The bipartisan permitting bill gets transmission right

On September 30, 2026, Senators Shelley Moore Capito (R-WV), Mike Lee (R-UT), Sheldon Whitehouse (D-RI), and Martin Heinrich (D-NM) released the text of the Bipartisan American Affordability and Jobs Act of 2026 (**BAAJA**). The bill would broadly transform permitting processes for energy infrastructure as well as the processes by which interregional transmission infrastructure assets are planned and cost allocated. In this brief, we specifically analyze those transmission and grid reform provisions, found in **Division B, Title I** of the bill.[1]

The transmission and grid provisions in BAAJA are ambitious, going beyond the provisions of 2024's EPRA bill. Most importantly, BAAJA gives FERC more statutory cover to take aggressive actions on grid development.

BAAJA mitigates numerous investment barriers that create uncertainties in transmission development today. In particular, it provides a federal framework for basic permitting and cost allocation processes and sets eligibility criteria for developers to use in obtaining federal permits. It also requires grid planners to conduct interregional transmission planning. It requires the DOE to study congestion and, if it chooses, designate regions for public financing. The bill also includes numerous other significant provisions: the inclusion of distributed energy resources (DERs) in wholesale markets, mandating rulemaking to protect ratepayers from the incremental costs of large loads, and rulemaking to mandate the usage of advanced transmission technologies. If passed, the bill would constitute the most significant improvement to transmission and grid governance in years.[2]

This brief will lay out how BAAJA transforms permitting, cost allocation, planning, and financing processes, among others, in the interest of new interregional transmission development.

Note: This text has been updated to reflect the content of the managers' amendment released November 7, 2026.

I. Permitting

Instituting an applicant-driven permitting process with a FERC backstop: BAAJA creates an applicant-driven process[3] under §216 of the Federal Power Act (FPA) that requires the Federal Energy Regulatory Commission (FERC) to issue permits to interstate transmission projects that are greater than or equal to 230 kV (or have advanced transmission conductors), are consistent with the public interest, protect and benefit consumers while providing them with improved reliability, and maximize existing rights-of-way.[4] While interstate projects are expected to start with a state application where possible, FERC is obligated to approve projects itself under its

[1] For our previous analysis of the Energy Permitting Reform Act of 2024 (EPRA) bill, see here.
[2] We have detailed issues facing the country's interregional transmission planning and financing system and highlighted potential solution frameworks in our latest report, *Down to the Wire*.
[3] Previously, the FERC backstop was discretionary, and had a requirement that lines be developed in a designated National Interest Electric Transmission Corridor (NIETC). **As a result of the administrative and political hurdles facing NIETC designations, the previous backstop authority remained unused.**
[4] This latter provision around maximizing rights-of-way applies only to line modifications and upgrades such as reconductoring.

applicant-driven process one year following the developer's filing of a state application in case a state does not approve the project, in the event FERC finds the line meets the aforementioned permitting criteria.[5] BAAJA creates a much-needed framework that can, in principle, apply across the entire country. It is applicant-driven, which means developers of new interregional lines do not need to wait for any kind of designation to pursue permitting with FERC, presuming they have exhausted state-level alternatives. **These provisions give FERC the ability to backstop the permitting of interstate lines that FERC finds will improve reliability and benefit customers, providing greater certainty to developers while restricting states' capabilities to prevent those lines from being built.[6]**

FERC is also designated as the lead agency for all federal authorizations and reviews subject to laws including the National Environmental Policy Act (NEPA) and the National Historic Preservation Act's (NHPA) Section 106 for projects permitted under the FPA's §216 or §225. The Department of the Interior is still the "point agency" for facilities on its leases, easements, or rights-of-way, including offshore.

