American Clean Power Association
Statement for the Record
Hearing entitled, "Permitting Purgatory: Restoring Common Sense to NEPA Reviews"
House Committee on Natural Resources
July 22, 2025

The American Clean Power Association (ACP) appreciates the House Committee on Natural Resources holding this hearing to discuss the importance of reforming and improving the National Environmental Policy Act (NEPA) process, which is critical for more effectively and efficiently permitting U.S. energy infrastructure.

Energy infrastructure, including clean energy and transmission, needs more timely, predictable, and reasonable federal environmental review and permitting processes. Improving the efficiency of these processes is necessary to achieve President Trump's goal to "make America energy dominant," a goal ACP shares, and, in particular, allowing the nation to timely meet rising energy demand while maintaining affordable energy prices for American families and businesses.

U.S. electricity demand is expected to grow by 9% by 2028 and 18% by 2033 - an increase of 2% per year, on average, relative to 2024 levels, according to an ICF report published in July 2025. Peak demand could grow 5% over the next four years. Over the long term, the U.S. is facing an electricity demand surge of 30-50% by 2040[1] – a staggering increase driven mainly by the AI/data center boom, electrification and manufacturing growth. The existing antiquated and balkanized power system is already struggling to keep up, and maintaining

[1] The *U.S. National Power Demand Study* from S&P Global Insights finds electricity demand growth will rise 35-50% between 2024 and 2040. The study was commissioned by the Alliance to Save Energy, American Clean Power Association (ACP), American Petroleum Institute (API), Clean Energy Buyers Association (CEBA), National Electrical Manufacturers Association (NEMA), Nuclear Energy Institute (NEI), and the U.S. Chamber of Commerce. The study finds that an additional (net) 730-765 gigawatts (GW) of renewables, 160-175 GW of storage, 60-100 GW of gas, and 10-25 GW of nuclear and geothermal will be needed by 2040 to maintain grid reliability, with 8% of the nation's energy demand being met through expected energy efficiency savings over 2024 levels of savings.

grid reliability, keeping the lights on, and meeting this dramatic growth in demand will require every megawatt possible from all sources of electricity.

The combination of rising demand and aging infrastructure is driving up electricity prices for both residential and commercial customers. In fact, ICF estimates that it could drive up the amount that utilities pay for electricity by 19% by 2028. Since 2022, U.S. residential electricity prices have already risen 13 percent on average, outpacing inflation, according to the Energy Information Administration.[2] As the cost of electricity rises with increased demand across the country, Americans that rely on cheap power will be forced to pay even more on their monthly bills and manufacturers and small businesses will be squeezed.

While it is necessary to develop traditional resources, they alone are not sufficient enough to meet this demand growth or keep prices low for consumers. Wind, solar, and battery energy storage are all crucial for American energy dominance. Clean energy represented 93% of new capacity added to the grid last year and currently account for 95% of electric capacity waiting to connect to the grid.[3] In addition, Lazard's 2025 analyses showcase the continued cost competitiveness of renewables and the importance of diversified energy portfolios. The report highlights that renewables remain the most cost-competitive form of new-build.[4] In contrast, for example, the cost of building gas power plants has nearly tripled since 2022, and power companies now face wait times of five years or more for new gas turbines.

Unfortunately, even in the face of these forecasts and in stark contradiction to the need to expedite all energy resources, the Administration has taken actions to raise barriers to the review and permitting of wind and solar projects, including on private lands. Most recently, the Department of the Interior established a burdensome review process for 68 individual steps (and a 69th catch-all for "similar" actions) that may be taken during the review of wind and solar facilities. Each of these steps now requires review and sign-off for any project via three duplicative levels of political review up to and including both the Deputy Secretary and the Secretary. All forms of energy infrastructure need acceleration, not obstruction, to meet the challenges of the day. As Senate Environment and Public Works Committee Chair Capito said, "every energy project needs to be permitted as fast as possible regardless of resource."

Reforms to NEPA and the Endangered Species Act (ESA) that provide a more streamlined process and greater legal certainty, while also preserving our nation's bedrock environmental protections are imperative, and ACP looks forward to working with the

---

[2] Available at https://www.eia.gov/todayinenergy/detail.php?id=65284.
[3] Available at https://emp.lbl.gov/queues.
[4] Available at https://www.lazard.com/research-insights/levelized-cost-of-energyplus-lcoeplus/.

