

A Convening Summary

Center-Right Transmission Policy

The Conservative Coalition for Climate Solutions and the R Street Institute hosted a right-of-center convening on transmission policy on October 23, 2024.

The convening had two primary goals: first, to enable a robust and transparent discussion on transmission policy, specifically planning, cost allocation, permitting, competition, and modernizing existing infrastructure; second, to initiate dialogue on a set of transmission policy principles and to form a center-right transmission policy working group to better inform policymakers.



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Executive Summary

The Conservative Coalition for Climate Solutions and the R Street Institute hosted a right-of-center convening on transmission policy on October 23, 2024. The convening had two primary goals: first, to enable a robust and transparent discussion on transmission policy, specifically planning, cost allocation, permitting, competition, and modernizing existing infrastructure; second, to initiate dialogue on a set of transmission policy principles and to form a center-right transmission policy working group to better inform policymakers. Briefing [materials](#) were provided before the meeting, which followed Chatham House rules with the understanding that a public, unattributed summary of the discussion would follow. This summary document honors those rules by summarizing what was said without providing individual attribution.

Background and Overview

In opening comments, one participant explained how wholesale electricity reforms, including transmission policy and regional power markets, gained momentum when consumers revolted against spiking costs of power. This led to open access transmission reform in 1996 under Order 888 of the Federal Energy Regulatory Commission (FERC). This initiated a series of reforms that have shaped the power industry for the last 25 years. In that time, there were some success stories of transmission competition working well. For instance, the Path 15 transmission line, overseen by the Western Area Power Administration, was financed by private capital and built on time and under budget. Nevertheless, participants noted that transmission expansion has predominantly been (and will foreseeably be) under a mandatory planning and cost allocation paradigm. This paradigm has varying uses of economic criteria and competitive bidding. Furthermore, state and federal regulatory roadblocks and excessive litigation (e.g., the weaponization of the National Environmental Policy Act) have made it difficult to build transmission.

Transmission reform in the 1990s, 2000s, and 2010s had more bipartisan buy-in. Today, many of the same policy challenges persist, but the tenor of the discussion has become more polarized. One participant remarked that people are pro- or anti-transmission expansion, depending on whether they are pro- or anti-renewable energy. Another emphasized a need to “de-renewablize” transmission policy discussions. In addition to these large-scale polarities, other participants noted knowledge gaps among conservative policymakers, and skepticism characterized by the notion that transmission policy reform will obfuscate the need for broader permitting reform.

Transmission reform is necessary to power the surge in energy-intensive industries (e.g., data

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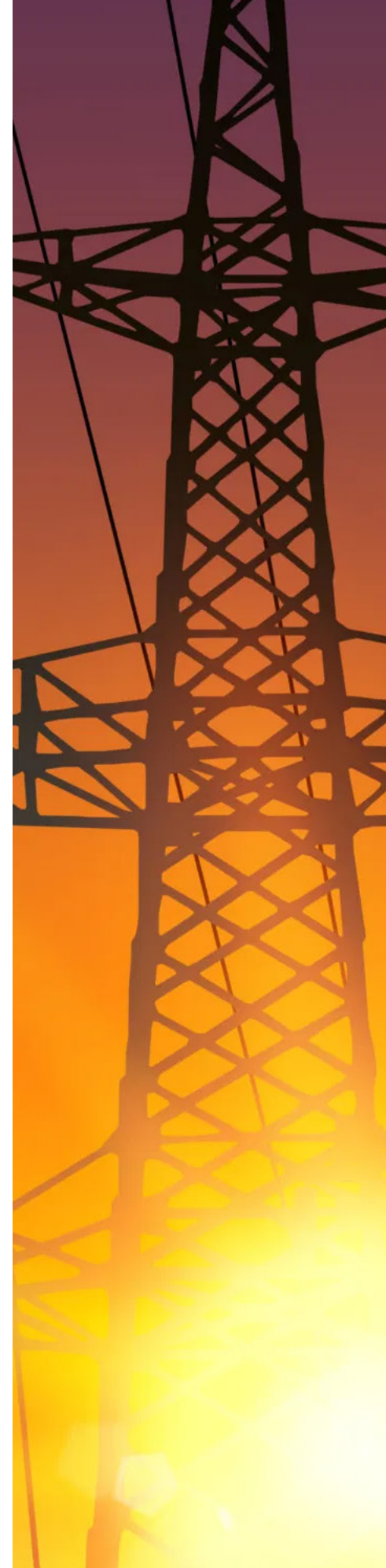
centers, chip, and auto manufacturing). Low-cost, abundant energy buoys economic growth, and transmission is imperative to maintaining America's competitive advantage. Participants noted that this surge in power demand growth is pulling conservatives back into transmission policy discussions. One participant noted major constraints on energy infrastructure development this decade and observed that "electricity acts as a brake" on industry investment and U.S. competitiveness. This underscores the vital need to revisit transmission policy.

