Policy Brief:

Understanding the Energy Permitting Reform Act of 2024

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HARC's latest Policy Brief, *Understanding the Energy Permitting Reform Act of 2024*, summarizes and analyzes the legislation, comparing it to the Clean Electricity and Transmission Acceleration Act of 2023 and recent federal rules. This brief also proposes recommendations to lawmakers.

Overview

The Energy Permitting Reform Act of 2024[1], recently introduced by Senators Joe Manchin (D-WV) and John Barrasso (R-WY), aims to modernize and streamline the permitting process[2] for energy projects across the United States. The draft bill's scope is expansive; it covers 1) legal claims and judicial review, 2) federal leasing and permitting for oil, gas, coal, renewable energy, and electric grid projects, 3) federal offshore leasing and permitting for oil, gas, and wind energy, 4) transmission permitting and planning, 5) reliability assessments, 6) liquified natural gas exports, and 7) hydropower.

In the press release announcing the release of the bill, U.S. Senator Joe Manchin champions the bill, stating that it will "advance American energy, lower prices, create domestic jobs and support America's role as a global energy leader." Senator John Barrasso, Chair and Ranking Member of the Senate Energy and Natural Resources Committee, describes the bill as "bipartisan" and highlights that it will "secure future access to oil and gas resources on federal lands and waters" and "strengthen the electric grid while protecting customers."[3]

Reactions to the bill have been mixed. While industry is generally in support of the bill, environmental and community organization positions range from identifying areas for improvement to calling for complete rejection of the bill. If enacted, the bill would likely have a transformative effect on the U.S. energy sector, speeding clean and conventional energy deployment, modernizing the grid, and reducing energy costs but many

[1] Energy Permitting Reform Act of 2024, S.4753 118th Congress (https://www.energy.senate.gov/services/files/744DC0D2-F3C0-4FE7-AD72-895D8517EBE4)
[2] Permitting is the process of obtaining official authorization from regulatory agencies to undertake a specific activity or project, such as building infrastructure. The process has become protracted, creating a bottleneck for energy projects and infrastructure buildout which are needed to achieve the energy transition, meet growing energy demand, ensure grid reliability, and reduce energy costs.
[3] U.S. Senate Committee on Energy and Natural Resources. (2024, July). Manchin, Barrasso Release Bipartisan Energy Permitting Reform Legislation. (https://www.energy.senate.gov/2024/7/manchin-barrasso-release-bipartisan-energy-permitting-reform-legislation)

organizations question if it sufficiently addresses environmental management and conservation, community engagement, and climate. Crafting the final legislation with these aspects in mind will be crucial to ensuring that the intended benefits of the legislation are fully realized while potential drawbacks and risks are mitigated.

On July 31, 2024, the Energy Permitting Reform Act was reported out of the Senate Energy and Natural Resources committee by a bipartisan vote of 15-4. It heads to the Senate next for debate and potential amendment.

What does the Energy Permitting Reform Act of 2024 do?

The Energy Permitting Reform Act aligns with an "all-of-the-above" energy strategy. Its impacts can be loosely grouped into two categories: build everything and build everything faster.

Build Everything.

The Energy Permitting Reform Act presents opportunities for energy development, in a variety of forms, on federal lands, and waters.

Oil, Gas & Coal

The Energy Permitting Reform Act would deliver a multitude of benefits to non-renewable energy businesses.

- The bill requires that the Secretary of the Interior offer a minimum of two million acres per year for oil and gas leasing, or at least 50% of the nominated acreage, before[4] issuing right-of-way permits for wind or solar projects on federal land.[5]
- Section 202 extends the validity of approved federal drilling permits from three to four years.
- Section 203 eases permitting compliance requirements for oil and gas drilling on non-federal land, including eliminating federal permits on certain non-federal surface lands and prohibiting the Secretary from imposing surface restrictions (e.g., mitigation requirements).[6]

[4] The Energy Permitting Reform Act contains language that maintains oil and gas primacy, in which the industry gets the first bite at the apple for federal sales or leases followed by the renewable energy industry.
[5] Energy Permitting Reform Act, S.4753 §201, 118th Congress, 2024
[6] Energy Permitting Reform Act, S.4753 §202 and §203, 118th Congress, 2024

- The bill also revitalizes the coal leasing process; it requires the Secretary of the Interior to begin reviewing federal coal leases within 90 days of receiving a lease request and to issue a decision within 90 days of finalizing the environmental review.[7]
- The Energy Permitting Reform Act mandates at least one offshore oil and gas lease sale per year from 2025-2029, offering a minimum of 60 million acres per sale in the Gulf of Mexico. The sale areas are restricted to areas currently open to leasing.[8]

Renewable Energy

The growth and evolution of the renewable energy sector has been energized by previous legislation including the Inflation Reduction Act (IRA) and the Infrastructure, Investment and Jobs Act (IIJA). The Energy Permitting Reform Act presents opportunities to catalyze this growth even more.

