JUN 24, 2021

Five Congressional Priorities for Electric Transmission Reform

As Congressional impatience mounts on a clean infrastructure bill, the culprit of electric transmission problems has been identified: defective regulation. The conundrum is a slog of red tape that deters many economic projects, while the regulatory framework discourages efficient use of existing infrastructure and encourages utilities to select new projects with higher costs. On cue, Congress announced a hearing [1] for June 29 to dig into transmission reform.

Transmission developers face massive barriers to put steel in the ground. Permitting and siting processes prevent development and add unnecessary costs, delays and litigation risk to projects that survive. Projects currently in the early planning stage are unlikely to enter service until the 2030s [2], which is a sobering reality for decarbonization timelines. Fixes will not be easy, but the clean energy movement must confront the fact that the regulatory state is the key impediment to the clean energy transition [3].

Another core defect is the perverse regulatory incentive structure facing incumbent transmission owners. Their motive is to increase the book value of the rate base upon which they earn a regulated return. This is correctable via economic regulatory oversight, or through competition. Currently, there's little of either [4] in transmission.

This lack of economic discipline jacks up regressive electricity rates in a manner contradicting the essence of a "just transition." Consider that despite underdevelopment, transmission costs are a growing component [5] of utility capital expenditures, and utility CapEx is on track for a record-breaking $141 billion [6] year, undeterred by the pandemic. Consumers, many of whom incurred [7] a tripling of transmission costs over the past decade [8], are alarmed by expansion proposals that will exacerbate the already-flawed transmission framework.

Next Tuesday, Congress will examine electric transmission alongside the Climate Leadership and Environmental Action for our Nation's (CLEAN) Future Act. Parties hold divergent views on the Act's main provisions, but scholars at the R Street Institute and Heritage Foundation flagged [9] transmission reforms outlined in the CLEAN Future Act as having bipartisan potential—especially those that reduce barriers to clean technologies and enhance competition between incumbents and new entrants.

This bipartisan potential translates into five priorities for Congressional action on transmission reform:

1. **Reduce red tape for infrastructure development, especially for linear projects like transmission.** Congress needs to overhaul project licensing and permitting processes [10] under the National Environmental Policy Act (NEPA), Endangered Species Act and Section 401 of the Clean Water Act. Reforms [11] should clarify compliance expectations, reduce redundant interagency processes, encourage good faith conflict resolution among local stakeholders and shorten regulatory timelines while mitigating liabilities. This will come with environmental trade-offs but can create net environmental gains if "right-sizing" regulatory scrutiny is done properly, not to mention the economic development benefits.
2. **Enact transmission siting reform.** High voltage transmission is typically interstate commerce. However, Congress elected to give the Federal Energy Regulatory Commission (FERC) limited backstop siting authority [12] instead of "first-stop" siting authority. As a result, developers must navigate states' individual siting processes, which are seldom coordinated and present a well-documented [13] barrier to development that has worsened this past decade [14]. Congress could assign FERC the authority to determine whether a transmission line is needed and bypass states entirely, but this risks upending the incorporation of local landowner and environmental impacts in siting decisions. Alternatively, Congress could keep states in a lead role but

strengthen targeted FERC backstop authority to force states to "play nice" with each other and adhere to consistent evaluation practices with schedule discipline. As noted [15] by former FERC commissioner Phil Moeller, "just the threat of [federal backstop authority] caused states to work together a little bit better."

3. **Encourage FERC to pursue reforms that increase net benefits to consumers.** Transmission reform may be the top priority at FERC now, with Chairman Richard Glick recently announcing [16] that the agency plans to outline a path forward on transmission policy. FERC will likely address one reform this summer: improving transmission line ratings. This is a big first step toward squeezing more efficiency out of existing infrastructure to the tune of hundreds of millions [17] in annual consumer savings, with major increases in clean energy utilization [18] to boot. It aligns with the CLEAN Future Act's emphasis [19] for FERC to examine policies to encourage deployment of advanced transmission technologies, including ambient and dynamic line ratings. The bigger question is how FERC approaches transmission planning reform and cost allocation. FERC should prioritize improving benefit calculations in planning processes, as current practices have methodological problems and examine benefits in artificial regulatory silos. FERC also needs to infuse competition [20] into local and regional transmission projects. This has the potential to spur innovation and reduce costs [21] by billions [22] of dollars, while enhancing reliability and decarbonization. But FERC will need political cover (see Congress) to take on incumbent monopoly transmission owners, who defend their competitive moat with zeal at consumers' expense.
4. **Explore a new institutional framework for interregional projects.** Improving the existing regulatory framework may suffice for local and regional transmission projects, but the framework has been a failure for interregional project development. Some regional grid operators, including those [23] spanning the Great Plains and Midwest, have made limited progress outlining interregional frameworks, but struggle with basics like developing common benefits calculation methods. Yet the true problem runs deeper: there are fundamental institutional disincentives for improving interregional electricity trade. Tweaks to the current framework cannot address this. It is time for Congress to examine the role of a body or process independent of parochial regional interests to conduct interregional transmission expansion planning. This approach should leverage competitive solicitations.
5. **Spend taxpayer dollars sparingly and efficiently, if at all.** First, subsidies do not fix the root problems with transmission development—recent FERC action to curtail return on equity adders [24] admits as much—nor are they a good candidate to reignite the economy. Expansionary fiscal policy has a muted effect on transmission infrastructure because demand is largely determined by administrative processes. Second, public spending on electricity infrastructure deployment has a poor track record, especially when injected into flawed regulatory systems. For example, the advanced metering infrastructure spending from the 2009 American Recovery and Reinvestment Act [25] channeled funds into monopoly-insulated regulatory architectures that systematically blocked the potential of smart meters [26], which have billions in untapped long-term value [27] if leveraged in competitive markets. Public spending on a "smarter grid" is more likely to have benefits that exceed costs by focusing on "upstream" research and development [28].

As Congress moves toward the reconciliation process for infrastructure, public spending constraints have become more acute. Green populists appear to view this as a threat to the clean transition, but it may actually shift the Congressional focus instead to where it's needed: regulatory reform. Indeed, the fate of the clean energy transition is inextricably linked to the quality of transmission regulation over the next two decades, not how much this Congress decides to spend.

Endnotes

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