Participants made several observations about the focus of public policy in transmission policy today. Several participants raised concerns about the risks and costs to ratepayers and taxpayers and the need to overcome incumbent supplier interests. Developers and investors see an enormous appetite for rate-based transmission development, with generous regulated rates of return, for the next several decades. This underscores the need to scrutinize who bears the costs and risks of such investments, especially given the potential for overbuilding or inflated projections of future energy demand and transmission needs.

One stated policy goal was to minimize all-in costs to consumers and taxpayers to achieve reliability. One participant emphasized that this includes how transmission policy affects taxpayers and distorts energy markets, given the potential expanded utilization of the Inflation Reduction Act tax credits. Others emphasized how transmission and generation are substitutes and complements, and that minimizing all-in costs requires optimization across this nexus.

Some participants noted that the north star of transmission policy is purely voluntarism in electricity markets, and that mandatory open access is not a free market reform. There was general agreement that reducing barriers to voluntary, market-driven transmission expansion was a priority. There was also recognition of the vital need to improve the predominant mandatory planning and cost allocation paradigm. These improvements include: the need for transparency and consumer protection; more transparency; and better cost-benefit analyses, because energy policies and policymakers hide costs, such as with renewable portfolio standards. Transmission expansion offers various co-benefits, including emissions reductions, but policymakers must prioritize affordability and reliability to retain a social license and achieve broader societal objectives.

A key takeaway is that the status quo transmission policy is outrageously inefficient. The current regulatory structure results in most transmission investment taking the form of incremental builds, with no economies of scale and no economic disciplinary mechanism. Specifically, most projects are initiated by incumbent transmission owners in the absence of competition and cost-benefit prudence review, and yet they secure mandatory cost recovery



through formula rates. This results in a misallocation of billions of dollars annually toward inefficient greenfield projects rather than efficient greenfield projects and enhancements to the existing system. Economies of scale make large projects cost-efficient, but stranded costs can be substantial, so it is important to establish guardrails to mitigate overbuild risk. Further, transmission projects face growing challenges from local and state permitting and siting, underscoring the need for better mechanisms to secure community-level buy-in.

Participants highlighted a second key takeaway: the status quo is a barrier to innovation. Cost-of-service regulation rewards overcapitalization, suppresses productive innovation, and socializes risk. Consumers make decisions not just based on costs, but on value, and value varies among consumers. A key question, then, is: how do we reduce barriers to innovation to get to equality of permission?

TOPIC 1: ADVANCING COMPETITION AND CHOICE

Competition for transmission possibilities generally falls into two bins: A pure merchant model that is voluntarily planned and has voluntary cost allocation, or a mandatory planned open access model where projects are placed for competitive bids. One commentator remarked that over 90 percent of transmission builds do not fall within either form of competition. Even attempts to encourage competition through Order 1000 left loopholes (e.g., reliability exemptions) that undermined the economic process.

The group emphasized a policy goal of prioritizing and reducing barriers to the merchant model. To the extent that mandatory projects are needed, policy should include competitive bidding and oppose the right of first refusal (ROFR). Participants raised questions about the uneconomic outcome of bidding out everything and whether there should be a voltage cutoff level (100 kilovolts was suggested).

Another overarching question was whether we should consider transmission policies as similar to those for the railroads or those for the Internet. One commentator emphasized that transmission policy is currently more like railroad policy, but should be more like Internet policy. Participants stated this because, in transmission, there are agreements at the top level regarding technology, interoperability, and open standards. Consequently, the problems in transmission are not technical ones but governance ones. Policy for the Internet operates through peering agreements, and transmission could benefit from doing the same.

Much of the remaining discussion centered on the barriers to the merchant model. Regional transmission organizations (RTOs) ignore merchant plans and instead mandate much of what the merchants would have voluntarily done. This leaves the “leftovers” for the merchants to fill any remaining gaps. It becomes a chicken-and-egg problem: How do you force vertically integrated utilities or regulated utilities to consider the merchant model so that merchant opportunities bubble up rather than get passed on? Many of the services the merchant model would provide cannot be productized or monetized. Furthermore, the merchant model is a real risk to incumbent interests seeking to build more generation.

