.S. energy production, major capital investments, and thousands of jobs.

Since its inception, offshore oil and gas production has created hundreds of thousands of jobs and generated billions in royalties for the U.S. Treasury, boosting our nation's energy independence and national security – all while yielding approximately half of the carbon intensity per barrel of other producers worldwide. The offshore industry has worked with the federal government and conservation partners, such as the Coastal Conservation Association (CCA), to collaborate on innovative efforts like the Rigs- to-Reef program, which repurposes obsolete platforms into habitats for marine life and further helps create a national recreational fishing economy. Additionally, legislation and programs like the Great American Outdoors Act, the Gulf of Mexico Energy Security Act (GOMESA), and the Land and Water Conservation Fund ensure that billions of more dollars from federal offshore oil and gas leasing is dedicated to long-term coastal conservation and restoration, environmental protection, and urban recreation efforts. Without continued reliable leasing this funding is at risk.

Also, under the Inflation Reduction Act, periodic oil and gas lease sales in the Gulf of Mexico are now required in order for the Department of the Interior to issue offshore wind leases. Many of the same companies that built the offshore oil and gas sector in the Gulf of Mexico are now participating in the build-out of the offshore wind sector in the Atlantic. This includes many service and supply companies along the Gulf Coast and beyond, who have expertise in marine construction, fabrication, subsea engineering and design, and offshore vessel services. A steady stream of offshore oil and gas and offshore wind lease sales is needed for the supply chain to fully realize these incredible opportunities before us. We encourage this committee to consider legislation that will serve to preserve the future of offshore leasing for both offshore oil and gas and offshore wind. This would necessarily include mandates for biannual oil and gas lease sales in the Gulf of Mexico, periodic lease sales in Alaska, and a robust schedule of offshore wind leases with ample acreage in the Atlantic, Pacific, and Gulf of Mexico. “The Offshore Energy Security Act of 2023,” recently introduced by Senator Cassidy, is one vehicle that should be considered as Congress moves forward to address federal permitting. We are also supportive of the “Reinvesting in Shoreline Economies & Ecosystems (RISEE) Act”, cosponsored by Senators Cassidy and Whitehouse, and would lift the revenue sharing caps under GOMESA and create a new dedicated stream of funding from future offshore wind development for coastal protection and resiliency. The “Energy Independence and Security Act” and the “Spur Permitting of Underdeveloped Resources Act” are likewise examples of legislation

that has been introduced to help address gaps, delays, and uncertainty in the permitting of energy projects. As it relates specifically to the statutory provisions for offshore wind, Congress can seek to instill greater certainty and predictability into the regulatory system through revisions to the Outer Continental Shelf Lands Act related to leasing, permitting, and litigation.

Progress towards addressing the climate challenge will further depend upon the advancement of principles of innovation, conservation, efficiency, resiliency, mitigation, and adaptation. Carbon capture and storage (CCS) is an innovative approach to mitigating greenhouse gas emissions and it will be critical for achieving the climate change ambitions and goals that have been established by diverse stakeholders around the world. U.S. leadership in CCS will help ensure the availability of abundant, reliable, and affordable domestic energy, while continuously driving down emissions.

According to the International Energy Agency:

Carbon capture, utilisation and storage (CCUS) technologies offer an important opportunity to achieve deep carbon dioxide (CO₂) emissions reductions in key industrial processes and in the use of fossil fuels in the power sector. CCUS can also enable new clean energy pathways, including low-carbon hydrogen production, while providing a foundation for many carbon dioxide removal (CDR) technologies.²⁰

As it relates specifically to the offshore, the National Petroleum Council concluded that “One of the largest opportunities for saline formation storage in the United States can be found in federal waters, particularly in the Gulf of Mexico.” *Meeting the Dual Challenge*, p. 27. This is also true as it pertains to state waters along the Gulf Coast. The U.S. Gulf of Mexico offshore region provides tremendous advantages for an emerging U.S. CCS sector. The Gulf of Mexico is characterized by vast geologic prospects for CO₂ storage, extensive and established energy infrastructure along the Gulf Coast and throughout the outer continental shelf, a proximity to industrial centers for capturing emissions, and an assessable engineering and energy knowledge base and workforce, along with associated RD&D capabilities. The U.S. Gulf of Mexico could very well soon be the leader in CCS. Early projections show that 50 million tons of CO₂ annually could be stored beneath the Gulf of Mexico by 2030, more than all the CCS currently operating globally. The Gulf’s storage capacity could double by 2040.

The build-out of the U.S. offshore carbon storage industry will depend upon certainty and predictability in the U.S. laws and regulations. The Infrastructure Investment and Jobs Act of 2021 (P.L. 117-58) included Sec. 40307, explicitly authorizing the Department of the Interior to grant leases, easements, or rights-of-way on the outer continental shelf for the purposes of long-term storage of CO₂. It also directed the Secretary to issue regulations to that effect within one year of enactment, or by November 2022. NOIA understands that Interior is in the process of developing the regulatory framework for offshore CO₂ sequestration as directed by the Infrastructure Investment and Jobs Act. However, a protracted timeline for finalization of the rules and for the initiation of leasing and project development could substantially impede U.S. efforts to decarbonize through offshore CCS. It will also be important for Congress to ensure adequate funding for Interior to fulfill its responsibilities for developing regulation, leasing and

²⁰<https://www.iea.org/reports/the-role-of-co2-storage>

regulating the activity. Finally, the U.S. Department of Treasury must implement the 45Q tax credit with sufficient flexibility to ensure a viable and durable U.S. offshore CCS program.

It is also important to note that EPA's proposed power plant rule presumably would seek emissions reductions through the installation of carbon capture technologies at facilities and through the associated storage of the emissions in underground geologic formations. However, from a practical standpoint, for such a rule to be implemented, there will need to be a substantial increase in the capacity to store carbon dioxide in underground storage reservoirs and in the offshore region in particular. The federal government, and the U.S. Department of the Interior more specifically, will need to move forward with greater speed to develop regulations and leasing opportunities for offshore sequestration for the rule to be workable and to accommodate the potential storage of carbon dioxide to be captured under EPA's proposal.

The U.S. economy relies upon affordable and reliable supplies of all forms of energy, including continued supplies of oil and natural gas. Continued U.S. offshore oil and gas development provides vast benefits and a sensible pathway for energy security for the next few decades. At the same time, the U.S. offshore sector is contributing to the development of low and zero carbon energy options, including offshore wind, hydrogen, and carbon removal technologies. The pathway toward investment in American energy projects must be streamlined so that we can truly harness the energy and innovation potential that lies before us in all of these activities. Thank you for the opportunity to testify on behalf of the offshore energy industry. NOIA and our members stand ready to work with the committee and all policy makers to ensure that Americans can rely upon an affordable and reliable energy system built upon strong pillars of energy, economic, national, and environmental security.

Very respectfully,



Erik Milito
President, National Ocean Industries Association

The CHAIRMAN. Now, Senator Barrasso.

Senator BARRASSO. Well, thank you, Mr. Chairman. And I would like to welcome to the Committee today Mr. Peter Obermueller, who is one of our witnesses at today's hearing. We have known each other a long time. His father is in the Wyoming Legislature. He represents my home community.

Pete, thanks for traveling here from Casper. We were on the same flight yesterday. You were sitting next to Senator Risch, who wanted to stay here and listen, and unfortunately, had another engagement in the Foreign Relations Committee. We appreciate you being with us at the nation's capitol. You are a Wyoming native, attended Natrona County High School in Casper, went on to graduate from Concordia University in St. Paul and then received a Master's Degree in Public Policy from the University of Minnesota.

Since 2019, Pete has served as the President of the Petroleum Association of Wyoming. For years, he served previously here on Capitol Hill as a legislative director to now-Senator Lummis, when she was in the House of Representatives, and prior to that he served as a staff member for Wyoming's Representative Barbara Cubin. Pete is an expert on issues facing oil and gas operators on federal land in the West. We are so grateful for the opportunity to hear from you today. Thanks so much for joining us. I look forward to your testimony.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Obermueller.

**STATEMENT OF PETE OBERMUELLER, PRESIDENT,
PETROLEUM ASSOCIATION OF WYOMING**

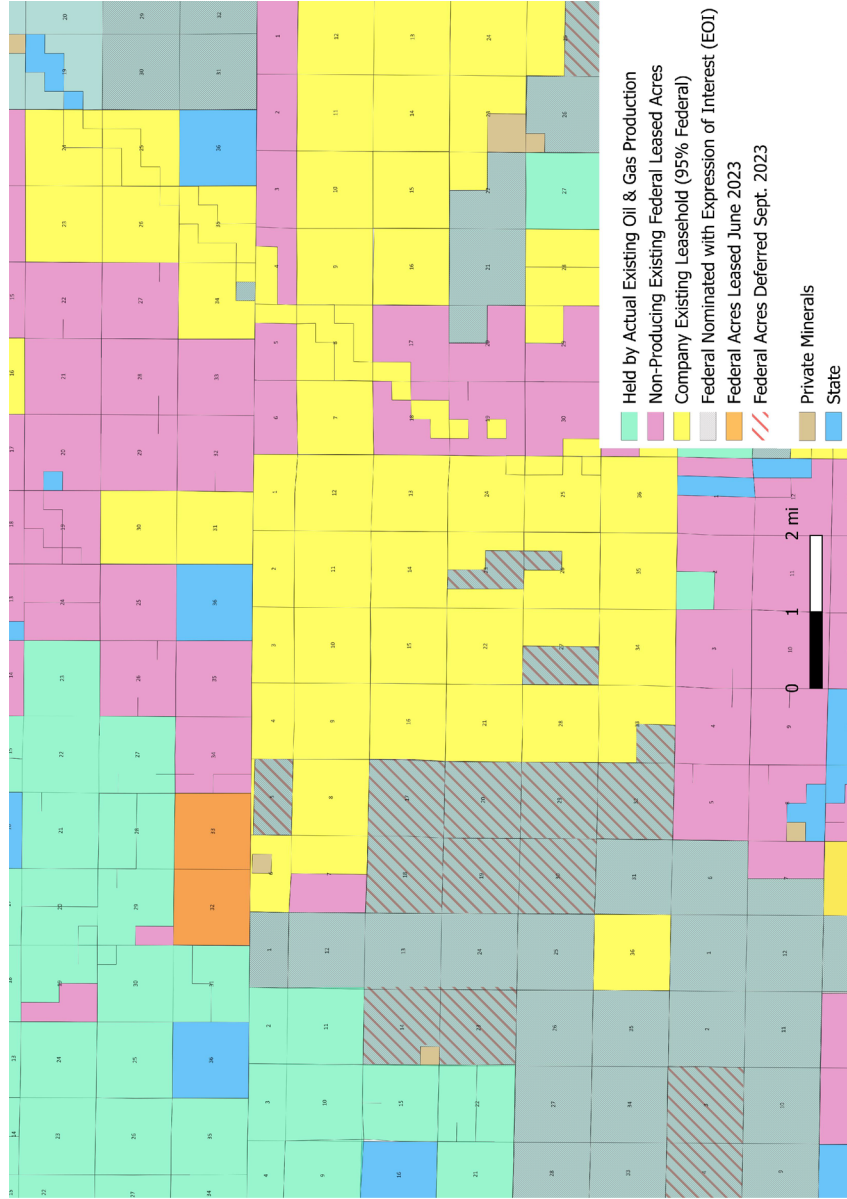
Mr. OBERMUELLER. Thank you so much, Mr. Chairman, Ranking Member Barrasso, members of the Energy and Natural Resources Committee, thank you for allowing me to speak with you regarding the leasing and permitting challenges on federal lands. I want to emphasize a few specific obstacles and policy prescriptions today, but it all boils down to one thing—American energy producers can and will invest in federal land production, but to do so, they need predictability and reliability in our regulatory and judicial processes.

In Wyoming, efficient and effective government oversight is not a theoretical question, because the Federal Government controls nearly three-quarters of Wyoming's mineral resources. In 2022, the oil and natural gas industry provided over \$2.34 billion in tax revenue to Wyoming. Now, Wyoming is a small state with a small budget. So to put that in perspective, that is 67 percent of the state's two-year general fund budget. Oil and gas is Wyoming's primary economic driver, but the Federal Government is in the driver's seat. It is no secret that the Biden Administration has severely curtailed leases of federal acres since 2021. But now that leases have at least nominally restarted, it is important that this Committee understand the ways that the BLM continues to minimize lease availability and avoid the issuance of permits.

Even in the best of times, the BLM's decision-making regarding what leases are available is opaque. But the current process is even worse. After offering no leases at all in 2021, the BLM now is deferring leases in extraordinary numbers—462 parcels, covering

more than half a million acres have been deferred without reasonable explanations as to why and with no guidance on how to remove them from this limbo status. An egregious but not a unique example is depicted in this map of an actual project in Wyoming today.

[The map referred to follows:]



Mr. OBERMUELLER. The squares are, of course, one-mile sections containing 640 acres each. Every single acre in this map is already leased for oil and gas development, save the ones I will mention. Focus your attention on the yellow areas. These sections are leased for development from one single company, but note the two donut holes in the middle of the yellow block. These acres were deferred by the BLM in the most recent lease sale, making production in the surrounding yellow areas functionally unavailable. What compelling reason exists to prompt deferral of the donut holes in an already-leased field that does not exist elsewhere in the field?

The BLM has denied requests to make those areas available under an agreement that there would be no surface disturbance at all. Neither has the BLM outlined a process to release those acres for bid. So a company now pays \$5 an acre to nominate a parcel that may never be offered at all or put into deferral purgatory with no process for removal. Once these leases are secured, operators must then undergo lengthy and expensive work to meet all the requirements necessary to earn a permit to drill. Permits are an essential component of drilling programs, so efficiency and processing is always an issue. Lately, the BLM's performance has lagged, as processing times have increased 124 percent since 2018, rising to 271 days. What is new and alarming is the BLM, on its own volition, is withholding permits on acreage subject to litigation, even if the court has not enjoined the issuance of permits. Approximately two million acres are languishing in this self-enjoined status.

Now, self-enjoining is a real problem, but it is understandable in this one sense. The agency has an extreme bunker mentality resulting from the onslaught of litigation on their every decision that approves human activity on federal land. Nearly every lease in Wyoming and every single permit issued since 2021 is the subject of litigation. A recently completed resource management plan amendment in Converse County is an example. After nearly seven years of collaborative work, the BLM issued a decision that provides for careful protection of wildlife and sustainable energy development. It is clever and creative. These are two words not usually used to describe the BLM. But unfortunately, after inexplicably waiting for two years, notorious activist litigators have now filed to overturn that amended plan. But recent Congressional attention on the paralytic state of permitting is encouraging. But so long as policy decisions are made in the closed confines of a courtroom, instead of the halls of Congress, the job is not complete. The good news is, most of what I have discussed can be immediately corrected with passage of the SPUR Act. That legislation would restore predictability by making leasing and permitting more consistent, stable, and timely, and I urge its passing.

Finally, Mr. Chairman, the development of affordable, reliable energy has done more to advance human flourishing than any other development in history. I am enormously proud of Wyoming's 100-year contributions to providing energy to all Americans. We all know that global production of oil and natural gas is going to continue for decades to come. I worry that Wyoming will be disallowed from playing its part. This Committee can help ensure Wyoming's energy future.

Thank you, Mr. Chairman.
[The prepared statement of Mr. Obermueller follows:]

Testimony of
Pete Obermueller
President of the Petroleum Association of Wyoming
before the United States Senate, Committee on Energy and Natural Resources
hearing to Examine Opportunities for Congress to Reform the Process for Permitting Electric
Transmission Lines, Pipelines, and Energy Production on Federal Lands

July 26, 2023

Chairman Manchin, Ranking Member Barrasso and members of the Energy and Natural Resources Committee. Thank you for allowing me to speak with you today regarding the leasing and permitting challenges natural gas and oil operators face every day in their attempt to bring sustainable, reliable, and affordable energy to Americans and indeed the entire world. This committee's efforts to focus attention on how difficult it has become to successfully navigate a system that is byzantine at best, and utterly broken at worst, is so very important. On behalf of the 19,000 men and women who work in the natural gas and oil industry in Wyoming, I implore you to pass meaningful permitting reform.

For many, energy debates in this country begin and end with high profile arguments based around specific events – the Keystone Pipeline, a power outage, or unusually high prices at the gas station. These incidents garner a lot of attention, but are often situational, and when the crisis passes the issue fades to the background. But for us in Wyoming, two truths illustrate why the issues never fade. Energy is the driver of our state's economy, and the federal government is firmly in the driver's seat on whether Wyoming's energy sector flourishes or falters.

Natural Gas and Oil are Wyoming's Primary Economic Drivers.

Wyoming is the 8th largest crude oil producer in the country, and the 9th largest producer of natural gas. This level of production provides high paying careers for more than 19,000 men and women in our state; supports a way of life for every single Wyoming citizen no matter their job as the economic activity from the oil and gas industry buoys the entire state; and enough tax revenue to subsidize every man, woman and child in Wyoming by more \$2,500 each.

In 2022, the oil and natural gas industry provided over \$2.34 billion in tax revenue to Wyoming. Wyoming is a small state with a small budget. \$2.34 billion is 67% of our state's two-year general fund appropriations of approximately \$3.5 billion. Last year the oil and gas industry provided over \$1.1 billion in funding to K-12 education, nearly \$200 million to Wyoming's local communities, \$177 million to public infrastructure projects, and added \$170 million to our state's permanent investment funds that ensure Wyoming citizens pay no state income tax and among the lowest property tax in the nation.

Every credible projection of global demand forecasts an ever-increasing appetite for energy. Despite rapid deployment of other sources, oil and natural gas will remain the major source of energy for many decades to come. While there are some who would like to force a faster transition by fiat and attempt to minimize the human impact of doing so by calling for a "just

transition,” there simply is no industry or government program that can substitute for the contribution to Wyoming from our natural gas and oil industry.

Federal Leasing Process is Unpredictable and Expensive

Nearly three quarters of Wyoming’s oil and gas projects include federally managed minerals. This presents challenges and delays to production that do not exist in private mineral states. The Inflation Reduction Act (IRA) made leasing federal minerals more expensive across the board, further diminishing Wyoming’s competitiveness. Unfortunately, that increased cost has been accompanied by a decrease in predictability in the leasing process as the Administration has continued to erect barriers to exploration and production.

Nomination of federal parcels for oil and gas leasing, called Expressions of Interest (EOI), are now \$5 an acre to submit. These EOIs are vetted by field offices to determine their availability under the applicable Resource Management Plan (RMP). When acres are determined to be available, the BLM offers them for bid haphazardly, allowing into lease sales seemingly random sections and partial sections that have no logical tie to a project. There are no discernable criteria used to determine which acres, or partial acres, are made available and when. After holding no lease sales at all in 2021, since then the Bureau of Land Management (BLM) has deferred 462 parcels covering over 586,000 acres with limited or no explanation regarding the criteria for deferral, and in contravention of the availability criteria in the RMP. Once placed in deferral limbo – neither available or unavailable for bids – there is no process for releasing them for bids.

Figure 1 shows an actual example of how leasing decisions at the Department of the Interior should stretch credulity.

