



Written Statement of Jason Grumet
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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 Jason Grumet, and I am the Chief Executive Officer for the American Clean Power Association (ACP). ACP represents nearly 800 companies focused on deploying utility-scale clean energy. We unite the power of solar, onshore and offshore wind, storage, green hydrogen and transmission developers, along with manufacturers and construction companies, owners and operators, utilities, and corporate purchasers of clean energy.

A Unique Opportunity for Meaningful Progress

In 2005 and 2007, this Committee came together to pass landmark legislation that improved our security, strengthened our economy, and protected public health and the environment. The 2005 Energy Policy Act and 2007 Energy Independence and Security Act created a framework for private sector innovation and investment that reclaimed our nation’s role as an energy superpower while achieving significant improvements in public health and reductions in greenhouse gas emissions. Our nation is on the precipice of another breakthrough in domestic energy production. This opportunity combines continued strength in traditional energy production with the massive deployment of a wide range of clean and renewable energy production and storage technologies.

The challenge we face today is a system of regulations and procedures that are preventing the private sector from modernizing our energy production and distribution systems. While the topic of permitting reform is freighted with years of missteps, half measures and partisan perspectives, there is good reason to believe that this Congress can develop the consensus needed to achieve our economic, security, and climate goals.

Despite an array of substantive policy differences and some occasional rancor, our nation is coalescing around a shared vision for energy policy that embraces our vast and diverse resource base, America’s unique capacity for technology innovation, and our well organized and powerful capital markets. While partisan sparks still fly over climate change, a quiet consensus has emerged over the last several years that prioritizes innovation and investment over regulation and deprivation. Instead of divisive debates over carbon taxes or regulatory efforts to limit production, we are debating constructive questions about how to scale new energy technologies, hire hundreds of thousands of workers, and strengthen American manufacturing.

A key inflection point in building this consensus was the work this Committee did to pass the Energy Act of 2020 by combining bipartisan bills together in an “all of the above,” agenda to



promote clean, secure domestic energy. This direction was reinforced by the bipartisan Infrastructure Investment and Jobs Act (IIJA), which made significant investments in clean energy innovation hubs designed to accelerate the scaling of new energy technologies and also by the Inflation Reduction Act, which has brought massive private capital forward to accelerate the deployment of a wide range of clean, secure domestic energy.

Clean power has become a significant part of our nation's energy mix. Approximately 15 percent of our nation's power comes from wind and solar and today there is enough wind, solar, and battery storage installed across the United States to power more than 59 million homes. The industry provides 443,000 good-paying American jobs and delivers over \$2.8 billion each year in state and local taxes and landowner lease payments. In just the last nine months, 46 new clean energy manufacturing facilities and over \$150 billion in domestic utility-scale clean energy investments have been announced. These future projects will be located across the country and will create an estimated 18,000 new American jobs and \$4.4 billion in savings for over 24 million customers served by utilities building out and procuring more clean power.

All energy technologies have weaknesses, but if we combine their strengths, we can create a new energy economy by mid-century that addresses our economic, security, and climate imperatives. This is the shared vision that is uniting the American Clean Power Association with colleagues at the American Petroleum Institute, the Interstate Natural Gas Association, the Nuclear Energy Institute, and a wide array of climate advocates in support of a more efficient process to permit the construction of new energy systems.

ACP Recommendations

There are two critical steps to unleashing America's diverse energy resources. First, we must speed up the federal permitting processes for all energy infrastructure in support of our nation's security and climate imperatives. Second, we must enable and encourage the buildout of high-impact transmission lines that will allow us to strengthen grid reliability, increase resiliency to extreme weather events, and capture the benefits of low-cost clean power. As discussed below, ACP believes Congress can improve the efficiency and predictability of federal environmental permitting while maintaining the integrity of our bedrock environmental laws.

We appreciate the work that this Committee and Congress have done — through the Energy Act of 2020 and the IIJA — to improve the current permitting process, such as providing more dollars for federal agency staff to process permits. But no amount of additional staff can fix the inefficient and unnecessary bureaucratic and regulatory structures that bog down energy innovation. It often takes more than a decade to permit high-capacity transmission lines, with the federal environmental review process alone taking more than seven years to complete.

Without permitting reform, the United States will not come close to meeting its energy goals, including the potential to unlock more than \$3 trillion in clean energy investments over the next decade. The good news is that we don't need to reinvent whole new processes nor erode our



bedrock environmental laws to achieve our goals. ACP members are aligned around a series of reforms to the NEPA permitting process that I will describe later in this testimony. The bulk of my testimony, however, will focus on the imperative to strengthen and expand our nation's electric grid which is a topic that has historically divided both Congress and ACP's diverse membership.

Unlocking High-Impact Transmission Lines to Connect the Current Balkanized Grid

The solution to our nation's transmission challenge is easy to describe, but hard to achieve. We must stitch together America's balkanized power grids and regions with a relatively small number of high-capacity lines. While this challenge is less daunting than building a new electric transmission grid, incentivizing broad regional and national interests in a regulatory structure designed to prioritize state and local interests raises complex political, ideological, and economic issues that have frustrated recent attempts to strengthen our nation's power grid.

Over the past several months, we have challenged ACP's "big tent" membership to confront our internal differences to shape a collective position on energy permitting and transmission reform that can gain bipartisan and broad stakeholder support. Today, I want to share ACP's "Discussion Framework" to ensure America's grid can meet the needs of the 21st century. We offer this framework to help further a constructive debate and achieve an actionable legislative consensus.