Part of the conversation steered toward linear infrastructure more broadly, particularly with respect to natural gas and power systems. It was noted that the federal law is fundamentally different. The Natural Gas Act requires developers of interstate natural gas projects with the federal right of eminent domain to obtain a certificate from FERC. The same authority does not apply to transmission lines, and objections were raised to the expansion of eminent domain.

Much of the remaining discussion during this topic focused on ROFR. Participants highlighted the potential cost savings from eliminating ROFR and mentioned some of the anti-ROFR state-level work. There was disagreement about the degree of cost savings, but broad agreement on seeking better evidence and more unbiased research, noting that both pro-ROFR and anti-ROFR studies have been industry-funded. Participants also noted that research should include looking at the results of completed projects.

One larger, outstanding question from this section is how much incumbent utility buyoff is needed, considering their gatekeeping capabilities. Some participants cautioned against utility buyoff as a necessity, arguing that the best result would be to prioritize the merchant model and ensure that any mandated projects were planned by an independent entity. Others noted that we may be locked into suboptimal policy choices due to the capture of incumbent utilities.

As the conversation closed, one idea was raised to improve upon the status quo. Participants highlighted the right of first ownership as a potential middle ground. This means that the project is competitively bid on for development, and then ownership is transferred to the utility. Questions were raised about whether this could operate outside an RTO model and whether it was sufficient to bring utilities to the table.

TOPIC 2: IMPROVING PLANNING AND COST ALLOCATION

The second discussion focused on sound planning and cost allocation principles for interregional, regional, and local transmission. Several themes emerged, particularly the importance of getting cost-benefit analyses (CBAs) correct and published, the impact of Order 1000, inefficiencies between institutions, and good governance. There was discussion of whether current CBA practices were too narrow or broad and what time horizon makes the most sense (for both CBA and planning). A common question was: "What constitutes benefits from an economic and reliability standpoint?" The impact of Order 1000 was also a key issue, as it results in economic, reliability, and public policy CBAs measured in silos. This method is disjointed and leads to inefficiencies in planning and expansion. The group also briefly discussed the benefits and need for more retrospective CBAs, which help secure consumer buy-in and identify ways to learn and improve.

There is an opportunity cost to not building, even if the build is expensive. Even with the potential for overbuilding in the next several decades, several participants noted that transmission build will deliver more long-term value to the system than cost. Timing is also an issue with valuing transmission assets. For example, one participant raised the timing mismatch of the cost and value of the Vogtle nuclear power plant. Other participants noted that much of today's inefficient transmission development stems from regions resorting to high-per-unit-cost incremental projects due to underbuilt regional- and interregional-scale expansion.

On the other hand, participants recognized the risks and costs to ratepayers and taxpayers of overbuilding. The overbuild in the 1980s and 1990s provides a cautionary tale. Future load growth projections could be way off in either direction, and participants noted that we must be humble and acknowledge the high level of uncertainty. Identifying the benefits was defined as maximizing the economic and reliability benefits while minimizing the costs to the total system, which should be the priority. Avoiding double-counting benefits and ensuring consistency across regions will help evaluate them more effectively. It is difficult for RTOs (even adjacent ones) to agree on common benefits.

Another helpful option is to operate on a moving target rather than a static one to reduce the risk of over- or under-expanding. For regional transmission planning, Order 1920 improved risk mitigation by requiring

planners to use scenario analyses. The Order also boosted transparency in its minimum standardized lists, but regions and states could do more to improve transparency. One participant opposed Order 1920, but most were supportive of it. For interregional transmission, participants generally preferred to exhaust the pure merchant model before considering mandatory planning. When considering the latter, many stressed the importance of incorporating non-wire alternatives into planning criteria and risk management.

Another challenge participants raised was the inefficiencies between institutions. Understanding who has jurisdiction and how it can be effectively operationalized often causes problems. For instance, the state legislature could state one thing, but it does not mean that statutory authority exists. The result is friction among institutions and greater expense in navigating these differences than is necessary. The group emphasized the need for greater price and cost transparency. Challenges also arise between what is best for the ratepayer and what is best for the generators. One example was given of a transmission project that would congest Pennsylvania, but generators would earn a lower rate of return. Questions arose about how to allocate costs and benefits when the project would reduce costs to consumers of the generator's expense.

