

# Streamlining Energy Infrastructure Permitting

- The American Public Power Association (APPA) urges federal policymakers to streamline federal permitting rules to help facilitate the construction of cost-effective energy infrastructure necessary to maintain electric reliability and accommodate new load growth and a changing resource mix.
- Public power utilities need clarity and certainty in all aspects of the federal permitting process to make significant investments in electric generation, distribution, and transmission infrastructure.
- APPA supports conducting environmental reviews and permitting processes in a concurrent, coordinated, consistent, predictable, and timely manner so needed projects can move forward as quickly and economically as possible, while maintaining reasonable environmental oversight.

## Background

Providing reliable and affordable electricity to American consumers and businesses requires an expansive infrastructure system and the capital to plan, build, and maintain it. America's energy infrastructure includes power plants, hydroelectric dams, transmission and distribution wires, and fuel delivery systems, such as interstate natural gas pipelines. The need for cost-effective infrastructure to support reliable and affordable electricity, to balance intermittent resources, and to meet rising electricity demand is particularly acute today. Rapid growth in wind, solar, storage, and distributed energy resources and the need for flexible resources, such as natural gas-fueled generation, are all part of a quickly evolving generation resource mix. Electrification of the transportation sector, the growth of data centers, and increased severe weather events are also driving more demands on the electric grid.

Streamlined environmental reviews under the National Environmental Policy Act (NEPA) would ensure that energy infrastructure projects are able to move forward quickly and cost-effectively to meet rising demand. NEPA requires federal agencies to consider the environmental impacts of proposed major federal actions as part of an agency's decision-making process. Projects receiving federal funding must also undergo environmental reviews. Environmental reviews and authorizations that involve multiple federal, state, and local agencies are common. These reviews are often time-consuming, fragmented, inefficient, and costly to project proponents. In addition to siting and permitting generation and distribution infrastructure, in some cases, the electric transmission siting authority resides with federal agencies and requires NEPA review.

The Federal Energy Regulatory Commission (FERC) plays a key role in hydropower, interstate natural gas pipelines, and bulk electric transmission lines. For more on permitting these specific resources that are not addressed in this issue brief, see APPA's issue briefs, "The Importance of Natural Gas for Electric Reliability and Affordability," "Hydropower," and "Electric Transmission Policies."

The U.S. Army Corps of Engineers' (the Corps) nationwide permit (NWP) program is integral to permitting energy infrastructure development. Under the Clean Water Act (CWA), the Corps can issue general permits to authorize activities with minimal individual and cumulative adverse environmental effects. The power sector relies extensively on these NWPs to provide timely and reliable installation of transmission and distribution powerlines and to perform maintenance on those lines, which are critical to system reliability. A streamlined NWP process supports the secure integration and delivery of a balanced mix of central and distributed energy resources.

The current suite of NWP's went into effect on March 15, 2021, and will expire on March 15, 2026. The Corps is currently developing the proposed rule to reissue the 2021 NWP's. It plans to publish a proposed rule by February 2025 to complete the re-issuance before the expiration of the 2021 NWP's. APPA's advocacy efforts have encouraged the Corps to re-issue the NWP's quickly, as public power utilities rely on the linear NWP's to modernize the grid, construct carbon dioxide pipelines, and maintain and repair utility lines.

## Congressional Action

The Infrastructure Investment and Jobs Act (IIJA)(P.L. 117-58) provided over \$70 billion in energy infrastructure investment. Many public power utilities have successfully obtained IIJA funding to support critical investments in grid resilience, electric vehicle charging, energy efficiency, and hydrogen infrastructure. Recognizing the necessity of an efficient and predictable permitting process, the IIJA also included provisions to streamline the NEPA review process for "major projects" funded by the act. Specifically, the IIJA requires: (1) that one agency lead the NEPA process for each project; (2) the creation of a joint project schedule; (3) the completion of the review process within two years; and (4) the production of a "record of decision" within 90 days of the issuance of a final environmental impact statement.