The framework is summarized below and attached at the end of this document (Attachment 1). Like any negotiated outcome, some ACP companies have reservations about elements of the framework while others would like to see additional ideas added to the structure. We welcome the opportunity to engage with other energy associations, thought leaders, and policy makers as we continue to explore and refine these ideas.

ACP Discussion Framework — Defining the Need

The United States electrical grid is often referred to as the "largest machine ever made." This "machine" was built across the United States over the course of the 20th century. While the notion of the electrical grid as a single "machine" that provides power to every American is compelling, in reality, the physical infrastructure still in place today dates back to the 1950s and 1960s.

Decades of neglect has resulted in an outdated, inefficient, and unreliable power system. The United States currently experiences more blackouts than any other developed country. Moreover, estimates indicate we'll need to expand our transmission system 60 percent by 2030



to meet growing demand.¹ Absent significant process improvements and increased private sector investment, the risk of system outages will only increase.

Cost-effectively decarbonizing the United States electric grid, enhancing the nation's energy independence, increasing reliability and resilience, and driving economic growth cannot be done without building high-impact transmission lines that can carry large amounts of energy from one region to another. Unfortunately, the current balkanized grid makes it impossible to deliver power on an interregional basis.²

The ability to transfer power between regions is enormously important in emergency situations. Recent events have driven home that the lack of connections with other regions of the country can have disastrous consequences. High-stress events like Winter Storm Elliot — the extreme cold snap that blitzed much of the nation at the end of last year — or Winter Storm Uri in 2021, which led to over 210 deaths, caused almost 70 percent of Texans to lose power and 50 percent to lose water, and cost at least \$80 billion — are becoming increasingly frequent. These weather patterns are much larger than our current fragmented grids leaving major portions of the country to fend for themselves when disaster strikes. Absent more interregional capacity, it is not possible to mount the coordinated response needed to future-proof our vital power supply system.

Transmission is also critical to addressing climate change. A recent report estimates that over 80 percent of potential emissions reductions could be lost if transmission expansion is constrained to its current development pace.³ Recent analysis suggests that interregional transmission expansion would also more than pay for itself by providing up to \$180 billion in net benefits and lower energy costs for families.⁴ Studies of interregional transmission routinely find benefit-cost ratios as high as 2.5⁵ demonstrating the high price our nation is paying under the current

¹ REPEAT Project, Electricity Transmission is Key to Unlock the Full Potential of the Inflation Reduction Act, available at https://repeatproject.org/docs/REPEAT_IRA_Transmission_2022-09-22.pdf.

² Today, there are 12 different transmission planning regions, all of which except for the Electric Reliability Council of Texas are under the jurisdiction of the Federal Energy Regulatory Commission. Yet, only six of them are full Regional Transmission Organizations — sometimes referred to as Independent System Operators — with the mandate and authority to conduct transmission planning for their region. The remaining five planning regions in the West and Southeast are much more loose associations of dozens of vertically integrated utilities, which tend to plan transmission mostly with just their own local territories (or balancing authorities) in mind.

³ *Id.*

⁴ Brattle Group, The Benefits of New Regional Transmission Planning Entities in the U.S. West And Southeast Regions, available at <https://www.brattle.com/wp-content/uploads/2022/03/The-Benefits-of-Interregional-Transmission-Grid-Planning-for-the-21st-Century.pdf>.

⁵ NREL, Interconnections Seam Study, available at [Interconnections Seam Study](#).



balkanized regime.⁶ Indeed, investing in clean energy has been shown to directly reduce household energy costs by an average of \$500 per year.⁷

By relieving grid congestion and promoting more efficient grid planning and operation, new interregional transmission presents an all-of-the-above opportunity for the full energy-generating portfolio of clean energy, fossil, and nuclear resources of the United States. Despite the near consensus that the benefits and value of expanding interregional transmission capabilities exceed costs, virtually no major interregional transmission projects have been planned and built in the United States over the last decade. In fact, in recent decades, the interregional electric grid infrastructure of North America, and of the United States in particular, has stagnated. Since 2014, the total capacity of planned or newly constructed large-scale interregional transmission in North America has amounted to less than 1/3 that of South America, 1/6 that of Europe, and 1/30 that of China.⁸

Our national economic competitiveness and security demand that our decision-making processes must evolve to meet current needs. Below we outline ACP's recommendations to spur permitting of interstate transmission and fixes to the planning and cost allocation for interregional lines.

Interstate Siting and Permitting Reform

The limited role that Congress granted the federal government to ensure transmission in the national interest has proven to be entirely ineffective. While there appears to be broad agreement around desired national direction, current legislative and regulatory incentives are not aligned to achieve this national interest. If adopted, the process improvements identified in ACP's Discussion Framework are designed to reduce the federal transmission permitting process time by more than half — from almost a decade to less than three years — and breathe life back into this provision while preserving the states' role and providing for a robust review. *See Chart, Transmission Permitting Reform* (detailing the timeline under the current process versus ACP's proposed process improvements).

