



NARUC

National Association of Regulatory Utility Commissioners

July 7, 2021

The Honorable Joe Manchin III
Chairman
Committee on Energy and Natural
Resources
United States Senate
Washington, DC 20510

The Honorable John Barrasso
Ranking Member
Committee on Energy and Natural
Resources
Washington, DC 20510

RE: Transmission Siting, Section 1005 “Energy Infrastructure” Discussion Draft

Dear Mr. Chairman and Ranking Member Barrasso:

On behalf of the National Association of Regulatory Utility Commissioners (NARUC), I would like to commend you and the Committee on Energy and Natural Resources members for addressing the nation’s critically important energy infrastructure. However, I write to you today because the Association is deeply troubled by the language found in section 1005 of the “Energy Infrastructure” Discussion Draft currently being considered by the Committee.

NARUC is a non-profit organization dedicated to representing the state public service commissions who regulate utilities that provide essential energy, telecommunications, power, water, and transportation services. NARUC's members include all 50 states, the District of Columbia, and the U.S. territories. Under state law, NARUC's members are obligated to regulate and ensure the establishment and maintenance of retail utility services and to ensure that these services are provided at rates and conditions that are fair, reasonable, and nondiscriminatory for all consumers.

In 2005, with passage of the Energy Policy Act, Congress preempted state siting jurisdiction and eminent domain authority for electric transmission projects by granting the Federal Energy Regulatory Commission (FERC) **limited** “backstop” authority for siting and eminent domain under certain circumstances. Unfortunately, Congress is now considering further preemption of state jurisdiction with the inclusion of section 1005 in the above-mentioned discussion draft. Section 1005



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removes all pretenses of the “limited” backstop for federal preemption of state jurisdiction in electric transmission infrastructure siting found in current law. In essence, this new provision simply gives the state an ultimatum: “Approve the project or FERC will approve it for you.” Further, the provisions limiting federal preemption to national interest electric transmission corridors (NIETC) provide little promise of actually “limiting” federal preemption when one considers the scale and scope of the first two NIETC designations in 2007. Perhaps, before taking this unnecessary and draconian step of further federal preemption, Congress should establish – through independent analysis or study – whether it is, **in fact**, state government action or inaction that is preventing electric transmission lines from being sited and constructed.

NARUC contends that the major impediments to siting energy infrastructure, in general, and electric transmission, in particular, are (in no particular order): 1) the great difficulty in getting public acceptance for needed facilities, which in turn drives state and federal political opposition; 2) federal permitting issues, especially in regions where large tracts of land are federally owned; 3) potential customers for the project being considered do not need or want the additional electricity, thereby making the project uneconomical; and finally, 4) cost and cost allocation issues, which may make alternatives to building transmission more economical and/or more environmentally sound. With regard to federal permitting issues, these will only be exacerbated should FERC become more involved in siting, as is contemplated in the discussion draft, because opponents will now be able to use the National Environmental Policy Act (NEPA) to slow or derail a project, as has been done quite successfully in FERC jurisdictional pipeline proceedings. This suggests that regardless of where siting authority falls – with state government, the federal government, or both – siting energy infrastructure will not be easy and there will be “no quick fix.”

In conclusion, NARUC strongly opposes section 1005 and the additional expansion of federal preemption found within this section. Section 1005 would overrule legitimate state agency concerns and laws with regard to how a state ruled on a transmission project even when a state provides a ruling within the one year time



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frame provided in the section. The language would then permit FERC to vacate the decision and preempt a state's lawful decisions and orders. The inclusion of this language, in essence, requires a state to approve a project to avoid federal preemption. We strongly urge that Congress not authorize FERC to override a timely state decision.

Thank you for your attention and NARUC looks forward to working with you and your staff as this legislation moves forward.

Sincerely,

Paul Kjellander
President
NARUC

CC: All Members of the Senate Committee on Energy and Natural Resources