

Transmission Without Representation

The Senate permitting bill would vastly expand the Federal Energy Regulatory Commission’s power, letting unelected federal regulators site transmission lines over state, local and community objections, and could shift the cost of blue-state renewable mandates onto red-state families’ utility bills.

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LINES BUILT UNDER THE FEDERAL SITING POWER CONGRESS CREATED IN 2005 ¹	MOST TIME THE BILL GIVES A STATE ON A LINE BEFORE FERC MAY ACT ²	MISO’S LOWEST BENEFIT ESTIMATE AS A MULTIPLE OF FIVE STATES’ HIGHEST ³

THE ISSUE

On September 30, Senators Shelley Moore Capito, Mike Lee, Sheldon Whitehouse and Martin Heinrich introduced the Bipartisan American Affordability and Jobs Act² (S. 5653). The White House supports it,⁴ and Senator Capito wants it to be the Senate’s first vote after the November 3 election. Much of it is permitting reform conservatives have long sought: review deadlines and a 150-day limit on lawsuits.¹

The transmission title is different. It would move three decisions about high-voltage power lines — where they run, whose land they take and who pays for them — from the states, which have historically sited transmission,⁵ to the Federal Energy Regulatory Commission (FERC).

Its authors are answering a real problem. Utilities spent 1.7 times as much a year on transmission in 2017–2023 as in 2004–2016, yet capacity grew half as fast,¹ and some incumbents have resisted regional lines that would undercut their own power plants.⁶ Those are arguments

for closer scrutiny of utility spending, not for taking the decisions from the states that host and pay for the lines.

Today FERC may permit an interstate line over a state’s objection only inside a corridor designated by the Department of Energy,² and only after the state has denied the line or sat on it for a year. No line has been built¹ under that power since Congress created it in 2005. In August the Energy Department dropped the last three corridors it was studying,⁷ one of them across parts of Colorado and New Mexico,⁸ and Secretary Chris Wright warned against an agenda that “disregards the concerns of local communities.”⁷

The bill would repeal the corridors and extend the override to most of the country,² everywhere but the part of Texas served by the ERCOT grid, for any interstate line of 230 kilovolts or more that FERC finds in the public interest and beneficial to consumers and reliability. Once FERC finds those criteria met, the bill says it shall grant

the permit,¹ and lines picked in regional or interregional plans would qualify if a state along the route says no.¹ For lines of 345 kilovolts or more, a developer could apply to FERC the same day it applies to the state² — a step FERC declined to allow in 2024,⁵ citing states' authority. The Institute for Progress, explaining the bill, says its developer-led process would let developers “circumvent states, utilities, and regional planning authorities.”¹

A FERC permit carries the power to take land. Section 216 of the Federal Power Act lets a permit holder that cannot buy a right-of-way condemn private land for it in federal or state court.⁹ Today that power reaches only corridors that do not exist. Under the bill it would travel with a developer's line into almost any state that refused it.¹

Who pays would be settled by formula. The owner of a federally sited line would ask FERC to allocate its costs to customers “at least roughly commensurate”² with six kinds of benefit: reliability, congestion relief, reduced line losses, carrying capacity, lower reserve requirements and access to cheaper power. Customers whose benefit is nil or trivial could not be charged. That protection is only as good as the estimates behind it, which are made by regional grid operators using their own models and assumptions.¹⁰

The Midwest shows how far such estimates can diverge. In December 2024 the Midcontinent Independent System Operator (MISO) approved a \$22 billion portfolio of 24 projects³ whose costs are shared across its footprint. The utility commissions of Arkansas, Louisiana, Mississippi, Montana and North Dakota, states with no renewable mandates,¹⁰ told FERC the plan was built to bring remote clean energy to states with clean-energy goals such as Minnesota, Michigan and Illinois. As Figure 1 shows, MISO valued three benefits — avoided capacity costs, reliability and decarbonization — at \$38.3 billion over 20 years at the low end; the commissions' consultant put them at \$4.3 billion to \$7.2 billion.³ The commissions called states' input into MISO's planning “advisory only and easily disregarded.”³

Today a state can at least refuse to site a line within its borders. The bill would take that refusal away and keep the formula, and nothing in it stops a state that rejected wind and solar mandates from paying for another state's. Suppose a developer proposes a 500-kilovolt line to carry wind power to California, which requires renewable and

zero-carbon sources to supply all of its retail electricity by 2045; the state's own agencies say it must roughly triple its grid capacity to get there.¹¹ The line ties into the grid of a state along the way that has no such law. That state denies the permit. FERC, finding the bill's tests met, must issue it, and the developer condemns the right-of-way. The developer's rate filing credits the state's customers with reliability and cheaper-power benefits; if FERC finds those more than trivial, the customers pay a share. Their own regulators cannot keep the charge off retail bills: the Supreme Court has held that state commissions must give FERC-approved rates binding effect¹² when they set retail rates.

