



Energy Permitting Reform Act of 2024: Electricity Provisions

August 29, 2024

On July 22, 2024, the Chair and Ranking Member of the Senate Energy and Natural Resources Committee released draft text for a permitting reform bill; the next day, [S. 4753—the Energy Permitting Reform Act of 2024](#)—was introduced. The Senate Energy and Natural Resources Committee ordered reported an amended version of the bill on July 31, 2024. The bill addresses many infrastructure permitting topics related to a broad set of energy sources and minerals. This analysis summarizes the provisions in Title IV and Title V of the bill as ordered reported, which relate to electricity.

Siting of Electricity Transmission Infrastructure

Under current law, siting authority for electricity transmission infrastructure primarily resides in the states. Although Congress, in 2005, carved out a limited role for the federal government acting through the Federal Energy Regulatory Commission (FERC), the commission has never exercised this authority. (For further discussion, see [CRS Report R47862, *Electricity Transmission: What Is the Role of the Federal Government?*](#)). FERC’s “backstop” siting authority, as it is known, allows the commission to permit the construction or modification of certain interstate transmission facilities if a state agency has denied approval, among other circumstances ([16 U.S.C. § 824p\(b\)](#)). This authority relies upon the U.S. Department of Energy (DOE) designating certain areas as National Interest Electric Transmission Corridors (NIETCs) based upon a triennial DOE study of transmission congestion. [Federal financial support](#) is available for electricity transmission infrastructure developed in NIETCs.

[S. 4753](#) would amend FERC’s backstop siting authority to apply to construction and modification of certain interstate electricity infrastructure (including infrastructure used to transmit electricity from the Outer Continental Shelf) without requiring a NIETC designation. Covered infrastructure would generally need to have a voltage rating of 100 kilovolts (kV) or higher and meet other criteria, such as being consistent with the public interest and benefiting customers. The bill would preserve FERC’s “backstop” role; transmission developers would still need to seek state approval first (as is currently the case). Under the bill, FERC’s backstop siting authority would not apply within the area of the Electric Reliability Council of Texas ([ERCOT](#)) (as is also currently the case).

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The bill would also give FERC authority to allocate costs associated with building transmission infrastructure meeting the criteria discussed above. Under this provision, developers of eligible transmission infrastructure would face reduced market risk (i.e., they would be essentially guaranteed a return on their prudent investment), with the costs of transmission development borne by customers benefiting from it. The bill includes several transmission benefits FERC must consider when allocating such costs, and it specifies that customers not receiving benefits should not be allocated costs (as is currently the case).

The bill would repeal the directive to DOE to designate NIETCs, but it would preserve DOE's authority to conduct a triennial study on transmission congestion. Parties developing transmission infrastructure in identified areas would be eligible for the federal funding currently reserved for facilities in NIETCs.

Other bills introduced in the 118th Congress would likewise seek to address FERC's backstop siting authority. Some would expand FERC's authority to a greater extent than [S. 4753](#), for example, by removing the primacy of the states in certain cases. At least one bill would reduce FERC's backstop siting authority compared with current law. A comparison of key siting authority proposals is provided in [CRS Report R47627, *Electricity Transmission Permitting Reform Proposals*](#).

Coordination of Federal Authorizations

Some electricity transmission infrastructure may require one or more authorizations (i.e., permits) from federal agencies, depending upon where it is constructed. For example, transmission lines that cross federal lands require approval from the relevant federal land management agency or agencies. Current law ([16 U.S.C. §824p\(h\)](#)) designates DOE as the lead agency "for purposes of coordinating all applicable Federal authorizations and related environmental reviews" for electricity transmission. Under a 2021 [interagency memorandum of understanding \(MOU\)](#), FERC is designated as the lead agency for infrastructure within NIETCs.

[S. 4753](#) would maintain DOE's role as lead agency for coordinating federal authorizations for transmission. The bill would codify part of the interagency MOU designating FERC as the lead agency for infrastructure for which FERC issues construction permits (i.e., in situations where FERC uses its backstop siting authority). The bill would additionally designate the Department of the Interior as the lead agency for coordinating federal authorizations for offshore infrastructure.

Interregional Transmission Planning

Pursuant to current [FERC regulations](#), most electricity transmission owners are required to engage in regional and interregional transmission planning. [S. 4753](#) would direct FERC to modify the requirements for interregional transmission planning, for example, by mandating the use of consistent assumptions and models for identifying interregional transmission infrastructure that would benefit customers. The bill would require transmission owners to update their interregional transmission plans every four years. Infrastructure identified through the plans would be deemed eligible for FERC backstop siting authority and receive FERC-approved cost allocation as described above.

Other bills introduced in the 118th Congress would likewise address interregional transmission planning. Several of these are summarized in [CRS Report R47627, *Electricity Transmission Permitting Reform Proposals*](#).

Electric Reliability

[S. 4753](#) would require FERC to direct the North American Electric Reliability Corporation (NERC) to assess potential reliability impacts of proposed federal regulations. The NERC assessment would take place whenever FERC, another federal agency, an affected transmission organization, or a state utility regulator determined that a proposed federal regulation could pose risks to electric reliability or resource adequacy.

A similar provision is in [H.R. 6185](#), the GRID Act, reported by the House Energy and Commerce Committee on March 19, 2024. The House bill would additionally require federal agencies to modify their proposed regulations before finalization to prevent potential negative reliability and resource adequacy impacts identified by FERC and NERC. The Senate bill includes no such provision. Instead, under the Senate bill, the NERC assessment would be treated like all other public comments on the rule (i.e., it would be taken into consideration before finalization of the regulation).

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