- The bill creates a national renewable energy goal: 50 gigawatts (GW) of clean energy on federal land by 2030.
- It expands the definition of eligible projects under Section 3101 of the Energy Act of 2020 to include energy storage coupled with wind, solar or geothermal. The bill, however, does not "modify existing requirements for the Secretary of the Interior to conduct a minimum amount of onshore oil and gas lease sales in certain years before issuing rights-of-way for renewable energy projects in the subsequent year".[9] The Energy Permitting Reform Act allows for annual federal geothermal lease sales, eases National Environmental Policy Act requirements for certain geothermal activities, and directs the Secretary of the Interior to establish rules and regulations for geothermal energy, including cost recovery and permitting.
- The bill also amends the Energy Policy Act of 2005 to extend categorical exclusion[10] to oil and gas activities related to geothermal resources.[11]

[7] Energy Permitting Reform Act, S.4753 §204, 118th Congress, 2024
[8] Energy Permitting Reform Act, S.4753 §301, 118th Congress, 2024
[9] Energy Permitting Reform Act, S.4753 §207, 118th Congress, 2024
[10] A categorical exclusion (CE) is a class of actions that a federal agency has determined to not individually or cumulatively have a significant effect on the human environment. An environmental assessment or environmental impact statement is not required for these activities which can expedite projects.
[11] Energy Permitting Reform Act, S.4753 §208, 118th Congress, 2024

- The bill directs the Secretary of the Interior to hold at least one offshore wind lease sale per year from 2025-2029 (of at least 400 thousand acres) and creates a national goal of 30 GW for offshore wind energy production.
- Section 302 maintains the existing requirement for the Secretary to perform offshore oil and gas lease sales before issuing offshore wind leases.
- The bill allows the extension of commence-construction deadlines by four years for hydropower projects that were licensed by the Federal Energy Regulatory Commission[12] (FERC) prior to March 13, 2020.[13]

Energy Infrastructure

The Energy Permitting Reform Act categorically excludes several types of electric grid projects and activities from National Environmental Policy Act[14] (NEPA) review. Activities like developing and upgrading electric transmission or distribution facilities within approved rights-of-way or on previously disturbed or developed land are excluded from NEPA review (e.g., reconductoring, installing grid-enhancing technologies or energy storage).[15]

Transmission

Limited or aging transmission infrastructure has been linked to higher energy prices and poor electric reliability. It has been identified as a limiting factor, or bottleneck, which could minimize the impact of landmark clean energy legislation, stifling progress on economic development in disadvantaged areas and progress on reducing environmental pollution and climate impacts. The Energy Permitting Reform Act seeks to address the need for electric transmission infrastructure by amending the Federal Power Act (FPA) and requiring interregional transmission planning.

[12] The Federal Energy Regulatory Commission (FERC) is an independent agency that regulates the interstate transmission of electricity, natural gas, and oil.
[13] Energy Permitting Reform Act, S.4753 §701, 118th Congress, 2024
[14] The National Environmental Policy Act (NEPA, 1970) requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.
[15] Energy Permitting Reform Act, S.4753 §209, 118th Congress, 2024