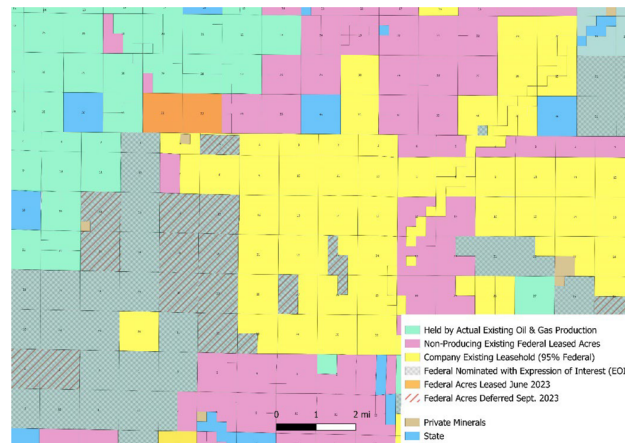


Figure 1: Current lease ownership map in a Wyoming basin. Crosshatch donut holes prevent development in the leased field.

Apart from the crosshatch areas that have been nominated for leasing but deferred by the Bureau of Land Management (BLM), every acre depicted in Figure 1 has already been leased for oil and gas development, including as recently as the June 2023 lease sale. Oil and gas operations exist in other neighboring parcels. Yet, the BLM deferred in the upcoming September lease sale the crosshatch acres. For the company that has leased the acres depicted in yellow, this decision is particularly egregious. What compelling reason exists to defer the donut holes in an already leased section that doesn't exist elsewhere in the section, or that could not be mitigated with horizontal drilling techniques? The BLM has denied a request to offer those acres for lease with a stipulation that there be no surface occupancy. Neither has it outlined a process for what mitigation steps could be taken to release those acres for bidding. Examples like this exist all over Wyoming, and often explain why exploration companies must lease and hold substantial acres in order to create a project area that can support an economical drilling program.

Even at the end of a properly executed lease sale, the BLM sometimes fails to issue the leases. Nominated, offered, and legally purchased leases made available in Q4 of 2020 totaling 165,753 acres and earning a bonus payment of over \$6 million to the federal government have never been issued by the agency and likely never will absent a court order to do so. This type of uncertainty created by the federal government drives away investment and increases the costs to consumers of necessary energy resources.

Federal Permits Must be Issued in a Timely Manner, and Should be Limited to Significant Federal Nexus

Once leases are secured operators must then undergo lengthy and expensive work to meet all the requirements under the lease to earn a permit to drill. Permits are an essential component of drilling programs of any size and serve as the primary official conduit of information flow between the operator and the BLM. They are not a one and done document. Requests from the operator and approvals from the BLM are ongoing throughout the project. Efficient and timely approval of initial permits and changes to permit terms are crucial for the day-to-day operations of a natural gas and oil project. Disruptions in permitting can cripple projects and set investment back years.

The BLM's performance on permit issuance has suffered in recent years as processing times increased 124% since 2018, rising from 121 days to 271 days. After this long wait, routine changes to permits that do nothing to alter the underlying environmental analysis but are essential to successful drilling programs are now routinely denied. Worse, the BLM is, on its own volition, withholding permits on acreage subject to litigation, even if the court has not enjoined the issuance of permits or other actions. From 2015 to 2022, 18 lease sales have been litigated in Wyoming, encompassing over 2.1 million acres. On most of these acres, the BLM is self-enjoining from issuing permit approvals.

Meanwhile, the specter of adding more acreage to federal control looms as the agency and others look to expand the reach of federal permitting requirements to private and state lands. The so-called fee/fee/fed scenario (see Figure 2) is common in Wyoming. Clear Congressional direction is necessary to ensure that the challenges of permitting are not foisted on private landowners even when their surface acreage is miles away from federal land or minerals.

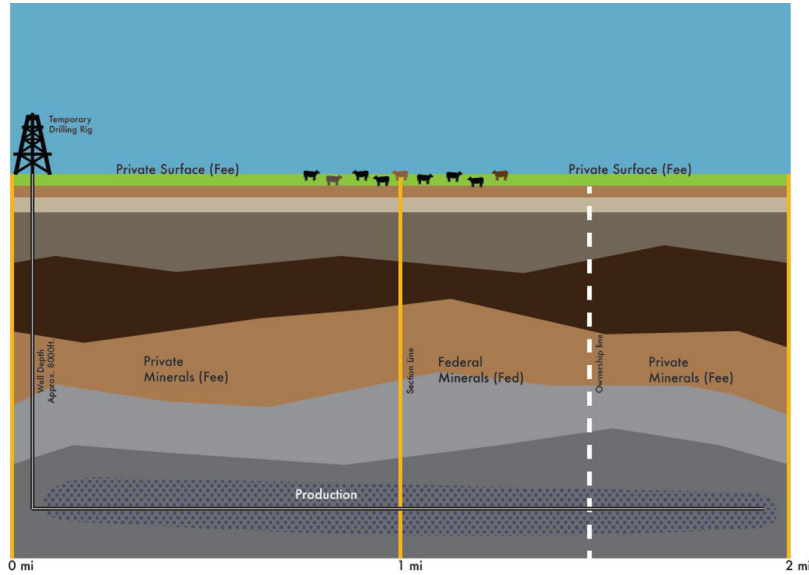


Figure 2: Fee/Fee/Fed scenario. A temporary drilling rig is located on privately owned surface, drills into privately owned minerals, then laterally into federally owned minerals and another privately owned parcel. The federal government owns none of the surface, either at the drilling rig, or above the wellbore.

Litigation Reform is Critical to Successful Leasing and Permitting

The BLM's unilateral decision to withhold permits on millions of acres absent a court order is unprecedented and severely limits economic growth in my state, but it is understandable in one sense: the agency has an extreme bunker mentality resulting from the onslaught of litigation on their every decision approving human activity. RMP updates or amendments, National Environmental Policy Act (NEPA) decisions, permit conditions of approval, wildlife timing stipulations, federal land territorial jurisdiction, emissions analysis, and so much more are all subject to protests and litigation.

The recently completed RMP amendment in Converse County, Wyoming is a prime example. Cleverly crafted with meticulous effort and stakeholder collaboration, this planning document took nearly 7 years to prepare. It provides for careful protection of wildlife while also ensuring economic development can occur. It is the type of professional creativity that should earn plaudits and serve as an example to federal employees looking to make a real difference in meeting a multiple use objective. Instead, after inexplicably waiting for two years to file their lawsuit, notorious activist litigators are now seeking to overturn the amended plan. The message this sends to BLM employees is to do nothing because hard work and creativity will be challenged anyway.

Access to the judicial system is crucial for our system of governance. Sadly, in the realm of natural resource law we have lost the plot because accessing the courts is no longer about correcting injustice, it is about bypassing Congress to create and enact policy outside of the crucible of elected representative debate. As the Article I branch of government it is Congress' primary responsibility to set our national policy and direct the Executive's actions to implement it. Recent Congressional attention on the paralytic state of permitting energy and infrastructure projects is encouraging, but the job is not complete. Only Congress can free the BLM from the court-ordered, or self-imposed, shackles that bind it.

Recommendations

To build on the helpful work enacted in the Fiscal Responsibility Act of 2023, we ask that you prioritize additional statutory changes that improve predictability and reliability for federal land energy development.

Specifically, this committee should advance, and Congress should pass:

- Clear and concise language regarding the timing of lease sales on acres determined to be available under an RMP, and that offered leases correlate to industry nominated parcels in states and field offices at every sale.
- Restrictions on BLM's authority to defer nominated acres when doing so is contrary to the relevant RMP, and direction for the agency to establish a clear process and timeline for deferred acres to be made available for bid at a future time.
- Language that settles the question of decision-making and management control in favor of private and state landowners when the federal nexus is limited to the subsurface mineral estate.
- Requirements that the issuance of permits and sundries following legally completed lease sales cannot be halted because of litigation if the court has not by order enjoined the issuance of permits.
- Reasonable timing requirements both on initial challenges to BLM final decisions, and on the BLM to complete court ordered analysis in a timely fashion.
- Reform legislation that removes taxpayer funded financial incentives to litigate like under the Equal Access to Justice Act.
- Rescission of Inflation Reduction Act language that eliminated the ability for explorers to find new reserves (so-called noncompetitive leases).

The good news is most of these issues are already covered by language in the SPUR Act introduced by Ranking Member Barrasso. We ask that this committee take up that legislation as soon as possible. It, combined with the work already done on NEPA timelines and other permitting reforms would restore faith in the process of public lands energy development. We sincerely hope you do not let this opportunity of bipartisan agreement on permitting pass you by.

The CHAIRMAN. Thank you.
Ms. Speakes-Backman.

**STATEMENT OF KELLY SPEAKES-BACKMAN,
EXECUTIVE VICE PRESIDENT, PUBLIC AFFAIRS, INVENERGY**

Ms. SPEAKES-BACKMAN. Hello and thank you, Chairman Manchin, Ranking Member Barrasso, and members of the Committee. Thank you for inviting me to testify today. Invenergy is a leading developer, owner, and operator of clean energy solutions and has led the clean energy transition and advanced American energy independence for more than 20 years. We have successfully developed more than 200 projects, 45 of which are in states represented by members of this Committee. We also have six projects currently under development on public lands and offshore.

As one of the largest American clean energy developers, it will be no surprise to you when I say we need predictable and transparent permitting processes to build the next generation of clean energy projects. We therefore welcome the recent bipartisan efforts to examine this issue and identify needed reforms. As part of any legislative reform, however, we must also preserve and prioritize meaningful engagement with tribal nations, landowners, and local communities. Invenergy is a leader of robust community engagement approaches, and we look forward to answering any questions you might have about how we incorporate this engagement into our project budgets and planning. Now, given that the topic of this panel is permitting on federal lands, we want to identify what we found to be challenges in constructing energy infrastructure in federal public lands and waters and what we believe to be reasonable and practical solutions to enable implementation.

So first, we support policies that encourage responsible renewable energy development on suitable Bureau of Land Management lands. For example, BLM's proposed renewable energy rule would ease the burden on energy developers by reducing the cost of leasing federal public lands. BLM could further spur development by taking common-sense measures, like revising its programmatic EIS for solar planning to prioritize siting projects on lands that are near planned or existing transmission infrastructure. In addition to these substantive reforms, agencies like BLM and BOEM—the Bureau of Ocean Energy Management—need sufficient and consistent resources to ensure that they can efficiently evaluate project authorization in a timely manner.

Second, offshore wind developers and the offshore wind supply chain need greater certainty and predictability to be able to take on these major private investment risks. The offshore wind industry is expected to support up to 83,000 American jobs by 2030, but only if offshore lease sales occur on a regular schedule and projects are permitted without delay. Companies must be able to plan and budget years in advance in order to make these massive investments, but it is not going to happen until lease sales are conducted on a consistent basis and the permitting process is efficient and predictable.

Finally, we have to do more faster on interregional transmission. As we saw during Winter Storm Elliot and Winter Storm Uri and the multitude of summer and winter weather events before that,

threats to our electric grid pose a risk to our homes, our hospitals, our military bases, and industries—and in extreme cases, to human lives. The most widely recognized, but underutilized major-scale solution is interregional transmission, which enables imports and exports across regions to move power from where it's available to where it's needed most. Unfortunately, today, federal policy does not adequately facilitate interregional transmission. Existing processes for planning have been largely ineffectual because they don't set meaningful and measurable targets, they don't require cooperation between regions, and they don't quantify reliability, resilience, and operational benefits.

Fortunately, members of this Committee have proposed legislation to address these issues by providing a clear framework to value interregional transmission benefits through your bill, Chairman Manchin; to require FERC to develop planning processes for national interest transmission lines through Senator Heinrich's proposal; and third, to require each region to have a defined percentage of import and export capability with neighboring regions through Senator Hickenlooper's proposal. All of these are bipartisan solutions and should be on the table.

So in conclusion, we are at an important inflection point. We have an opportunity to make the reforms and the investments necessary to maintain American energy dominance in the 21st century, creating millions of jobs here at home and ensuring that American companies like Invenergy can continue to lead the clean energy transition. So thank you for the opportunity to address you today. I am happy to answer any questions you may have.

[The prepared statement of Ms. Speakes-Backman follows:]



**Written Statement of Kelly Speakes-Backman
Executive Vice President, Public Affairs, Invenergy
Before the Senate Committee on Energy & Natural Resources
July 26, 2023**

1. Introduction

Chairman Manchin, Ranking Member Barrasso, and members of the Senate Committee on Energy & Natural Resources, thank you for the invitation to testify at today's hearing. My name is Kelly Speakes-Backman, and I am the Executive Vice President for Public Affairs at Invenergy, a leading developer, owner, and operator of clean energy solutions.

Invenergy was founded in 2001 in Chicago, Illinois, and for more than 20 years has led the transition to clean energy across many technologies and advanced American energy independence. Invenergy develops, builds, owns, and operates large-scale wind, solar, and natural gas power generation, transmission, and energy storage facilities primarily here in the U.S., as well as elsewhere in the Americas, Europe, and Asia. We have successfully developed more than 200 clean energy projects that are in operation, construction, or contracted, totaling over 31,000 megawatts (MW)—equivalent to the power usage of nearly 10 million American homes and businesses. Forty-five of those projects, totaling over 7,100 MW, are in the states represented by Members of this Committee.

Invenergy develops projects on private and public lands as well as offshore on the Outer Continental Shelf. We are currently developing multiple projects on federal lands and waters, including the Leading Light Wind project in the New York Bight, Even Keel Wind off the central coast of California, the New Mexico North Path Transmission Project in northern New Mexico, and solar and storage projects in Nevada and Utah.

As one of the largest American clean energy developers, Invenergy is committed to ensuring that local communities share in the company's success. We engage early and often and invest in local communities including through community benefit agreements. In 2022, Invenergy projects generated \$400 million in economic investment in our home communities. Invenergy also partners with local workforce development, training, and educational institutions to make sure that more American workers are manufacturing, building, and operating the equipment and energy projects that will power the clean energy future. In 2022, Invenergy projects supported 3,723 construction jobs, in addition to our approximately 2,400 full time plant operators and corporate staff.

2. The Need for Bipartisan Permitting Reform

The United States needs a predictable and transparent permitting process if we want to build the next generation of clean energy projects and remain competitive on the global stage. We welcome recent bipartisan efforts to examine this issue and to work collaboratively to identify needed reforms, while maintaining a central role for community input and engagement. We are particularly appreciative of the ongoing work by the members of this Committee, who initiated and have led the national dialogue on the need for transmission, environmental review, and other permitting reforms.

While the Fiscal Responsibility Act included reforms to the National Environmental Policy Act (NEPA), this Committee has recognized that there is further work to be done to ensure that American families and businesses continue to have access to reliable, resilient, and affordable clean energy. My testimony today focuses on the need for these additional reforms, but also on the broader impact that policy certainty can have on clean energy development and how early community engagement can ensure that all Americans share in the benefits of the energy transition.

3. Policy Certainty is Critical

Large-scale energy infrastructure projects are challenging to build in any regulatory environment. Advancing projects requires constant engagement and consultation with Tribal Nations, landowners and communities, state and federal agencies and regulators, labor organizations, suppliers, customers, and capital providers. And recent supply chain issues—resulting from the pandemic, Russia’s invasion and war in Ukraine, national security considerations, and an accelerating global energy transition increasing demand—add layers of complexity.

While the Inflation Reduction Act (IRA) provides critical incentives to stimulate clean energy production and domestic manufacturing, permitting challenges can still interfere with project development and exacerbate the uncertainty inherent in the development of large-scale energy projects. This is particularly true for interregional transmission and offshore wind projects. Most experts and multiple government studies¹ recognize

¹ See, e.g., U.S. Department of Energy, *Draft National Transmission Needs Study* (Feb. 2023), <https://www.energy.gov/sites/default/files/2023-02/022423-DRAFTNeedsStudyforPublicComment.pdf>; Lawrence Berkeley National Laboratory, *Regional and Interregional Transmission Have Significant Economic Value* (Aug. 2022), <https://emp.lbl.gov/news/regional-and-interregional-transmission-have>; Lawrence Berkeley National Laboratory, *The Latest Data Show that the Potential Savings of New Electricity Transmission was Higher Last Year than at Any Point in the last Decade* (Feb. 2023), https://eta-publications.lbl.gov/sites/default/files/lbnl-transmissionvalue-fact_sheet-2022update-20230203.pdf; National Renewable Energy Laboratory, *The North American Renewable Integration Study* (June 2021), <https://www.nrel.gov/docs/fy21osti/79224.pdf>; National Renewable Energy Laboratory, *Interconnections Seams Study* (Oct. 2020), <https://www.nrel.gov/docs/fy21osti/78161.pdf>.

interregional transmission as critical for a reliable and resilient electric grid, which is necessary to keep Americans' lights and air conditioning on and the economy thriving. Yet right now, the United States lacks any meaningful policy to promote the deployment of interregional transmission. Likewise, uncertainty about future offshore wind lease sales makes it risky for companies to invest in domestic offshore wind supply chains and difficult for federal agencies to build the expertise necessary to efficiently permit such projects. Later in this testimony I describe several legislative solutions that can address these concerns.

Much of the national permitting discussion has focused on substantive reforms to NEPA and other laws; however, any substantive changes must be paired with sufficient and consistent funding and resources for agencies so they can execute project reviews in a timely and effective manner. We must ensure agencies pay competitive salaries to attract, train, and retain the best talent. Equipping agencies to do their jobs effectively in itself is a signal of policy certainty for industry.

4. Importance of Community Engagement

In addition to providing clean energy developers with policy and process certainty, we must also prioritize meaningful engagement with local communities. This includes early and proactive public engagement and consultation by energy developers and the federal government with Tribal Nations and environmental justice communities, as well as smart reforms that preserve environmental and health protections important to American communities.

Invenenergy is a leader in community engagement approaches and has strengthened industry best practices in these areas, including through the adoption of project Codes of Conduct, contributing to developer resources like Americans for a Clean Energy Grid's *Recommended Siting Practices for Electric Transmission Developers* report,² and by incorporating robust community engagement and benefits into project budgets and planning. For example, we are currently working with tribal communities in New Mexico to advance the New Mexico North Path transmission project while respecting tribal sovereignty by engaging with Tribes from the inception of the project and identifying community benefits reflective of tribal priorities.

² Americans for a Clean Energy Grid, *Recommended Siting Practices for Electric Transmission Developers* (Feb. 2023), <https://cleanenergygrid.org/wp-content/uploads/2023/04/ACEG-Report-Recommended-Siting-Practices-for-Electric-Transmission-Developers-February-2023.pdf>.

5. Policy Priorities for Bipartisan Reform

Invenergy is currently advancing six large-scale energy infrastructure projects on federal lands or waters—including solar, offshore wind, and transmission projects. These projects will generate or transmit nearly 10 gigawatts (GW) of power and represent over \$33 billion in total investment. The success of these projects can be affected both by issues specifically related to permitting on federal lands and broader policy challenges and uncertainty.

5.1 Permitting on Federal Public Lands

Invenergy supports efforts that encourage responsible renewable energy development on suitable Bureau of Land Management (BLM) land, including the agency's intent to prepare a revised programmatic Environmental Impact Statement for utility-scale solar planning on federal lands and related revisions to its Resource Management Plans. As Invenergy outlined in comments submitted to BLM, this presents an excellent opportunity for the agency to identify new priority areas for utility-scale solar development and change its exclusion criteria to reflect advancements in solar technology. Our comments also encouraged the agency to identify areas for solar development that are proximate to planned or existing transmission infrastructure, as there has been little development in solar energy zones that do not have access to transmission.

