



To: House Committee on Natural Resources Republican Members
From: Subcommittee on Energy and Mineral Resources; Ashley Nichols
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Date: Tuesday November 16, 2021, at 10:00am EST.
Subject: Oversight Hearing: *"Plugging in Public Lands: Transmission Infrastructure for Renewable Energy."*

On **Tuesday, November 16, at 10:00 a.m. EST, in room 1324 Longworth House Office Building and online via Cisco Webex**, The Subcommittee on Energy and Mineral Resources will hold an oversight hearing titled, *"Plugging in Public Lands: Transmission Infrastructure for Renewable Energy."*

Member offices are requested to notify Ashley Nichols no later than **Monday, November 15, at 4:30 p.m. EST**, if their Member intends to participate via his/her laptop in the committee room or remotely from another location. Submissions for the hearing record must be submitted through the Committee's electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (Everett.Winnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- Any effort to increase renewable energy development in the U.S. will rely heavily on the ability of industry to construct new transmission lines.
- The current regulatory processes for transmission projects are incredibly complicated and time consuming.
- Without significant regulatory changes, the U.S. will not be able to develop the amount of transmission required to meet the renewable energy targets of the current Administration.
- Republican bills would address some of the needs for more streamlining.

II. WITNESSES

Panel I:

- **Ms. Janea Scott**, Senior Counselor to the Assistant Secretary for Land and Minerals, Department of the Interior



Panel II:

- **Mr. Pius Fischer**, Vice President, Basin Electric Power Cooperative, *Republican Witness*
- **Mr. Robert Busch**, Chairman, New Mexico Renewable Energy Transmission Authority
- **Ms. Janice Fuller**, President, Mid-Atlantic, Anbaric Development Partners
- **Ms. Yvonne McIntyre**, Director, Federal Electricity and Utility Policy, Climate & Clean Energy Program, Natural Resources Defense Council

III. BACKGROUND

The Current State of Transmission in the U.S.

The U.S. bulk electric system consists of more than 360,000 miles of transmission lines connecting to roughly 7,000 power plants.¹ Transmission systems are generally administered on a regional basis by a regional transmission organization (RTO) or an independent system operator (ISO).² There are currently seven ISOs/RTOs operating in the U.S.³ In the past, transmission lines carried power from a central source of generation, like a power plant or a hydroelectric dam, to consumers. Today, with increasing renewable energy mandates at the state and federal level, generation is becoming increasingly distributed across a large area, while the need to connect people to their power is the same. As we build more intermittent generation like solar arrays and wind farms, additional transmission lines are necessary to deliver that electricity reliably and affordably.

In April, President Biden set a goal of decarbonizing the U.S. power grid by 2035,⁴ and in January, the President called on the Department of the Interior (DOI) to double renewable energy production from offshore wind by 2030 to a targeted 30 gigawatts (GW).⁵ Additionally, the Consolidated Appropriations Act of 2021 directed DOI to issue permits that would authorize a total of at least 25 GW of electricity from wind, solar, and geothermal energy projects by 2025.⁶ However, these arbitrary targets are likely unattainable in the current regulatory structure.⁷ While increasing transmission is required for largescale renewable energy expansion, permitting transmission is extremely difficult and time-consuming. Current renewable energy development is already stretching the limits of our existing system, requiring significant improvements and

¹ North American Electric Reliability Corporation Electricity Supply & Demand Database, <http://www.nerc.com/page.php?cid=4138>.

² Department of Energy, *U.S. Electricity Industry Primer*, P. 13, available at <https://www.energy.gov/sites/default/files/2015/12/f28/united-states-electricity-industry-primer.pdf>

³ American Public Power Association, *Wholesale Electricity Markets and Regional Transmission Organizations*, <https://www.publicpower.org/policy/wholesale-electricity-markets-and-regional-transmission-organizations>.

⁴ The White House, *President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies*, <https://bit.ly/3BZhJO3>.

⁵ The White House, *President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across Federal Government*, <https://bit.ly/3knbv19>.

⁶ Public Law No: 116-260, <https://www.congress.gov/bill/116th-congress/house-bill/133/text/enr>.

