



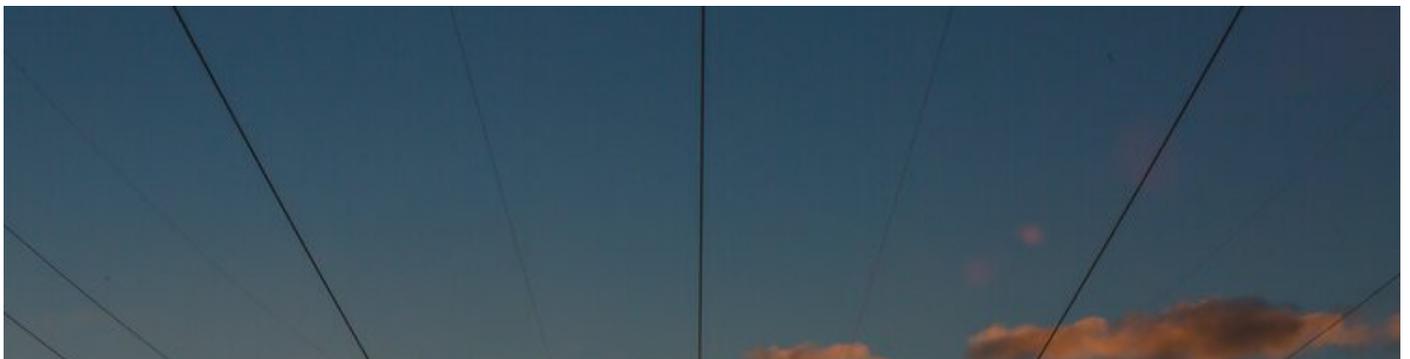
September 28, 2021

**CAUTION: HIGH
VOLTAGE –
FEDERAL VERSUS
STATE AUTHORITY
CONCERNING THE
SITING OF HIGH
VOLTAGE
TRANSMISSION
LINES**

BY: GRACE BROCK

Electricity charges our phones, runs transportation, provides air conditioning, and fuels countless household appliances, but how exactly is that much power produced and transmitted across the country?[i] Electricity is generated at power plants, moves through a complex grid of transformers and power lines, and eventually arrives at the doorstep of millions of homes and businesses across the United States.[ii] The United States power grid is composed of over “7,300 power plants, nearly 160,000 miles of high-voltage power lines, and millions of miles of low-voltage power lines and distribution transformers.”[iii] Within the U.S., there are three main electric grid interconnections: the Eastern Interconnection, the Western Interconnection, and the Electric Reliability Council of Texas.[iv] These three main interconnections, along with other minor networks, provide the routes for power to flow across the country.[v] With an increase in extreme weather conditions, reliance on renewable energy, and unprecedented demand, the capacity, and efficiency of the power grid is a pressing issue.[vi]

Improving the efficiency of the electric transmission grid is a key focus of both the Biden Administration and Congress, as evidenced by the Senate’s passing of the Infrastructure Investment and Jobs Act.[vii] In his first year in office, President Biden committed to creating a “carbon pollution-free power sector by 2035” and a “net zero emissions economy by no later than 2050.”[viii] The method of achieving these goals is through the Infrastructure Investment and Jobs Act, which provides funding for new transmission lines and delegates more authority to the Federal Energy Regulatory Commission (FERC) in the approval and siting of electric transmission lines and facilities.[ix]





Recurring issues with expanding the electric transmission grid include getting permits and approval from the proper authorities.[x] This can be an extraordinarily difficult task considering that in some situations, it only takes one commissioner to derail an entire transmission project.[xi] Public opposition is often a significant issue for the siting of new transmission lines and proposed projects on federal territory are slowed down by having to go through various federal agencies and their different approval processes.[xii] Even when a new high voltage transmission line is approved, it can take more than a decade to be completed.[xiii] The Energy Policy Act of 2005 tried to address this issue by creating National Interest Transmission Corridors, which gave more authority to FERC and the Department of Energy with the siting of transmission lines.[xiv] This authority eroded over time through legal decisions and at the time, resulted in FERC being unable to exercise siting authority in any of the National Interest Electric Transmission corridors.[xv] Currently, states or state public utility commissioners have the main authority to regulate transmission line construction.[xvi] The Infrastructure and Investment Jobs Act attempts to restore some of this lost authority through giving FERC explicit permission to approve transmission lines to be placed along National Interest Electric Transmission Corridors.[xvii]