BLM also recently proposed revisions to its Renewable Energy and Right-of-Way programs to promote the development of renewable energy on federal public lands. Invenergy is still reviewing the substance of the proposed rule and its impact on our business, but preliminary review shows that, as proposed, the changes could potentially cut annual costs in half. Invenergy appreciates BLM's willingness to work with industry to facilitate energy development on federal public lands and believes reducing the costs associated with leasing federal public lands will spur progress towards the Congressional goal to permit at least 25 GW of renewable energy on federal public lands by 2025.

Finally, companies are reluctant to spend the time and resources investing in projects on federal public lands if the agencies do not have the personnel and resources to timely review and permit the projects. Congress should therefore consider strengthening BLM's Renewable Energy Coordination Office (RECO) authority to ensure timely approval of renewable energy projects and increased attention to consistent staffing and capacity of the Office.

5.2 Offshore Wind

Invenergy is the only privately held American company to hold U.S. offshore wind leases, through our Leading Light Wind project in the New York Bight and Even Keel Wind project off the Central Coast of California. Invenergy is committed to leading the way to building a domestic offshore wind manufacturing and project development supply chain and workforce for the U.S. We have an unmatched commitment to advancing a domestic offshore wind industry that secures both American energy independence and competitiveness in the global market. To achieve this goal, this burgeoning industry requires clearly defined procedures across all relevant agencies on lease sales and efficient, predictable permitting.

The United States currently has 32 offshore wind leases under development. These will provide 51.3 GW of clean energy. Offshore wind project development, construction, and operations are expected to support up to 83,000 American jobs by 2030, with industry investment poised to deliver \$25 billion annually in economic output.³

There are two important elements to industry growth. *First*, it is critical that offshore lease sales occur on a regular schedule. Project sponsors and financing parties must be able to plan and budget years in advance to pursue new projects at this scale. Likewise, supply chain companies must be assured of a long pipeline of projects to support capital investments in factories and labor forces.

Second, once projects have successfully secured leases, permitting processes must be efficient and predictable, which depends on exceptional partnership and communications among government agencies. The longer the time between lease sales and securing permits, the more uncertainty projects face in advancing and finalizing billion-dollar contracts for parts, labor, vessels, and facilities. These contracts drive U.S. supply chain investment and job creation. The Bureau of Ocean Energy Management, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, U.S. Army Corps of Engineers, and other relevant federal and state agencies must work hand in hand in an “all-of-government” approach to permitting while keeping projects on schedule.

5.3 Transmission

Electricity is essential today. It powers our homes, hospitals, military bases, and businesses. It will be even more essential in the century to come. America’s economic

³ North American Electric Reliability Corporation, *2023 State of Reliability Technical Assessment* at 3 (June 2023), https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/NERC_SOR_2023_Technical_Assessment.pdf.

strength will depend on a reliable, resilient, and affordable electric grid that can power new industries—like advanced manufacturing, data centers, and the artificial intelligence economy—and can withstand extreme weather events as they become more frequent and severe.

According to the North American Electric Reliability Corporation (NERC), generator outages during extreme weather are now the biggest risk to the electric grid, both in terms of frequency and severity.⁴ Extreme weather is a regionally concentrated risk. No matter the mix of generation sources in a given region, all generation sources are vulnerable all at once when extreme weather strikes. The most widely recognized large-scale solution is interregional transmission, which enables imports and exports across regions to move power from where it is available to where it is needed most. Like energy storage technologies, high-voltage direct current (HVDC) technology—which is ideally suited for interregional transmission—is precisely controllable to efficiently provide essential reliability services such as frequency response, voltage control and ramping, as well as enhance resilience during sudden disruptions.

The consequence of insufficient interregional transmission is well documented. In December 2022, Winter Storm Elliott brought unprecedented cold weather to much of the Central and Eastern United States resulting in blackouts affecting 1.5 million households.⁵ At the same time that customers in the Tennessee Valley Authority’s (TVA) territory were without power, the Southwest Power Pool (SPP) only one state away was curtailing 3 GW of wind energy generation because the surplus power had nowhere to go. This situation is neither efficient, nor consumer-focused. Interregional transmission between SPP and TVA would have prevented blackouts during the storm and saved ratepayers tens of millions of dollars for years to come.

Unfortunately, federal policy does not adequately facilitate or incentivize interregional transmission. Existing processes for interregional transmission planning have been largely ineffectual because they do not set meaningful or measurable targets; they do not require joint planning between regions; and they fail to adequately prioritize and quantify interregional transmission’s myriad reliability, resilience, and operational benefits. Fortunately, policy proposals put forth by members of this Committee would address these issues and help avoid future Winter Storm Elliots.

For instance, Chairman Manchin’s Building American Energy Security Act of 2023 provides a direct path for “national interest” transmission facilities to apply to the Federal Energy Regulatory Commission (FERC) and a clear framework for valuing reliability

⁵ Rocky Mountain Institute, *Wasted Wind and Tenable Transmission during Winter Storm Elliott* (Feb., 16, 2023), <https://rmi.org/wasted-wind-and-tenable-transmission-during-winter-storm-elliott/>.

and other benefits. Likewise, Senator Heinrich's Interregional Transmission Planning Improvement Act would require FERC to develop a comprehensive planning process for interregional power lines within the next 18 months, and Senator Hickenlooper's forthcoming Big Wires Act would enhance reliability and resilience by requiring each region to have an ambitious but achievable defined percentage of import and export capability with neighboring regions. We welcome all bipartisan legislation that can help deploy more transmission. Invenenergy has initiated a docket at FERC in which over 35 state regulatory, public and ratepayer interest, commercial and industrial energy consumer, national security, climate and environmental, and energy supply chain organizations have called on the Commission to explore policy reforms to recognize the benefits and remove barriers to interregional merchant high-voltage direct current transmission.⁶

Transmission expansion—including both interregional and regional—is necessary to achieve grid reliability and resilience, access low-cost power necessary to support a strong industrial base and achieve our greenhouse gas emission reduction goals. As Princeton's ZERO Lab has explained, greater transmission deployment is an essential element of any plan to decarbonize the nation's electricity supply and realize the full potential of the IRA. Without sufficient transmission buildout, nearly 80% of the emission reductions spurred by this legislation cannot be realized.⁷ We therefore also support Senator Heinrich's Grid Resiliency Tax Credit Act.

6. Conclusion

The United States is at an important inflection point. We must decide whether we want to make the investments and reforms necessary to maintain American energy dominance in the 21st century, or whether we want to cede the playing field to other countries. Smart reforms that provide certainty for transmission, offshore wind, and renewable energy development on federal lands can ensure that America remains a global energy leader, and that American companies like Invenenergy continue to lead the clean energy transition. Thank you for the opportunity to address these critical issues.

⁶ Federal Energy Regulatory Commission, *Docket AD22-13-000*, https://elibrary.ferc.gov/eLibrary/docketsheet?docket_number=ad22-13-000&sub_docket=all&dt_from=1960-01-01&dt_to=2023-07-23&chklegadata=false&pagenm=dsearch&date_range=custom&search_type=docket&date_type=filed_date&sub_docket_q=allsub.

⁷ Princeton University ZERO Lab, *Electricity Transmission Is Key to Unlock the Full Potential of the Inflation Reduction Act* (Sept. 2022), https://repeatproject.org/docs/REPEAT_IRA_Transmission_2022-09-22.pdf.

The CHAIRMAN. Well, let me thank all of you for being here. I appreciate it and your statements are well taken.

As you all know, we passed the Inflation Reduction Act in a balanced approach, trying to look at how we could have an all-in energy policy, but also have the security that we needed for the energy that we had right here in our backyard. We were not going in that direction. We think that bill, basically, was directing this government and this Administration to get back on track. So with that, I can't understand—it's pretty simple that solar and wind on federal lands and waters, they can't proceed unless we are holding meaningful oil and gas lease sales. They all go together. And if they think one without the other is going to happen, it won't. It appears that renewables and oil and gas both face the same challenges of not having consistent sales. Onshore, the Administration cannot sign agreements for more than 20 wind and solar projects currently under review because they haven't met the IRA's oil and gas lease sale requirements. We did this on purpose. We are all in this together. We have got to make sure we have reliable, affordable, dependable energy.

And so, how important is it, I mean, to get off the dime here? Do you all work with both sides of the aisle here trying to figure, hey, we are all in this together? Have you had conversations with people who are protesting, objecting, stopping, and suing, that they are basically killing themselves—shooting themselves in the foot?

Mr. Milito.

Mr. MILITO. Yes, we are constantly in conversation with members of both sides of the aisle—Senate, House.

The CHAIRMAN. Do they know, I mean, the advocates who want no oil and gas leases at all, okay, or coal production whatsoever, do they know that basically it is all tied inextricably to—

Mr. MILITO. I don't believe there is that level of understanding of the provisions of the IRA and how they are going to impact the future wind leasing, both onshore and offshore. We are trying to make sure we educate everybody on that and we are trying to make sure there is some urgency around moving forward with the oil and gas sales so nothing is impeded as we move forward.

These are projects that are—the competition for the money behind these projects is global. We don't want to lose that. We don't want to see that go to other parts of the world. We want that here in the U.S. and that is what we are trying to convey.

The CHAIRMAN. What do you see, Mr. Obermueller?

Mr. OBERMUELLER. Yes, thank you, Mr. Chairman. I think, as you well know, we are actively in conversation with all sorts of people about these issues on federal lands—

The CHAIRMAN. You all studied the bills. You three probably have studied that bill as well as anybody, you know, and it's pretty clear what the intent was of the Inflation Reduction Act. And it should, hopefully—do you all believe it was a balanced approach to how we produce energy in our country and having the results, basically, from an energy policy that would work?

Mr. OBERMUELLER. It was a balanced approach and it was a very good start, yes. I think I would divide the folks that I am talking about in my testimony into two camps, those that want to have a

serious discussion about infrastructure for all sources of energy, of which Wyoming provides every source.

The CHAIRMAN. Right.

Mr. OBERMUELLER. And those that don't. They just want to spend the time in the courtroom.

Ms. SPEAKES-BACKMAN. I believe that the Inflation Reduction Act was an amazing step toward creating more clean energy and being able to work on a bipartisan level to get that forward. Now, as Invenergy, we don't have oil and gas leases in mind.

The CHAIRMAN. Right.

Ms. SPEAKES-BACKMAN. But we believe that we need to do everything—

The CHAIRMAN. You understand you can't have what you want—

Ms. SPEAKES-BACKMAN. Absolutely.

The CHAIRMAN [continuing]. Unless we are doing what we need.

Ms. SPEAKES-BACKMAN. We believe that it's critical to take all necessary steps to ensure continued offshore wind lease sales.

The CHAIRMAN. I know producers in Wyoming are concerned about the Administration withholding some of the most productive areas from oil and gas leasing, and I share your concerns. At the same time, I am concerned about proposals that will restrict Interior from withholding any areas from leasing because many of our federal lands are managed for multiple use, which includes hunting, fishing, hiking, off-road vehicles, timber grazing, and more. There is a big difference between land being available for leasing versus land that must be leased upon request. So what are your suggestions for legislation that would ensure producers aren't only offered unwanted acreage, but also protects other uses of federal lands?

Mr. Obermueller.

Mr. OBERMUELLER. Thank you for that question, Mr. Chairman.

I think, again, to your point, we can strike a balance there. The Bureau of Land Management was created to provide—

The CHAIRMAN. The donut hole you showed on your map was very, very compelling to me, and very interesting. They intentionally, cleverly did this, basically, to prevent, I am sure, what is going to be horizontal drilling. Correct?

Mr. OBERMUELLER. Correct.

The CHAIRMAN. I know exactly what it was for.

Mr. OBERMUELLER. That is precisely why it becomes unavailable in those yellow blocks because you need the space to horizontal drill.

The CHAIRMAN. I know. They've got you stopped completely.

Mr. OBERMUELLER. Right.

So the SPUR Act does take care of some of this in the sense that it requires—it does not require 100 percent of ceding to what industry has asked for in terms of nominated acres, but it does ask for some sort of coherence in what industry thinks is a reasonable place to develop, and issuing leases, at least in part, based on that. And that is a reasonable balance I think we can find and there is legislation in front of you that does that.

The CHAIRMAN. We might want you to keep that map or leave it here with us so we will bring BLM back in and let them answer that.

No further questions.

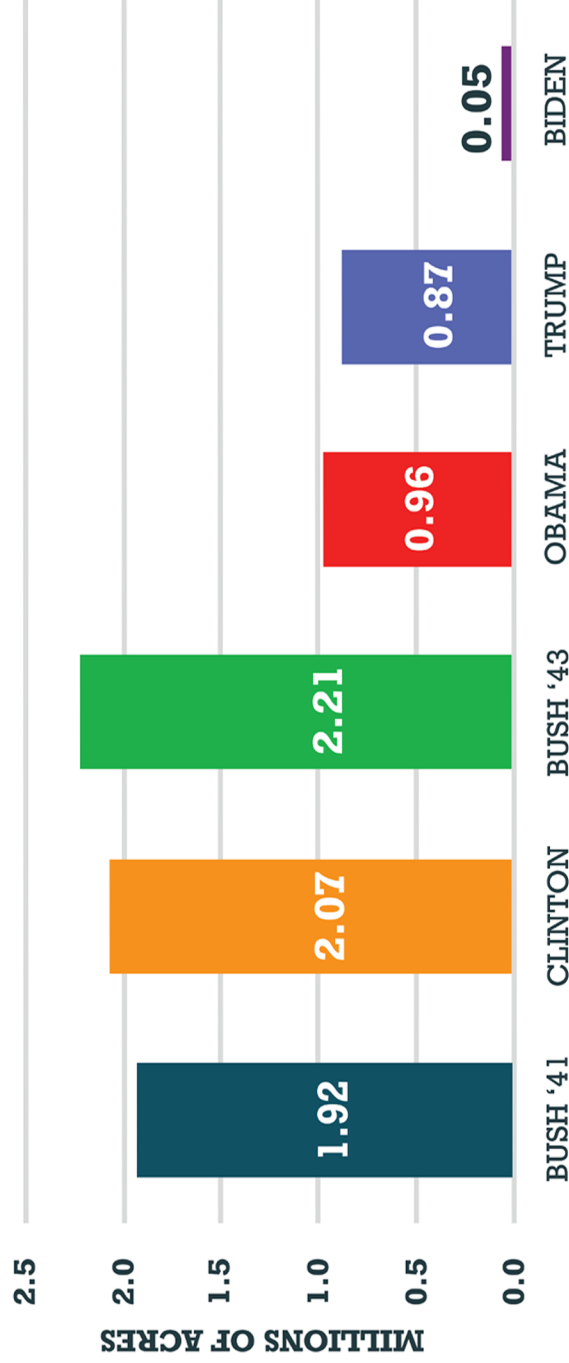
Senator Barrasso.

Senator BARRASSO. Thanks, Mr. Chairman.

Mr. Obermueller, so the BLM has held just two oil and gas lease sales in Wyoming since Joe Biden took office. The Mineral Leasing Act requires quarterly lease sales, meaning there should have been ten sales under President Biden so far. So I have a chart up here that shows the average amount of acres leased, and it's in millions of acres, by previous presidents. Well, you can see Joe Biden, right there at the bottom, is defying the law and has wrecked the leasing process.

[The chart referred to follows:]

AVERAGE ANNUAL ACREAGE OF NEW FEDERAL OIL & GAS LEASES BY PRESIDENT



Source: Bureau of Land Management data (<https://nflss.blm.gov/s/sales>) and GAO report <https://www.gao.gov/assets/720/717469.pdf>

Senator BARRASSO. Can you talk about the impact that this BLM refusal to follow the law has had on the State of Wyoming?

Mr. OBERMUELLER. Thank you, Senator Barrasso, thanks for the question. Happy to do so. I want to answer it in two ways. Number one, just the fiscal impact to the State of Wyoming. I mentioned how important oil and gas is to our economy and to Wyoming's revenues. The two lease sales that the Administration has offered, the first brought in \$14 million, the second brought in \$13 million. At that rate—you mentioned that they have missed ten—Wyoming and the Federal Government should have been receiving around \$130 million. So there is a quantifiable dollar amount impact for sure.

The second part that I want to emphasize, Senator, is that the issue of leasing for Wyoming has everything to do with the exploration, not necessarily the production. I was so encouraged to hear Senator Manchin differentiate between leasing and permitting in that way. Wyoming is an exploratory field still. It is different from other fields in that sense. We need leasing in order to explore for new fields. That is what attracts companies to Wyoming, is that exploratory nature. And as we cut off leasing and cut that down, we choke off the ability to explore for new resources, and that hurts us in the long term.

Senator BARRASSO. So the failure to lease federal lands resulted in less oil and gas production and simply caused companies to move elsewhere.

Mr. OBERMUELLER. Right. In terms of the expense and in terms of leasing, if companies have production in other basins, of course, Colorado or New Mexico or other places, they fight internally for capital, and the barriers that BLM puts in front of Wyoming puts us as a competitive disadvantage.

Senator BARRASSO. So Mr. Milito, do you see the same reaction from companies in offshore oil and gas sectors?

Mr. MILITO. Yes, the offshore sector is highly competitive. It makes up about 30 percent of total global oil production, which is 100 million barrels a day. And these are projects that are competing on a global level. You are looking at places like Guyana, Southeast Asia, the North Sea. It is very difficult and challenging to continue to make investments in a region like the Gulf of Mexico that is highly prospective when you have uncertainty and you don't have the predictability that you might have in another part of the world. So the money could definitely leave, and you know, you put those jobs at risk.

Senator BARRASSO. So Mr. Obermueller, you talked about activists having challenged essentially every oil and gas lease sale that BLM has held in Wyoming. They include lease sales held by, you know, even held by the Obama Administration. The lawsuits are often filed years after the leases have been issued. These groups ask judges to cancel leases that are valid—existing contracts between BLM and private companies. How do these lawsuits affect your members' ability to produce on federal land?

Mr. OBERMUELLER. In some cases, Senator Barrasso, it completely stops the ability to produce. Currently, there are 2,573 leases under litigation in Wyoming. In some cases—in many cases—it has prompted the BLM to, as I mentioned before, self-en-

join, but perhaps one of the most egregious examples of that is, legally, the leases offered in the fourth quarter of 2020, the legal process was completed. The leases were available, but for fear of litigation, the BLM has yet to actually issue those leases from Q4 2020 as a result of litigations.

Senator BARRASSO. So to make that point, since Joe Biden has taken office, BLM has decided to stop issuing permits on oil and gas leases that are under litigation, is what you just said.

So often BLM has made this decision even though environmental activists have not actually won a ruling in court. So as a result, companies have not been able to develop hundreds of thousands of acres in Wyoming based on this decision. As a matter of basic fairness, should environmental activists get what they want without actually winning in court?

Mr. OBERMUELLER. Mr. Chairman, it does defy a little bit of explanation. You know, obviously, access to courts is very, very important, but the process should play out and there should not be an incentive to continually file lawsuits and then have an agency self-enjoin during that process. The process should play out and it should play out fairly.

Senator BARRASSO. So Mr. Milito, the Biden Administration set a goal to deploy 30 gigawatts of offshore wind by 2035. I will note that offshore wind requires over 33,000 pounds of minerals per megawatt of capacity. It's about 12 times the amount of minerals that natural gas needs per megawatt. Does the United States have policies in place to support the development of mineral resources that offshore wind energy needs?

Mr. MILITO. Well, we lack a comprehensive strategy for securing the critical minerals needed for our energy future. We need to work together to make sure that China does not remain the dominant player in this space. We have companies that can do offshore mineral mining, and they would be helped by the Administration if they stepped up and played a role in getting them access to some of these areas around the world where they are trying to deploy their technologies to have a U.S. company in that space.