⁷ Reuters, Timothy Gardner, *U.S. to struggle to meet Biden's power grid climate goal -Woodmac*, September 16, 2021, <https://www.reuters.com/business/sustainable-business/us-struggle-meet-bidens-power-grid-climate-goal-woodmac-2021-09-16/>.

additions to the existing network. Most new projects are estimated to take a decade or more to complete.⁸

Roadblocks to Transmission Development on Federal Lands and Waters

Spiderweb of Jurisdiction: Most transmission projects cross wide swaths of land with a variety of private, city, county, state, and federal ownership. This creates overlapping jurisdictions and authorities, with each level of government having its own permitting processes, approval timelines, and requirements to be coordinated and completed. For example, the Transwest Express Transmission Project crosses through the jurisdictions of the states of Wyoming, Colorado, Utah, and Nevada, fourteen counties, Bureau of Land Management (BLM) lands under the jurisdiction of fourteen different field offices, U.S. Forest Service (USFS) land; the lands of two different Native American tribes; and lands owned by roughly 450 different private landowners.⁹ The project started about 13 years ago and likely will not be in service for another five years.

In the case of offshore wind, the Bureau of Ocean Energy Management (BOEM), the Federal Energy Regulatory Commission (FERC), the National Oceanic and Atmospheric Administration (NOAA), and the Department of Defense (DoD) all have jurisdictional interests in the siting of offshore energy projects. That is in addition to the many state and local governments that wield significant power in decision-making.

Many project proponents feel that the federal government has not done an adequate job in working with impacted communities to address local concerns, leading to ongoing challenges throughout the project approval process. This is further complicated by staffing inadequacies at federal field offices, which stakeholders have often described as critically lacking in capacity or expertise in renewables. Local opposition is felt across sectors but may be especially problematic for offshore development. This has been apparent since the inception of the offshore wind industry in the U.S., when the proposed Cape Wind project (sited between Cape Cod, Martha's Vineyard, and Nantucket) faced fierce opposition from homeowners that did not want their beachfront views obstructed.¹⁰ The project failed, finally relinquishing its lease in 2018.¹¹

Community conflicts are not limited to aesthetic concerns. For instance, more modern offshore infrastructure is further from shore and harder to see but puts offshore wind in the literal path of commercial fishing. One example of this conflict is the Maine Aqua Ventus project, meant to test floating offshore wind infrastructure in the area. The project was strongly opposed by local fishermen, lobstermen, and the St. George Select Board in 2017.¹² Up and down the East Coast, largely left-leaning states struggle internally between local opposition and broader consensus for renewable power. For instance, New Jersey's Democrat Governor, Phil Murphy, signed

⁸ Transmission Agency of Northern California, How Long Does It Take to Permit and Build Transmission to Meet California's Policy Goals?, <https://www.tanc.us/news-article/how-long-does-it-take-to-permit-and-build-transmission-to-meet-californias-policy-goals/>.

⁹ Transwest Express LLC, <http://www.transwestexpress.net/>.

¹⁰ <https://boston.cbslocal.com/2021/04/22/cape-cod-marthas-vineyard-offshore-wind-farm/>

¹¹ <https://www.boem.gov/renewable-energy/studies/cape-wind>

¹² Bangor Daily News, Maine Coastal Town's Leaders Vote to Oppose Offshore Wind Project, December 12, 2017, <https://bit.ly/3kpbw0B>.

legislation this year that would strip coastal communities of the right to block buried power lines for projects.¹³

The National Environmental Policy Act (NEPA): NEPA continues to be a significant barrier for energy development of all kinds, including renewable transmission projects. The current permitting process is filled with repetitive, duplicative assessments and prolonged processing, making it difficult for developers to plan, finance, and build projects effectively.¹⁴ Some stakeholders have had success by utilizing third-party contractors to prepare NEPA documents, but most agree that more categorical exclusions and other reforms are needed. The Trump administration took a positive step forward by releasing comprehensive NEPA reforms for the first time in more than 40 years.¹⁵ Among other actions, these reforms established time and page limits for environmental reviews and strengthened the role of the lead agency.¹⁶ These reforms served as a means of expediting all projects on federal lands, including transmission, yet the Biden administration recently announced that it would begin rolling back these critical reforms.¹⁷

The Endangered Species Act (ESA): ESA species listings and their respective critical habitat designated by the U.S. Fish and Wildlife Service (FWS) also have a significant impact on transmission project permitting and construction timelines on federal lands. Whenever a federal action impacts a listed species or crosses through critical habitat, problems arise. Mitigation and ESA Section 7 consultation are often required, but complying with these time-consuming requirements does not guarantee a smooth process. Last summer, a federal court in Colorado vacated an Incidental Take Permit issued to the Nebraska Public Power District authorizing take of the American burying beetle.¹⁸ Species concerns such as the endangered North Atlantic Right Whale, will likely threaten offshore transmission as well. The Trump administration attempted to ease these problems by issuing five major ESA rules: limiting bloated critical habitat designations, strengthening economic considerations before designated habitat, and streamlining the Section 7 consultation process. Unfortunately, the Biden administration announced in June that it would be rescinding and revising these critical reforms.¹⁹ The rescissions and rollbacks pose serious near and long-term impacts to the permitting of transmission lines on federal lands.