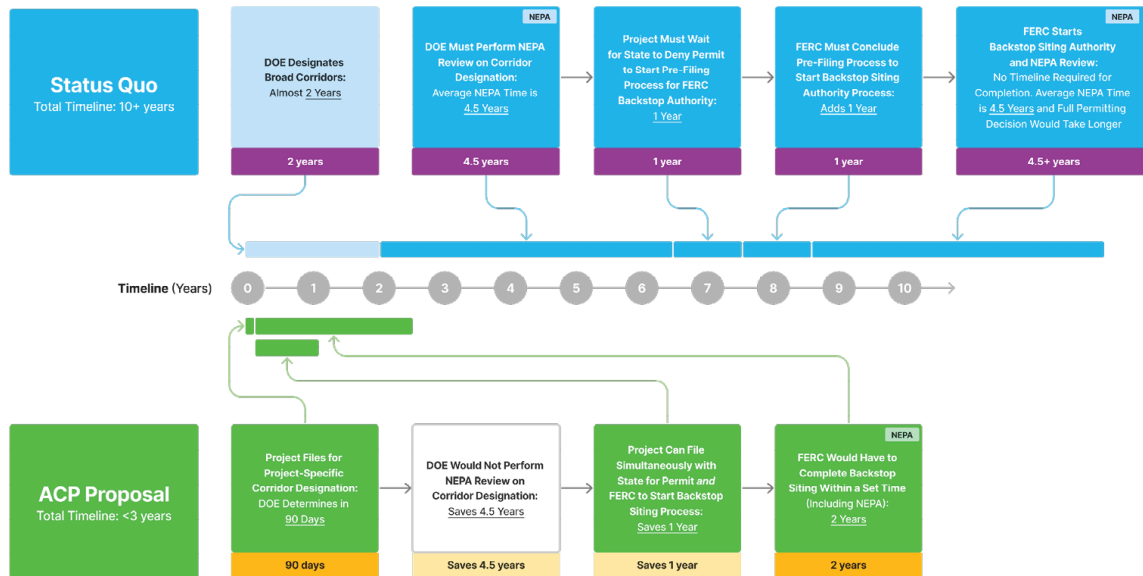
⁶ For instance, while the grid operators for the Midwest and the Plains states, over the same time period, the Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP), respectively, which have substantial connections to each other as well as to other regions, experienced a "handful of short duration" outages during Winter Storm Uri, the grid operator for Texas, the Electric Reliability Council of Texas (ERCOT), experienced capacity outages that averaged 34,000 MW for two consecutive days. More than 4.5 million people lost power, some for up to four days, while temperatures were below freezing—and hundreds died as a result. ERCOT has just two DC transmission tie lines to the Eastern Interconnection and imported only 800 MW of power throughout the week. MISO's imports, meanwhile, peaked at 13,000 MW.

⁷ Center for American Progress, *Clean Energy Will Lower Household Energy Costs*, available at <https://www.americanprogress.org/article/clean-energy-will-lower-household-energy-costs/>.

⁸ Hickenlooper, BIG WIRES Act, at 2.

Transmission Permitting Reform

Expediting the Existing “Backstop” Siting Authority for Interstate High-Impact Lines in National Interest Transmission Corridors without Sacrificing Full Environmental Review



Prior to the Energy Policy Act of 2005 (EPA 2005), states had sole authority over transmission siting. Almost a century ago, Congress gave the Federal Energy Regulatory Commission (FERC) authority over transmission rates and facilities, but preserved state authority over siting. At that time (and for decades thereafter), generation resources were typically located near load centers. Today, generation is more often than not located large distances from demand, requiring transmission providers to obtain approval from each state (and in some states, each county) they traverse.

Crucially, state law often directs state and local decisionmakers to consider only the interests of in-state residents and businesses in issuing permits for interstate lines. In other words, lines that serve regional and national interests are essentially subject to a test that only considers parochial interests. In fact, a single stakeholder in a state process can stand in the way of a project getting developed that stretches hundreds of miles, even though all the other states that the line crosses have approved it.



In the EAct 2005, Congress vested the federal government with limited siting authority of high-voltage interstate transmission lines.⁹ Specifically, Congress provided the Department of Energy (DOE) and FERC the authority, under certain limited circumstances, to site transmission projects in the national interest.¹⁰ This statutory provision gives DOE power to designate “national interest electric transmission corridors.” Once DOE has established one or more such corridors, FERC can issue permits for the construction of transmission facilities within the corridors if it makes certain findings. The IJA clarified FERC’s authority so that it can use its “backstop” siting authority, among other things, if a state has not approved the application within a year.¹¹

Unfortunately, not a single line has been permitted in the almost two decades that backstop siting authority has been on the books. Under the current process, FERC will issue a permit only after DOE has completed its corridor designation, effectively requiring two separate consultations, two separate NEPA reviews, and two separate agency processes before a new transmission project can move forward. In fact, if a project were to attempt to go through the whole process, it would likely take almost a decade and could be subject to a serious challenge at the end of the process — due to vagueness in the statutory authority. It is therefore not surprising that the well-intended EAct 2005 provisions have not achieved the desired effect.