House Committee on Natural Resources on these issues. We also emphasize that any comprehensive, meaningful permitting reform must also include measures under the jurisdiction of other committees to improve interregional transmission capacity, planning and cost allocation under the Federal Power Act (FPA). Those are key to ensuring we have the needed generation capacity, regardless of technology type, to meet skyrocketing demand and the ability to move that power to where it is needed, as well as providing a more resilient and reliable grid.

ACP recommends the following NEPA reforms:

Judicial Review

- **Injunctive Relief**
    - **Problem:** Project opponents often seek preliminary injunctions to halt development of energy infrastructure while a decision on the merits is pending in court. Even if the opponents ultimately lose, such delays could ultimately prevent project development.
    - **Solution:**
        - Provide that a court can only issue a preliminary injunction to stop development of energy infrastructure with a showing of "proximate and substantial irreparable harm."
- **Vacatur/Remand**
    - **Problem:** If a court finds an agency action unlawful, it typically vacates the action and remands it back to the agency. The agency must then address the deficiencies in its NEPA analysis prior to reapproving/approving the final agency action. While courts may impose a deadline by which time an agency must address the deficiencies, they are not required to do so. This outcome significantly extends project timelines, even if the final agency action is ultimately the same as the final agency action proposed prior to vacatur.
    - **Solution:**
        - Provide that if the agency action to authorize energy infrastructure will not pose a risk of "proximate and substantial harm," a court may not vacate the decision and may only remand the document, such that the action may progress while the agency addresses errors or deficiencies in the NEPA document, so long as such activity does not directly impact such errors or deficiencies.

- Require courts to set a deadline for an agency to act on remand that does not exceed 180 days from the date on which the order of the court was issued.

- **Limitation on Civil Actions**

  - **Problem:** Litigation significantly slows down many permitting projects, even though the agency often prevails. Moreover, under the Administrative Procedure Act plaintiffs can sue up to six years after agency action (and potentially more under *Corner Post).*

  - **Solution:**
    - Set a 150-day statute of limitations for filing a claim against agency action.
    - Require any filing party to have participated in the administrative proceedings regarding the action.
    - Limit claims to actions that concern an alternative or environmental effect considered, or not considered that would have been essential to making a reasoned determination related to the proposed agency action.
      Require a reviewing court to set for expedited consideration any civil action arising under Federal law seeking judicial review of a final agency action granting or denying an authorization for critical energy infrastructure.

Application Processing Timelines

- **Pre-Environmental Review Timelines**

  - **Problem:** While the Fiscal Responsibility Act (FRA) provides a timeline for the issuance of an environmental impact statement (EIS) and an environmental assessment (EA), there are no similar provisions for actions that occur before the environmental review process. Delays at the beginning of the environmental review, such as the issuance of a notice of intent (NOI), can significantly extend project timelines.

  - **Solution:**
    - Require agencies within 30 days of receipt of a timeline to notify applicant if its application is complete. If an application is incomplete, an agency must notify the applicant what additional information is necessary. Subsequent deficiency notices must not include issues not initially identified by the agency.
    - Establish a default timeline of 30 days for the issuance of a NOI after receipt of a completed application for an EIS and 15 days for issuance

of a NOI after receipt of a completed application for an EA (if notice is to be given). The timeline should be subject to reasonable extension if a senior agency official approves a longer period in writing and establishes a new timeline.

- **Post-Environmental Review Timelines**

  - **Problem:** As with pre-environmental reviews, there are no prescribed timelines for actions required after an agency completes an EIS or EA.

  - **Solution:**
    - Require agencies to publish a Finding of No Significant Impact (FONSI) and/or Record of Decision (ROD) no more than 90 days after publication of a final EA or EIS, respectively. The timeline should be subject to reasonable extension if a senior agency official approves a longer period in writing and establishes a new timeline.
    - Require any outstanding project authorizations to be issued no later than 180 days after the issuance of the finding of no significant impact or record of decision. .

- **Environmental Review Timelines under Fast-41**

  - **Problem:** Currently, a lead agency can extend an environmental review timeline, in consultation with the applicant, to establish a new deadline. This extension does not require approval by the applicant. As a result, timelines are often extended with little recourse provided for the applicant.