II. Cost Allocation

Creating a cost allocation framework for lines meeting federal criteria: The bill creates a new federal cost allocation process for lines that meet the FPA's §216 criteria, whether or not they hold a federal permit. This means state-sited interregional lines can also secure cost allocation. New lines can only assign costs to consumers who benefit, and the list of benefits according to which cost allocation can be determined is as follows: improved reliability, reduced congestion, reduced losses, greater carrying capacity (delivering reliability or lower delivered power cost), reduced operating reserves, and improved access to lower-cost generation. These are identical in scope to the benefits proposed under the 2024 EPRA bill, both of which differ from benefit criteria outlined in FERC Order 1920, as shown below. (FPA §225 sets a parallel cost allocation process for projects selected via the interregional planning process as described in the next section.) **Previously, developers had little or no certainty on how their costs ultimately would be recouped and the resulting impacts on the form of cost recovery backing their financing.**

Customers receiving no or trivial benefits are protected from having the costs of line development involuntarily allocated onto them. Jurisdictions hosting lines, meanwhile, can receive host-community payments from developers, which can go through the cost recovery process to secure those payments under FPA §219.

[5] BAAJA says FERC "shall" issue its permits—which is stronger language than simply stating FERC can or should issue its permits.
[6] This proposed FERC-supervised and applicant-driven process also applies to compact states under FPA §216 that form a regional transmission siting agency, something that has not yet been done to our knowledge. In the event the compact states are unable to reach an agreement on a particular application by one year after filing, as determined by DOE, the backstop becomes applicable.

Grid Quality Targets	FERC Order 1920	EPRA	BAAJA
reliability	"avoided or deferred reliability transmission facilities and aging infrastructure replacement"	"improved reliability"	"improved reliability"
congestion	"reduced congestion due to transmission outages"	"reduced congestion"	"reduced congestion"
reduced power loss	"reduced loss of load probability," "reduced transmission energy losses"	"reduced power losses"	"reduced power losses"
carrying capacity		"greater carrying capacity"	"greater carrying capacity"
reserve/peak requirements	"reduced planning reserve margin," "reduced peak energy losses"	"reduced operating reserve requirements"	"reduced operating reserve requirements"
lower-cost generation	"production cost savings" "capacity cost benefits from reduced peak energy losses"	"improved access to lower-cost generation"	"improved access to lower-cost generation"
extreme weather, shocks	"mitigation of extreme weather events and unexpected system conditions"		

Sources: (1) FERC staff presentation on Order No. 1920; (2) EPRA bill text; (3) BAAJA bill text.

III. Planning

Requiring interregional planning: BAAJA mandates that FERC require grid planners to undertake regional transmission planning processes, to undertake interregional planning processes (filed bilaterally or multilaterally by the participating grid planners), and to set out rate treatments for planning and cost allocation. Under §225(h), compliance with FERC Order 1920 satisfies the

regional part of the planning mandate, so FERC is relieved of the duty to write a new regional planning rule. The new interregional plans must use common assumptions and models, must be conducted on a consistent timeline, and must allow for joint identification and selection of interregional transmission facilities, including those with advanced conductors or being reconductored. Plans must consider modifications that maximize existing rights-of-way. Plans must also consider plans filed by other grid planners. Similar to the FERC permitting backstop described previously, facilities identified for development under these plans must improve reliability, protect or benefit consumers, and be consistent with the public interest. Projects selected under these plans are deemed to satisfy the tests used in the FERC permitting backstop described above—and will therefore be able to receive federal permits—but will remain subject to state governments' siting rules as well as the state trigger.

This provision helpfully mandates the coordination of interregional transmission planning. However, there is no "forcing function" in the event regions fail to submit a planning process. Grid planners have no obligation to select projects identified through this interregional planning process and FERC cannot force them to do so. FERC does keep its existing FPA §206 authority, which it could use to require consistent modeling, tariff, and cost allocation rules across regions. Developers can also use the applicant-driven permitting process for individual lines and §216(f) cost allocation does not depend on a permit.

Augmenting DOE's triennial transmission study process: BAAJA requires the Department of Energy (DOE) to study transmission constraints and congestion within a year of the bill's passage and every three years afterwards. This study process already technically exists under current law; the DOE already publishes its *National Transmission Needs Study* triennially. But BAAJA now has DOE identify specific *geographic areas* that are experiencing, or may experience in the future, constraints or congestion that adversely impact consumers, rather than designating specific corridors. Specifically, BAAJA eliminates the DOE's ability to designate National Interest Electric Transmission Corridors (NIETCs). The new area/regional identifications help the DOE target public finance, as discussed in the next section—but developers do not need to build interregional lines within them in order to secure a federal siting permit for those projects. **BAAJA thus augments DOE's ability to use its study process to identify regions where congestion and constraints harm consumers without constraining the processes by which developers secure federal permitting and siting through FERC. In turn, the carrot of DOE financing ensures the study process will still be eyed seriously by transmission developers looking for means to advance their projects; DOE retains financial mechanisms by which it can complement ongoing transmission planning by pulling in or cementing projects.**