Our nation’s convoluted federal transmission authority stands in sharp contrast with the expansive and exclusive federal authority to site interstate natural gas pipelines. Congress granted FERC’s predecessor-agency exclusive authority to site interstate natural gas pipelines, and developers benefit greatly from the consolidated federal approval process that has resulted. Not surprisingly, over the past decade, the United States has built more than 10,000 miles of new natural gas interstate pipelines per year, compared to an average of just 1,800 new miles of electric transmission lines (a 5.5x difference).¹²

Many suggest that providing FERC similar plenary authority for interstate transmission lines would be the most direct and efficient way to increase grid resilience and expand low-cost clean generation. The Discussion Framework we are sharing today offers another pathway Congress can consider to accomplish these same critical objectives by substantially reforming the existing backstop authority. Under our proposal, the integrity of the process would be preserved as only redundant and inefficient steps would be removed. Further, the expedited authority would be

⁹ Congress determined that new federal authority was needed to help overcome state “[s]iting challenge” for transmission.” 1 S. REP. NO. 109-78, at 8 (2005) (statement of Sen. Pete Domenici, Chairman of the Senate Committee on Energy and Natural Resources). In another statement, Domenici said that the act would “streamline the permitting of siting for transmission lines to assure [sic] adequate transmission.” 150 CONG. REC. S3732 (daily ed. Apr. 5, 2004) (statement of Sen. Domenici).

¹⁰ The Infrastructure Investment Jobs Act (IIJA) clarified FERC’s FPA so that FERC can use its backstop permit authority where a state has not made a determination on an application by the one-year date.

¹¹ The IJA also expanded DOE’s authority to designate national interest electric transmission corridors in areas currently experiencing or that are expected to experience transmission capacity constraints or congestion.

¹² York Dispatch, Clean energy Permitting Reform, *available at* <https://www.yorkdispatch.com/story/opinion/contributors/2023/01/11/clean-energy-permitting-reform-needed-for-pa-to-boost-economy-protect-climate-and-burn-less-coal/69798464007/>.



limited to just a handful of lines that are deemed of significant national interest due to their size and impact.

The ACP Discussion Framework proposes the following reforms:

I. Congress Should Codify an Applicant-Driven Process:

The current process relies upon DOE to proactively undertake a corridor study and then designate broad transmission corridors. On the single occasion in 2007 when DOE designated corridors, they covered entire states, unnecessarily increasing state opposition to them. It took about two years just to get to the proposed designation.

- **ACP's Discussion Framework** proposes that Congress explicitly grant DOE authority to consider project-specific transmission corridors at the request of applicants, rather than only considering projects that are in DOE-initiated corridors. DOE has asserted such authority, but the statute is vague, so developers are wary of being the first one to use it and potentially be subject to litigation absent clarification in statute.

Under this approach, a project applicant would submit a proposal to DOE for the purpose of establishing a corridor consistent with the proposed project's footprint. Eligibility for this expedited backstop siting authority would remain limited to lines that are deemed in the national interest, based on the existing criteria, and to those that meet additional voltage and megawatt size limitations to ensure the lines are high impact. This reform would cut at least a couple of years off the existing backstop siting authority process.

II. Congress Should Require Contemporaneous State and FERC Review:

Under the status quo, a developer seeking backstop siting authority must allow the state a year to make its decision on its project before starting the pre-filing process at FERC. This delay is due to the fact that FERC currently provides states a full year to process an application without any intervening federal proceedings. FERC is currently taking comment on a proposal to eliminate this one-year delay.¹³

- **ACP's Discussion Framework** proposes Congress codify FERC's proposed policy for simultaneous state and FERC review. This would continue to recognize the primacy of the states' role in siting transmission infrastructure but would help remove a year off the backstop siting authority process, as the FERC pre-filing process takes that long and would likely be completed by the time a state made its decision on whether to permit a line, saving a year in the overall permitting process.

¹³ FERC, Applications for Permits to Site Interstate Electric Transmission Facilities, Notice of Proposed Rulemaking, *available at* <https://www.ferc.gov/media/e-1-rm22-7-000>.



III. Congress Should Mandate a Single Federal Environmental Review for the Applicant-Driven Process:

At present, there is a requirement for DOE and FERC to conduct separate environmental reviews on a project seeking backstop authority. DOE must perform an environmental review of any corridor designation, and FERC must do an environmental review of any line therein that seeks backstop authority. The average timeline for a full environmental review, which would likely be required at both stages, is four and half years.¹⁴ Thus, requiring this review to be undertaken twice for a transmission project could result in a wait time of almost a decade for the environmental analysis alone.

- **ACP's Discussion Framework** proposes that Congress direct that only a single federal environmental review would be used for applicant submissions. Because the proposed location of the corridor in an applicant driven process would be coextensive with the footprint of the transmission line itself, the environmental impacts of the project could be fully analyzed during FERC's consideration of backstop authority for a line, making the currently required earlier review by DOE duplicative and unnecessary. FERC's NEPA review would serve as a single environmental review and form the basis for all decisions on the proposed line. This reform would cut off at least a couple of years of the existing backstop siting authority.

IV. Congress Should Impose Timelines on the Corridor Designation and Backstop Siting Process:

The current backstop siting authority does not have timelines in which the corridor designation must be performed by DOE or with respect to when FERC must issue a permit under the backstop siting authority.

- **ACP's Discussion Framework** proposes that Congress apply timelines to the corridor designation and backstop siting authority decisions. DOE would be required to make the initial national interest determination in 90 days as this straightforward determination merely initiates the process. A single federal environmental review would be led by FERC, which would set milestones for cooperating agencies, and require completion of the siting and permitting process within two years unless an applicant independently sought a delay. As such, the entire length of the federal permitting process would take less than three years.