Who weighs those benefits depends on who appoints FERC. The president names its chairman, and up to three of its five commissioners may share the president's party; from 2010 to early 2026, Democrats held the majority 53% of the time and Republicans 21%.¹³ The White House that supports the bill today will not be the last one to apply it. In 2024 a Democratic majority adopted Order No. 1920, which requires grid planners to assume that state clean-energy laws will be met; Commissioner Mark Christie dissented that the costs of policy-driven lines would be “shifted onto consumers in states that never agreed to bear such costs.”¹⁴ Nothing in the bill would stop a FERC majority appointed by a future president committed to those mandates — a President Gavin Newsom, say — from reading its formula the same way. Heritage Foundation economist E. J. Antoni warned that families in states that rejected wind and solar mandates “could find the cost of blue-state mandates folded into their monthly electric bills.”¹⁰

The title also shifts risk. Merchant developers, who now build at their own risk and must find buyers for their power,¹ could convert their lines into ones paid for by ratepayers through cost allocation.¹ Congress federalized siting once before, for natural gas pipelines, and kept a discipline this bill drops. A certificated pipeline may condemn land,¹⁵ but FERC first requires its sponsor to be prepared to support the project financially without subsidies from existing customers.¹⁶ The bill would give power lines the pipeline's permit and eminent domain without the pipeline's paying customers.

The title reaches further still. It would require every planning region to adopt FERC-approved methods for

valuing benefits and allocating costs,¹ let FERC, at a state's request, investigate a utility's local planning and fine it up to \$5 million per facility,¹ and send challenges to state decisions affecting a federally authorized line to federal appeals courts.¹ Michael McKenna, a contributing editor of *The Washington Times*, wrote that the bill would “expand the size and scope of the federal government.”¹⁷

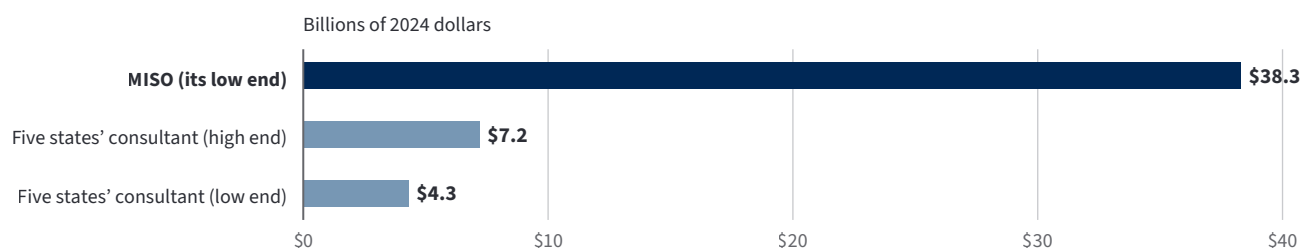
For pipelines and power lines alike, the bill narrows states' Clean Water Act review to water quality;¹ for power lines, it also removes the state's final say. Senator Whitehouse said the bill would “flood the grid with clean, affordable energy.”¹⁸ *The Washington Post's* editorial board called the package “necessary to power all the projects that environmentalists say they support.”¹⁹

WHAT WE RECOMMEND

1. **Strike Section 2101's expansion of federal siting.** Keep FERC's backstop confined to corridors the Energy Department designates, so that a state's denial of an interstate line remains final everywhere else.
2. **Protect the state that says no.** If Congress keeps any federal siting power, Section 2101 should provide that when FERC approves a line a state has rejected, the developer cannot use eminent domain in that state and the state's ratepayers cannot be charged for the line.
3. **Count only benefits customers can measure.** In Sections 2101 and 2103, count only measurable reliability, congestion and cost savings for the customers charged — not another state's policy mandates — and require independent market-monitor review before FERC approves an allocation.
4. **Use the compact path Congress already wrote.** Section 216(i) already consents to siting compacts among three or more neighboring states⁹ and keeps FERC out unless their members deadlock; Congress should approve qualifying compacts in advance so states can site regional lines together.

None of these changes touches the bill's environmental-review, litigation or Clean Water Act reforms.

FIGURE 1 Estimated value of three benefits of MISO's Tranche 2.1 transmission portfolio over 20 years, by estimate



From Howland (2025), reporting the July 30, 2025, complaint to FERC by the utility commissions of Arkansas, Louisiana, Mississippi, Montana and North Dakota. The three benefits are avoided capacity costs, mitigation of reliability issues and decarbonization; MISO's figure is the low end of its estimate, about 74% of the portfolio's benefits in that scenario. The commissions' range is their consultant's, after correcting MISO's assumptions. MISO: Midcontinent Independent System Operator; FERC: Federal Energy Regulatory Commission.

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