Instituting a Consolidated Planning Process for generation, transmission, and interconnection: BAAJA §2106 creates a new provision in the FPA, §228, which mandates that FERC require each ISO and RTO to file a consolidated interconnection and regional planning process. Each new process should jointly evaluate transmission, load, storage, and generation needed for forecasted demand over a 20-year time horizon. Each RTO and ISO must publish resource- and fuel-neutral Planned Interconnection Locations (PILs) and a fixed, upfront, subregional, per-MW fee to interconnect at each PIL. BAAJA also streamlines generator interconnection and transmission service request studies by requiring developers to submit nonrefundable security

deposits and imposing withdrawal penalties. This consolidated planning process closely emulates the structure of the Southwest Power Pool's process of the same name and federalizes it for developers of energy generation, storage, and large loads, thereby substantially reducing the uncertainty over the size and potential instability of potential grid upgrade costs facing a given project and making those upgrade costs contingent upon anticipated grid headroom. **BAAJA ensures that interconnection is finally subject to some anticipatory planning of grid needs rather than being conducted in a manner that is purely reactive to developer requests.** These plans must be conducted every two years.

Ensuring oversight of local transmission planning: BAAJA requires FERC to adopt rules that enable state commissions to refer utilities to a FERC-led investigation team to assess whether those utilities chose not to invest in the most efficient or cost-effective local facilities (including replacement projects such as asset-condition or end-of-life projects) or whether those utilities are interfering with regional planning. If FERC's investigation team releases such a finding, FERC can order changes to utilities' local transmission planning processes, revoke its presumption of utility prudence, mandate reductions to utilities' returns on equity from local transmission facilities, or institute other appropriate remedies. Monetary penalties are credited to customers who paid for the facility. **BAAJA gives states and FERC a disciplinary tool to ensure utilities make investments in accordance with regional transmission plans and in the interest of ensuring ratepayers are not backstopping inefficient or higher-cost projects—especially when interregional transmission might provide a utility with access to lower-cost alternative power options.**

IV. Public Finance

Revising developers' eligibility for federal transmission financing: Projects being planned in areas identified as congested—selected through the DOE's triennial transmission study process described above—will, through BAAJA, now be eligible for access to a set of transmission-specific financing facilities housed at the DOE: the Transmission Facility Financing (TFF) and the Transmission Facilitation Program (TFP).[7]

TFF provides concessional loan financing to developers of transmission lines. Previously, developers could only access TFF with a national interest designation; BAAJA, by eliminating national interest designations in favor of a regional needs identification approach, appears to make it far easier for developers to access TFF if DOE identifies sufficiently wide areas subject to congestion risks. However, the One Big Beautiful Bill Act (OBBBA) rescinded funding for TFF. Funding would need to be reappropriated if this program were to be deployed this way to de-risk identified lines. **By replacing the cumbersome and politically challenged NIETC designation process with a DOE-led regional congestion mapping process, BAAJA significantly expands the reach of TFF should it receive new appropriations.**

[7] A provision in the Energy Policy Act of 2005 allows the Secretary of Energy to direct the Southwestern Power Administration and Western Area Power Administration to secure third-party financing or use public-private partnership structures to build lines located in NIETCs. (There is an alternative option to use them for addressing projected or actual demand growth.) BAAJA's replacement of NIETCs with geographic areas identified through DOE's triennial study allows these two power marketing administrations broader ability to creatively finance new and necessary interregional transmission projects.