  - **Solution:**
    - Provide that agencies can only extend environmental review deadlines if approved by the applicant.
    - Provide that modifications to a permitting timetable, other than for reasons outside the control of Federal, State, local, or tribal governments, may not extend the permitting timetable for a period of time greater than one quarter of the amount of time from the establishment of the permitting timetable (as compared to the current ½ time).
      - Provide that modifications beyond the limit described above may only be made at the request of the project sponsor
    - Provide that, along with the completion date, any milestone date in the permitting table may not be modified within 30 days of the established date

Small Handles

- **Problem:** NEPA requires agencies to provide a detailed statement on reasonably foreseeable effects of a proposed agency action that is a major Federal action. Often projects are considered major federal actions if only a small portion of the project, such as a transmission line, crosses federal lands. As a result, agencies may conduct a lengthy analysis of the impacts of the entire project, not just the portion crossing federal lands.

- **Solution:** For projects that have a limited footprint on federal lands (for example transmission lines/pipelines that are on private lands but cross public lands), the effects should be limited to the portion of the project that crosses federal lands.

Major Federal Action

- **Federal Funds**

    - **Problem:** Currently, agency action is typically considered to be major federal action if it receives federal funds. This can mean projects that are largely outside the scope of federal agency action (on private or state lands for example) are required to undergo a lengthy environmental review process even if they receive de minimis federal funding.

    - **Solution:** Clarify that agency action may not be determined to be a major federal action solely on the basis of provision of Federal funds (grant, loan, loan guarantee, and funding assistance).

- **Existing Rights of Way**

    - **Problem:** Agencies often undergo lengthy reviews for activities that have minor impacts because they occur in previously developed or disturbed areas, such as existing Rights of Way (ROWs).

    - **Solution:** Provide that an action by the Secretary concerned with respect to certain covered activity shall not be considered a major federal action under NEPA, including transmission infrastructure upgrades and meteorological towers in existing energy ROWs.

Scientific Review

- **Problem:** Under existing law and regulations, it is not clear whether agencies are required to undertake or consider new scientific or technical research after an

application has been submitted to the agency. Such research can significantly extend project review timelines, and open NEPA reviews to litigation.

- **Solution:**
  - Provide that in considering effects an agency need not undertake new scientific and technical research after the receipt of a complete application.
  - Provide that in considering effects an agency is not required to consider any new scientific or technical research that becomes publicly available after either the receipt of a complete application, or the publication of a notice of intent of decision to prepare an environmental document.

Cooperating Agency Review

- **Problem:** Existing regulations do not limit cooperating agency review, meaning that cooperating agencies could undertake review beyond their jurisdiction, thereby extending the review timeline.

- **Solution:** Limit comments from cooperating agencies to matters relating to the proposed action with respect to which such cooperating agency has jurisdiction by law or special expertise.

Duplicate NEPA Reviews

- **Problem:** Under existing regulations, an agency is not relieved from conducting a NEPA analysis even if it or another agency was required to already conduct substantially similar reviews under another statute.

- **Solution**: Direct the Secretary concerned to use previously completed environmental assessments and environment impact statements to satisfy NEPA requirements if the Secretary concerned determines that the new proposed action and impacts are substantially similar.

Categorical Exclusions within Existing Rights of Way

- **Problem:** If certain activities occur in an existing right-of-way, it should not have to go through a full environmental analysis.

- **Solution:** Congress should provide categorical exclusions for renewable energy, energy storage, and transmission projects in existing rights-of-way on federal lands, including for:
  - Construction of meteorological towers with a footprint of less than five acres of soil or disruption.

- Adding a battery energy storage resource to an existing or planned energy generation facility or substation, when the storage resource is located within the physical footprint of an existing or planned energy facility or substation, or an associated right-of-way and will result in less than five acres of soil or disruption.
- Any modification, repair, maintenance, upgrade, or minor addition to existing transmission and distribution infrastructure within an existing physical footprint or right-of-way that is below 500 MWs; and
- Routine vegetation management and removal of dangerous trees within or adjacent to an existing right-of-way.

Concurrent NEPA/NHPA Review

- **Problem:** Although Section 106 of the National Historic Preservation Act (NHPA and NEPA are independent statutory requirements, the processes for compliance may require similar studies to identify affected resources, and similar levels of tribal consultation and public engagement. Delays in NHPA consultation have caused serious delays for project permitting timelines.

- **Solution:** Require coordination of review under the two laws to expedite both compliance processes similar to regulations at 36 CFR 800.8:
  - NHPA process should start at the same time as the NEPA process
  - The same agency should act as lead agency under both NEPA and Section 106;
  - The lead agency should develop plans and schedules for cultural resource identification studies, consultation and public engagement, and other requirements common to both Section 106 and NEPA.