The Migratory Bird Treaty Act (MBTA): The MBTA (codified at 16 U.S.C. §§ 703–712) prohibits the “take” (including killing, capturing, trading, selling, and transport) of any migratory birds or their nests or eggs without prior authorization from the FWS. The transmission sector is responsible for a large amount of incidental take of migratory birds. Like NEPA and ESA, the Trump administration crafted a rule to bring common sense to the implementation of MBTA,

¹³ Bloomberg, *New Jersey Amps Up Fight Against Beachside Towns Opposed to Offshore Wind*, July 22, 2021, <https://gcaptain.com/new-jersey-amps-up-fight-with-beachside-towns-opposed-to-offshore-wind/>.

¹⁴ Geothermal Rising, Letter to Secretary Debra Haaland, March 18, 2021, <https://geothermal.org/resources/geothermal-rising-letter-addressing-geothermal-permitting-public-lands>.

¹⁵ Council on Environmental Quality, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 7/16/2020, <https://www.federalregister.gov/documents/2020/07/16/2020-15179/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental>.

¹⁶ *Id.*

¹⁷ The White House, *CEQ Proposes to Restore Basic Community Safeguards during Federal Environmental Reviews*, <https://www.whitehouse.gov/ceq/news-updates/2021/10/06/ceq-proposes-to-restore-basic-community-safeguards-during-federal-environmental-reviews/>.

¹⁸ JDSUPRA, *Transmission Line Permit Invalidated, USFWS Ordered to Redo Endangered Species Act Analyses*, July 9, 2020, <https://www.jdsupra.com/legalnews/transmission-line-permit-invalidated-87237/>.

¹⁹ U.S. Fish and Wildlife Service, *U.S. Fish and Wildlife Service and NOAA Fisheries to Propose Regulatory Revisions to Endangered Species Act*, June 4, 2021, <https://bit.ly/3ofuHCv>.

limiting regulations to actions directed at migratory birds and not simply incidental take.²⁰ This rule was consistent with the Fifth Circuit appellate court decision in *United States v. CITGO Petroleum Corp.*, which held that the MBTA does not prohibit incidental take.²¹ This rule would have relieved transmission line operators from incidental or accidental take of migratory birds impacted by transmission infrastructure. However, the Biden administration finalized a rule last month revoking the Trump rule, also issuing an Advanced Notice of Proposed Rulemaking (ANPRM) to develop proposed regulations to authorize the incidental take of migratory birds.²² This ANPRM has already created heartburn for transmission developers, and the final rule will likely have a significant impact on transmission development in the foreseeable future.

Capacity, Siting, and Litigation: Another issue facing transmission buildout is the power grid itself. For example, the grid along the East Coast is not designed to take large amounts of power from offshore wind facilities and few existing points of interconnection are able to accommodate this generation. To help minimize the number of interconnection points to shore, offshore wind proponents hope to develop “backbone” transmission systems, meaning a small number of regionally located transmission lines running to shore from which a large number of wind generation projects could connect.²³ Presently, U.S. wind uses so-called “radial” transmission lines, meaning each project has its own tie back to shore. These are simpler to develop as they are constructed on a project-by-project basis, but they provide significantly less grid reliability and control over power flow, and face the ultimate challenge of scarcity of interconnection points.²⁴ Uncertainty over the future infrastructure of offshore transmission makes wind developers cautious, fearing generation projects may reach completion before sufficient transmission is fully available to bring the power to market.²⁵

Another complication in siting decisions is the reality that, as with all projects on or impacting federal lands, litigation is an unfortunately common occurrence. For example, the Cardinal Hickory line from Wisconsin to Iowa was hit with two preliminary injunctions from state and federal judges that threaten to halt the project.²⁶ Some stakeholders argue that even the threat of litigation expands project timelines, pressuring agencies to spend extra time crafting “perfect” environmental analyses to avoid a lawsuit.²⁷

Efforts to Expedite

FAST-41: On December 4, 2015, the Fixing America’s Surface Transportation Act (FAST Act) was signed into law (Pub. Law 114-94). Title 41 of this Act (“FAST-41”) created a new structure, set of procedures, and funding authorities to improve federal environmental review and authorization for covered infrastructure projects.²⁸ Covered projects are provided a lead federal agency, early inter-agency consultation, the development of project timetables, the reduction of

²⁰ U.S. Fish and Wildlife Service, *Regulations Governing Take of Migratory Birds*, January 7, 2021, <https://bit.ly/3F5FICL>.