Despite these changes, lengthy, inefficient, and costly federal permitting processes still make it difficult for utilities to make needed infrastructure investments and there is bipartisan agreement in Congress that building new infrastructure projects takes too long and costs too much. Congressional Republicans are primarily interested in reforming laws like NEPA, CWA, and the Endangered Species Act to streamline the federal permitting process. In contrast, congressional Democrats are particularly interested in reforms that would change how transmission lines are permitted, sited, and paid for (cost allocation), with the goal of speeding the expansion of the transmission system to accommodate increased renewable resources.

In early 2023, House Republicans passed H.R. 1, the Lower Energy Costs Act, an energy permitting reform bill that would have reformed NEPA by increasing interagency coordination, including requiring the development of a joint schedule, imposing deadlines, and page limits on certain environmental reviews, and creating limits on what qualifies as a major federal action (thus triggering a NEPA review). These reforms were all generally supported by public power and the electric sector. Ultimately, these NEPA reforms were included in H.R. 3746, the Fiscal Responsibility Act (FRA), which was signed into law in June 2023. While positive, neither Republicans nor Democrats were fully satisfied with the reforms in H.R. 3746 and since its passage, members in both parties have expressed interest in continuing to negotiate additional permitting reform measures.

In July 2024, the Senate Energy & Natural Resources Committee passed S. 4753, the Energy Permitting Reform Act of 2024 (EPRA), authored by Chairman Joe Manchin (I-WV) and Ranking Member John Barrasso (R-WY). While the bill did include reforms that would have streamlined the federal permitting and siting process, particularly for energy projects on public lands, it also included language that would have subjected public power, electric cooperatives, and the federal Power Marketing Administrations (known as 201(f) entities under the Federal Power Act), to increased regulation by FERC. Expanding FERC's jurisdiction over 201(f) entities would be a radical departure from 100 years of precedent, as not-for-profit entities are primarily regulated at the state and local levels; moreover, it would do nothing to speed up the permitting process. APPA advocated extensively to amend S. 4753 to prevent the addition of new regulatory burdens on public power utilities and believed its concerns could be addressed without sacrificing the overall goals of the bill. Ultimately, S. 4753 was not considered by the full Senate.

Members of Congress on both sides of the aisle remain interested in addressing permitting reform. APPA will continue to support efforts to streamline the federal permitting and siting process, eliminate excessive regulatory barriers, and ensure more predictable and timely decisions from relevant federal agencies.

## Regulatory Action

In response to the NEPA reforms contained in the FRA, the Council on Environmental Quality (CEQ) finalized its Phase 2 amendments to NEPA in May 2024. The Phase 2 final rule includes extensive changes to current NEPA regulations. Some provisions are likely helpful, such as confirmation that effects must be "reasonably foreseeable," requirements for deadlines and schedules for NEPA review, and allowing contractors (not just the federal government) to prepare environmental impact statements and environmental assessments. Other new procedures and policy elements could result in more complicated, time-consuming, and legally vulnerable NEPA reviews, such as the shift in perspective from NEPA as a procedural statute to one that is "action-forcing," the evaluation of alternatives outside of the action agency's jurisdiction, and requirements to evaluate environmental justice and

climate change effects at multiple stages of the NEPA process. After the Phase 2 rule was promulgated, a coalition of states challenged the rule in the U.S. District Court of the District of North Dakota. Subsequently, a recent court decision has added to the ongoing controversies related to environmental permit reforms under NEPA.

In November 2024, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) ruled that CEQ lacks the statutory authority to issue regulations implementing NEPA in *Marin Audubon Society v. Federal Aviation Administration* (No. 23-1067). If the decision stands, it could have significant implications for the validity and application of CEQ's NEPA regulations not limited to the Phase 1 and Phase 2 NEPA regulations, but on other administrative agencies' NEPA implementing regulations that rely on CEQ regulations, as well as on actions such as permits that rely on CEQ's NEPA regulations. While the court ruling does not vacate CEQ's NEPA regulations, it means agencies may not be able to rely on CEQ's NEPA regulations to demonstrate compliance, and project opponents may be able to rely on these regulations to challenge NEPA. The court ruling could also serve as a strong basis for the Trump administration to seek to repeal CEQ's NEPA regulations.

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The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government and protect the interests of the more than 54 million people that public power utilities serve and the 96,000 people they employ.

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