- Section 401 of Energy Permitting Reform Act allows FERC, without the designation of a National Interest Electric Transmission Corridor[16,17], to issue a construction permit to a project in the national interest that complies with existing law, improves electric reliability, and meets a minimum voltage threshold.
- The bill maintains requirements for state siting criteria, and the mandate to consult with affected states, Indian tribes, federal agencies, private property owners, and other interested persons.
- It provides requirements for cost allocation of "national interest" projects, specifying that FERC must consider electric reliability and affordability benefits to consumers in its review of utility tariffs.
- Sections 401(e) and 401(f) expand FERC's authority to include offshore electric transmission and designates FERC as the lead agency for NEPA environmental reviews for these projects (except for projects on the Outer Continental Shelf).
- Section 401(i) exempts the Electric Reliability Council of Texas from these requirements.
- Section 402 of the Energy Permitting Reform Act amends the FPA further by adding two sections regarding transmission planning. This new language within the FPA requires the Secretary of Energy, in consultation with transmission planning regions, to issue a report every three years identifying areas of transmission capacity constraints and congestion. It also directs FERC to open a rulemaking proceeding on interregional transmission planning within 180 days of enactment of the Energy Permitting Reform Act. The resulting joint transmission plans must consider reconductoring, existing transmission plans, and reliability and affordability benefits to consumers and the public interest. These interregional plans must be submitted to FERC within 2 years and updated at least every 4 years.

[16] The Energy Permitting Reform Act would remove the National Interest Electric Transmission Corridor (NIETC) designation process borne out of the Federal Power Act. The NIETC process was designed to expedite and streamline the permitting, siting, and regulatory processes required for transmission buildout.

[17] U.S. Department of Energy, Grid Deployment Office. (n.d.). National Interest Electric Transmission Corridor Designation Process. (https://www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process)

Build Everything Faster.

The Energy Permitting Reform Act would expedite deployment of energy projects by shortening the "permitting process for critical energy and mineral projects of all types in the United States."[18] This is achieved through Section 206 which accelerates renewable energy permitting by providing categorical exclusions for low disturbance activities, including:

- surface disturbances of less than five acres at sites that have previously undergone National Environmental Policy Act (NEPA) review,
- activities at a location at which the same type of activity occurred within five years,
- activities on previously disturbed or developed land (as defined in Department of Energy regulations),
- installation, modification, operation, or decommissioning of commercially available energy systems on buildings or structures.

Categorical exclusion for these activities would likely be impactful for the renewable energy industry due to the high incidence of litigation against solar and wind projects.[19]

The Energy Permitting Reform Act does not only address permitting; it is intended to lower the burden of litigation that may slow project progress. The bill shortens the window to legally challenge an energy project to 150 days and establishes a 180-day timeline for judicial review; going as far as to "require reviewing courts to set litigation of authorizations for energy and mineral projects for expedited consideration".[20]

Other Areas Covered

Liquified Natural Gas Exports

The Energy Permitting Reform Act also requires the Secretary of Energy to resume review of and action on applications for liquified natural gas exports (LNG), with

[18] U.S. Senate Committee on Energy and Natural Resources. (2024, July). Manchin, Barrasso Release Bipartisan Energy Permitting Reform Legislation. (https://www.energy.senate.gov/2024/7/manchin-barrasso-release-bipartisan-energy-permitting-reform-legislation)
[19] Bennon, Michael and Wilson, Devon, NEPA Litigation Over Large Energy and Transport Infrastructure Projects (October 2, 2023). Environmental Law Reporter, Available at SSRN: https://ssrn.com/abstract=4498938
[20] Energy Permitting Reform Act, S.4753 §101, 118th Congress, 2024

default approvals if the Secretary fails to act on applications within 90 days.[21] The bill requires any supplemental reviews conducted by the Secretary of Energy to go through public notice.[22]

Reliability Assessments

The bill authorizes FERC to review actions proposed by other federal agencies and directs the North American Electric Reliability Corporation[23] (NERC) to review and publish a report on those actions if FERC determines the action is likely to violate a mandatory electric reliability standard, resource adequacy requirement or process on file with FERC.[24]

Mining

The Energy Permitting Reform Act ensures certain mining projects can use federal land for mine support activities and creates a new mill site claim.[25]

Rights-of-way on Indian Land

The bill amends existing law such that a right-of-way granted by an Indian tribe on tribal land does not require approval of the Secretary of the Interior if the tribe's right-of-way approval process substantially complies with other applicable laws.[26]

Clean Electricity & Transmission Acceleration Act

Critics of the Energy Permitting Reform Act of 2024 (EPRA) have pointed to the Clean Electricity and Transmission Acceleration Act of 2023[27] (CETA) as an alternative bill that is better aligned with community engagement, the environment, and climate goals. The