And you are very well aware that, you know, the State of Wyoming has various critical minerals, and BLM, of course, has a lot of jurisdiction over that that prevents that kind of development. But the SPUR Act has provisions in there to address a lot of this and we need to work together to develop this comprehensive strategy so that the U.S. becomes a leader in critical mineral mining.

Senator BARRASSO. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Mr. Chairman.

I am going to ask Ms. Speakes-Backman to focus on this for me and help me out here. So in Nevada there are 96 pending applications to deploy solar projects statewide. Fifty-one of them are in southern Nevada. There is a growing bottleneck. One of the things I constantly hear, and you touched on it a little—both from BLM officials and from Nevadans and those that are trying to do the project—is that the bottleneck is caused to some extent by understaffing, or a lack of staffing at our local BLM offices to be able to

move the permitting along. Now, with that said, I also know that in the Inflation Reduction Act, Congress provided about \$150 million to the Interior Department to support that environmental review and permitting to move it through quickly.

My question to you is, what are we missing here? Is it an inability to hire these individuals? Because they have the money. BLM has the money to do it. Is it a lack of interest? Is it an inability to hire that workforce? What are you hearing and seeing on the ground when it actually matters to move these permits along?

Ms. SPEAKES-BACKMAN. Thank you so much for this question because I do believe, when it comes to federal land permitting, or permitting generally, really the biggest impediment that we have to this is staffing, is being able to get the right folks at their desks and working and the right training involved to make sure that that pipeline is involved. The renewable energy—the RECO offices that are throughout the United States are woefully understaffed, frankly, and I’m not sure that it is necessarily a lack of interest. It takes a long time to hire within the Federal Government, as I am sure you are very well aware.

Senator CORTEZ MASTO. Absolutely.

Ms. SPEAKES-BACKMAN. But it also takes a more steady level. As these agencies like BOEM and BLM and NOAA are working towards goals, such as 30 gigawatts or 25 gigawatts by 2025 on federal lands—as they are trying to work toward that, staffing takes a long time, and we absolutely—we have the funding there now, thankfully, through the leadership of this program.

Senator CORTEZ MASTO. Right.

Ms. SPEAKES-BACKMAN. We just need to be able to—for example, in the IIJA, there were creative ways of creating employment statuses where you could hire a lot faster. And it’s simply—you have to be able to get these sorts of different types of hires, rather than just the federal employees, to get the hiring done faster.

Senator CORTEZ MASTO. Yes, and that is what I would be interested in hearing from our folks at Interior, is what can we do to streamline that process, because it is a challenge, I hear, because of the rules at the federal level, but if we are really—the funding is out there, they have the ability to actually make the hires, it’s just getting through the process much quicker and moving it.

Ms. SPEAKES-BACKMAN. And perhaps some detailing, creative detailing. We have a number of ideas that I am happy to forward to you, afterwards, but you can detail from one agency from the other. And also, I would say that solar and wind, and I would suggest also for geothermal expertise throughout the country. I think that is a really important element as well.

Senator CORTEZ MASTO. And thank you, because I know, and this is something I have been pushing, again, to support, is really growing opportunities around geothermal, not just in Nevada, but across the country. There is so much potential. But as we continue these projects, as we are hearing, there is a backlog. And the first step for me is to start with the agency itself. The funding is there, but how do we make it easier for them to hire, and how do we get more people in the pipeline?

Ms. SPEAKES-BACKMAN. It is the number one impediment, in my mind, for clean energy development on federal lands, is being able

to get the right people in the right place, to have the full resources and have steady resources across years to be able to retain that talent and to retain the processes keeping in time.

Senator CORTEZ MASTO. Thank you.

And then, I only have so much time left, but I also picked up on your statement, which I think is important, thank you. Invenenergy is in Nevada. Thank you. I was at one of the ribbon cuttings with MGM and one of the AEP renewables.

But you talked about local community engagement—how important it is to have that community engagement—local, federal, and tribal nations. And I guess my question to you is, how can that be used for a model, particularly now that we have that new federal office within FERC, the Office of Public Participation? Can you talk a little bit about the importance of that community engagement and why it matters?

Ms. SPEAKES-BACKMAN. Yes, I mean, absolutely. It is incredibly important. And the success of our projects and any project depends on our ability to really build trust with those communities and not just tell them why we are in their town and why we are going to be doing good for them, but hearing from them—what are their needs, what are their priorities, how can we support both financially, but also getting the end goal of the project—getting, you know, making sure we are on the same page. It is incredibly important. And not only is it important to make sure that we are accepted, but it can help accelerate the permitting process and it can help accelerate—if you have the community behind you—it can help get those projects done more quickly.

Senator CORTEZ MASTO. Thank you.

Ms. SPEAKES-BACKMAN. Thank you.

The CHAIRMAN. Thank you.

Senator Lee.

Senator LEE. Thank you very much, Mr. Chairman.

President Biden, flanked by a veritable army of unelected, unaccountable bureaucrats, have made their goal very, very clear. Their goal is to hinder fossil fuel production on federal lands and in federal waters by any and every means necessary. And they are doing quite a job of it. In tandem with the climate provisions of the Orwellian-named Inflation Reduction Act, which Congressional Democrats passed last summer, new regulations are coming out of the Department of the Interior, the EPA, CEQ, and even agencies like the Securities and Exchange Commission chilled capital investment of oil, gas, and coal production. This, at a particularly inopportune time. You know, the Democrats' war on fossil fuels has only added more risk, more uncertainty, and more suffering to this process and to the countless permitting obstacles that energy projects were already facing. And this is contributing to a situation in which energy prices and inflation are making Americans even poorer, at the same time when they are suffering from the rampant inflation that we have faced over the last two and a half years because of excessive federal spending and excessive federal regulatory intervention.

Instead of allowing American operators to produce domestically, the Biden Administration has done everything that it possibly can to slow domestic oil and gas production to try to appease the radical fringe elements of the environmental lobby while groveling to

Venezuela and Saudi Arabia for more oil supply to try to bring down prices for a moment, for short-term political gain. This strategy makes absolutely no sense. We have boundless domestic oil and gas reserves that are far better, environmentally speaking, and far better for Americans, economically speaking. Substantive regulatory and permitting reform is indeed long overdue. And so, I am glad we are having this conversation today, and I thank the Chairman for convening the hearing.

Mr. Obermueller, I would like to start with you. As environmental groups have increased their opposition to the production of oil and natural gas on federal lands over the last 25 years, perhaps it comes as no surprise that in FY22, for the first time, 100 percent of the parcels posted for sale or for which there were leases going on were protested and litigated—100 percent. That had never happened before. This kind of litigation, of course, targets permits, leases, licenses, permits for drilling and so forth, and of course, NEPA analysis for wells, gathering lines, and pipelines.

In a bill that I have called the UNSHACKLE Act, I tried to reform the NEPA process. It is a bill that I have introduced in the past and that I will be reintroducing in Congress again soon. And I proposed a uniform 150-day statute of limitations for all NEPA-related claims, along with tightening the requirements necessary in order to obtain prompt judicial review.

Can you describe how these judicial reforms would add some more certainty to the permitting process for oil and gas projects?

Mr. OBERMUELLER. Certainly, thank you for the question.

I think, as you pointed out in your remarks, that we need to acknowledge that we have, perhaps inadvertently, but we certainly have established a system that incentivizes and rewards driving policy changes through the judicial branch. And whether it's your act—I know that I have seen iterations of that and appreciate that work and other efforts, specifically regarding taxpayer funding of reimbursements for litigation. We have to find ways to curtail that incentive and reward structure for repeated litigation not intended to correct an injustice, necessarily, we all want access to courts for that, but to so-called correct procedural issues, really whatever you can come up with because there is no skin in the game to repeatedly, you know, file lawsuits on 100 percent of these projects.

Senator LEE. Right. It is all gain at that point because if you file it, you will delay it. If you delay it, it may never happen. It might disappear. And in the meantime, BLM comes out and proposes this new rule, earlier this week, which would hike royalty and rental rates, increase the bond and minimum bid amounts, and then establish a new fee for expressions of interest. And while these cost increases are garnering most of the attention surrounding the rule, and rightly so, I am concerned about the preference criteria in the rule, which would give BLM even more discretion to direct oil and gas leasing toward areas that “do not have sensitive cultural, wildlife, and recreation interests.”

This worries me because it is going to create yet more discretion that will be used to discriminate even more at will against states where the President knows he is not going to lose many friends anyway because he does not have many, and where there happens to be a whole lot of federal land. And that description, that profile

starts to look a lot like Utah and Wyoming and a handful of other states. This is worrisome to me. So how challenging will it be for producers, in light of this rule, with high development potential, that the BLM does not arbitrarily deem to have cultural, wildlife, or recreational resources?

Mr. OBERMUELLER. Senator, it is challenging, and I would add one more to that list that I think is important—one of the criteria that they are looking at, of course, is that the BLM would define what has high potential for development—low versus high potential. You know, in Utah, from the Uinta Basin, and we know, of course, in Wyoming, every single acre at one point was low potential until technology made it high potential. So having the BLM be the arbiter of what has low and high potential is not the path we want to go down.

Senator LEE. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Hickenlooper.

Senator HICKENLOOPER. Thank you, Mr. Chair. Thank you all for being here. I appreciate your putting in the time and the effort.

Let me start with Ms. Speakes-Backman. Your company is building out a whole new energy generation that we are going to rely on for decades, I assume. Right now, new projects, though, are coming online. The new projects that are coming online face long studies, incredible costs to connect, sometimes into the hundreds of millions of dollars. Along with Representative Scott Peters, we have been working on a forthcoming bill, the BIG WIRES Act, which would require a minimum amount of transmission between regions. How would something like the BIG WIRES Act—that helps break that logjam—how would it add to kind of facilitating wind, solar, gas, and storage projects that are piling up in interconnection queues, and what would that mean for reliability and affordability?

Ms. SPEAKES-BACKMAN. Yes, well, first of all, thank you for your work and your leadership on the BIG WIRES Act. We at Invenergy are highly supportive of the bill, setting a minimum criteria for import and export capacity. You know, transmission helps accommodate new generation projects, which in turn help to strengthen the grid. It is a symbiotic relationship, if you will. An example of how transmission can really help to accommodate a new generation project is in Texas—the CRES program—where they constructed more than 2,000 miles of transmission lines in addition to the 18,000 megawatts of clean energy projects that they put together—new energy projects put together for consumers, which lowered prices. It helped reliability and resilience, and it is exactly the type of measurable, and I would say metric-driven transmission build-out, as well as new technologies to make existing transmission more efficient, that is important to help spur more generation on the clean energy side, especially.

Senator HICKENLOOPER. Exactly. Thank you.

Mr. Milito, although Colorado is not a coastal state today, as a former geologist, I like to remind people that at one time we had prime coastal real estate. We certainly recognize that offshore resources like offshore wind are a big part of our country's energy future. Right now, we are losing that race to China. The statistics they gave to me was that China had installed more offshore wind

capacity in 2021 than the rest of the world did in the previous five years. How can America better tap into its rich offshore resources to continue to diversify our energy mix?

Mr. MILITO. Yes, thank you for the question.

One of the areas where we need increased certainty and predictability is in the ability to get acreage through leasing. Right now, there are some of the questions that were raised earlier about the tie between oil and gas and between offshore wind, so let's make sure we work together to create schedules for leasing for both oil and gas and wind so that we can continue to allow both to thrive. The Administration has done a strong job of pushing forward with the construction operation plan approvals for these projects that are coming online—they are still in the water, and we are beginning to see a lot of excitement around the prospects for continued approvals and for continued construction of these projects.

I do think we do need to make sure we are keeping an eye on some of the Inflation Reduction Act incentives to make sure that they are being distributed and implemented in a way that, you know, we take full advantage of the ability to provide those incentives to this industry.

Senator HICKENLOOPER. Great. Thank you.

I will come back to Ms. Speakes-Backman. Recently, Senator Thom Tillis and I filed a bipartisan amendment to the NDAA, which would have had the Department of Defense investigate risks to mission readiness if we had an inadequate ability to move power between regions at home. So again, getting back to that, you know, the sense of large-scale transition. What role could that play in helping ensure power supply to critical infrastructure like our military bases at home?

Ms. SPEAKES-BACKMAN. Well, certainly, grid reliability impacts all aspects of our economy, but especially our security and our national security and defense. There was a statistic—I would have to look that up—something along the lines of 6,000—let me make sure I have the right notes—it's something along the lines of 6,000 outages in the last two years at military facilities. And that is not acceptable. It does impact our national readiness, and that means we need a more efficient grid. We need more reliability, and we need measurable elements of the planning system that help us to figure out what the reliability and resilience levels need to be in order to protect our country.

Senator HICKENLOOPER. Great. Thank you. And I guess I am out of time, so I will yield back to the—I had, as an exploration geologist, I had a couple good questions, but I will put them in writing. Back to the Chair.

The CHAIRMAN. Senator Hoeven.

Senator HOEVEN. Thank you, Mr. Chair.

Clearly, it's time to reform our broken federal permitting process. Delays and uncertainty drive up the cost of projects and opponents are exploiting a more and more complicated permitting process to the extent that—so to the point where a delay becomes defeat. And you have highlighted that very well. U.S. consumers pay the price for this regulatory uncertainty, particularly through higher energy costs. It affects everybody. Increasing supply is key to lowering energy costs and attacking inflation. And we need to empower our en-

ergy producers with a clear, consistent, and timely, federal permitting process.

To that end, I have introduced three bills. One is the Bureau of Land Management Mineral Spacing Act, which would remove duplicative BLM permitting regs and better respect the rights of private mineral owners. Also, the North American Energy Act, which would prevent unnecessary delays for cross-border pipeline and transmission line projects. And the Promoting Interagency Coordination for Review of National Gas Projects Act, which would streamline and set deadlines for multi-agency NEPA reviews of natural gas pipelines and LNG projects. And I appreciate our Ranking Member for including all of these in the SPUR Act, which I am also co-sponsoring.

So Mr. Obermueller, for you, just starting with my BLM Mineral Spacing Act, again, the basic concept, and this Committee actually has passed the act through the Committee, but it would remove duplicative application for permit-to-drill requirements when the Federal Government owns no surface land and a minority of the mineral interest, right? And so, I mean, you know, you are the adjacent landowner, you own the minerals. You are being held up. You are the mineral owner in that parcel, right, or may share in it. You may be the landowner. The BLM has no surface ownership, yet they sit and hold it up with the federal requirements rather than allowing the state to move forward.

Do you agree that removing this duplicative permitting requirement in states with a split mineral estate would help empower more energy development and enable BLM to better utilize its resources, and, frankly, bring some fairness to private owners who are disenfranchised unfairly by the Federal Government?

Mr. OBERMUELLER. Senator Hoeven, I really appreciate that question, and I mentioned earlier about technology making resources available that were not previously available. Horizontal drilling techniques have resulted in an issue that you just brought up that requires Congressional attention to fix. And that is precisely what you talked about. Drill pads and energy projects can be miles away from federal minerals, and the Federal Government cannot own the surface at all in any of it, and still from a minority of a nexus, dictate management prescriptions on private and state land. That is a dramatic expansion of the BLM's authority beyond the lands that they own. It is very critical to Wyoming and to North Dakota, I know.

Senator HOEVEN. And it is absolutely unfair. And then, I mean, we have pads where you could have—they may be up to 24 wells—but 16 or more wells on a pad and they drill out three or more miles in all directions underground, so there is no surface interruption whatsoever. Those kinds of things can be held up by the Federal Government in the kind of cases we are talking about where they don't even own surface acres, right?

Mr. OBERMUELLER. Absolutely can, and in terms of the litigation discussion we have been having before, there are litigators who are trying to force it the other way, to require the Federal Government to actually have management prescriptions and authority on private and state land—

Senator HOEVEN. Which actually empowers the kind of strategy you just talked about where they may take a section and actually prevent a much larger project, even though they only own a minority interest in a small part of it.

Mr. OBERMUELLER. Precisely.

Senator HOEVEN. And then, just recently—last week, BLM issued proposed regulations that would further limit oil and gas leasing and increase the cost of energy production on federal lands. Your testimony raises concerns that this proposal drives up the cost of energy production on federal lands and is layered upon a lengthy and uncertain federal permitting process already in place. Did the Administration's policies toward federal energy production encourage or discourage your members from increasing production, and at a time when everybody is fighting inflation and energy is a big part of that, won't this new regulation further hurt our ability to produce energy in this country versus getting it from other countries, who may be hostile to our interests and have much worse environmental stewardship? And does that make any sense whatsoever?

Mr. OBERMUELLER. Senator Hoeven, I appreciate that question. And I think you are referring to the new bonding rule that they proposed last week. And what I would say is, it absolutely does discourage, and in part because it's a one-size-fits-all approach. In Wyoming, we basically have very small companies. A third of Wyoming's oil production is produced by 400 companies that individually produce less than two percent of the total.

Proposals like the BLM's last week will hurt those companies the most. Very expensive, and there is no opportunity like we have in Wyoming to go into a regulated like I know they do in North Dakota and work on a cost-based bonding system, not a blanket bond where there is no room to talk about what it costs to reclaim a well at any depth.

Senator HOEVEN. Yes, and as you said, in many cases, these are small businesses, right, that are the most impacted?

Mr. OBERMUELLER. The impact of a lot of these regulations is further consolidation to the biggest oil and gas operators.

Senator HOEVEN. Thank you.

Thank you, Mr. Chair.

The CHAIRMAN. Thank you.

Senator King.

Senator KING. Thank you, Mr. Chairman.

Ms. Speakes-Backman, I want to talk about permitting, and we are talking about federal permitting and BLM and leasing and all of that. But a lot of the issues in energy development are local permitting, state permitting, and one of my observations is that often you will have a project, such as the ones you sponsor, that have a global benefit, but a local impact. The strategy that—I don't know if you are aware—but prior to my life here I was an energy developer in hydro, biomass, wind power, conservation. We tried to provide a specific local benefit to the people who bear the impact of the project. Talk to me about that concept.

Ms. SPEAKES-BACKMAN. Absolutely. As part of our early and often strategy for local interaction and community engagement, we very much look for not only how this project should be sited or how

this project should be built, but what are the needs of the community either in conjunction with the objectives of the project itself, or what do the communities need that are not necessarily related to the energy project or the transmission project that we are building.

And so we go through a very rigorous process of first planning community engagement and then executing on that community engagement.

Senator KING. And part of that is, as you say, determining what the community needs and if the project can meet those needs. I think that is an important concept, because saying this is going to benefit the earth doesn't help a resident of a community that is going to see or experience the project.

I just want to emphasize something you talked with Senator Cortez Masto about, and that is the lack of staff, and that is throughout this process, whether it's at the state level, the national level, and a lot of these delays, they are not people who are sitting on their hands, they just—there is just too much. And I take it—you are nodding—but the record won't show you are nodding. I take it you agree?

Ms. SPEAKES-BACKMAN. I agree 1,000 percent. I have had the privilege to work with federal employees at the Department of Energy in my past and I have never seen a harder working set of folks to work toward the mission of the agency itself. And I think that is across all of government. This is why one of the primary issues for us or the priorities for us on when it comes to permitting, is really making sure that these folks are well staffed and consistently staffed.

Senator KING. Particularly if you are going to shorten deadlines.

Ms. SPEAKES-BACKMAN. Absolutely. Or if we are going to increase the scope. So as they have to do more work, we have got to make sure that, on a steady basis, so they are not—the few folks that are there in the office—are not spending time training the new folks coming in, right? We need to keep a consistent level of staffing.