Proponents of this portion of the bill argue that constructing a more comprehensive national grid would improve economic development in the United States through streamlining electricity markets and would ultimately lead to more affordable utility bills.[xviii] Senator Martin Heinrich, a Democrat from New Mexico, argued this change would reduce electric rates by allowing more affordable renewable energy to be moved onto the electric grid and pointed to the fact that FERC already has similar authority under the Natural Gas Act when it comes to citing and permitting gas pipelines.[xix] Senator Joe Manchin, a Democrat from West Virginia, attempted to alleviate any

concerns about giving FERC more power by explaining FERC would only be able to wield the additional authority in specific instances where the Department of Energy has determined an area in desperate need of new high voltage power lines.[xx]

Despite strong support for a more comprehensive, developed grid, there are legitimate concerns about how this legislation would change electric transmission projects. The President of the National Association of Regulatory Utility Commissioners has expressed clear concerns related to increased federal authority, saying, “This new provision simply gives the state an ultimatum: ‘Approve the project or FERC will approve it for you.’”[xxi] Despite advocating for increased use of renewable energy, environmentalist groups have vehemently opposed the construction of new power lines.[xxii] A recent example is the opposition from the Sierra Club regarding a 145-mile power line that would connect the United States to Canadian hydroelectric power—a proposal that natural gas companies in the area also oppose.[xxiii] Some Republicans are worried that state-level concerns would be disregarded if FERC were to gain this newfound power.[xxiv]

Since studies have shown that the United States can accomplish a reliable 80% clean energy grid by 2030 with existing grid technology, there is time to make sure the best policy approach is pushed forward through legislation.[xxv] While it will be necessary to expand the grid to account for renewable energy sources and increased demand, it is essential to protect property rights as much as possible. There are two questions to consider. First, who should ultimately be deciding when to invoke eminent domain for these high voltage transmission lines? Second, who should have final approval over these transmission line projects?

It would be helpful first to see a study on whether it is state regulatory action or inaction that is preventing new transmission lines from being approved and constructed.[xxvi] As the National Association of Regulatory Utility Commissioners has stated, the real issues behind the lack of expansion to our grid could be any of the following: “public opposition to transmission facilities, federal permitting issues, economic viability, [or] costs of the projects and cost allocation.”[xxvii] State regulatory agencies likely have a better understanding of state law, constituent opinions, and the culture of their own state. One way of maintaining the crucial balance between state and federal government power may be to allow state regulatory bodies to keep their transmission sitting authority. Before pre-empting state jurisdiction and handing the last bit of control to the federal government, Congress should consider the capability of the states and their regulatory agencies.

[i] *Electricity Usage of a Cell Phone Charger*, EnergyUse Calculator https://energyusecalculator.com/electricity_cellphone.htm (last visited Sept. 27, 2021); Kristy Hartman & Jaime Rall, *Transforming Transportation with Electricity*, Nat'l Conf. of St. Legis. (Jan. 2014) <https://www.ncsl.org/research/transportation/transforming-transportation-with-electricity.aspx> [<https://perma.cc/53XG-6VLW>].; Walter Curtis *Heating and Cooling System Basics*, howstuffworks <https://home.howstuffworks.com/home-improvement/heating-and-cooling/heating-and-cooling-system-basics-ga.htm> (last visited Sept. 27, 2021) [<https://perma.cc/NK6M-4TXM>]. ; *What Uses the Most Electricity in Your Home?* Payless Power (Oct. 29, 2018) <https://paylesspower.com/blog/what-uses-the-most-electricity-in-the-house/> [<https://perma.cc/K23Q-WABJ>].

[ii] *Electricity Explained: How Electricity is Delivered to Consumers*, Energy Info. Admin. <https://www.eia.gov/energyexplained/electricity/delivery-to-consumers.php> (last visited Sept. 13, 2021) [<https://perma.cc/UGD3-Q3DW>].

[iii] *U.S. Electricity Grid & Markets*, U.S. Env'tl. Protection Agency https://19january2021snapshot.epa.gov/greenpower/us-electricity-grid-markets_.html (last visited Sept. 27, 2021) [<https://perma.cc/GEG9-MQWX>].

[iv] *Id.*

[v] *Id.*

[vi] Edward Klump, Kristi E. Swartz & Miranda Wilson, *4 Issues to Watch as Heat Disrupts the Grid*, E&E News EnergyWire (Aug. 6, 2021 6:20 AM), <https://www.eenews.net/articles/4-issues-to-watch-as-heat-disrupts-the-grid/> [<https://perma.cc/KRN8-NAVP>].