[21] Energy Permitting Reform Act, S.4753 §601, 118th Congress, 2024
[22] Energy Permitting Reform Act, S.4753 §602, 118th Congress, 2024
[23] The North American Electric Reliability Corporation (NERC) is a not-for-profit international regulatory authority whose mission is to assure the effective and efficient reduction of risks to the reliability and security of the grid.
[24] Energy Permitting Reform Act, S.4753 §501, 118th Congress, 2024
[25] Energy Permitting Reform Act, S.4753 §210, 118th Congress, 2024
[26] Energy Permitting Reform Act, S.4753 §205, 118th Congress, 2024
[27] House Select Committee on the Climate Crisis. (2023, April 26). *Climate Emergency Transition Act (CETA) Section-by-Section Summary (https://seec.house.gov/sites/evosubsites/seec.house.gov/files/CETA%20Act%20Sec-by-Sec%2023.04.26.pdf)

bill did not have bipartisan sponsorship but contains similar subject matter to the Energy Permitting Reform Act, as discussed below and summarized in Table 1.

Table 1: Content Comparison CETA (2023) vs. EPRA (2024)

Topic	CETA	EPRA
FERC Transmission Siting Authority	X	X
Cost Allocation	X	X
Interregional Transmission Planning	X	X
Electric Reliability	X	X
FERC Office of Electricity Transmission	X	
Establishing a National Renewable Energy Goal		X
Independent Transmission Monitor	X	
Advanced Energy Technologies	X	
Community Solar	X	
Electric Utility Ratemaking Reform	X	
Renewable Energy on Federal Lands & Waters	X	X
Oil, Gas, Coal & Mining on Federal Lands & Waters		X
Carbon Management[28]	-	-
Environmental Justice	X	
Greenhouse Gas Projections	X	
Streamlining of Federal Permitting	X	X
Liquified Natural Gas Exports		X
Geothermal Energy		X
Judicial Review		X

Compared to the Energy Permitting Reform Act, the Clean Electricity and Transmission Acceleration Act directs FERC to consider more benefits when making decisions for cost allocation, including public policy, environmental, and climate benefits. CETA obligates Regional Transmission Operators (RTOs) and Independent System Operators (ISOs) to establish an independent transmission monitor to facilitate buildout and operation of transmission facilities. The Energy Permitting Reform Act did not have this requirement.

[28] Neither bill focuses on carbon management.

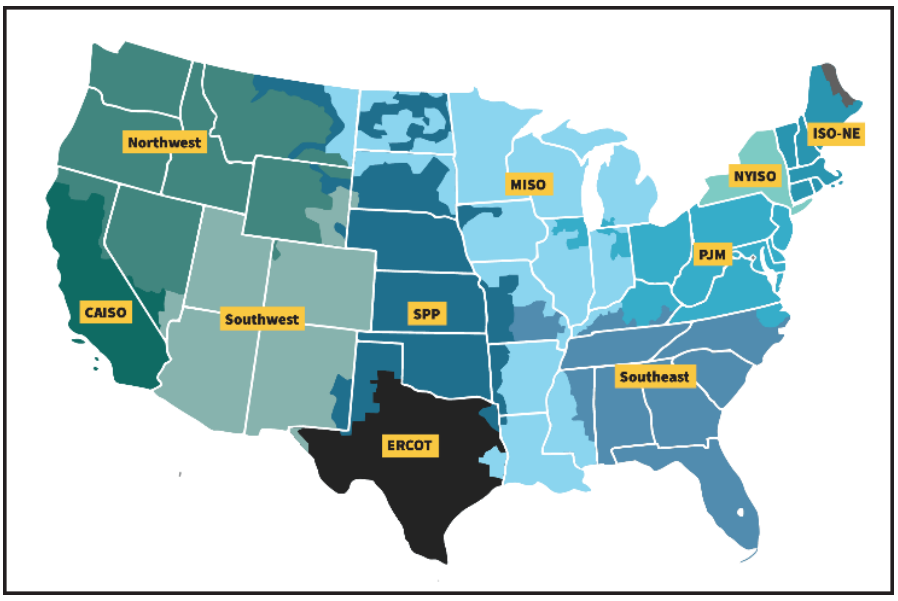

Figure 1: A map of RTOs and ISOs
Image Source: The Federal Energy Regulatory Commission (https://www.ferc.gov/electric-power-markets)

CETA contains several sections for advanced energy technologies such as distributed energy resources (DERs), non-wires solutions, virtual power plants (VPPs), and grid enhancing technologies (GETs). It also directs FERC to initiate rulemakings to modify utility rates to better align the interests of transmission owners and operators with those of electricity consumers with respect to grid reliability, electricity prices, and environmental impacts (e.g., GHG emissions). The Energy Permitting Reform Act did not address utility rate reform.