Interregional Planning & Cost Allocation Reform

FERC's seminal 2011 rule on transmission planning and cost allocation, Order No. 1000, attempted to address both regional and interregional lines. While FERC created a workable

¹⁴ Council for Environmental Quality, Environmental Impact Statement Timelines, *available at* https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf.

process for regional lines, no significant interregional transmission project has been approved through the Order No. 1000-driven process. This fact, combined with the numerous studies finding that such projects would yield significant benefits if built, demonstrates the need for a new approach. *See* Chart, Interregional Transmission: Improving Transmission and Cost Allocation (depicting the status quo for interregional planning and cost allocation compared to ACP’s proposed improvements).

Interregional Transmission: Improving Planning and Cost Allocation

Today, regions only “coordinate” on planning and paying for interregional transmission. Without a joint model to evaluate interregional transmission lines, it’s no surprise that **not a single meaningful interregional project has cleared the Federal Energy Regulatory Commission’s (FERC) planning and cost allocation processes.**

Simple improvements to existing processes can address this issue.

	Processes Joint vs. Coordinated	Planning Consolidated vs. Separate	Paying Varying vs. Standardized
Status Quo No meaningful interregional projects have cleared FERC’s planning and cost allocation processes.	COORDINATED FERC’s Order No. 1000 merely requires regions to coordinate on interregional planning. In practice, “coordination” has meant that regions simply evaluate these projects using their regional process – which does not fully consider the broad benefits these projects can provide. This “coordination” process has yielded no significant interregional projects in the past decade.	SEPARATE Interregional projects must be approved by each region they cross, with their own criteria – and <i>also</i> through a combined evaluation. This is the “triple hurdle” – separate evaluations by each region using their own practices and metrics: 	VARYING Each region crossed by a transmission line uses its own methods to determine if the project is more cost effective and efficient than regional alternatives, and typically doesn’t take into consideration broader benefits. Interregional projects never make it to cost allocation due to misaligned or different methodology in each region.
	JOINT PROCESS Congress would require FERC to conduct a rulemaking that requires a true joint process for interregional transmission planning and cost allocation.	CONSOLIDATED Neighboring regions must adopt a single process for evaluating interregional transmission lines. Lines cannot be subsequently reassessed by a planning region.	STANDARDIZED As part of a single process, regions would use common criteria to evaluate costs and benefits. This criteria would automatically move projects forward to cost allocation if projects are more cost effective, efficient and benefits clearly outweigh costs.

Improvements: By having Congress instruct FERC to review Order No. 1000 and mandate joint planning procedures for neighboring regions, a significant barrier to interregional line development would be eliminated.

While FERC’s Order No. 1000 encouraged interregional planning and cost allocation, it did not require it. The rule requires neighboring transmission planning regions to establish procedures to *coordinate* planning and cost allocation, but it does not mandate a true *joint* process or evaluation of interregional solutions and their benefits. The result has been little, if any, forward momentum on interregional lines as planning organizations focus their project assessment on existing region-specific criteria without adequate consideration of interregional benefits.

Without a mandated joint consideration of interregional projects and the economic, reliability, operational, and public policy benefits these projects provide, it is no wonder that interregional projects are rarely found to be more efficient or cost effective than regional alternatives. The current process subjects interregional projects to an impossible “triple hurdle,” requiring



approvals in the interregional planning process and two separate and independent regional reviews.

In addition, under current regulatory practice, for an interregional project to get cost allocation, every region affected by the project must select the relevant portion of that project for regional cost allocation rather than designating a single interregional cost methodology for the entire project. Congress must direct FERC to require the regions to create a mutually agreed upon single process for planning and allocating cost for interregional lines. Without such a process, these critically important interregional projects will not move forward.

Lastly, Order No. 1000 presents another impediment to the development of interregional lines by failing to provide a clear path for non-incumbent utility transmission developers to seek cost allocation, even though such business models have often taken the lead in developing interregional transmission.

To address these issues, ACP's Discussion Framework proposes the following reforms to interregional planning and cost allocation.

I. Congress Should Require FERC to Issue a Rulemaking Mandating Joint Interregional Planning and Cost Allocation between Neighboring Regions:

- **ACP's Discussion Framework** proposes that Congress require FERC to issue a final rule within a year requiring planning regions to create a formal procedure with their neighboring regions for the identification and evaluation of interregional facilities. Neighboring regions would then submit compliance filings proposing regional variations, providing the flexibility to determine how they comply with the interregional planning and cost allocation requirements as long as they adhere to FERC's existing planning and cost principles, as well as the additional joint planning and cost allocation requirements discussed below. If regions do not timely submit an acceptable compliance filing with joint planning and cost allocation procedures, FERC would impose its default rule.

II. Congress Should Require Joint Interregional Planning Reforms:

- **ACP's Discussion Framework** proposes that Congress explicitly require true, joint interregional planning, specifying that approved lines in the process may not be subsequently reassessed by a planning region once they reach a material stage of development — removing the triple hurdle. The joint plan would be required to use compatible benefits metrics and study approaches between neighboring regions in approving interregional projects and mandate that these metrics seek to maximize net benefits on an interregional (not regional) basis. In other words, the proposal would require neighboring regions to harmonize their interregional planning processes to ensure synchronization in viewing lines that cross their seams. Aligning the interregional approval processes in this manner would help address the challenge



these projects face in being subject to different metrics and approval standards in the different planning regions from which they must obtain approval.