TFP is a program whereby the DOE commits to a purchase of the capacity of new transmission lines to support developers' bankability; the DOE can resell this capacity contract at a later date. **While developers' access to TFP's offtake provisions does not depend on changes made by BAAJA, the DOE triennial study provisions ease another pathway for developers of critical lines to receive federal support.**[8]

V. Other provisions

Ratepayer protection: BAAJA calls on FERC to initiate rulemaking that requires computational loads to be charged for both embedded costs of the existing system and incremental costs of grid upgrades that they occasion. Under a new FPA section, §229, incremental costs may not be allocated to other customers. States retain the authority to set additional rates above embedded or incremental costs and can credit any surplus costs recovered above incremental costs to customers, allocate service through "open season" or competitive solicitations, condition service on loads bringing their own generation (known as "bring your own generation" or "BYOG"), or condition service on limited transmission service. States also retain the right to treat these loads less favorably relative to other industrial loads. And the bill ensures that utilities can recover full incremental costs from large loads even if those loads terminate their electricity purchase contracts early. **BAAJA empowers FERC to ensure that large loads can more easily be made to pay for grid upgrades they occasion without interfering with states' ability to set rules around how they interconnect to the grid.**

Eliminating the federal right of first refusal (ROFR): BAAJA eliminates federal ROFR for transmission facilities selected under regional and interregional plans for purposes of cost allocation. **FERC Order 1000 eliminated this ROFR, but BAAJA writes it into statute with exceptions in place for FERC's current orders.** BAAJA does not touch state ROFRs. Local facilities as well as transmission upgrades that are not part of a regional cost allocation process are not subject to the federal ROFR revocation.

Confirming FERC jurisdiction over ISO and RTO governance: §2116 confirms FERC jurisdiction over ISO and RTO corporate governance. This is a response to previous judicial rulings, including CAISO v. FERC, which limited FERC's authority over board selection.

Ensuring distributed energy systems secure wholesale market access: Distributed energy resource (DER) facilities that are able to deliver electricity within 15 minutes, are at least 5 kW, no more than 5 MW, and have sufficient metering and telemetry specifications are now eligible for access to wholesale energy markets. Aggregations of DERs above 100 kW are now eligible as well, unlocking potential business opportunities for budding private and public virtual power plants. These systems can also participate in state programs, but cannot earn double compensation. Nor can DERs be subject to mandated energy-market participation as a requirement for capacity market participation, though ISOs and RTOs may set narrowly tailored performance rules for aggregations participating in capacity markets, but not energy markets.

[8] The Bipartisan Infrastructure Law authorizes the DOE to participate in and co-develop projects in NIETCs through TFP. BAAJA's replacement of NIETCs with broader DOE-identified areas modestly expands DOE's ability to provide upfront project development support to developers of critical interregional lines, on top of TFP's capacity contracting and loan finance provisions.

Distribution utilities within RTOs/ISOs must also interconnect eligible behind-the-meter resources in a timely manner, allow exports, and not impede DER market participation except as otherwise regulated by state law. **BAAJA ensures that DERs can serve the wider energy grid by providing a source of low-cost flexible energy and capacity that can compete against other generation and capacity resources.**

Supporting advanced transmission technologies (ATTs): BAAJA requires FERC to mandate the usage of ATTs by FERC-jurisdictional "public utilities" under FPA §201(e)[9] on new transmission projects, upgrades, modifications, and replacements covered by FERC jurisdiction. If the benefit-cost ratio of using ATTs is greater than 1.0, those solutions must be utilized. If utilities do not utilize ATTs when their benefit-cost ratio is above 1.0, the utility may be subject to a return on equity (ROE) penalty. The use of ATTs is now presumed prudent. **BAAJA ensures the adoption of a necessary new class of technologies from here on out, with all the attendant benefits for ratepayers and grid reliability, along with a disciplinary mechanism to incent their usage.**

Expediting generator interconnection queues: FERC must initiate rulemaking on the incorporation of AI, machine learning, and other forms of automation in generator interconnection studies.

Simplifying grid data access by transmission providers: BAAJA enables providers to request data from bulk-power system users, owners, or operators.

Instituting PMA compensation schedules: PMAs must now set their own employee and executive compensation plans based on an annual survey of electric industry compensation in the locality and compensation at comparable utilities in the relevant regional grid interconnection. DOE must approve the plan. BAAJA also restores collective bargaining rights to PMA employees.

[9] The entities excluded from this include federal entities, public power, states and their subdivisions, and co-ops that are financed by the Rural Utility Service or sell under 4 million MWh of electricity per year.