Senator KING. Let me change the subject slightly, and Mr. Milito, you may want to comment on this. It has always bothered me that in NEPA and other kinds of environmental analysis, you are looking at the impact of the project, but there is no analysis of the benefit, the environmental benefit of the project. You can have a project with 100 units of environmental benefit and eight units of detriment, but that is all the focus. Do you think it would be useful, important, and good policy to have NEPA and the other environmental laws that assess impact to assess the positive virtues of the project as against any detriment?

Ms. SPEAKES-BACKMAN. Absolutely. As a former state regulator, as well, it is the net benefits that really are what count, but you have to take a look at both sides of the ledger, but the net benefits really are something that you need to take a look at. It's not just what the impact is, but what are the positive outputs?

Senator KING. Mr. Milito, do you agree?

Mr. MILITO. Oh, absolutely. There are so many factors that should be considered in a decision like this—energy affordability, national security, employment. We oftentimes—

Senator KING. The world requires trade-offs, does it not?

Mr. MILITO. Absolutely. You need to balance all the factors and determine the best approach to moving forward with a project based on the consideration of those factors.

Senator KING. Mr. Obermueller, a question—we talked a lot about litigation. One of the things that was in discussion last year about these permitting reform proposals was shortening the period of the statute of limitations on these actions. Do litigants wait out the statute of limitations and then file at the end, therefore extending the period even further? What is your view on shortening the statute of limitations on appeals of administrative action?

Mr. OBERMUELLER. Senator, thank you for the question. I certainly support shortening the statute of limitations—bring that action closer to the final decision of the federal agency.

Senator KING. So we aren't talking about keeping people out of court, we are just saying you can't sit on your rights.

Mr. OBERMUELLER. That is correct.

Senator KING. And what about some provision to move these cases to an accelerated docket in the court system?

Mr. OBERMUELLER. Senator, any possibility of accelerating these decisions would help with the predictability question I talked about before, as would the ability to have these cases heard in the places where the project actually takes place.

Senator KING. So you are talking about geographic as well as temporal?

Mr. OBERMUELLER. That's right.

Senator KING. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Thanks to the witnesses for being here.

Ms. Speakes-Backman, if I could start with you. Your company, Invenergy, is planning a high-voltage transmission line across my state called the Grain Belt Express. You are familiar with this, I'm sure.

Ms. SPEAKES-BACKMAN. I am, sir.

Senator HAWLEY. As I understand it, this line, if built, would carry electricity from western Kansas to Indiana. It would cut across, right across the State of Missouri, 200 miles from west to east, eight counties, and cover hundreds and hundreds of farms. I understand you are also now proposing a second transmission line called the Tiger Connector line, which would run north and south from Monroe County down to Callaway County. Farmers in my state have expressed a lot of concern with the Grain Belt Express and the use—your company's use—of eminent domain. So let me just give you a chance to say what your response is to farmers and rural homeowners in my state who don't want transmission lines running over their farms, preventing them from planting crops, or having their land taken from them for corporate use.

Ms. SPEAKES-BACKMAN. Sir, thank you for the question. I would say that community engagement is first and foremost in our mind when we are developing any type of project. And in addition, what we are thinking about is, what is the necessity to make sure that

lights stay on and that we can improve the reliability and resilience of these communities, as well as across these communities, from one to the other. And that is why we find it very important that we look toward the larger view of what is necessary in the communities, but then at the state level, and what is in the national interest. And that is why we are continuing to work with communities to make sure that they understand what we are doing and that they give us feedback as to how we should develop these projects responsibly.

Senator HAWLEY. You say the lights stay on. Are lights going to stay on in the State of Missouri from this project? My understanding is, as originally planned, the transmission line wouldn't benefit the residents of Missouri at all.

Ms. SPEAKES-BACKMAN. Lights staying on across the entire country. We are talking about—

Senator HAWLEY. You are taking Missourians' land.

Ms. SPEAKES-BACKMAN. Sorry?

Senator HAWLEY. You are taking Missourians' land from them.

Ms. SPEAKES-BACKMAN. We are working—

Senator HAWLEY. And you have gone to—your company has gone to court and sued Missouri farmers to take away their land. Now, this isn't speculative. I mean, you have actually used this corporate power, which, frankly, I am not sure you should have, to seize land from Missouri farmers that has been in their families for generations.

Ms. SPEAKES-BACKMAN. Well, sir, I would actually say that I think about—we would have power that would go into communities in Missouri. So I would just—I am happy—

Senator HAWLEY. That's the new Tiger Connector line. So after it was pointed out that your original Grain Belt Express did nothing for the State of Missouri, then you came back and said, well, we will add something more. So what commitments are you going to give the farmers and residents of Missouri today that they will actually benefit from this land grab?

Ms. SPEAKES-BACKMAN. Yes, sir. Since we, as Invenergy, have taken over this project, we have done an inordinate amount of community engagement. We will continue to do direct community engagement. This project did not start with us, but we took it on and we took it on with the objective to make sure that the communities are well spoken to and well heard from in order to make sure that—

Senator HAWLEY. What are they going to get? Are Missouri farmers and residents, are they going to get lower energy prices out of this? What—how are they going to benefit? You are putting a huge transmission line across 200 miles of land in the State of Missouri. You have gone to court to seize the land from Missouri farmers. You are a private corporation, aren't you?

Ms. SPEAKES-BACKMAN. Yes, we are, sir.

Senator HAWLEY. How much money are you making on this?

Ms. SPEAKES-BACKMAN. I would have to get back to you on that—

Senator HAWLEY. Would you?

I'm really curious because, you know, you have got Missouri farmers who, in many cases, these are small family farms. These

are not massive corporate farmers. This land has been in their family for generations. They just want to be left alone and be able to farm and you are a major corporation who is coming in here and taking them to court, literally, to take their land. And then the benefit that they get from it is nothing. Nothing for the State of Missouri. And you talk about the national good. So your message to them is—give us, a big, rich corporation, your land, or we will take it from you and you should just live with it.

Ms. SPEAKES-BACKMAN. Sir, I am sure that's not the message that we are trying to—

Senator HAWLEY. That's what they are hearing.

Ms. SPEAKES-BACKMAN. And I would say that since we did take it, since Invenenergy took over this project, we have changed the direction of the project. We have changed the path of the project to suit the communities' needs and the communities' demand.

Senator HAWLEY. So will you pledge not to exercise eminent domain in the State of Missouri?

Ms. SPEAKES-BACKMAN. I am not authorized to—

Senator HAWLEY. That's a no?

Ms. SPEAKES-BACKMAN. I am not authorized to make that commitment, but I will certainly get back to you.

Senator HAWLEY. You know, that, I think, would be the kind—if you want to talk about rebuilding trust here—I think if you as a corporation would say “you know what, we are not going to take your land from you.” You talk about outreach to the community and benefits to the community, why don't we start with “we won't take your property?”

Again, I'm not—it's not clear to me why you, as a corporation, should have the power to seize their property. I don't think you should. That, apparently, that decision has been made and I guess you do. But I would just say, if you want to rebuild some trust, number one, why don't you show something for the State of Missouri for the residents there that you are going to do for them, and number two, why don't you pledge to them that you won't take them to court to take away their land so that they can continue to farm and raise their families and have their livelihood? I am sure you will still find a way to make lots of money.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Well, let me thank all of you for your time and effort today to be here and sharing your knowledge with us. We appreciate it very much. And I think we all know it's a passionate plea, but the bottom line is we need dependable, affordable, reliable energy, and we can do it cleaner and better than anywhere in the world. And I appreciate it so much.

So the members are going to have until the close of business tomorrow to submit additional questions for the record.

The Committee stands adjourned.

[Whereupon, at 12:00 p.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

U.S. Senate Committee on Energy and Natural Resources
July 26, 2023 Hearing: *Opportunities for Congress to Reform the Process for Permitting*
Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands
Questions for the Record Submitted to Mr. Jason M. Stanek

Questions from Senator Martin Heinrich

Question 1: In a May 9th, 2022, *Utility Dive* article, you described the process of linking new energy projects to the transmission system as “a ‘quagmire’ that state regulators deal with daily.” The Federal Energy Regulatory Commission (FERC) recently issued a draft final rule on interconnection reforms to improve efficiencies in connecting generating plants to the grid. Do you think these new rules will improve the interconnection process, and do you see any remaining gaps that need to be addressed?

Answer: FERC’s recently issued Order No. 2023 strikes the right mix of prescriptiveness and flexibility to address the well-known problems that have slowed the interconnection of generating resources across the country. I expect that the new process laid out in the final rule should cut in half the time that resource developers wait to be interconnected. Imposing firm study deadlines and penalties, increasing financial commitments on interconnecting customers, and transitioning to cluster-based studies are all significant improvements over the existing interconnection processes. Fortunately, we have seen grid operators such as PJM move to adopt some of these reforms in advance of FERC’s issuance and other RTOs/ISOs are following suit to break this “queue logjam” that I was referencing in the *Utility Dive* article. In terms of remaining gaps, FERC’s final rule leaves the door open to addressing related matters in the separate and forthcoming transmission planning and cost allocation rule in FERC Docket No. RM21-17. As FERC reforms the manner by which grid operators and transmission owners proactively plan for building new infrastructure, we should take the additional step of merging the interconnection process into the long-term planning process. One holistic process will yield many more benefits over existing method where generator interconnection requests and long-term transmission planning remain largely in separate silos.



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U.S. Senate Committee on Energy and Natural Resources
July 26, 2023 Hearing: Opportunities for Congress to Reform the Process for Permitting Electric
Transmission Lines, Pipelines, and Energy Production on Federal Lands
Questions for the Record Submitted to Mr. Antonio P. Smyth
Questions from Senator Martin Heinrich

Question 1: Recent studies¹ have shown that energy storage can serve as a cost-effective transmission asset by alleviating congestion, improving transmission capability, increasing renewable energy deliverability, and avoiding costly transmission upgrades.² Are you looking at ways to utilize energy storage, either on the grid or as a transmission asset? What challenges and opportunities do you foresee, such as developing new revenue models to monetize these storage assets?

¹ Brown et al., 2023, “Storage as Transmission Asset Market Study—White Paper on the Value and Opportunity for Storage as Transmission Asset in New York,” Quanta Technology

² Midcontinent Independent System Operator’s (MISO) 2020 transmission expansion plan concluded that installing an \$8.1M, 2.5MW/50 MWh battery in the Waupaca area would be more cost-effective than rebuilding double 115 kV transmission lines for \$11.3M

Response: American Electric Power has explored energy storage as a transmission asset on the grid and continues to support cost-effective storage solutions for customers. For example, in 2020, AEP filed a petition for declaratory order at FERC proposing an energy storage solution that was approximately \$24 million less than the cost of rebuilding the transmission line. However, in the case of AEP’s project, FERC found that the project was not a transmission asset, despite the fact that the project underwent the same review process as a traditional wires solution.¹ Thus, AEP was unable to proceed with the energy storage project.

FERC’s determination of whether storage facilities are appropriately classified as transmission assets on a case-by-case basis, rather than in a wider-spread or more uniform manner, such as a rulemaking, is an impediment to implementing storage as a transmission solution. Congress should encourage FERC to issue clarification on the circumstances under which energy storage facilities will be approved as transmission assets.

¹ *American Electric Power Service Corp.*, 173 FERC ¶ 61,264 at P 37 (2020).

Question 2: Advanced reconductoring of high-voltage transmission lines can increase their capacity by over 100%, and a recent study³ estimates that reconductoring just 25% of aging infrastructure in NERC regions can facilitate the interconnection of at least 27 Gigawatts (GW) of carbon generating capacity annually over the next 10 years. Are there additional NEPA reforms needed to ensure safe and expeditious deployment of these advanced reconductoring technologies?

³Casparry and Schneider, 2022, Advanced Conductors on Existing Transmission Corridors to Accelerate Low Cost Decarbonization, American Council on Renewable Energy.

Response: The Inflation Reduction Act and Infrastructure Investment and Jobs Act amended the Energy Policy Act to allow for Department of Energy (“DOE”) loan and loan guarantees for a variety of projects, including transmission projects that increase capacity. These projects typically involve rebuilding existing infrastructure to higher voltages or with newer conductor, which increases the amount of electricity that can be carried by the line. These projects are usually within existing rights-of-way with little to no additional land rights necessary for the transmission to be rebuilt or reductored.

The use of DOE loans or loan guarantees can help expedite the deployment of these projects and lower costs to customers, however, DOE currently requires applicants for loans to undergo a NEPA review, even if the project is not on federal land or where NEPA would otherwise not apply were it not for the fact that the loan is from the federal government. This NEPA review process is in addition to any applicable state processes for approval to rebuild the transmission lines. This extra NEPA review adds time, uncertainty, and potential litigation risk that could deter companies from using these loans. The potential delay is a real concern that may be measured in years, depending on the level of NEPA compliance that DOE requires. Furthermore, the DOE does not have control over where the facilities are located but only whether federal dollars are used for the project. States still retain siting authority and utilities are still required to comply with all state and federal laws (*i.e.* Clean Water Act, Endangered Species Act, National Historic Preservation Act, etc.).

To streamline the process, we would suggest that reforms center around a clear division of roles and responsibilities between the states and DOE. Recent amendments to the definition of “Major Federal Action” in the Fiscal Responsibility Act of 2023 could help with this clarification. However, the language still leaves the door open for interpretation by federal agencies and others. The new definition states:

Major Federal action does not include the following activities or decisions:

*(vii) Loans, loan guarantees, or other forms of financial assistance where the Federal agency does not exercise sufficient control and responsibility over the effects of such assistance. (emphasis added)*²

² 42 U.S.C. § 4336e

The last part of the definition leaves ambiguity in whether DOE has “control and responsibility”. Striking the last part of the sentence, after “financial assistance” from the definition, eliminates the ambiguity, making it clear that loans and loan guarantees are not a “major federal action” and therefore are not subject to NEPA if the project receiving the loan would not otherwise trigger NEPA.

Proposed language:

Major Federal action does not include the following activities or decisions:

(vii) Loans, loan guarantees, or other forms of financial assistance. ~~where the Federal agency does not exercise sufficient control and responsibility over the effects of such assistance~~

There are other possible reforms that would also help advance these projects. Providing NEPA process exclusions for loans associated with transmission projects that are being rebuilt on the existing centerline of rights-of-way or with de minimis deviations from the centerline would help advance a large portfolio of projects. The use of existing transmission rights-of-way is often the least environmentally impactful way to increase capacity. NEPA review for projects in existing rights-of-way is an unnecessary step because not only will these projects remain subject to the raft of other state and federal environmental laws, but the NEPA review will ultimately lead to the same decision to rebuild in place because building a new transmission line would, by definition, increase impacts. Therefore, in the case of loans for transmission line rebuilds along existing centerlines with minimal changes, continued compliance with NEPA imposes nothing but delay and increased costs.

Whether the goal is to increase capacity for reliability, renewable interconnection, or to alleviate congestion, using existing rights-of-way is preferred by regulators, landowners, and utilities. Ensuring that NEPA doesn’t provide an additional opportunity for litigation and delay is important to helping the country create a sustainable grid.

AEP appreciates the opportunity to weigh-in on these important questions.

U.S. Senate Committee on Energy and Natural Resources
July 26, 2023 Hearing: Opportunities for Congress to Reform the Process for Permitting
Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands
Questions for the Record Submitted to Mr. Erik G. Milito

Questions from Senator Martin Heinrich

Question 1: *A provision in the Inflation Reduction Act prevents the Department of Interior from issuing a lease for offshore wind projects unless it has held an offshore oil and gas auction within the previous 12 months and offered at least 60 million acres in those auctions. Are you concerned about any possible interruption of offshore wind leasing starting in October 2024 as a result of this provision? How would such a pause on leasing affect your ability to plan for future projects and investments?*

Response: Yes, NOIA and its members are extremely concerned that this wind ‘leasing cliff’ could become a reality.

- BOEM has stated it will publish its final national OCS five-year oil and gas leasing program in September 2023, with the program being finalized in December 2023. Given that sale specific NEPA review and related consultations required for oil and gas lease sales generally takes from 18-24 months, BOEM’s upcoming September oil and gas lease sale, Lease Sale 261, will only provide statutory cover to issue wind leases through September of 2024. Should BOEM’s five-year program go into effect in December of this year as stated, it is possible no oil and gas lease sales would be held until 2026, thereby creating a significant gap in the issuance of offshore wind lease sales.
- Pausing wind leasing at a time in which such a nascent domestic industry is attempting to get off the ground would be unreasonably disruptive to the future of offshore wind in the United States. With offshore wind still lacking a codified sale schedule, leasing program, and revenue sharing program, eliminating the possibility of future lease sales by not conforming with the oil & gas leasing tie-in passed in the IRA would seriously set back the industry just as it embarks on the crucial goal of delivering President Biden and the American people 30gw of carbon-free, offshore wind energy by 2030.

U.S. Senate Committee on Energy and Natural Resources
July 26, 2023 Hearing: *Opportunities for Congress to Reform the Process for Permitting*
Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands
Questions for the Record Submitted to Ms. Kelly Speakes-Backman

Questions from Senator Martin Heinrich

Question 1: In your testimony, you state that high-voltage direct current technology is ideally suited for interregional transmission and can be controlled to provide reliability services such as frequency response, voltage control and ramping, and enhanced resilience. Can you please speak to these features and elaborate on how HVDC transmission, together with large-scale energy storage, can enhance grid reliability, resilience, and quality using clean energy?

Response: High-voltage direct current (HVDC) transmission has several unique reliability benefits. Similar to large-scale energy storage systems, HVDC transmission can play an increasingly important role as the grid moves to inverter-based resources. It can support bi-directional power flows, it can provide black start in the event of outages, and it can provide services such as frequency response, voltage control, and ramping that are necessary to reliably operate the grid. HVDC systems also have the capability to connect asynchronous grids, such as the Western Interconnection and Eastern Interconnection, and can deliver power over longer distances with minimal losses. These features make HVDC transmission, paired with the addition of large-scale energy storage, ideally suited to support reliability and resilience as the U.S. builds a grid capable of moving inexpensive electricity to our homes, industrial base, and military installations.

Question 2: I recently introduced the FASTER Act, which is intended to ease the siting of transmission lines by encouraging developers to enter into community benefit agreements with local stakeholders that might be affected by a transmission line. Invenery's 400-mile, high-voltage direct current North Path transmission project is an example of a project that has worked to get local community buy-in, and an example of the types of projects my FASTER Act is intended to promote. Can you share with the Committee how Invenery has worked with local communities, including Tribes, to ensure everyone shares in the project's success?

Response: Thank you, Senator, for your work on the FASTER Act, as well as on the Interregional Transmission Planning Improvement Act and Grid Resiliency Tax Credit Act. Invenery agrees that early and active community engagement and community benefit agreements ensure that companies and local stakeholders share in each project's success.

From a project's inception through operation, Invenery prioritizes robust outreach with Tribal Nations and stakeholders, including landowners and local communities, to learn how our presence can best serve community interests, local economies, and livelihoods. Last year alone, Invenery projects contributed \$400 million to the communities where they are located.

