



# NARUC

National Association of Regulatory Utility Commissioners

November 11, 2025

The Honorable Mike Lee  
363 Russell Senate Office Bldg.  
Washington, DC 20510

The Honorable Martin Heinrich  
709 Hart Senate Office Bldg.  
Washington, DC 20510

The Honorable Shelley Moore Capito  
170 Russell Senate Office Bldg.  
Washington, DC 20510

The Honorable Sheldon Whitehouse  
498 Russell Senate Office Bldg.  
Washington, DC 20510

The Honorable Brett Guthrie  
2161 Rayburn House Office Bldg.  
Washington, DC 20515

The Honorable Frank Pallone  
2117 Rayburn House Office Bldg.  
Washington, DC 20515

The Honorable Sam Graves  
1135 Longworth House Office Bldg.  
Washington, DC 20515

The Honorable Rick Larsen  
2163 Rayburn House Office Bldg.  
Washington, DC 20515

**Re: NARUC Support for State Primacy in Electric Transmission  
Permitting Authority**

Dear Members:

On behalf of the National Association of Regulatory Utility Commissioners (NARUC), I am writing to express concern regarding any legislation that could weaken state commissions' authority to site and permit electric transmission lines.

Please find attached (*page 4*) a resolution that NARUC passed in February 2024. Although it is specific to a particular case, the underlying sentiment expressed in the resolution is clear. Since the earliest days of the buildout of the electric grid, states have been the arbiter of transmission permitting within their boundaries, including in some states siting, environmental review, and eminent domain. Even after the initial passage of the Federal Power Act, where Congress created a bright-line jurisdictional divide between state and federal jurisdiction, Congress understood the importance of allowing states to continue to exercise their exclusive permitting authority over electric transmission facilities. The FPA makes clear that State authority survived the specification of the Federal Energy Regulatory Commission's (FERC) transmission and wholesale electricity ratemaking authority.

In 2005, the Energy Policy Act of 2005, (Pub. L. No. 109-58, 1119 Stat. 594, as amended, Pub. L. No. 117-58, 135 Stat. 933 (Nov. 15, 2021)) Congress gave FERC limited transmission siting backstop authority but only in “a national interest electric transmission corridor designated by the Secretary” (NIETC). Before FERC can enable its backstop siting authority for a project that is located in a NIETC, FERC must find that the state commission cannot approve the application, the state does not act within one year of the application or the state denies the application. FERC has never used this backstop siting authority. The NIETC specification procedure is an important restriction on FERC’s authority.

The current process of state public utility commissions permitting and siting transmission lines has generally allowed needed projects to get built with safeguards for the public and affected landowners.

While there are proposed projects that have faced significant permitting hurdles in some parts of the nation, it is our observation that many of the delays surrounding the siting and permitting of large interstate transmission lines are due to **federal** processes and do not involve state permitting and siting. We are concerned that federal preemption of state permitting everywhere, even where state permitting is working well, only to be replaced by a federal regime, could result in significant delays of needed transmission. Indeed, once a federal nexus is established, such as through FERC siting, it triggers the time-consuming requirements of numerous federal permitting rules and statutes that may be more burdensome than those required in individual states. Such a triggering of federal nexus may also include the opportunity for intervenors to use the federal court system as a means of delaying projects, even those that state officials have found to be unobjectionable. In brief, Congress does not need to preempt the states to fix issues that exist as the result of federal statutes, and doing so incurs the risk of creating new permitting hurdles in places where they do not currently exist.

In closing, for more than a century, state siting and permitting of electric transmission has generally worked well for American electricity customers. If this nation’s goal is to build transmission lines in an appropriately expeditious manner, we encourage Congress to first study and reform federal permitting laws and rules that may be impeding transmission development, rather than adopting proposals that may weaken state siting and permitting, and only to replace it with a federal regime that may work even less well for the American people and for landowners who are affected by these projects.

If you have any questions about this letter, please contact NARUC Sr. Director of Energy Policy and Legal Counsel Kim Duffley at 202.898.1350 or [kduffley@naruc.org](mailto:kduffley@naruc.org).

Thank you in advance for your consideration.

Sincerely,



Hon. Tricia Pridemore,  
President  
National Association of Regulatory Utility Commissioners  
Commissioner, Georgia Public Service Commission

***EL-1 Resolution Supporting States' Jurisdiction to  
Render Transmission Permitting Authority***

*Whereas*, states have long been the arbiter of transmission permitting within their boundaries, including but not limited to the purposes of siting, environmental review, and eminent domain;

*Whereas*, before and after the passage of the Federal Power Act, States continued to exercise their permitting authority over electric transmission facilities—an authority that is separate and apart from Federal Energy Regulatory Commission's (FERC) transmission and wholesale electricity ratemaking authority;

*Whereas*, in 2005, through the enactment of the Energy Policy Act of 2005, (Pub. L. No. 109-58, 1119 Stat. 594, *as amended*, Pub. L. No. 117-58, 135 Stat. 933 (Nov. 15, 2021)) Congress gave FERC limited transmission siting backstop authority but only in “a national interest electric transmission corridor designated by the Secretary” (NIETC);

*Whereas*, the states share the RTOs' concerns regarding transmission congestion and the need for robust transmission infrastructure because it is in the States' interests to ensure that adequate electric transmission facilities are constructed to meet the needs for economic and reliable utility service to their citizens;

*Whereas*, the National Association of Regulatory Utility Commissioners takes no position on whether the transmission line at issue should be sited; *now, therefore be it*

*Resolved*, that the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its February 28, 2024 Winter Policy Summit in Washington, D.C., supports the primary role of States in siting, permitting, and the exercise of eminent domain for transmission; *and be it further*

*Resolved*, that NARUC will file amicus briefs in the matter of *Transource Pennsylvania, LLC v. Steven<sup>1</sup> [sic] M. DeFrank, et al.*, Docket No. 24-1045 (3d. Cir.), CIVIL 1:21-CV-01101 (M.D. Pa.), for the limited and specific purpose of advocating NARUC's policies as a supporter of states' rights. NARUC's amicus filing will be limited to any or all of the following issues: opposing any overreach into state eminent domain authority; opposing an overly narrow interpretation of state siting authority that constrains a state's authority to the Oxford Dictionary definition of the term “siting,” especially given the scope of State siting authority under Section 216 of the Federal Power Act; opposing any interpretation of the opinion that suggests that a state can never deny siting or eminent domain for a FERC transmission planning region's selected project; and, opposing the Court's novel expansion of accepted dormant commerce clause jurisprudence regarding what is a per se violation of the dormant commerce clause.

*Passed by the Committee on Electricity on February 26, 2024*

*Adopted by the NARUC Board of Directors on February 28, 2024*

<sup>1</sup>

The case caption incorrectly spells the name of Stephen M. DeFrank, Chairman of the PA PUC.