



N A R U C
National Association of Regulatory Utility Commissioners

December 12, 2022

The Honorable Joe Manchin III
Chairman
Senate Committee on Energy and Natural Resources
U.S. Senate
Washington, DC

RE: Federal Preemption Issues in the “Building American Energy Security Act of 2022”

Dear Chairman Manchin:

On numerous occasions, the National Association of Regulatory Utility Commissioners (NARUC) has opposed Congressional proposals to preempt state authority to site electric transmission projects. Most recently, on September 14, 2022, NARUC sent a letter to all U.S. Senators opposing your permitting proposal because it included additional preemption of state transmission authority. Unfortunately, the “Building American Energy Security Act of 2022” released on December 7, 2022, still includes language that expands the Federal Energy Regulatory Commission’s (FERC) authority to preempt state siting authority. That is why NARUC continues to oppose your legislation, which ignores the real problem. States are not the problem. Rather, existing federal law and policies have been the biggest barrier to infrastructure rollout.

Mr. Chairman, your legislation eliminates the last vestiges of state electric transmission siting jurisdiction by removing limitations placed on FERC authority under current law. Put bluntly, should this provision become law, FERC will have jurisdiction over electric transmission siting wherever and whenever they choose, regardless of local circumstances and/or needs. It simply flies in the face of federalism. The US Constitution was ratified as a protection of the rights of the states from the federal government, not the other way around.

While it is unfortunate that many worthwhile energy projects are canceled for no other reason than the burdensome, expensive, and lengthy **federal** permitting regime, we question how your new scheme, does anything to improve the siting, permitting, and construction of electric transmission facilities. Granting complete federal preemption will only exacerbate siting challenges to the construction of electric transmission facilities. Why? Because it will allow opponents to use the National Environmental Policy Act (NEPA) to slow or derail specific electric transmission projects. As you know, for years such NEPA challenges have been a successful tactic for those that seek to delay or derail FERC’s siting of new jurisdictional natural gas pipelines. In state electric transmission siting proceedings NEPA is not a factor and cannot be used by opponents of a project. So the big question remains: How does federal preemption of state siting and eminent domain jurisdiction, by giving this authority to a federal agency subject to NEPA, alleviate siting and permitting delays? Perhaps the answer is that some in Congress do not really care not about addressing the obvious challenges to siting new energy infrastructure. Rather it

appears the real goal is to concentrate as much authority over local siting decisions in the federal government as possible.

As we have suggested previously in testimony and letters, Congress should first consider the relative impact the following impediments have to the siting of energy infrastructure, in general, and electric transmission, in particular, prior to taking the unnecessary and draconian step of providing for the complete federal preemption of state siting jurisdiction that is contemplated in the "Building American Energy Security Act of 2022": 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) whether potential customers for a proposed project need or want the additional electricity; and finally, 4) alternatives to building transmission that may be more economical, more secure, more environmentally sound and/or increase resilience.

NARUC is also deeply troubled by the trajectory of federal preemption on cost allocation contained in the "Building American Energy Security Act of 2022." The new "cost allocation" text proposed to substitute for current 16. U.S.C. § 824p(f) is at best ambiguous and obviously raises additional serious concerns about additional federal overreach

We would welcome the opportunity to participate in drafting streamlined permitting legislation that addresses the real and significant issues that affect the states themselves, the regions, and the myriad policies different states are pursuing, which is their sovereign right, in accordance with our American federalist model.

In conclusion, NARUC strongly opposes passage of the "Building American Energy Security Act of 2022," as it is currently drafted, as well as any other proposals that include further federal preemption of state electric transmission authority.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Caron", written over a light blue horizontal line.

Michael Caron
NARUC President

CC: All Members of the U.S. Senate