Invenery is particularly proud of our work with Tribes in New Mexico to ensure that Invenery's North Path transmission project protects tribal interests. Invenery first initiated Tribal engagement with the Navajo Nation, Zia Pueblo, Santo Domingo Pueblo,

U.S. Senate Committee on Energy and Natural Resources
July 26, 2023 Hearing: *Opportunities for Congress to Reform the Process for Permitting*
Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands
Questions for the Record Submitted to Ms. Kelly Speakes-Backman

Santa Ana Pueblo, and San Felipe Pueblo at the outset of project development to not only inform and identify suitable development areas, but also to build collaborative partnerships that deliver direct and indirect benefits to Tribal Nations. Over multiple years, Invenergy has continued to meet with Tribal leadership about how to best support Tribal energy goals and energy sovereignty, build the Native workforce, and create education and scholarship opportunities for Native communities.

Invenergy strives to be a good corporate citizen in every community where we operate. In some cases, this may take the form of structured community benefits agreements. For instance, Invenergy is partnering with energyRe and the New York Power Authority to develop the Clean Path NY transmission project, which will enable the delivery of more than 7.5 million megawatt-hours of emissions-free energy from upstate and western New York into New York City every year. As part of that effort, we have committed to a \$270 million fund to support workforce development and education programs, health services, and environmental stewardship programs, with priority given to frontline communities. We hope that other companies, galvanized by your work on the FASTER Act, will likewise commit to early and active engagement with and support for the communities where they operate.

Question 3: Your testimony refers to the Bureau of Land Management's plans to revise its Programmatic Environmental Impact Statement for solar development on federal lands. You identified the lack of access to transmission as one of the barriers that has prevented developers from making full use of BLM's Solar Energy Zones. Can you elaborate on those concerns, and explain how BLM's plan might better promote solar energy deployment?

Response: The Bureau of Land Management's (BLM) Western Solar Plan identifies specific areas where the BLM prioritizes utility-scale solar energy development (i.e., Solar Energy Zones). While the Solar Energy Zone concept is well-intentioned, development in BLM-designated Solar Energy Zones has been slow, due in large part to limited access to transmission infrastructure in the immediate vicinity of Zones. Where there is access to transmission infrastructure, such as the Dry Lake Solar Energy Zone in southern Nevada, development has been robust and rapid. Identifying priority areas that are attractive to industry is the key.

In revising the Western Solar Plan, the BLM could improve its promotion of solar energy development by identifying priority areas for development that are proximate to existing or planned energy transmission infrastructure and responsive to energy market needs. The BLM could work with outside experts, industry, transmission and planning organizations to identify such priority areas. Invenergy also recommends that the BLM offer priority lands competitively on a more frequent and regular schedule (e.g., annually or semi-annually) to ensure robust market participation. For example, BLM could set targets for the amount of priority land to offer up for lease annually to meet the clean energy goals set by BLM and the Administration. Lastly, Invenergy supports prioritizing

U.S. Senate Committee on Energy and Natural Resources
July 26, 2023 Hearing: *Opportunities for Congress to Reform the Process for Permitting*
Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands
Questions for the Record Submitted to Ms. Kelly Speakes-Backman

lease applications, including those outside of Solar Energy Zones, that meet defined criteria such as proximity to transmission points of interconnection.

Question 4: A provision in the Inflation Reduction Act prevents the Department of Interior from issuing a lease for offshore wind projects unless it has held an offshore oil and gas auction within the previous 12 months and offered at least 60 million acres in those auctions. Are you concerned about any possible interruption of offshore wind leasing starting in October 2024 as a result of this provision? How would such a pause on leasing affect your ability to plan for future projects and investments?

Response: Yes, Invenenergy is concerned about probable interruptions to offshore wind leasing starting in October 2024 due to this provision. If offshore wind developers do not have a consistent and predictable leasing process, suppliers will not continue making investments in the United States, limiting the potential for American-led clean energy developers and suppliers to participate in the growth of the offshore wind market. It will also interfere with the ability of regulators and permitting agencies to develop the experience necessary to efficiently permit projects. Such an interruption will cause delays in the permitting process, increase the price of materials and equipment, and stymie the development of the domestic offshore wind industry.

Senate Energy and Natural Resources Committee
Hearing regarding opportunities for Congress to reform the process for permitting
electric transmission lines, pipelines, and energy production on federal lands
Statement from Senator James Risch
July 26, 2023

As I have brought before this Committee before, we have a project being proposed and permitted in Idaho—the Lava Ridge Wind Energy project—which has been met with unprecedented and near-unanimous opposition in Idaho.

In relevance to today’s discussion, projects like Lava Ridge are proposed with the hope of exporting electricity to states that have forced retirement of existing and reliable generation in favor of so-called clean energy standards. In turn, these states don’t actually have enough resources to meet demand and are looking to states like Idaho to fill in the gaps.

To do so, these projects are relying on huge transmission lines being permitted and built quickly, completely absent of the fact that these lines have not yet been approved by states regulators and may not have the support to be constructed at all.

As we have this permitting discussion, I am extremely concerned about any legislative proposals that will allow companies like this to disregard local opposition even further by using the federal government to authorize the transmission for their projects without the backing of states, and at the cost of ratepayers who won’t benefit from the generation, and who oppose the project.

I strongly discourage this Committee from moving forward legislation that undercuts state authority, increases costs, and will further incentivize unwanted projects like Lava Ridge. I can assure you the federal government does not understand the needs of Idahoans better than the state and local officials who live in and serve these communities.

That is perhaps no better demonstrated by the other side of the transmission challenge we face in Idaho—federal land ownership. Nearly two-thirds of Idaho is managed by the federal government, meaning we are often at the mercy of federal agency review.

In Idaho, the Idaho Power Company initiated work on a transmission line running from northeastern Oregon to southwestern Idaho—known as Boardman to Hemingway—in 2007. The BLM and Forest Service began their review processes

in 2010 and did not finalize their decisions until 2017 and 2018, a decade later than the project was initiated.

Further, this approval was really only the beginning as other tests, easements, and engagement are required and this line is still not expected to be in-service until 2026, almost twenty years after its initiation.

Unlike my first example, this project, which is now cooperative between Idaho Power, PacifiCorp, and the Bonneville Power Administration, will mutually benefit its entire service territory and allow the three organizations to work together to meet all of their customer's needs and varying demands throughout the region.

There is a lot of room on this Committee for agreement that we need to be responsive to demand fluctuations and changing population centers, and that transmission is essential to do so. But I caution that we need to look more at how we can get away from taking a decade or more to just get through the federal process and less at removing states and local communities and forcing ratepayers to pay costs for projects they may not benefit from or support.

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July 26, 2023

The Honorable Joe Manchin
Chairman
Committee on Energy and Natural Resources
U.S. Senate
Washington, DC 20510

The Honorable John Barrasso
Ranking Member
Committee on Energy and Natural Resources
U.S. Senate
Washington, DC 20510

Dear Chairman Manchin and Ranking Member Barrasso:

Air Products commends the Committee on Energy and Natural Resources for holding a hearing on permitting reform, and offers its views specifically about hydrogen pipeline regulation. We are extremely concerned about proposals that seek to regulate hydrogen pipelines under the Natural Gas Act ("NGA"), including a provision in S. 1399, Chairman Manchin's Building American Energy Security Act. This would impose far-reaching, burdensome, and unneeded regulations across the existing hydrogen industry. It also would also hold back new development going forward. Any legislation regarding the regulation of hydrogen pipelines should only be formulated, let alone passed, after a record is built showing the need for such regulation and exploring options to the extent that need is shown.

Air Products is the world's largest supplier of hydrogen and a leader in providing hydrogen fueling infrastructure, including over 110 hydrogen production plants producing more than 10,000 tons of hydrogen per day. More than 3,600 tons of production is scheduled to begin in the United States and around the world during the next five years. Air Products has 22,000 employees and operations in 50 countries. We serve customers across a wide range of crucial industries, including the food and beverage, agricultural, medical, transportation, and energy sectors.

A significant aspect of our hydrogen portfolio is an interstate hydrogen-only pipeline built, owned, and operated by Air Products in the U.S. Gulf Coast. The pipeline stretches approximately 700 miles from Texas City, Texas, to New Orleans, Louisiana, serving dozens of industrial customers along the way. Air Products obtained all necessary permits and rights-of-way for the project, which of course is subject to safety regulation by the Pipeline and Hazardous Materials Safety Administration ("PHMSA").

As first noted, we are extremely concerned about proposals that seek to regulate hydrogen pipelines under the NGA, including a provision in S. 1399, Chairman Manchin's Building American Energy Security Act. The

NGA is administered by the Federal Energy Regulatory Commission ("FERC" or "Commission") and imposes complex and far-reaching regulations across the entire natural gas industry, implicating all aspects of the economic operations, market entry, construction, and abandonment of natural gas pipelines and storage facilities.

Before acting on any hydrogen-related legislation, the Committee should ensure that it fully understands the issues unique to the hydrogen industry, and only target those issues to the extent problems can be identified. Specifically, one needs to determine if there are currently any obstacles preventing companies from building or operating hydrogen pipelines. The Committee should explore not only issues affecting the hydrogen industry now, but also conduct hearings to determine whether there are additional obstacles that are anticipated between now and 2030 or 2050. Only once the current and future obstacles, if any, have been identified can lawmakers recommend appropriate legislation and identify the appropriate legislative vehicle for addressing these obstacles. Otherwise, this Committee runs the risk of enacting legislation that will stifle rather than promote the development of a more robust hydrogen economy.

Over the course of many years, FERC has developed its NGA regulatory regime with only natural gas in mind, and many of the nuances of that regime may be ill-suited for the hydrogen industry or might even cause the industry economic damage. Hydrogen pipelines, sellers, and buyers have been operating outside of this regulation, entering into commercial arrangements that make most sense for their businesses. There would be a significant burden to the hydrogen industry in requiring a transition to a scheme that mirrors the interstate unbundled natural gas markets. S. 1399 threatens to lay that burden on both emerging and legacy hydrogen projects with no identified purpose or benefit. The contracts and business arrangements currently utilized by hydrogen producers and transporters in conducting business with existing customers may violate provisions of the NGA. Remediating any conflicts between the NGA and existing business practices would be extremely disruptive to the hydrogen industry.

It is even unclear which hydrogen pipelines and storage facilities, would be subject to regulation. The NGA covers transportation, storage, and (some) sales of natural gas "in interstate commerce" as well as the companies engaged in those activities. These activities are "in interstate commerce" whenever the pipeline crosses a state line *or* if the gas transported is commingled with gas that has crossed state lines. Therefore, depending on FERC's approach, hydrogen pipelines could be subject to the NGA even if they are located entirely within one state if they transport hydrogen made from natural gas that was transported in interstate commerce.

The NGA's siting requirements present further difficulties. Any gas pipeline must obtain a FERC Certificate of Public Convenience and Necessity before it can begin construction or operations. This process is expensive, burdensome, and is also subject to procedural delay at FERC and in the courts. Air Products believes the NGA's siting authority is entirely unnecessary to develop and construct hydrogen infrastructure at this time – we have done so successfully without using such authority. Moreover, the nation is covered with pipelines carrying oil, refined products, and even ammonia that did not require federal siting authority to be built. As Air Products' experience clearly shows, hydrogen pipelines can be built wherever there is sufficient demand to justify them.

Imposing the NGA on hydrogen would disrupt existing markets and hold back future infrastructure development. We urge the Committee to carefully review the state of the hydrogen industry and its likely path forward before enacting any far-reaching legislation.

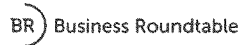
Air Products appreciates the opportunity to offer its views. Please do not hesitate to contact us with any

questions or if we can otherwise be of any assistance to the Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. M. T.", written in a cursive style.

VP – Hydrogen for Mobility Solutions



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 Washington, DC 20024
 202.872.1260
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July 26, 2023

The Honorable Joe Manchin
 Chairman
 Senate Committee on Energy and
 Natural Resources
 304 Dirksen Senate Building
 Washington, DC 20510

The Honorable John Barrasso
 Ranking Member
 Senate Committee on Energy and
 Natural Resources
 304 Dirksen Senate Building
 Washington, DC 20510

Dear Chairman Manchin and Ranking Member Barrasso:

On behalf of the more than 200 CEO members of Business Roundtable, who lead U.S.-based companies that support one in four American jobs and almost a quarter of U.S. GDP, we want to thank you for holding the July 26 hearing to "Examine Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands."

We welcome the continued discussion on permitting and are eager to provide constructive, bipartisan solutions for additional reforms. To achieve the goals of recent legislation, Congress and the Administration should continue to improve the federal permitting process, particularly for energy projects. Permitting reform can address escalating costs, critical minerals supply chain vulnerabilities, transmission constraints and other barriers to American energy success. The most significant action Congress can take to increase the production and export of American energy is to further streamline the permitting process to make it easier to build American infrastructure and grow America's clean energy capacity.

Business Roundtable strongly supported the meaningful bipartisan reforms to the permitting process included in the Fiscal Responsibility Act, including:

- Requiring lead or joint lead agencies to supervise environmental reviews;
- Requiring single, page-limited environmental review documents;
- Establishing time limits on the environmental review process; and
- Expanding the use of categorical exclusions.

We encourage policymakers to build on that progress and enact additional reforms to address remaining barriers to unleashing American energy. Attached are Business Roundtable's recommendations for how best to increase domestic energy production and export, expand and improve transmission capabilities and capacity and expand access to key raw materials, including critical minerals.

July 26, 2023
Page 2

We are pleased that you are continuing to work to find meaningful, bipartisan reforms. The work of the Senate Energy and Natural Resources Committee is important to the effort of making it easier to build American infrastructure and grow America's clean energy capacity.

Sincerely,

A handwritten signature in black ink, appearing to read 'Corey Astill'.

Corey Astill
Vice President
Business Roundtable

A handwritten signature in black ink, appearing to read 'Matt Sonnesyn'.

Matt Sonnesyn
Vice President
Business Roundtable



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Dream.Org

The Honorable Joe Manchin
Chairman
Energy and Natural Resources Committee
United States Senate
304 Dirksen Senate Building
Washington, DC 20510

The Honorable John Barrasso
Ranking Member
Energy and Natural Resources Committee
United States Senate
304 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Manchin and Ranking Member Barrasso,

Thank you, and the members of the Senate Environment and Natural Resources committee, for having the hearing to "Examine Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands", on July 26th, 2023. Dream.Org supports bipartisan efforts to reform the permitting process and hope you will continue to pursue meaningful policy improvements.

At Dream.Org we work for cleaner air and water, affordable energy, and good jobs for all. Unfortunately, the current permitting process is significantly inhibiting those goals. Clean energy will be integral to our energy mix in the very near future, but the current process limits our ability to scale renewable energy investments and create a more resilient and more affordable energy future. Dream.Org is working to accelerate permitting for clean energy projects so that we can scale green infrastructure with urgency while engaging community voices and protecting vulnerable communities.

The problems with the permitting process are well documented. Projects can take a decade or more to be fully permitted and implemented. Less than a quarter of clean energy projects become operational because of transmission hurdles. Energy costs and grid instability are increasing. The need is becoming greater, and yet we still aren't building resilient clean energy infrastructure quickly. Without reform, we risk these problems getting worse and wasting the historic opportunity to make meaningful climate progress. Additionally, our global competitors will seize the opportunity to lead the clean energy economy and leave the U.S. behind, meaning clean energy jobs and investments for communities all over the country would go unrealized. We must increase transmission capacity and efficiency by cutting



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the red tape that stops viable, clean energy projects.

Bipartisan permitting reform legislation can remedy many of the delays plaguing the permitting process while also lowering emissions, lowering energy costs, and creating jobs. We believe that well designed reform achieves five essential goals. We are advocating for reform that:

1. Streamlines the permitting processes for clean energy and transmission lines
2. Ensures that amendments to the permitting process include considerations from directly impacted communities experiencing environmental concerns
3. Ensures robust, early community engagement and technical assistance in communities being impacted
4. Ensures rural states economically benefit from providing renewable energy to dense population centers
5. Creates workforce opportunities with investments in low emission, zero-emission, and resilient technologies and infrastructure to help reduce emissions and air pollutants

We are encouraged by the Committee's recognition that the permitting process is preventing the United States from building the energy infrastructure it needs today and in the future. Our organization encourages you to keep pursuing a bipartisan permitting reform policy. We believe that designed correctly, permitting reform can help reduce emissions and pollution while creating opportunities in the clean energy economy for all.

Sincerely,

Kyle Kammien
Policy Director, Green for All
Dream.Org



Statement for the Record

National Association of Manufacturers
733 10th Street, NW, Suite 700
Washington, DC 20001

Senate Committee on Energy and Natural Resources
“Examining Opportunities for Congress to Reform the Process for Permitting Electric
Transmission Lines, Pipelines and Energy Production on Federal Lands”

Wednesday, July 26, 2023



Statement for the Record

Senate Committee on Energy and Natural Resources “Examining Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines and Energy Production on Federal Lands”

WEDNESDAY, JULY 26, 2023

The National Association of Manufacturers appreciates the opportunity to submit written comments for the record regarding the Senate Committee on Energy and Natural Resources hearing on “Examining Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines and Energy Production on Federal Lands.”

As the nation’s largest manufacturing association, the National Association of Manufacturers represents nearly 14,000 manufacturers of all sizes in every industrial sector and in all 50 states. Manufacturers in the U.S. are committed to creating jobs and improving the quality of life in the communities they serve and are dedicated to protecting the health, safety and vibrancy of those communities.

The Fiscal Responsibility Act substantially amended the National Environmental Policy Act for the first time in decades. While the reforms to NEPA are a strong start, there is still much left to do to modernize and update our nation’s antiquated permitting system. Manufacturers respectfully submit the following points for your consideration.

Judicial Review

The Congressional Research Service states that NEPA is the most frequently litigated federal environmental statute.¹ Protracted legal battles make it more difficult for manufacturers to expand their capabilities and deliver on many of our national goals, such as reducing the U.S.’s carbon footprint, protecting the environment and strengthening our energy grid. The need for judicial review was highlighted recently when the 4th Circuit judges improperly usurped congressional and executive branch intent when they halted the Mountain Valley Pipeline. The NAM urges Congress to set a stricter statute of limitations for filing court challenges and require courts to process those NEPA challenges and issue a final judgment expeditiously so manufacturers can get back to what they do best, which is manufacturing products that make modern life possible.

Transmission Lines

According to the Department of Energy’s draft National Transmission Needs Study released in February 2023, the national electric transmission system would need to grow 57% by 2035 to meet the infrastructure needed to reach the administration’s clean energy goals as it relates to the growing light-, medium- and heavy-duty vehicle industries.² Yet at the historical pace of approximately 1% annual growth for these projects,³ the transmission system could require more than half a century to meet the administration’s goals. Regardless of whether new transmission lines are used to bring power online from new renewables, nuclear, natural gas, hydrogen or other sources, the country needs the ability to build additional transmission lines in a timely manner to get power where it is most needed.

Regulatory Certainty

Continually revising federal standards creates unpredictability. That has led to the U.S. losing out on new projects and facilities to other countries, undermining the very goals of our environmental standards. Currently, the Environmental Protection Agency is taking an aggressive approach toward tightening regulations in several environmental statutes. Unfortunately, these proposed regulatory changes are not

¹ <https://crsreports.congress.gov/product/pdf/IF/IF11932>

² <https://www.energy.gov/gdo/national-transmission-needs-study>

³ https://repeatproject.org/docs/REPEAT_IRA_Transmission_2022-09-22.pdf

based on the best available science and often set standards at or below limits of detection, making compliance technically impossible. This is driving investment outside of the United States of materials that will be necessary to diversify our energy supply and produce items important to national security, such as semiconductors.

