

A R T I C L E

BUILDING A NEW GRID WITHOUT NEW LEGISLATION: A PATH TO REVITALIZING FEDERAL TRANSMISSION AUTHORITIES

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New long-distance, high-voltage transmission will be vital if the United States is to integrate the renewable energy generation needed to decarbonize the electric system at sufficient scale and at reasonable cost. The U.S. Congress would ideally take action to address the regulatory and economic barriers that currently prevent long-distance, high-voltage transmission from being developed at the necessary speed and scale. But until Congress acts, the U.S. Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC) should use their existing authority to advance transmission development. However, it has become conventional wisdom that development of new long-distance, high-voltage transmission projects is hopeless without new legislation because opponents can exploit veto points created by state laws and state-level institutions involved in transmission siting decisions.

As this Article explains, that conventional wisdom is wrong. Congress has already enacted authorities that the federal government can use to counteract siting-related

obstacles. To date, those authorities have either not been used or have been used unsuccessfully. In part, this is the result of unfavorable judicial interpretations of those authorities, but those interpretations are not fatal. Given the urgent need for energy system transformation, now is the time for DOE and FERC to revisit the authorities that they have been given.

This Article recommends steps for those agencies to take now that would allow them to side-step the obstacles and revitalize the provisions Congress has already adopted in order to facilitate transmission system development: (1) reducing obstacles to transmission; (2) designating Transmission Corridors under the Federal Power Act (FPA) §216(a); (3) federal permitting of transmission under FPA §216(b); (4) entering DOE-private developer partnership projects under the Energy Policy Act of 2005 §1222; and (5) exploring Power Marketing Administration transmission projects. Within the five categories, there are 20 interrelated recommendations:

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Authors' Note: This Article was written prior to the employment of Mr. Zevin and Mr. Walsh at the U.S. Department of Energy. It does not necessarily reflect the views of the Department. Similarly, it was written prior to Mr. Gundlach's employment at the New York State Department of Public Service, and does not necessarily reflect the views of the Department or the New York State Public Service Commission.

Table 1. Twenty Recommendations for Policymakers

Reducing Obstacles to Transmission
1. Technologies and policies that increase use of the existing transmission system, minimize the extent of new transmission needs, reduce public opposition, or eliminate the need for state permitting should be implemented to the greatest extent feasible.
Transmission Corridor Designation (FPA §216(a))
2. DOE should supplement or redo its 2020 congestion study.
3. DOE should expeditiously designate new Transmission Corridors that are a prerequisite to FERC issuing federal siting permits.
4. DOE should consider how new transmission will benefit customers by connecting areas with high renewable potential.
5. DOE should take care to consult with states when studying transmission congestion as required.
6. DOE should meaningfully incorporate state feedback into Transmission Corridors designation.
7. DOE should designate narrow Transmission Corridors with specific projects in mind.
8. DOE and FERC should issue coordinated project-specific Transmission Corridor designations and federal siting permits for the project, which would require FERC to update its regulations.
9. DOE should consider delegating Transmission Corridor designation responsibilities/authority to FERC.
Federal Permitting of Transmission (FPA §216(b))
10. FERC should issue a new order refining the procedure for issuing federal permits and clarifying its interpretation of the criteria FERC will use to evaluate applications.
11. FERC’s new order should clarify that transmission projects connecting renewable energy to population centers meet the statutory criteria for federal permits.
12. FERC’s order should reiterate FERC’s interpretation that it may grant a federal permit when a state affirmatively denies siting to a project and apply that interpretation to projects in states outside the Fourth Circuit.
13. FERC’s order should permit applicants to begin the pre-filing process in parallel with state review of project applications.
14. FERC’s order should encourage developers to apply for federal siting permits when states lack authority to approve their projects, when states fail to consider a project’s interstate benefits, when states only permit projects that serve in-state customers, or when states impose unreasonable conditions.
DOE-Private Developer Partnership Projects (EP Act 2005 § 1222)
15. DOE should issue a new request for proposals that declares the agency’s willingness to evaluate new partnership.
16. DOE should make the beginning of the section 1222 review process automatic.
17. DOE should structure deals under section 1222 to provide material inducements that might aid in building public support for projects.
18. If it moves forward with future projects, DOE should consider whether existing appropriated funds might be available.
Power Marketing Administration Transmission Projects
19. DOE should consider providing appropriated taxpayer funds to study PMA transmission systems and existing rights-of-way.
20. DOE should continue to support the Western Area Power Administration’s management of its program to borrow funds for transmission development.