ACP recommends the following ESA reforms:

- **Problem:** Securing legal and economic certainty via incidental take permits (ITPs) under the ESA takes too long, is too complex and uncertain, and often imposes conditions on projects related to mitigation and/or monitoring that are based on worst-case scenarios and pessimistic assumptions leading to measures that are too costly and not commensurate with expected impacts.

- **Solution:**
  - Establish presumptive timelines to complete Section 10 habitat conservation plan (HCP) reviews and to issue an incidental take permit (ITP), providing similar structure and certainty in the Section 10 permitting process as exists for Section 7.

- ACP first recommends establishing a notice of intent to apply for an ITP process, which once filed by an applicant and deemed complete by USFWS would start the timeline clock. This is important because the formal ITP application often comes only after an HCP has been discussed with the agency and developed through a process without timelines and which can be dragged out or delayed indefinitely. To be deemed complete, the notice of intent to apply would include: (1) applicant name and address (2) if a business, the type of business and name/title of the person responsible for the business (3) a description of the project, its location, and relevant facilities and (4) the names of the species sought to be covered by the permit and a statement explaining the applicant's determination that potential incidental take of the species is likely.
- Once the notice is confirmed to be complete, USFWS should establish a presumptive timeline to be run concurrently with the NEPA review of the HCP. In the experience of ACP and our members, the key components of an HCP (e.g., covered species, covered activities, avoidance/minimization/mitigation measures, monitoring, take authorization request, etc.) are typically identified in the first few weeks or months of coordination with USFWS. Thus, the HCP components necessary for the NEPA review are generally available soon after USFWS engagement begins and once the key HCP components are identified, the processes should be run concurrently to reduce overall permitting timelines. Implementation of additional recommendations provided below, such as clarification of an applicant-driven process and guidance to USFWS staff on the roles and responsibilities of the agency and applicants during HCP development, address the sources of delays that commonly arise after the key components have been identified.
- For an HCP with a Categorical Exclusion, which should be increasingly used and encouraged by USFWS for ITP issuance reviews under updated NEPA regulations and implementing guidelines, the timeline should be no more than six months for completion of HCP development and notice of availability of the ITP application and documents supporting the Categorical Exclusion determination. The ITP should then be issued within 90 days.
- For a more complex HCP with an EA, the timeline should be no more than one year for completion of HCP development, notice of intent to prepare an EA for the HCP, and publication of the final EA and HCP. The ITP should then be issued within 90 days.
- In the rare instance of an HCP requiring an EIS, the timeline should be no more than two years for completion of HCP development, notice of intent to prepare an EIS for the HCP, and publication of the final EIS and HCP. The ITP should then be issued within 90 days.

- Clarifying Section 10 is an applicant driven process with permit applications evaluated solely as to whether the ESA Section 10 issuance criteria are met.
- Clarifying that the requirement to minimize and mitigate the impacts of take "to the maximum extent practicable," which already exists in statute, does not equate to a requirement to fully offset take, such measures must be commensurate with the expected impact, and impacts considered must not be speculative.
- Codifying that practicability can involve insufficient implementation options and/or financial constraints (both are included in the Service's HCP Handbook). For the financial constraint pathway, legislation should clarify this is sufficiently demonstrated through financial analysis certified by the project proponent and that such analysis is considered confidential business information and not subject to release under the Freedom of Information Act. The Service should not conduct its own independent financial analysis as they are not qualified to assess.
- Codifying and expanding the use of research as mitigation.
    - Congress should clarify that a permittee's commitment to invest or carry out research, which is likely to provide benefits to a species covered under a permit, be counted toward the mitigation requirements thereunder.
- Establish that, per the DC Circuit Court ruling in Maine Lobstermen's Association v. National Marine Fisheries Service, ESA Section 7 consultations must focus on likely outcomes and not worst-case scenarios.
- Encouraging the development and use of low-effect habitat conservation plans (HCPs), 4(d) rules, and/or general permits to expedite coverage and improve certainty for projects with limited impacts.
- Codifying availability of and criteria for general conservation plans (GCPs, currently included in the HCP Handbook), with clarification that: (1) the appropriate mitigation threshold is "maximum extent practicable" and GCPs are not required to result in no net loss to a species or a conservation benefit (2) GCPs are an appropriate tool where an industry has a generally accepted approach to minimization measures (3) GCPs are appropriate where the primary threats to a given species is not driven by anthropogenic causes and can best be addressed by coordinated conservation and/or research efforts and (4) development of a GCP by the Service should include industry and other stakeholders with knowledge of the practical aspects of project construction, operation, maintenance, and financing, and, if completed, must also include an ongoing advisory committee to provide technical and practical expertise to ensure the GCP remains workable for the subject industry.
- Clarifying lands covered by Enhancement of Survival Permits; Conservation Benefit Agreements; Habitat Conservation Plans; and other voluntary conservation agreements are excluded from critical habitat designations.