Enforceable Deadlines

The two-year deadline for environmental impact statements and one-year deadline for environmental assessments in the Fiscal Responsibility Act shortened a process that often extended more than four and a half years.⁴ However, the NAM is concerned that the only enforcement mechanism on those deadlines is an applicant taking a permitting agency to court. Many applicants consider legal action as a last resort, the NAM encourages Congress to consider other measures of enforcement that do not require legal action, such as deeming requirements on the process to have been fulfilled if an agency fails to act within a given timeline.

Unlock Domestic Critical Minerals

There is broad bipartisan support for increasing semiconductor production in the U.S. With 88% of chips produced outside of the U.S.,⁵ this is a crucial goal for not only our economic security but also our national security. Yet, the critical minerals for those chips, such as lithium and cobalt, are still mined largely outside of the U.S.⁶ The National Mining Association reports that Australia and Canada, two countries with environmental protections that are in many ways equivalent to those in the U.S., have mine permitting processes that last two to three years on average, whereas in the U.S., the permitting process averages seven to 10 years.⁷ Developing an adequate domestic supply of these minerals will require congressional and administration action to expedite permissions for developing those resources in a responsible way.

If the United States does not continue to prioritize permitting reform, we could lose much needed manufacturing investment to foreign nations, costing the U.S. well-paying jobs and economic competitiveness. On the other hand, if we seize this opportunity to lead, there is no limit to what manufacturers in the United States can accomplish—for the good of our people and the good of the world.

The NAM looks forward to continued engagement with Congress as we work to create jobs and grow investment in manufacturing while continuing to keep our promises to protect our environment and set the standard for environmental stewardship.

Sincerely,

Brandon Farris
Vice President, Domestic Economic Policy

⁴ https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf

⁵ www.semiconductors.org/wp-content/uploads/2021/09/2021-SIA-State-of-the-Industry-Report.pdf

⁶ https://www.gao.gov/products/gao-22-104824#summary_recommend

⁷ <https://nma.org/wp-content/uploads/2016/09/Fact-Sheet-Permitting-Delays-1.pdf>



The association of electrical equipment
and medical imaging manufacturers
www.nema.org

July 25, 2023

The Honorable Charles Schumer
Senate Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Senate Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Hakeem Jeffries
House Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressional Leadership:

Thank you for your direction and dedication to enhancing our nation's infrastructure by streamlining the processes employed by federal agencies to approve and construct energy projects. The recent passage of H.R. 3746, the Fiscal Responsibility Act, which included several improvements, is a great start to meaningful reform of the permitting process. We hope Congress will continue working together to find additional bipartisan agreement on permitting legislation.

The National Electrical Manufacturers Association (NEMA) represents nearly 325 electrical equipment and medical imaging manufacturers that make safe, reliable, and efficient products and systems serving building systems, building infrastructure, lighting systems, industrial products and systems, utility products and systems, transportation systems, and medical imaging. Our combined industries account for 370,000 American jobs in more than 6,100 facilities covering every state. These industries produce \$124 billion in shipments and \$42 billion in exports of electrical equipment and medical imaging technologies per year.

As Congress continues to consider permitting legislation, we encourage both sides of the aisle in each Chamber to consider the following areas of interest for electrical manufacturers:

Critical Minerals – Rare earth elements and critical minerals are essential to the electrical supply chain. As the nation continues to electrify even more industries, additional domestically sourced minerals will be needed. To lessen our dependence on China and other unfriendly countries for essential raw materials, any permitting legislation should prioritize the domestic access to these materials on both private and public lands as well as through unconventional sources, such as coal waste.

Legislation should further our understanding of the availability of future supplies of critical minerals by studying and assessing their quantity and accessibility within the U.S. This is particularly true for minerals that have a national security nexus, including copper. Congress should place such minerals on the Department of the Interior's *Critical Mineral* list. These assessments should be ongoing and made in conjunction with a national strategy to re-shore or friend-shore the critical minerals supply chain. All minerals should benefit from any streamlined permitting provisions provided to those on such a list. Furthermore, these assessments should be required before federal land is withdrawn from possible use.

Finally, we support additional government actions, such as the FAST-41 process and the Defense Production Act, as tools to increase access to critical mineral resources.

Energy Infrastructure – NEMA strongly encourages Congress to reduce the timeline to approve and build energy infrastructure, including transmission and cross border projects. The electric grid needs more transmission and distribution capacity nationwide to meet expected demand growth in the coming decades.

One solution to expedite transmission development is to prioritize projects that use existing railway and highway rights-of-way. Rights-of-way corridors have proven minimal impacts on adjoining communities and their immediate surroundings, and most have already been subject to environmental impact reviews. Therefore, Congress should limit environmental reviews and assessments, or allow for categorical exclusions, for new transmission projects which utilize rights-of-way. Further, Congress should direct the Department of Energy to designate existing railroad and highway rights-of-way as National Interest Electric Transmission Corridors, as well as incentivize and encourage the Federal Energy Regulatory Commission to prioritize projects which incorporate rights-of-way.

Permitting – Permitting any type of energy project currently takes too long and is plagued by regulatory and legal uncertainty, which causes projects to take years and often decades to get approved. Any additional permitting legislation must include provisions to create clearer and more certain legal and regulatory processes while requiring transparent and broad stakeholder engagement, including potential litigants, from a project's beginning.

To achieve this, Congress must provide additional funding for any federal agency that is part of the permitting process to recruit and retain necessary staff, provide technical assistance to stakeholders, and improve timely and relevant communications among stakeholders.

NEMA remains committed to working with you and relevant Congressional committees on the important issue of permitting reform in order to enhance our electrical system and the connected supply chain.

Sincerely,



Debra Phillips
President and CEO
National Electrical Manufacturers Association

CC: Sen. Joe Manchin, Chairman, Senate Energy & Natural Resources Committee
Sen. John Barrasso, Ranking Member, Senate Energy & Natural Resources Committee
Sen. Tom Carper, Chairman, Senate Environment & Public Works Committee
Sen. Shelley Moore Capito, Ranking Member, Senate Environment & Public Works Committee
Sen. Maria Cantwell, Chairman, Commerce, Science & Transportation
Sen. Ted Cruz, Ranking Member, Commerce, Science & Transportation
Rep. Sam Graves, Chairman, House Transportation & Infrastructure Committee
Rep. Rick Larsen, Ranking Member, House Transportation & Infrastructure Committee

Rep. Bruce Westerman, Chairman, House Natural Resources Committee
Rep. Raúl Grijalva, Ranking Member, House Natural Resources Committee
Rep. Cathy McMorris Rodgers, Chairman, House Energy & Commerce Committee
Rep. Frank Pallone, Ranking Member, House Energy & Commerce Committee
Rep. Garret Graves, Transportation & Infrastructure Committee
Rep. Scott Peters, Energy & Commerce Committee



July 25, 2023

The Honorable Joe Manchin III
Chairman
Committee on Energy & Natural Resources
U.S. Senate
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John Barrasso
Ranking Member
Committee on Energy & Natural Resources
U.S. Senate
304 Dirksen Senate Office Building
Washington, DC 20510

Re: Comments for the Record – July 26, 2023, Full Committee Hearing to Examine Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands

Dear Chairman Manchin and Ranking Member Barrasso:

NextEra Energy, Inc. is a leading energy holding company, investing billions of dollars every year in energy infrastructure across North America, and the parent company of NextEra Energy Transmission, LLC, (NEET), the leading competitive transmission developer, owner, and operator in the U.S., with over \$5 billion in total investments in current operating or development projects in every power region.

As you endeavor to enact sensible bipartisan permitting reform legislation, NextEra Energy urges you to consider incorporating meaningful federal policy measures supporting interregional transmission expansion as part of that effort. Such action is critically needed now to overcome well-documented ineffectual policies, regulatory hurdles, and bureaucratic inertia holding back further development of high-impact interregional transmission lines that is central to mitigating grid reliability risks and ensuring customers have ready access to affordable power. Our perspective on these issues is informed by a decade plus of transmission development experience across 14 states and different regulatory constructs.

As industry and government experts have well-chronicled, the need for interregional transmission expansion is now all but undeniable. The nation is becoming increasingly susceptible to extreme weather events due to the limited ties between regions preventing surplus power from flowing between regions where and when it is needed most. According to DOE's draft Transmission Needs Study, "there is a pressing need for additional electric transmission infrastructure" in nearly all regions of the country.¹ Recent studies of extreme weather events also demonstrate the significant value of interregional transmission. During Winter Storm Uri, grid operators in the Midwest and Southwest, having strong connections to neighboring regions with their existing interregional transmission, managed to keep the lights on by importing power from unaffected regions, while the isolated Texas grid operator was forced to institute rolling blackouts. One recent analysis determined that each additional gigawatt of transmission capacity between Texas and the Southeast would have saved Texans roughly \$1 billion and kept the lights on for 200,000 homes.² Comparable additions of interregional capacity would have yielded nearly \$100 million in benefits during the more recent Winter Storm Elliott.³

¹ <https://www.energy.gov/gdo/national-transmission-needs-study>

² <https://acore.org/transmission-makes-the-power-system-resilient-to-extreme-weather/>

³ <https://acore.org/wp-content/uploads/2023/02/The-Value-of-Transmission-During-Winter-Storm-Elliott-ACORE.pdf>

NextEra Energy Transmission, LLC

Spurring much-needed long-distance transmission lines that can help ensure reliable and affordable power for customers will require effective interregional transmission planning and cost allocation policies that will facilitate the expedited development of greenfield interregional transmission projects. As recent hearings on this topic have shown, such projects face institutional, market, and policy barriers that constrain their development and the many consumer benefits they can provide.⁴ Fortunately, numerous policy reforms aimed at boosting interregional transmission have been proposed for the Committee's consideration. To highlight just a few, Chairman Manchin's Building American Energy Security Act of 2023 would assist projects of national significance by allowing them to apply directly to the Federal Energy Regulatory Commission (FERC) for cost recovery and cost allocation support. Likewise, Senator Heinrich's Interregional Transmission Planning Improvement Act would help foster interregional transmission buildout by requiring FERC to develop a comprehensive planning process within the next 18 months. Further, the BIG WIRES Act under development by Senator Hickenlooper would enhance reliability and resilience by requiring grid operators to have the capacity to transfer a minimum amount of electricity to neighboring regions.

As you contemplate draft legislation, we encourage you to keep these and other promising proposals in mind. Finally, we would urge you to avoid creating further headwinds for independent developers by restricting their ability to seek incremental cost recovery for nationally significant interregional lines commensurate with the broader system benefits they can provide ratepayers.

Thank you for your consideration of our input and focus on reforms driving needed interregional transmission expansion. We are hopeful that meaningful progress can be made on these issues and look forward to working with you on these efforts.

Sincerely,



Matt Valle
President, NEET

⁴ [Written Statement of Jason Grumet, Chief Executive Officer, American Clean Power Association, Before the Senate Committee on Energy and Natural Resources, May 11, 2023.](#)



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August 9, 2023

**Testimony of the United South and Eastern Tribes Sovereignty Protection Fund
For the Record of the Senate Energy and Natural Resources Hearing to
“Examine Opportunities for Congress to Reform the Process for Permitting Electric Transmission
Lines, Pipelines, and Energy Production on Federal Lands”**

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Energy and Natural Resources Committee (Committee) with the following testimony for the record of the July 26, 2023 hearing to, “Examine Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands.” On May 11, 2023, the Committee held a similar hearing to examine opportunities for permitting reform for energy and mineral projects. During the July 26th hearing the general tone was that there was a significant need to reform federal permitting processes on federal lands and waters, such as those required by the National Environmental Policy Act (NEPA). Although USET SPF will refrain from engaging in much of the debate around issues raised during the hearing, we feel compelled to expand upon and highlight some related issues.

As a matter of Tribal sovereignty and self-determination, Tribal Nations continue to pursue the rebuilding of our Tribal economies, especially following the COVID-19 public health emergency. The deployment, upgrade, and maintenance of infrastructure on Tribal Lands remains a critical component of these efforts in our pursuit of Nation rebuilding. However, the deployment of new infrastructure projects, including energy infrastructures, and the streamlining of federal permitting processes remain a major concern for USET SPF because of the potential impacts to Tribal sovereignty, cultural and sacred sites, and the public health and lifeways of our communities. We note that the Committee did discuss issues with National Environmental Policy Act (NEPA) permitting and how the law needs to be revised in favor of streamlining the process. USET SPF has serious concerns regarding changes to NEPA, particularly because the federal government is already failing to uphold its current process and streamlining would further threaten our cultural and sacred sites. We also have serious concerns with the ongoing authorization of offshore wind leases absent early and appropriate Tribal consultation, as well as the lack of funding and planning for avoidance and mitigation measures and impact aid to Tribal Nations.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk

Because there is Strength in Unity

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

While the Committee perceives that the purpose of the July 26th hearing was to focus on reforming and streamlining NEPA permitting approvals on federal lands, it must recognize that such lands are the traditional homelands of our Tribal Nations. While these lands may not exist within our current jurisdictional boundaries, Congress must uphold its trust and treaty obligations to protect areas that have cultural and sacred significance to our people. Many of us were forcibly removed from our traditional homelands and we were restricted access to these lands because we were confined to reservations or left without a sustainable land base or land base in general. Even in modern times, Tribal Nations continue to experience challenges and restrictions from the federal government in accessing these federal lands for cultural, medicinal, subsistence, and religious purposes. Due to the cultural importance of these lands to our lifeways, we remain concerned about the Committee's focus on fast tracking the NEPA permit approval process on federal lands and waters, which can have detrimental impacts to our cultural and natural resources and sacred sites located within these areas. The federal government has a moral, solemn, and legal obligation to ensure these areas are protected so that future generations of our peoples can continue our lifeways and cultural and religious observances. Federal efforts to streamline processes to advance the nation's energy infrastructure capabilities must not come at the expense of preserving and protecting our cultural heritage, sacred sites, and the public health of our people.

Concerns with Considering Legislation that Expedites the NEPA Review Process Absent Consultation with Tribal Nations

Since Congress has begun to raise issues with the costs and time constraints associated with finalizing NEPA reviews for permitting energy projects, USET SPF has been seriously concerned with the potential ramifications that the enactment of legislation streamlining the NEPA review process would have on our sacred sites, cultural and natural resources, and public health. While the NEPA review process may need to be reexamined on Tribal Lands for projects being pursued by Tribal Nations, USET SPF strongly opposes the streamlining of NEPA and other permitting review processes without early engagement and consultation with Tribal Nations. Just as the federal government has trust and treaty obligations to protect our cultural heritage and well-being, it also has obligations to empower us to exercise self-determination and utilize funds and other resources to protect what is important to us.

The resources available to Tribal Nations to fully participate in the NEPA review process have always been inadequate – yet another reminder of the federal government's failure to uphold its trust and treaty obligations to fully fund technical assistance and support for Tribal Nations. For instance, while funding for Tribal Historic Preservation Officers (THPOs) received an increase in Fiscal Year 2023 appropriations – after remaining stagnant for far too long – these funding levels are still insufficient to support the costly and time-consuming review of leases and permits for proposed infrastructure projects. This issue is further compounded due to enactment of the COVID-19 relief laws and the recent Bipartisan Infrastructure Law and Inflation Reduction Act that are making historic investments in infrastructure deployment. These investments are further exacerbating and straining the resources, personnel, and capacity of Tribal Nations to participate in and review NEPA permits within and outside of our jurisdictional boundaries.

Furthermore, it is important to note that in the instances that Tribal Nations have a THPO and/or a cultural or natural resources department dedicated to conducting environmental, cultural, and historic preservation

Tribes (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

reviews, oftentimes these individuals and departments are inundated with multiple projects and permit applications that exceed available capacity and resources. Review of these projects can also be lengthy because they are often broken into multiple, segmented reviews of a single project and span across multiple agency jurisdictions and oversight authorities. Additionally, these individuals and departmental staff may fulfill multiple roles within their Tribal government due to the historic and persistent failures of the federal government to fund its trust and treaty obligations, including appropriating the necessary resources for these positions. It is not uncommon for a THPO/cultural resource manager to also fulfill the role of a natural resource manager or serve in an emergency management role.

For these reasons, we urge Congress to uphold its trust and treaty obligations to Tribal Nations and allocate the appropriate funding for Tribal Nations to fully engage in the NEPA review process on infrastructure/energy projects being considered for leasing and development outside of our jurisdictional boundaries. This would benefit both the federal government and Tribal Nations by hastening review processes, limiting the potential for costly and lengthy litigation, and advancing the infrastructure/energy development initiatives. We will continue to oppose any legislative efforts until bill language respects Tribal Nation sovereignty and does not threaten environmental and cultural review processes on Tribal homelands and beyond.

Any Senate action to reform energy development as well as efforts to reform and streamline NEPA and other permitting processes, on federal lands and waters and such other lands and waters outside our Tribal jurisdictions, must receive input from Tribal Nations. We urge the Committee to engage Tribal Nations through meaningful consultation before any legislation is developed or considered in response to this hearing. Congress has trust and treaty obligations to ensure that any legislative overhaul to permitting for infrastructure/energy development projects is not enacted without Tribal consultation.

Concerns with Offshore Wind Development Without Proper Tribal Consultation, Compliance with NEPA, and Resources and Technical Assistance for Tribal Nations

Although the Committee's hearing to, "Examine Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands", implies that it is focused on reforming the permitting process for infrastructure projects on federal lands, permitting projects in federal waters were also included in these discussions. The Committee must recognize that there are cultural, historical, and sacred sites that are now submerged but still carry immense sacred significance to our Tribal Nations. The continued planning and deployment of offshore wind energy projects without early and appropriate Tribal consultation has become an increasingly alarming issue throughout Indian Country. The recent, historic funding authorized by the Bipartisan Infrastructure Law and the Inflation Reduction Act have overwhelmed Tribal Nations and our Tribal departments and personnel responsible for reviewing NEPA permit applications for infrastructure projects. The aggressive pursuit of offshore wind development has led to decisions to streamline or outright ignore federal responsibilities to appropriately engage in consultation with Tribal Nations and hold non-Tribal developers accountable for Tribal engagement and coordination.

Tribal Nations are contending with the impacts of the deployment of offshore wind energy projects due to the failure of the Bureau of Ocean Energy Management (BOEM) to conduct appropriate consultation and engagement with Tribal Nations prior to the approval of permits for these projects. Though these issues have the potential to impact Tribal Nations across the United States, several of these projects are currently under construction and affected USET SPF member Tribal Nations have been engaged with BOEM to avoid adverse impacts. Let it be strongly emphasized that USET SPF is not opposed to renewable energy development, especially when those projects are being pursued and initiated by Tribal Nations. The issue

we have is when non-Tribal entities and agencies of the federal government do not properly engage and consult with Tribal Nations when these projects are occurring outside of our jurisdictional boundaries and threatening our cultural, environmental, and natural resources and sacred sites.

BOEM is currently considering additional offshore wind project proposals and several Tribal Nations, both within and outside the USET SPF region, continue to raise concerns about potential threats to submerged sites of cultural significance, natural and environmental resources, and aquatic life. The development of these projects is moving forward without necessary avoidance and mitigation measures or impact aid to Tribal Nations. In recognition of these concerns, USET SPF adopted [USET SPF Resolution No. 2023 SPF-013](#), which urges a temporary moratorium on BOEM's offshore wind scoping and permitting processes until a Nationwide Programmatic Agreement (NPA) is developed and agreed upon with Tribal Nations.² USET SPF has been engaged with BOEM and the other agencies within DOI regarding ongoing concerns with offshore wind development absent Tribal consultation. Any type of offshore development that is outside of Tribal Nations' jurisdictional boundaries must require Tribal engagement and consultation prior to the issuance of any new offshore leases.

