

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

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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 loss 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).