[vii] Hil Anderson, *Biden Seeks to Revive Concept of Vital Transmission Corridors*, Daily Energy Insider (Aug. 18, 2021), <https://dailyenergyinsider.com/featured/31578-biden-seeks-to-revive-concept-of-vital-transmission-corridors/> [<https://perma.cc/UA5B-P73V>].

[viii] *See* Press Release, Joe Biden, President, White House, FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies (Apr. 22, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/> [<https://perma.cc/NA99-UHB6>].

- [ix] Brooksany Barrowes, Robert S. Fleishman, Brian C. Greene, Marcia Hook & Raya B. Treiser, *Massive Bipartisan Infrastructure Bill Includes Billions in Funding and Process Improvements for Energy and Infrastructure*, Kirkland & Ellis Energy (Aug. 10, 2021), <https://www.kirkland.com/publications/blog-post/2021/08/bipartisan-infrastructure-bill> [<https://perma.cc/7LKJ-DEHN>].
- [x] Catherine Morehouse, *Senators Clash Over Policy to Increase FERC Transmission Siting Authority*, Util. Dive (Jul. 15, 2021), <https://www.utilitydive.com/news/senators-clash-over-policy-to-increase-ferc-transmission-siting-authority/603354/> [<https://perma.cc/9AXS-YSCB>].
- [xi] *Id.*
- [xii] *Electric Transmission Policies*, Am. Pub. Power Ass'n (June 2021), <https://www.publicpower.org/system/files/documents/June%202021%20-%20Electric%20Transmission%20Policies.pdf> [<https://perma.cc/N9TW-YBN5>].
- [xiii] Jay Apt & M. Granger Morgan, *An Urgent Plan to Decarbonize Electricity by 2035*, Hill (Sept. 9, 2021, 4:01 PM), <https://thehill.com/opinion/energy-environment/571527-an-urgent-plan-to-decarbonize-electricity-by-2035?rl=1> [<https://perma.cc/9JHH-2WAL>].
- [xiv] Anderson, *Supra* note vii.
- [xv] Bracewell LLP, *Divided Court Disconnects DOE Transmission Corridors*, Bracewell (Feb. 8, 2011), <https://www.energylegalblog.com/blog/2011/02/08/divided-court-disconnects-doe-transmission-corridors> [<https://perma.cc/QD5H-GTDK>].
- [xvi] *Electricity 101*, Dep't Energy <https://www.energy.gov/oe/information-center/educational-resources/electricity-101#p1> (last visited Sept. 13, 2021) [<https://perma.cc/RZW7-J2SS>].
- [xvii] Morehouse, *Supra* note x.
- [xviii] Robinson Meyer, *Unfortunately, I care About Power Lines Now*, Atlantic (Jul. 28, 2021), <https://www.theatlantic.com/science/archive/2021/07/america-is-bad-at-building-power-lines-lets-fix-that-transmission-climate/619591/> [<https://perma.cc/4GZF-86Y4>].
- [xix] Morehouse, *Supra* note x.
- [xx] *Id.*

[xxi] Matthew Choi, *Senate Energy Panel's Reconciliation Share*, Politico (Aug. 4, 2021, 10:00 AM), <https://www.politico.com/newsletters/morning-energy/2021/08/04/senate-energy-panels-reconciliation-share-796920> [<https://perma.cc/64LR-U3EL>].

[xxii] Alex Berezow, *Environmentalists Want Renewable Energy, But Not Power Lines*, Am. Council Sci. and Health (Feb. 12, 2021), <https://www.acsh.org/news/2021/02/12/environmentalists-want-renewable-energy-not-power-lines-15341> [<https://perma.cc/C9WS-Y4L2>].

[xxiii] *Id.*

[xxiv] Morehouse, *Supra* note x.

[xxv] Dan Esposito, *Studies Converge on Benefits of a Rapid Clean Energy System*, Energy Innovation (July 2021), <https://energyinnovation.org/wp-content/uploads/2021/07/Studies-Converge-on-Benefits-of-a-Rapid-Clean-Energy-Transition.pdf> [<https://perma.cc/T6GJ-96JA>].

[xxvi] *See* Press Release, National Association of Regulatory Utility Commissioners, NARUC on the Infrastructure Bill: 'A' for Effort, 'C-' for Utility Content (Aug. 12, 2021), <https://www.naruc.org/about-naruc/press-releases/naruc-on-the-infrastructure-bill-a-for-effort-c-for-utility-content/> [<https://perma.cc/EFY3-PAKF>].

[xxvii] *Id.*

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