ACP recommends the following transmission reforms:

Minimum Amount of Interregional Transmission Capacity

- **Problem:** Nearly all transmission planning regions and grid operators have at least some connectivity with their neighbors, but in nearly all cases new transmission is planned to meet needs within each region. Currently, there is no requirement that any minimum amount of transmission capacity be available to transfer electricity between regions, whether in normal or extreme circumstances. This leads to individual regions planning their grids without taking into account the needs of neighboring regions or considering whether interregional solutions might be more cost-effective than intra-regional solutions. In turn, this can lead to bottlenecks, congestion, and price divergence during severe weather events, when surplus electricity in one region cannot be transmitted to load in another region. In most places, interregional transfer capability is well below 10% of peak load.

- **Solution:** Congress should direct FERC to utilize certain criteria to evaluate interregional transfer capability and then allow regions to conduct and submit their own analysis to demonstrate what interregional transfer minimum would be appropriate. In the alternative, could set a minimum, e.g., 15% of peak demand, and require regions to explain why that should not apply.

Interregional Planning and Cost Allocation Process

- **Problem:** Virtually no major interregional transmission projects have been planned and built in the United States over the last decade. This is largely due to the fact that the interregional planning and cost allocation processes are not effective and in need of reform, as regions don't adequately plan for transmission with neighboring regions or determine means for spreading the costs to pay for it.

- **Solution:** Congress should direct FERC to issue a rulemaking on interregional planning and cost allocation within 180 days and finalize the rule no later than one year.
  - *Planning*: Require neighboring regions to harmonize their interregional planning processes to ensure synchronization in viewing lines that cross their seams.
    - A formal procedure for the identification and joint evaluation of interregional facilities.
    - Set out planning requirements to ensure consistency, coordination, and accounting for full electricity system benefits.
    - Specify 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.

    - Require the 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.
- *Cost Allocation*: Require a cost allocation methodology that ensures costs for interregional lines are roughly commensurate with overall benefits and no costs are allocated to those who receive no benefits.
    - Require planning regions to develop with their neighboring regions a single cost allocation methodology for interregional lines.
    - Require a common interregional cost allocation method across neighboring regions for new interregional transmission facilities.
    - Allow a developer of an interregional line 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.
- *Allow for Incumbent and Non-Incumbent Models to Participate in Interregional Planning and Cost Allocation*: Direct 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.

Interstate Permitting of Transmission Lines—Expedite Existing Corridor & Backstop Authority

- **Problem:** Congress enacted Section 216 of the Federal Power Act in 2005, which allows for federal "backstop" siting if an interstate transmission line is in the national interest, and a state rejects that project, delays action or lacks authority to approve it. To trigger this authority, DOE must first identify National Interest Electricity Transmission Corridors (NIETCs). Only then, if a state does not site a transmission line in such a corridor within a year, FERC can exercise its backstop authority for the line. This bifurcated process has proven unwieldy and has not resulted in a single project being permitted in the almost two decades since its enactment. This is because courts have held that this process requires duplicative and unnecessary environmental reviews for qualifying transmission lines—necessitating DOE and FERC to engage in largely duplicative reviews during each of their respective roles.

- **Solution:** To address this issue and make this process more efficient and expedient, Congress should:

- Clarify that a DOE-initiated corridor or an applicant-driven project does not trigger:
  - A major federal action requiring environmental review under NEPA (reverse *California Wilderness Coalition*), or any other environmental review, including:
  - Section 7 consultations under the Endangered Species Act (ESA).
  - Section 106 consultations under the and the National Historic Preservation Act (NHPA).
- Explicitly provide for an applicant-driven corridor application process.
- For applicant-drive projects, require DOE to make the initial NIETC determination in 90 days after an application is received.
- Consolidate one environmental review for NIETCs at FERC – ensuring robust but non-duplicative review under NEPA, the ESA and NHPA.
- Allow for simultaneous state and FERC review of lines in NIETCs.

Thank you for your consideration of the recommendations included above. We look forward to continuing to work with Congress to address these needed reforms. Please do not hesitate to let ACP know if we can provide any additional information as the Committee continues your deliberations.