With respect to cost allocation, the beneficiary pays principle is consistent with cost causation. Benefits may not be controversial on a technical basis but can be hard to measure (especially if or when politicized), whereas costs are not. Even with agreed-upon benefits, operationalization can be challenging, and beneficiaries may not be willing to bear their share of the costs.

The conversation shifted to FERC's authority to set just and reasonable rates under Section 206 of the Federal Power Act (FPA). There was concern that the end of Chevron deference would limit FERC's authority to ensure just and reasonable rates. Participants recognized that FPA 206 is the standard in case law today and inquired about how the Energy Permitting Reform Act of 2024 (EPRA), sponsored by Senators Barrasso and Manchin, would affect that authority. Some participants held favorable views of the EPRA, citing the quality of its interregional transmission-planning component. Other participants were opposed, noting concern over its cost allocation text.

Good governance was the last issue discussed in this session. The concept of an Independent Transmission Monitor was introduced to enhance coordination, auditing, and oversight of transmission, particularly outside Regional Transmission Organizations (RTOs). This differs from independent transmission planning, which participants noted should be improved in RTOs and is mostly absent outside RTOs, especially in the Southeast.

Participants emphasized a critical need to fix the local transmission overbuild problem. One suggestion was to reform formula rates, which weaken regulatory prudence over monopoly utility projects. Another suggestion was to establish a clear bright line for state (local projects) and federal authority (regional projects) to close the current gap. Currently, states grant their public utilities regulators very different authorities over transmission oversight, creating balkanization challenges at the local-regional interface.

TOPIC 3: UPGRADING EXISTING INFRASTRUCTURE

Upgrading existing infrastructure, such as improving seams management between regions and employing advanced transmission technologies (ATTs), can lower costs and improve reliability. Participants acknowledged that the appeal of ATTs like grid-enhancing technologies, reconductoring, and other brownfield-related improvements is even stronger given rising congestion from load growth, the headwinds for greenfield

construction, and the adverse effects of greenfield development, such as land use and eminent domain. ATTs can be adopted much faster than greenfield projects, while other existing system upgrades, such as inertia optimization, may take longer. Participants also noted that some ATTs were developed under the Department of Energy's Advanced Research Projects Agency-Energy program, but are now being deployed abroad rather than in the United States.

Grid operators like PJM say we need more capacity, and we have a large, heterogeneous technology set. Yet ATTs are unattractive under the cost-of-service model, so incumbent utilities often seek to suppress them. Furthermore, the new technology presents operational challenges for grid operators and the regulatory apparatus overseeing cost-of-service utilities.

The working group noted that the status quo severely deters existing system upgrades, yet there are no policy silver bullets. This prompted a variety of policy questions, including:

- Since upgrades run contrary to cost-of-service incentives—unlike a competitive marketplace—should the regulator's role be more hands-on to ensure just and reasonable rates?
- How do we ensure these complex technologies are economically prudent and operationally safe, and is there any voluntary incentive to pursue infrastructure upgrades?
- Should there be different approaches for hardware versus software (could be tied to cybersecurity)?
- Whether it is existing system upgrades or greenfield generation interconnection, how do you reduce the cost-of-service rate-based incentive for investment?
- What is the role of the state vs. the federal government?

One participant noted it should be the federal government or regional grid operators that implement seams and ATT solutions, given their synergistic effects across states (except Alaska, Hawaii, and most of Texas). A federal strategy akin to FERC Order 881 was to take a technology-forcing approach rooted in CBA to achieve "good utility practice," recognizing that cost-of-service utilities are not competitive enterprises that would otherwise adopt least-cost solutions. A future example would be advancing a dynamic line ratings rulemaking that requires utilities to establish a rebuttable presumption that the technology is not consistent with good utility practice. One participant noted that merchant transmission projects could be exempt from any regulatory prudence requirement because they already have the proper incentive to adopt best practices as a competitive enterprise.

The group also noted that states pressuring RTOs to pursue these solutions was an effective bottom-up strategy. Participants emphasized that there is a significant information deficit among state officials and consumer groups regarding the prudence of ATTs and better seam management approaches. A key need was to have ongoing assessments of commercial readiness drivers and to institutionalize conversations that build regulatory records to gauge the dynamic prudence of best practices in upgrading the existing system. This would encourage regional stakeholders to develop their own proposals to bring to FERC or build an evidentiary basis for compelling legal complaints.