III. Congress Should Require Joint Interregional Cost Allocation Reforms:

- **ACP's Discussion Framework** proposes that Congress require planning regions to develop with their neighboring regions a single cost allocation methodology for interregional lines. This would require a common interregional cost allocation method across neighboring regions for new interregional transmission facilities. Further, the developer of an interregional line would be able to file at FERC for cost recovery and cost allocation upon a showing that: (1) the benefits outweigh the costs of the project (ratio must exceed 1.00), based on the broad range of direct and quantifiable benefits of the line across all regions; and (2) the line is more efficient and cost-effective solution for regional needs than regional alternatives or non-transmission solutions. Costs would be allocated to regions consistent with existing FERC precedent, including the requirement that costs must be roughly commensurate with overall benefits.

IV. Congress Should Allow for Incumbent and Non-Incumbent Models to Participate in Interregional Planning and Cost Allocation:

- **ACP's Discussion Framework** proposes that Congress provide a directive that all transmission developers of interregional facilities, regardless of business model (e.g., incumbent, merchant, or independent), would be able to seek cost recovery and allocation at FERC — but must participate in the interregional planning process to do so.

National Environmental Protection Act Reform

Recognizing that NEPA does not fall under the jurisdiction of this Committee, it is still imperative to address the challenges associated with the federal environmental review process for energy infrastructure.

ACP believes that it is possible to implement changes to the permitting process that make project approvals more efficient, predictable, and coordinated without sacrificing the intent and purpose of those environmental statutes. Successful deployment of wind, solar, storage, hydrogen, and transmission projects require a predictable, timely, and cost-effective permitting framework. However, the current process is anything but. It takes an energy generation project — such as a new solar or wind farm an average of four and half years to complete necessary NEPA reviews. Transmission project environmental reviews take an average of six years.¹⁵

¹⁵ See *supra* note 14.



These delays are largely due to procedural inefficiencies in implementation rather than problems with the law itself. Because projects are typically not allowed to move forward until a NEPA review is finalized, delays create uncertainty and raise costs for project developers — creating a chilling effect on the development of vital energy infrastructure projects. While waiting for reviews to be finalized in order to begin construction, developers must continue to pay loans, meet other financial obligations, and purchase and store materials. There are also lost opportunity costs — money invested in a project waiting to break ground could be invested somewhere else, creating employment opportunities and affordable power.

These delays have ripple effects throughout the economy — throwing off project timelines, domestic supply chains, and the indirect jobs and economic activity that would otherwise occur. That is why ACP has been and will continue to be a strong advocate for commonsense NEPA reforms that will expedite permitting timelines, increase transparency and accountability, and promote best practices while reducing duplication and bureaucratic red tape. To that end, ACP has supported constructive elements in various legislative proposals that would address these procedural inefficiencies, including specific NEPA provisions in Chairman Manchin’s Building American Energy Security Act, H.R. 1, and Senator Capito’s RESTART Act.

ACP supports the following NEPA reforms that are addressed in these bills:

- The designation of a lead agency for NEPA review to ensure greater coordination across agencies, to avoid duplication and to reduce the number of environmental documents produced.
- A time limit of 2 years for an environmental impact statement (EIS) and 1 year for an environmental analysis (EA) to ensure the timely completion of environmental reviews.
- Allowing project sponsors to prepare an EIS or EA, while still requiring the lead agency to independently evaluate the document for adoption.
- Limiting “major federal actions” to prevent review of projects that are not on federal lands, that have no or minimal federal funding, and for which the federal agency cannot control the outcome of the project.
- The inclusion of additional Categorical Exclusions.
- The requirement to utilize previously completed EISs and EAs if the action is substantially similar, and the effects of the proposed action are substantially similar to those analyzed in the previous reviews.

ACP also recommends reforms that would:

- Codify a default timeline of 30 days from the date of application for a Cost Recovery Agreement and not more than 180 days for the issuance of a Notice of Intent for the EIS



from the time of receipt, in order to prevent up front delays to the NEPA process after an application has been filed.

- Codify the requirement that outstanding authorizations required for project construction be issued no later than 180 days after the issuance of a Record of Decision (ROD) or a finding of no significant impact, with exceptions established for authorizations that require a level of engineering detail that is incompatible with the stage of design development during the NEPA process.

Public Lands Permitting Reform

In 2015, less than 1,000 megawatts (MW) of solar photovoltaic and 220 MW of onshore wind projects have been deployed on public lands.¹⁶ In the same period, 42,900 MW of utility-scale photovoltaic and 64,900 MW of onshore wind was built across the country on private lands.¹⁷ This is the case even though public lands have the potential to host tens of thousands more megawatts of clean energy.

Enacting the NEPA reforms outlined above is critical to unleashing clean energy on public lands.

In addition, ACP recommends:

- Revising the Bureau of Land Management’s (BLM) competitive leasing rule to make developing clean energy on public lands more attractive. A revised rule should address the fact that the existing overly burdensome costs of developing clean energy on public lands serves as one of the main barriers to tapping the potential that public lands hold for deploying these resources.
- Passing the Public Land Renewable Energy Development Act (PLREDA), that would expedite the permitting process for wind, solar, and energy storage development on federal lands and increase the production of these clean energy resources on public lands, including: a revenue sharing mechanism that would ensure a fair return for states, counties, conservation, and taxpayers; the same procedures for “priority” lands and newly named “development” lands (i.e., lands that are not “priority” lands nor “exclusion areas”), with incentives established for priority lands; a new designation of “development” lands that are neither priority lands nor within exclusion areas; and a process that ensures that development lands are processed on parity with priority areas.
- Strengthening Renewable Energy Coordination Office (RECO) authority to ensure faster approval of renewable energy projects on BLM lands.