EPRA provides categorical exclusions under NEPA for certain renewable energy project activities on federal land, whereas the Clean Electricity and Transmission Acceleration Act provides limited exceptions and directs the Bureau of Land Management to establish priority areas for renewable energy development in coordination with diverse stakeholders.

The Clean Electricity and Transmission Acceleration Act makes reforms to the National Environmental Policy Act and FERC to support environmental justice efforts, including a 90-day public comment period, more local community engagement, and the creation of environmental justice liaisons within FERC. The Energy Permitting Reform Act maintains community engagement processes and requirements in existing law but shortens the timeline for legal claims to be brought against energy projects.

The Clean Electricity and Transmission Acceleration Act instructs federal agencies to quantify GHG emissions associated with projects. The Energy Permitting Reform Act does not address greenhouse gas emissions.

Recent Related Federal Rules

This year, the Bureau of Land Management and the Federal Energy Regulatory Commission (FERC) issued rules that may duplicate the effort of the Energy Permitting Reform Act. On May 1, 2024, the Bureau of Land Management (Department of the Interior) issued a final rule to update its procedures to promote solar and wind energy development on public lands through reducing financial barriers, improving the application process, and providing clarity on the administration of solar and wind project authorizations. These changes are expected to result in more clean energy deployment on federal lands, the same intended outcome of the Energy Permitting Reform Act. The rule is effective as of July 1, 2024.

The Federal Energy Regulatory Commission issued Order 1920 on May 13, 2024, to expedite transmission grid expansions and strengthen regional transmission planning. The rule calls for regional transmission planning every five years. Planning efforts must also:

- evaluate transmission needs over a two-decade time horizon,
- consider the use of advanced transmission technologies (e.g., grid enhancing technologies), and
- evaluate a standard set of economic and reliability benefits.

The rule also clarified that customers only pay for projects from which they benefit and maintains the state's role in planning for transmission facilities.[29] Many components of Order 1920 are in alignment with the Energy Permitting Reform Act.

A question arises: are these federal agency rules enough to achieve a similar result as the Energy Permitting Reform Act with respect to renewable energy, while avoiding the more controversial aspects of the bill?

[29] Federal Energy Regulatory Commission. (n.d.). Fact Sheet: Building the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection. (https://www.ferc.gov/news-events/news/fact-sheet-building-future-through-electric-regional-transmission-planning-and)

Conclusion & Recommendations

The Energy Permitting Reform Act of 2024 offers a useful framework to catalyze an American energy expansion, generating economic benefits for all types of energy businesses, delivering cost savings and reliability benefits to consumers, and beginning the work to construct the energy grid of the future. The authors attempt to balance the need for expedited energy project deployment and infrastructure development with existing environmental laws and community engagement practices. However, the bill has raised concerns about environmental and community impacts, as it takes a more conservative approach, if any, to environmental conservation and justice, pollution reduction, and climate than previously introduced legislation like the Clean Electricity and Transmission Acceleration Act.

Questions remain about the additional value of the legislation considering the recent federal rules that may achieve similar outcomes without facilitating deployment of non-renewable energy resources, a key critique of the bill. While the Energy Permitting Reform Act may be bipartisan, consensus has not been reached. The bill has passed out of the Senate Energy and Natural Resources committee, but it is far from final and far from being law. **As it progresses through the legislative system, it will be vital for lawmakers to consider:**

- the added value of the legislation versus federal rules,
- the alignment of normative assumptions within the bill (e.g., oil and gas primacy) with societal values and goals,
- the full scope of positive and negative impacts of the bill, including the economy, consumers[30], communities, the environment, and climate, and,
- any alternatives or mitigating policies that may be needed to reduce or eliminate risks associated with those impacts (e.g., including carbon management requirements for oil, gas, and coal operations on federal land).

The Energy Permitting Reform Act sets the stage for the U.S. to build more types of energy projects, and build them faster than ever before, amplifying the need to ultimately build them smarter—in a manner that supports social wellbeing, environmental health, and economic development.

[30]U.S. Environmental Protection Agency. (n.d.). Electricity Customers. (https://www.epa.gov/energy/electricity-customers)

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