



NARUC

National Association of Regulatory Utility Commissioners

September 14, 2022

Majority Leader Schumer
United States Senate
Washington, DC 20510

Minority Leader McConnell
United States Senate
Washington, DC 20510

RE: Manchin Permitting Legislation

Dear Majority Leader Schumer and Minority Leader McConnell:

The National Association of Regulatory Utility Commissioners (NARUC) commends Senator Manchin and Senate Leadership for their efforts to streamline the long drawn out and burdensome federal permitting procedure for energy infrastructure. Too many projects have been canceled after arduous work and extensive planning due to the laborious and unnecessarily tedious federal permitting process. However, while streamlining efforts are meritorious, NARUC strongly objects to the proposed provision in Senator Manchin's draft permitting bill that would eliminate all state authority over the siting of electric transmission projects found by the Secretary of Energy to be "national interest facilities."

States have watched the dominoes fall one by one as federal authority expands and encroaches further and further on state siting and eminent domain jurisdiction for electric transmission. The 2005 Energy Policy Act intruded on state authority over electric transmission by granting the Federal Energy Regulatory Commission (FERC) **limited** "backstop" authority to negate siting decisions by state authorities under certain specified circumstances. Just last year in 2021, the Infrastructure Investment and Jobs Act further intruded on state oversight by removing the limitations on FERC backstop authority—by simply giving states an ultimatum: "Approve the project or FERC will approve it for you." Now, the Manchin proposal would go even further and deliver a death blow to what is left of state siting jurisdiction by providing the Secretary of Energy and FERC with exclusive power to designate any project as a "National Interest Facility." Once such a designation is made, the state will have no siting jurisdiction over any such project. FERC's authority will completely preempt state authority over these "National Interest" projects. As a result, local considerations, which should remain rightly entrusted to the states, will be ignored or at best reduced to afterthoughts.



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Extremely disturbing is that stripping states of authority that is rightly theirs and granting FERC complete federal preemptive siting authority will almost certainly not achieve the intended purpose of shortening the time it takes to bring a transmission project to fruition. This overreach and infringement on state authority will be for naught. While state proceedings are not subject to the National Environmental Policy Act (NEPA), if the Manchin proposal passes and states are largely removed from the process, any “designated national interest facility” will be subject to NEPA; electric transmission projects will then meet the same hurdles pipelines face in FERC proceedings. The projects will likely be drastically delayed, become significantly more costly, and face cancellation altogether both during any federal review process that FERC develops and in post-decisional review in any federal court. The Manchin proposal will serve only to centralize and consolidate federal authority, limiting or eliminating state and local input into siting decisions, without achieving the streamlining goals of alleviating delay in electric transmission siting process.

Finally, NARUC believes this very important decision deserves focused and independent consideration and should not be rushed and virtually skipped over by including it as an addition to the Continuing Resolution to keep the government funded.

In conclusion, NARUC fervently opposes passage of any permitting reform proposal that includes further federal preemption of state electric transmission siting authority and strongly urges that the Manchin proposal not be considered for inclusion in any “must pass” legislation.

Thank you for your attention and consideration.

Sincerely,

Judith Williams Jagdmann
President
NARUC

CC: All Members of the United States Senate