We understand that the Biden Administration has a goal of deploying 30 gigawatts of offshore wind electricity generation by 2030. However, this development, as well as the continued development of oil and gas on the Outer Continental Shelf, must not occur at the expense of destroying our sacred sites, cultural, natural, and environmental resources, and aquatic wildlife. Consistent with the Administration's commitment to Indian Country and "the whole of government" approach, the process must provide full mitigation through the completion of comprehensive and transparent procedures to appropriately protect Tribal Nation religious, cultural, environmental, and sovereign interests. We believe that the Administration's goals of developing clean energy and increasing Tribal co-management opportunities can and must be harmonized. Indeed, Tribal Nations have extensive experience in navigating the deployment of federal infrastructure in a way where multiple interests are satisfied³ and our cultural heritage is preserved. We are committed to exploring solutions with our federal partners that will benefit both Tribal Nations and the Administration's offshore wind deployment goals.

The federal government must uphold its trust and treaty obligations by ensuring it, and non-Tribal developers of these projects, engage and consult with Tribal Nations early in the process when considering awarding a lease for development of these projects. Similarly, in the event our cultural and sacred sites and cultural lifeways are disrupted, disturbed, and otherwise adversely impacted, the federal government as well as the non-Tribal developer must be held accountable and provide mitigation measures, impact aid, and other necessary resources to Tribal Nations. Tribal Nations have already sacrificed too much in the way of land loss, the destruction of our communities, cultural heritages, and sacred sites, and the exploitation of our natural resources.

Conclusion

USET SPF strongly supports a robust and strengthened national energy infrastructure, including clean energy infrastructure build-out on federal lands to reach Indian Country and beyond. However, energy development must not occur at the expense of Tribal consultation and our sacred sites, lifeways, or the well-being of the natural environment of these areas. Federal lands were established to preserve and

² USET SPF partner organizations, the National Congress of American Indians and the Affiliated Tribes of Northwest Indians, share these concerns and have passed similar resolutions.

³ USET was instrumental in the creation of the Federal Communications Commissions' (FCC) Tower Construction Notification System that provides for expedited cultural reviews of cell phone tower siting, as well as a [best practices agreement](#) between member Tribal Nations, the FCC, and project proponents.

protect the natural environment and the wildlife within its boundaries. Furthermore, federal waters should receive the same protections by ensuring that our submerged cultural and sacred sites are protected from degradation. As the Committee moves forward in considering any further legislative action to develop the nation's energy resources and/or revise and streamline NEPA and other federal permitting review processes on federal lands and waters, we strongly urge you to consider its implications to Tribal Nations and engage in early and appropriate outreach and consultation with us prior to the introduction of legislation. Further, the federal government must ensure that any inland or offshore development on federal lands and waters does not harm our inland and submerged cultural and sacred sites and that any development includes avoidance and mitigation measures, as well as impact aid for Tribal Nations, comparable with that extended to other units of government, since the development of these projects will inevitably disturb or disrupt these areas. Although a private entity may receive a license or permit to proceed with inland or offshore development, it is still the responsibility of the federal government to uphold its solemn trust and treaty obligations to protect our cultural and sacred sites, the public health of our communities, and the lifeways of our people.



MARK GORDON
GOVERNOR OF WYOMING
CHAIR

MICHELLE LUJAN GRISHAM
GOVERNOR OF NEW MEXICO
VICE CHAIR

JACK WALDORF
EXECUTIVE DIRECTOR

July 31, 2023

The Honorable Joe Manchin
Chairman
Committee on Energy and Natural Resources
United States Senate
304 Dirksen Senate Building
Washington, DC 20510

The Honorable John Barrasso
Ranking Member
Committee on Energy and Natural Resources
United States Senate
304 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Manchin and Ranking Member Barrasso:

With respect to the Committee's July 26 hearing, Opportunities for Congress to Reform the Process for Permitting Electric Transmission Lines, Pipelines, and Energy Production on Federal Lands, attached please find two Western Governors' Association policy resolutions:

- Policy Resolution 2023-10, Infrastructure Permitting; and
- Policy Resolution 2022-01, Energy in the West.

These policy resolutions convey Western Governors' collective, bipartisan policy on planning, permitting, and siting energy generating assets, transmission, and pipeline infrastructure. Current permitting processes governing land management activities and infrastructure development can negatively affect the pace and scale of critically important projects. A clear, consistent, focused, and effective environmental review process is essential to protect environmental resources, ensure public participation, and facilitate timely decision making in the design, financing and execution of critical infrastructure projects.

I request that you include this document in the permanent record of the hearing, as it articulates Western Governors' policy positions and recommendations related to this issue.

Thank you for your consideration of this request. Please contact me if you have any questions or require further information.

Sincerely,


Jack Waldorf
Executive Director

Attachments



Policy Resolution 2023-10 Infrastructure Permitting

A. BACKGROUND

Western states and territories face a host of challenges in balancing the protection of human health and the environment with the many needs of growing populations. Robust permitting processes help achieve that balance by ensuring environmental protection and public participation. Current permitting processes governing land management activities and infrastructure development can negatively affect the pace and scale of critically important projects: to provide wildfire mitigation and habitat improvements, to ensure safe roads and bridges, to build drinking water and wastewater capacity, to improve energy systems including transmission and distribution, to construct and place broadband and other telecommunications infrastructure, and to address supply chain shortages. These review processes can be improved and streamlined while still providing meaningful opportunities for public input and promoting a safe and healthy environment for our citizens.

B. GOVERNORS' POLICY STATEMENT

1. A clear, consistent, focused, and effective environmental review process is essential to protect environmental resources, ensure public participation, and facilitate timely decision making in the design, financing and execution of critical infrastructure and land management projects. Western Governors urge Congress and the Administration to streamline the review of critical infrastructure projects and land management activities, where appropriate, to achieve the goals of federal legislation that invests in improving infrastructure and enhancing ecosystem function.
2. The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental considerations into their decision-making processes, which have been defined through regulations and guidance issued by the Council on Environmental Quality (CEQ). Federal agencies' NEPA review processes should seek to comply with CEQ requirements as efficiently and effectively as possible. Litigation risk should not cause agencies to take an overly cautious approach to the permitting process. Instead, federal agencies should fully utilize existing mechanisms to streamline the environmental review process, such as any available categorical exclusions, where appropriate, while ensuring that robust consideration of environmental factors remains integral to the process.
3. CEQ should revise its guidance to direct agencies to consider only those impacts that are reasonably foreseeable and have a proximate relationship to the proposed action and also include robust socioeconomic analysis.
4. Western Governors believe Congress and the Administration should take steps to mitigate the risk of excessive project delays associated with legal challenges. Judicial review of federal decisions can significantly delay project implementation and can cause significant cost increases due to the rising cost of materials and labor. Agencies should initiate tribal, state, and county consultation in the earliest stages of the review process.

5. Federal permitting policies and efforts to streamline permitting processes should be flexible enough to meet the diverse needs of local communities. While significant investment in energy generation and transmission, transportation infrastructure, and land and water management is needed across the West, the specific types of projects pursued within each municipality, state, territory and tribe will differ based on factors including geography, geology, economy, climate, as well as the differing policy goals of each jurisdiction. Creating a robust federal permitting framework that is accommodating of the diverse natural and political landscape of the West is essential for the success of the region as a whole.
6. Western Governors are concerned that lengthy reviews in federal permitting processes are impeding states' ability to invest federal funding that would provide environmental or conservation benefits and for which individual projects are typically similar in scope, such as construction of wildlife crossings on highways or fiber for wildfire monitoring cameras. CEQ should consider how best to streamline review processes for similar projects delivering an environmental or conservation outcome to ensure that federal funds are invested effectively.
7. The Administration and Congress, in continuing to evaluate permitting processes, should consider how to make these processes more accessible to underserved or historically disadvantaged communities, small and rural communities, and recipients of smaller awards to ensure that it is cost-effective for these groups to access federal funding. For example, small communities often choose not to apply for federal funding for transportation and infrastructure improvements because of the complexity and cost of the federal permitting process as well as the cost of compliance with federal requirements.
8. Western Governors recognize the value of interagency reviews, such as reviews under Section 309 of the Clean Air Act, which authorizes the Environmental Protection Agency (EPA) to review all federal actions affecting the quality of the environment, but urge Congress and federal agencies to evaluate and address steps that may cause undue delays in permitting, including by improving coordination of federal agency activities.
9. Western Governors recognize the importance of highly qualified staff in local agency field offices that evaluate and process permitting applications. Governors are concerned by shortages of realty specialists in local field offices, especially as many staff responsible for permitting at these agencies are becoming eligible for retirement. Significant federal investment in infrastructure and land management projects increases the workload on agency staff, exacerbating existing shortages. It also increases the need for technical assistance for local communities and states applying to use federal funds. Federal land management agencies that receive funding for staffing to implement federal investments should prioritize hiring qualified permitting staff in local field offices to ensure permits are processed in a timely manner and technical assistance needs are met.
10. The Federal Infrastructure Permitting Dashboard operated by the Federal Permitting Improvement Steering Council (FPISC) adds transparency, accessibility, and agency accountability to the permitting process. The Administration and Congress should continue to empower and support the FPISC in its efforts to improve the federal permitting process. However, the FPISC, which is limited to select projects that qualify for inclusion, is only a temporary solution while comprehensive permitting reforms are developed and implemented. Fundamentally, Congress and the Administration must pursue

comprehensive reforms that increase transparency, accessibility, and agency accountability for all projects.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in June 2026. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.



Policy Resolution 2022-01

Energy in the West

A. BACKGROUND

1. Energy policy and the development of sustainable energy resources are major priorities for every Western Governor.
2. Western Governors recognize that approaches to energy use and development vary among our states and territories. However, the Governors remain committed to the development of policies and utilization of state energy endowments that result in sustainable practices that can benefit citizens, the region, the nation, and the world.
3. Electricity generation and delivery systems are undergoing rapid, significant change across the West. The increasing integration of renewable energy and distributed energy resources, electrification of vehicles and buildings, and retirement of traditional energy generating assets are all contributing to fundamental shifts in the electric sector. Several western states have accelerated these developments by enacting legislation to create targets or deadlines to further support renewable energy.
4. In addition, some energy systems face heightened threats from digital and physical sources, including wildfires, severe storms, heat waves, droughts, and other extreme weather events. Ensuring the reliability of energy generation and delivery systems despite these threats is a priority of every Western Governor.
5. Western states and communities are served by a diverse mix of electricity providers. Investor-owned utilities, public power utilities, and rural electric cooperatives all serve an invaluable role in delivering reliable, affordable power across the West. These electricity providers are characterized by differences in federal and state oversight, governance structures, capital assets, and geographic service territories.
6. The presence of federal lands affects energy projects and infrastructure deployment across the West. Planning, permitting, and siting energy generating assets and transmission and pipeline infrastructure can require close coordination between states, private developers, utilities, and one or more federal agencies. Western Governors are committed to working with federal agencies to create an effective state-federal partnership in energy development, land management, and environmental protection.
7. Western energy production is indispensable to meeting national energy demands. Because of this, the West is in a strong position to lead the development of energy systems that make the best use of land and resources and balance technical, economic, environmental and cultural considerations. The West provides a diverse range of energy resources:
 - a. Western states have the vast majority of high-yield geothermal energy capacity in the United States.

- b. Western states supply the majority of non-federal United States petroleum.
 - c. Western states are at the forefront of unconventional natural gas production and produce the majority of the nation's natural gas. Natural gas currently accounts for approximately 40 percent of the nation's electricity generation mix.
 - d. The West produces the largest output of hydropower in the nation.
 - e. Western states have the largest contiguous areas of land-based wind power resources in the nation and have over two-thirds of the nation's installed capacity. In addition, the Pacific Ocean offers some of the best offshore wind resources in U.S. waters.
 - f. The West has some of the highest-identified solar energy resource areas in the country and the majority of installed solar capacity.
 - g. Western states produce the largest portion of coal in the United States.
 - h. The West has the largest contiguous areas of high-yield biomass energy resource potential in the nation.
 - i. Western states are uniquely situated to produce low carbon intensity, clean hydrogen to facilitate greater economic development and decarbonization efforts.
 - j. Western states have conventional nuclear power generation facilities, produce all domestic uranium, and are at the forefront of advanced nuclear reactor technology development.
- 8. Western states are also leading the way in the development and deployment of innovative energy storage technologies. Utilities across the West have installed a range of battery technologies to improve grid function, flexibility, and resilience.
 - 9. Western states and Pacific territories have the resources to drive job creation and economic development through broad growth in the energy industry.
 - 10. The Merchant Marine Act of 1920 has prevented certain noncontiguous states and territories from being supplied with domestically produced energy commodities.

B. GOVERNORS' POLICY STATEMENT

Governors' Energy Priorities

- 1. Western Governors recognize the following as energy policy priorities for the West:
 - a. Secure the United States' energy supply and systems, and safeguard against risks to cybersecurity and physical security.
 - b. Ensure energy is clean, affordable, equitable, and reliable by providing a balanced portfolio of resources.

- c. Increase energy efficiency associated with electricity, natural gas, and other energy sources and uses to enhance energy affordability and to effectively meet environmental goals.
- d. Advance efficient environmental review, siting, and permitting processes that facilitate clean energy development and the improvement and construction of necessary energy infrastructure, while ensuring environmental and natural resource protection.
- e. Improve the United States' electric grid's reliability and resiliency.
- f. Protect western wildlife, natural resources, and the environment, including clean air and clean water, and reduce greenhouse gas emissions.
- g. Make the West a leader in energy education, technology development, research, and innovation.
- h. Utilize an all-of-the-above approach to energy development and use in the West, while protecting the environment, wildlife, and natural resources, and reducing emissions.

Grid Modernization and Resilience

- 2. A robust, resilient, and well-maintained energy delivery system is vital to the economy and quality of life in the West. Grid infrastructure in the West faces potential disruptions due to natural disasters, particularly wildfires, as well as growing cyber threat landscape. Increased grid threats due to wildfires and extreme weather events highlight the need to use and develop energy systems that are both reliable and combat climate change. Upgrades to transmission and distribution infrastructure, including information technology systems, are needed to properly address these risk factors, as well as anticipated increased electricity demand. Coordination between electricity providers and states in energy markets can lead to cost-effective energy for ratepayers and leverage regional resources.
- 3. Transmission infrastructure in western states often crosses one or multiple federal lands jurisdictions. In these situations, close coordination between states, utilities, and federal agencies is needed to ensure that projects are planned, permitted, and sited in a timely, efficient manner. Western Governors encourage federal agencies to streamline project-permitting reviews to minimize timelines without compromising environmental and natural resource protection or states' roles in those processes.
- 4. Western Governors encourage Congress to provide federal agencies, particularly the Bureau of Land Management (BLM), the Environmental Protection Agency, the Department of Energy (DOE), the Federal Energy Regulatory Commission, U.S. Forest Service (USFS), Bureau of Ocean Energy Management, and U.S. Fish and Wildlife Service with additional support to enhance staff and resource capacity to conduct environmental review and permitting activities associated with transmission infrastructure.
- 5. Western Governors recommend federal agencies leverage designated West-wide Energy Corridors to support the effective and efficient permitting and siting of energy infrastructure assets. Where applicable, Western Governors encourage the BLM and USFS to integrate designated corridor specifications into local land use plans.

6. Western Governors believe clear, coordinated and consistent wildfire mitigation strategies including application of federal vegetation management practices is integral to maintaining the health of western forests, preventing dangerous and damaging wildfires, and maintaining grid reliability. The Governors support effective and efficient cross-jurisdictional coordination that enables vegetation management for federal transmission rights-of-way.

Innovation and Technology

7. Western Governors encourage innovation and application of energy storage, including battery, hydrogen, pumped hydropower, and compressed air technologies, where cost-effective.
8. The U.S. has the opportunity to continue global leadership in carbon capture and storage (CCUS) research and technology development, while further deploying CCUS technologies, where cost-effective, that provide financial benefits to our nation's entire value chain.
9. The President and Congress should consider federal incentives to expand cost-effective deployment of carbon dioxide (CO₂) capture at power plants and other industrial sources.
10. Federal policies aimed to limit CO₂ emissions should promote, and not impede, development and deployment of CO₂ capture and commoditization. Federal regulations should allow states to create programs tailored to individual state needs, industries and economies and consider permanent CO₂ storage that results from enhanced oil recovery in meeting federal regulatory objectives.
11. Western Governors are committed to considering advanced and small modular reactors as an energy resource.
12. Western Governors are committed to developing regional hydrogen hubs to spur economic development and add more clean energy sources to the region's resource mix.
13. The developing floating offshore wind industry presents a strong economic and sustainable energy generation opportunity for the West. Western states can work collectively, and in consultation with Tribal governments and in coordination with stakeholders, to address workforce, economic, infrastructure, social, environmental, and manufacturing challenges associated with offshore wind planning, siting, and deployment.
14. Western Governors commend efforts by the United States Geological Survey and state geological surveys to identify potential, critical minerals deposits for alternative energy technologies and other consumer products vital to modern society.
15. Governors also support development of emerging tools and technologies that address barriers to mineral supply chain reliability, including technologies that help recycle or reuse existing critical mineral resources for use in electric vehicles and other clean energy technologies.
16. Western Governors are committed to leveraging the vast expertise in the West's industry, academic institutions, and national laboratories to make the region an international hub for new energy technology research and development, as well as energy education.

17. Western Governors encourage Congress and DOE to support and fund research, development, demonstration, and deployment of advanced energy technologies.
18. Western Governors support the creation of public-private research and development partnerships among industry, academia, the national labs, and federal agencies to identify promising new technologies, including energy efficiency technologies that advance clean energy with reduced environmental impacts.

Economic and Workforce Development

19. Western Governors and states are committed to encouraging training and education in energy-related fields and ensuring there is an adequate workforce operating under the highest safety standards.
20. Many western states and communities have been affected by localized job losses due to changes in the energy sector and the closure of coal power plants. Western Governors and states are working diligently to facilitate the creation of employment opportunities for displaced energy sector workers.
21. Western Governors offer their support for the U.S. Department of Agriculture (USDA) Rural Energy for America program, which has benefited farmers, ranchers and rural businesses that are often underserved by other federal energy efforts.
22. Western Governors support funding and long-term authorization for the State Energy Program (SEP), Weatherization Assistance Program (WAP), and Low-Income Home Energy Assistance Program (LIHEAP).
23. Western Governors support legislative measures that promote flexibility for rural electric cooperatives to refinance or adjust loans secured through the USDA Rural Utilities Service.
24. Western Governors support increasing the development and use of energy storage and low- and zero-emissions vehicles and associated infrastructure. WGA's Electric Vehicles Roadmap Initiative [Report](#) provides valuable insights on strategies to effectively integrate electric vehicle charging equipment with local grid infrastructure.
25. Western Governors call on the federal government to lift a barrier to domestic free trade between the contiguous United States and the noncontiguous states and territories by the Merchant Marine Act of 1920 by allowing those jurisdictions to receive energy commodities produced in the mainland but transported by foreign vessels, should those jurisdictions, and the jurisdictions whose ports are being used to ship these materials, desire it.
26. Redundant federal regulation of energy development, transport, and use is not required where sufficient state or territorial regulations exist. Existing state authority should not be replaced or impeded by Congress or federal agencies. Where additional regulations are necessary, federal agencies should consult and coordinate with states and tribes to ensure collaboration and understanding of unique circumstances within individual states and tribal nations.

C. **GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in December 2024. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.