To remove barriers to innovation and open opportunities for economically efficient alternatives, the participants posited moving away from cost-of-service and towards performance-based standards. One option was the Watt Coalition and the shared savings idea. Part of the challenge, however, is that the implied

rate of return is so high that utilities require a huge share of the pie, thereby eroding the rightful share passed on to consumers. Utilities can also game the baseline, as evidenced by performance-based standards in states that have not aged well. One participant explained this as akin to “negotiating with a toddler” when asking utilities to do what is right for consumers. A prudent determination for a technology-forcing regulation does not have this problem. However, it is a difficult determination to make for technologies whose prudence varies by specific circumstances (unlike Order 881, which found one type of ATT to be uniformly good utility practice).

This topical discussion concluded by emphasizing two technology stages that warrant different but compatible policy sets. The first is securing sufficient technology demonstration to assess commercial readiness, like advanced market commitments. The second is ensuring there are mechanisms to scale the application once a technology is economically prudent.

TOPIC 4: SITING AND PERMITTING

Siting and permitting reform is of huge interest to policymakers. States have primary jurisdiction over intrastate and interstate lines, unlike most other linear infrastructure, which grants the federal government preemptive authority. Local siting and permitting authority varies by state. FERC has a limited backstop authority. The questions posed were:

- How can we improve permitting for transmission infrastructure.
- Should FERC have stronger backstop authority for siting?
- Are there better ways to align federal and state authorities that are consistent with federalist principles?

Participants stressed that permitting and siting should treat merchant and non-merchant developers consistently and comparably. For instance, some states have laws that advantage incumbent utilities over new entrants. Multiple Illinois court decisions were cited as examples of favoring the incumbent utility model, which mandates cost recovery, over merchant transmission with voluntary cost assignment.

Participants also emphasized the need for better information to evaluate the costs and benefits of projects. A major challenge is how to properly compensate pass-through states, which often resist net-benefit projects because the benefits are concentrated outside their states. Some states can account for other states' benefits while others cannot. For instance, Kentucky has a dual siting regime and can account for multistate benefits. Since local authorities often block projects, participants discussed what appeals processes might better vindicate liberty by allowing parties to seek redress from state permitting agencies that fully factor in all project costs and benefits.

States have 50 versions of policy and regulation, and not all states have written clear, concise, and strong state laws. The difficulty of permitting and siting multistate projects tilts transmission development in favor of intrastate development, which has inferior economies of scale. Sometimes states prefer intrastate projects because they have full control, whereas in interstate projects they do not (even though the former is far more expensive per unit than the latter). However, inefficient, balkanized transmission development is leading to excessive costs. To overcome this, some states have begun to welcome stronger federal backstop authority to incentivize cooperation on efficient interstate projects. Some participants noted that EPRA could have resolved the transmission siting problem, but should have focused on infrastructure beyond transmission.

A comparison was made between interstate transmission, natural gas pipelines, and oil pipelines. Historically, interstate natural gas pipelines have been easier to build because of FERC certification and federal eminent domain authority, unlike the state-by-state approach for transmission and oil pipelines. However, participants noted that it has become increasingly difficult to build natural gas pipelines, as the PennEast pipeline was canceled and the Mountain Valley Pipeline was a multi-trillion-dollar bargaining chip in passing the Inflation Reduction Act. Even so, some of the participants liked the idea of the natural gas pipeline permitting and siting model for transmission, while others raised concerns about eminent domain and usurping states' rights. One participant commented that state authority under the Federal Power Act is relatively generous for interstate transmission, given the Commerce Clause.

More broadly, participants stressed that permitting reform should be done in a resource- and technology-neutral manner. There is concern that permitting reform limited to transmission would remove the incentive to address the permitting and regulatory obstacles that plague all energy sources and technologies.

Some participants found the Department of Energy's National Transmission Planning Study and corridor designation to be a waste of time. They noted that FERC should have owned the designation process and been neutral on location. Currently, DOE and FERC are duplicating efforts.

This led to a discussion about the need for better information and to rely on technical analysis rather than broader, subjective decisions, such as public or national interest determinations. The group stressed that permitting and siting processes should weigh trade-offs objectively rather than have energy infrastructure based on political decisions, such as the liquefied natural gas export pause or the cancellation of the Keystone XL Pipeline. Similarly, the National Environmental Policy Act has grown into a procedural tool that is far afield of its originally intended use. It now serves primarily as a tool for litigation and project delays, rather than informing decision-making.



Participants

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Lynne Kiesling *American Enterprise Institute*

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INVITED BUT UNABLE TO ATTEND

Marc Marie *Americans for Prosperity*

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