¹⁶ Bureau of Land Management. Wind Energy Rights-of-Way (ROW) on Public Lands. May 2021, *available at* https://www.blm.gov/sites/blm.gov/files/docs/2021-05/PROJECT%20LIST%20WIND_May2021.pdf.

¹⁷ ACP, Clean Power IQ. Data, *available at* <https://cleanpoweriq.cleanpower.org>.



- Passing an increased renewable permitting target for public lands as it recently did for federal lands in the Energy Act of 2020.

Offshore Wind Permitting Reforms

Some of the biggest challenges for offshore wind are project delays and unnecessary project reductions due to federal permitting. Offshore wind projects are invariably sited on federal waters (as that is where the best resources are). Therefore, virtually all offshore wind projects must go through the unnecessary lengthy federal permitting process, as well NEPA reviews. Offshore projects must also comply with more than a dozen cooperating and consulting agencies and require reviews and approvals under at least ten distinct federal statutes. This broad federal review has led to significant delays in offshore wind deployment.

ACP recommends that:

- Congress should pass an offshore wind permitting target for federal waters.
- Congress should make the following changes to Outer Continental Shelf Lands Act to facilitate offshore wind permitting:
 - Optimize the factors in 43 U.S.C. 1337(p)(4) to provide clarity and additional legal protections for leasing and permitting of offshore renewable energy.
 - Clarify that the National Oceanic and Atmospheric Administration has the authority to issue offshore rights of way for transmission within national marine sanctuaries for projects that are located outside of the boundaries of the sanctuary, provided they are not determined to be incompatible with the purpose of the marine sanctuaries. This would ensure that certain offshore wind projects are not boxed out of sending their power to the shore.
 - Create parity in judicial review for offshore wind and oil and gas projects by allowing United States Courts of Appeals to have original jurisdiction over approvals of offshore wind plans. This would limit the ability of opponents of offshore wind to engage in endless appeals.
 - Clarify that the construction and operation of offshore renewable energy projects does not require Clean Air Act permits in light of their long-term air emission reductions. This would align the air permitting requirements for offshore wind energy with onshore wind.



Conclusion

Our nation is at an inflection point. We have the energy resources to power a secure and clean economy. We have the skilled workforce to manufacture and operate exciting new energy production and storage solutions, and private sector capital poised to modernize and scale new energy infrastructure. What we lack is an efficient regulatory structure to guide and manage this tremendous opportunity. Developing the legislative consensus to speed the clean energy transition has been elusive, but we have never before had support from a coalition with this breadth of aligned interest or shared sense of urgency.

Progress on permitting reform has been held back by a perception that more efficient processes would advance an energy system that is inconsistent with the environmental imperatives of climate change. We now can see clearly that these inefficient systems are the major barrier to achieving our climate, security, and economic goals.

We are encouraged by the various legislative proposals from both sides of the aisle and the partnership forming across energy technologies with the common goal of passing reasonable permitting reform. There is no political coalition or constituency that can move forward legislation that is focused principally on fossil energy. There is equally no possibility of moving legislation forward that only seeks to apply process improvements to new clean energy technologies. The truth is that we need to work together to find a solution that can advance all competitive energy sources that are consistent with our climate and security national imperatives.

We are also encouraged by the growing realization that we must increase transmission capacity to move electric power between regions. From providing more low-cost clean power to increasing grid resilience to protecting regions from extended disaster driven outages, new transmission is the key.

We believe that ACP's Discussion Framework offers a pragmatic set of ideas that can advance this critical discussion. We urge this Committee and Congress to embrace the fierce urgency of pragmatism and lead the way.



**Attachment 1:
ACP Discussion Framework
High-Impact Transmission Lines in the National Interest:
Planning, Siting & Cost Allocation**

Purpose and Context

The current permitting, planning and cost allocation processes for high-impact power lines are essentially broken and presents a huge barrier to delivering clean energy. In fact, not a single line has ever been sited under the existing backstop siting authority and no real interregional projects have ever been developed under the existing interregional planning and cost allocation processes. The American Clean Power Association (ACP) represents companies on all sides of this issue (utilities, IPPs, and independent transmission developers) but all have the common purpose of deploying more clean energy. This Discussion Framework represents an effort among ACP members to overcome our differences and chart a path forward on policies that are necessary to unlock our shared deployment goals for clean energy. **Like any negotiated outcome, some ACP companies have reservations about elements of this framework while others would like to see the proposed structure augmented with additional ideas. We are offering this framework to accelerate the constructive debate that must occur to achieve an actionable legislative consensus. In the coming weeks, ACP welcomes the opportunity to engage with other energy associations, thought leaders, and policy makers as we continue to explore and refine these ideas.**

I. Designation of High-Impact Facilities in the National Interest

- a. *Applicant-driven process:*** Transmission developers can directly submit an application to DOE to have high-impact transmission lines (AC or DC and overhead, underground, or submarine) be deemed National Interest Transmission Electric Corridors (NIETC), consistent with the existing criteria in section 216 of the Federal Power Act and the additional limitations below:
 - i. Existing criteria** for determining whether to designate —
 1. The economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;
 2. Economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy;
 3. A diversification of supply is warranted;
 4. The energy independence or energy security of the United States would be served by the designation;
 5. The designation would be in the interest of national energy policy;
 6. The designation would enhance national defense and homeland security;