²¹ *United States v. CITGO Petroleum Corp.* - 801 F.3d 477 (5th Cir. 2015).

²² U.S. Fish and Wildlife Service, *Regulations Governing Take of Migratory Birds; Revocation of Provisions*, October 4, 2021, <https://bit.ly/3wzdEil>; U.S. Fish and Wildlife Service, *Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds*, October 4, 2021, <https://bit.ly/3mYXYBR>.

²³ Staff briefing. Orsted. November 2, 2021.

²⁴ <https://www.energy.gov/sites/prod/files/2014/08/f18/NOWEGIS%20Executive%20Summary.pdf>

²⁵ Staff briefing. Orsted. November 2, 2021.

²⁶ Energy Wire, *Legal Battles Cast Shadow over \$500M Midwest power line*, Jeffrey Tomich, 11/8/21, <https://bit.ly/3D4dsKu>.

²⁷ *Id.*

²⁸ 42 U.S.C. § 4370m et seq.

the statute of limitations for lawsuits, and other mechanisms to expedite the project. While not perfect, stakeholders have largely agreed that timelines for FAST-41 covered projects have been much more efficient compared to those not covered. A permanent extension of FAST-41 was included in infrastructure legislation passed this month.²⁹

West-Wide Energy Corridors: Under Section 368 of the Energy Policy Act of 2005 (Pub. Law 109-58), BLM designated 5,000 miles and FS designated 1,000 miles as preferred locations for energy transportation projects (a.k.a. “west-wide energy corridors”). In 2009, the Secretaries of the Interior and Agriculture finalized a Programmatic Environmental Impact Statement (EIS) and signed Records of Decision designating 117 energy corridors in eleven western states.³⁰ Several major environmental groups sued DOI over concerns about environmental protections and renewable energy development in the planned corridors. A settlement was reached in 2012, yielding 36 so-called “corridors of concern,” requiring an interagency Memorandum of Understanding, and prompting additional environmental reviews and opportunities for stakeholder input.³¹

The settlement also required a study, completed in 2016, that highlighted some of the perceived shortcomings of the corridors.³² Some of the concerns included gaps in corridor routes across private and non-federal land, avoidance of critical habitat of protected species, sites with cultural resources, and locations not aligning with project and industry needs.³³ The report also documented some advantages of the corridors including reduced project reviews, lessened requirements for mitigating adverse effects, and improved interagency procedures and coordination.³⁴ According to BLM, these corridors have been utilized approximately 50 percent of the time during development of a transmission line since their inception in 2009.³⁵ A new EIS in the wake of the 2012 settlement is still pending. At the same time, BLM is currently working on updated regulations for rights-of-way and renewable energy, set to be published in early 2022.³⁶

Republican-led Legislative Efforts: To name a few, there are several Republican-led bills that could improve renewable energy development on federal lands:

- H.R.4334 (Scalise), the American Energy First Act, is an “all of the above” approach to help permitting concerns across energy sectors on federal lands and waters;
- H.R. 2515 (Graves), the Building United States Infrastructure through Limited Delays and Efficient Reviews (“BUILDER”) Act, codifies many of the important NEPA reforms made in the previous Trump rulemaking;
- H.R. 3330 (Gosar), the Public Land Renewable Energy Development Act, is specifically aimed at assisting onshore renewable development through increased coordination; and

²⁹ Bloomberg Government, ENERGY BRIEFING: Infrastructure Bill Passed While BBB Waits, November 8, 2021, <https://www.bgov.com/core/news/#!/articles/R292QGT1UM0Y>.

³⁰ West Wide Energy Corridors Information Center. <http://www.corridoreis.anl.gov/>

³¹ West Wide Energy Corridors Information Center. Settlement Agreement. <http://corridoreis.anl.gov/regional-reviews/settlement/>

³² https://corridoreis.anl.gov/documents/docs/Section_368_Corridor_Study.pdf

³³ *Id.*

³⁴ *Id.*

³⁵ Staff briefing from the Bureau of Land Management and the Bureau of Ocean Energy Management. November 10, 2021.

³⁶ <https://www.blm.gov/press-release/bureau-land-management-solicits-initial-public-input-updating-regulations-rights-way>

- H.R.5350 (Fulcher), the Enhancing Geothermal Production on Federal Lands Act, establishes a categorical exclusion for geothermal exploration test sites.

Despite the Democrat Majority's stated goals for rapid expansion of renewable energy on federal lands and waters, they have yet to hold hearings on these bills.