7. The designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid; and
 8. The designation —
 - a) Maximizes existing rights-of-way; and
 - b) Avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites; and
 - c) The designation would result in a reduction in the cost to purchase electric energy for consumers.
- ii. Additional limitations** for being deemed a high-impact line eligible for special siting authority in section II —
1. Transmission capacity of not less than 750 megawatts;
 2. Capable of transmitting electricity at a voltage of not less than 345 kilovolts; and
 3. Crosses at least two states or one state and the outer continental shelf.
- b. No NEPA for designation:** Preparation of an environmental document would not be required for the designation of high-impact lines deemed in the national interest.
- c. Milestone:** DOE would be required to make a decision on the designation within 90 days from the date of application for an applicant-driven project.

II. Expediting Existing Siting & Permitting Authority for High-Impact Facilities in the National Interest

- a. Application process for backstop siting authority:** If the criteria in section (I) above are met, a transmission developer may apply directly to states and FERC for siting authority at the same time.
- i. Simultaneous review:**
1. The state application and FERC siting proceedings would run contemporaneously and the latter could begin upon an application being submitted for NIETC designation.
 2. The DOE NIETC designation and FERC siting proceedings would run contemporaneously.
- ii. Certificate issuance:** After an opportunity for notice and an opportunity for hearing, FERC would be able to issue a certificate if it finds, consistent with the criteria in the existing backstop siting process (section 216):
1. A state in which a high-impact transmission line is to be constructed or modified had not approved the siting of the line within a year from the time the state application was submitted.
- iii. Environmental review:**



1. **One document:** Only one environmental document would be prepared on the line (*i.e.*, FERC would incorporate any environmental review performed by DOE for the NIETC designation).
2. **Avoid duplicate reviews:** FERC would coordinate with and incorporate the review performed by a state to the maximum extent practicable.
3. **Milestones:**
 - a) FERC would act as the lead agency for all environmental reviews related to high-impact lines in the national interest and set milestones for cooperating agencies.
 - b) FERC, as well as the other federal participating agencies, would be required to complete the permitting process within two years unless an applicant independently sought a delay.
4. **Community Engagement:** The siting process should allow for a pre-application consultation with stakeholders in affected communities, including notice and engagement with stakeholders and affected communities.
 - a) **Funding Mechanism:** Potential funding mechanisms (such as revenue sharing) to offset impacted communities from a line should be considered.
 - b) **Cost Recovery:** Developers should be allowed to seek cost recovery in FERC transmission rates for community benefit payments to jurisdictions impacted by a project.

III. Fixing the Existing Interregional Planning and Cost Allocation Process

- a. **Interregional planning and cost allocation rulemakings:** Direct FERC to issue a rulemaking on interregional planning and cost allocation within 180 days and finalize the rule no later than one year.
 - i. **“Interregional facilities”** defined consistent with FERC’s current definition: spanning two or more FERC Order No. 1000 planning regions.
 1. Developers of interregional facilities, regardless of business model (*e.g.*, incumbent/merchant/independent), should be able to seek cost recovery and allocation at FERC but must participate in the interregional planning process and cannot then recover costs directly from customers for the line absent selection in the planning process.
- b. **Interregional Planning Requirements**
 - i. Rule would require planning regions to create with their neighboring regions a formal procedure for the identification and joint evaluation of interregional facilities.

- ii. **Planning requirements:** Rule would set forth a *pro forma* tariff but allow regions to propose variations in subsequent compliance filings that adhere to the following principles:
 - a) The synchronization of planning processes in neighboring regions.
 - b) Regions must adopt a consistent timeline and common metrics — including benefits, needs, and input assumptions.
 - c) Projects must be selected to meet identified interregional needs through a single, coordinated assessment.
 - d) Regions must account for full electricity system benefits, including improved reliability, enhanced resilience to extreme weather, reduced congestion, reduced power losses, greater carrying capacity, reduced planning and operating reserve requirements, and improved access to generation.
 - e) Approved lines may not be subsequently reassessed by a planning region once they reach a material stage of construction.
 - f) Interregional plans must be completed within three years of enactment and updated not less frequently than once every three years.
- iii. **Cost Allocation Requirements:** Rule would require planning regions to develop with their neighboring regions a single cost allocation methodology for interregional lines.
 - 1. **Cost Recovery:** The developer of an interregional line could file at FERC for cost recovery and cost allocation upon a showing:
 - a) The benefits outweigh the costs of the project (ratio must exceed 1.00) based on the broad range of direct and quantifiable benefits of the line across all regions; and
 - b) The line is more efficient/cost-effective solution for regional needs than regional lines or non-transmission solutions.
 - i. The developer would be barred from recovering costs directly from customers absent selection of the project in the interregional planning process.
 - 2. **Cost Allocation Principles:** Costs would be allocated to regions consistent with existing FERC precedent, including:
 - a) Costs must be roughly commensurate with overall benefits;
 - b) No costs allocated to those who receive no benefits; and
 - c) Consider the broad range of direct and quantifiable benefits (e.g., reliability, economic, public policy).

IV. ROFR

- a. Nothing in section III of this Discussion Framework is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to the ownership of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.