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Energy Chairman Manchin’s Permitting Bill Moves Through Committee in Careful Balancing Act

*By Elizabeth Leoty Craddock, Elizabeth M. Noll and Beth A. Viola**

In this article, the authors discuss the Energy Permitting Reform Act of 2024, which was recently released by the chair of the U.S. Senate Committee on Energy and Natural Resources, and which then cleared that committee.

After two years of continuous behind-the-scenes work, Senator Joe Manchin (I-W.Va.), who chairs the U.S. Senate Committee on Energy and Natural Resources, joined by Senator John Barrasso (R-Wyo.), released S. 4753,¹ the Energy Permitting Reform Act of 2024, on July 22, 2024 – and 11 days later cleared the legislation through his committee. At its core, S. 4753 seeks to update and streamline permitting rules in an effort to speed the deployment of new energy infrastructure projects and boost the production and transmission of both renewable energy and traditional fossil fuels. The legislation aims to facilitate faster permitting processes for coal, oil and natural gas, renewable energy, critical mineral mining and transmission lines.

Throughout the committee markup,² both Democratic and Republican senators expressed opposition to certain provisions in the bill but understood the challenge of trying to “stitch” together legislation that can secure enough support needed to pass. Both sides of the aisle recognized the importance of advancing energy permitting and infrastructure projects, with Republican senators expressing support for permitting reform on domestic resource extraction and Democratic senators recognizing the potential in strengthening the national grid to support the increased electrification and manufacturing investment that has occurred over the past three to four years as a result of the Inflation Reduction Act (IRA). Chairman Manchin said the bill is a careful

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¹ <https://www.energy.senate.gov/services/files/744DC0D2-F3C0-4FE7-AD72-895D8517EBE4>.

² https://www.energy.senate.gov/hearings/2024/7/hearing-to-consider-s-4753-the-ener?utm_source=DCS+Congressional+E-mail&utm_medium=Email&utm_term=https%3a%2f%2fwww.energy.senate.gov%2fhearings%2f2024%2f7%2fhearing-to-consider-s-4753-the-ener&utm_campaign=Energy+and+Natural+Resources+Committee+Clears+Manchin-Barrasso+Permitting+Reform+Legislation%2c+Pendig.

balancing act that includes “meaningful and reasonable changes when it comes to both energy production and emissions reductions.”

Ultimately, the committee advanced the legislation on a bipartisan 15-4 vote, with only Senators Bernie Sanders (I-Vt.), Ron Wyden (D-Ore.), Mazie Hirono (D-Hawaii) and Josh Hawley (R-Mo.) voting against. Most notably, while more than 50 amendments were filed for consideration, only a handful were offered and received a rollcall vote. All amendments failed, except one. This was a crucial test to ensure that the legislation remained as balanced as possible to continue to enjoy support from enough senators in the committee to vote to advance the bill to the Senate floor.

It is unclear when the Senate permitting bill will advance to the floor; however, it is highly unlikely to do so before the November elections. On the House side, House Committee on Natural Resources Chairman Representative Bruce Westerman (R-Ark.) and Representative Scott Peters (D-Calif.) have signaled they would like to put together their own permitting legislation but have indicated action is more likely to happen next Congress.

THE BILL

As for the substance of S. 4753, it tackles many of the perceived problems that plague both traditional and renewable energy projects, but only matters that are within the jurisdiction of the U.S. Senate Committee on Energy and Natural Resources. The bill is divided into seven titles, as described below.³

Title I: Accelerating Claims

Establishes a 150-day statute of limitations to seek judicial review of an agency action granting or denying an authorization for an energy or mineral project.

Many energy projects, whether traditional fossil fuels, renewable energy or transmission lines, have been plagued by litigation causing, in some instances, decade-long delays in the project being built or deployed. This section aims to reduce the interruptions caused by litigation delays to ensure these energy projects move forward in a reasonable timeframe.

Title II: Federal Onshore Energy Leasing and Permitting

This section boosts onshore oil and gas development by requiring the U.S. Department of the Interior Secretary to offer a minimal amount of acres for leasing, extending the life of a permit to drill by one year and streamlining requirements for federal permits needed for nonfederal lands. It also sets

³ <https://www.energy.senate.gov/services/files/D51EF6FD-67C0-4D31-A197-173A0CBFAF23>.

deadlines for coal leasing on federal lands, ensuring that the Interior Secretary reviews coal permits and issues a record of decision within a shortened time frame.

Traditional fossil fuel development and leasing has been restricted under the current administration. These provisions would mandate regular onshore lease sales, as well as streamline deadlines for coal leasing, in an effort to advance the production of these fuels moving forward.

Title III: Federal Offshore Energy Leasing and Permitting

Requires at least one offshore lease sale be held from 2025 to 2029, for a minimum of five lease sales in the Gulf of Mexico. Also requires one lease sale per year for offshore wind energy, for a minimum of five lease sales, and establishes a national goal of 30 gigawatts for offshore wind energy production.

These provisions seek to ensure that consistent offshore energy development continues in the U.S. for years to come by mandating lease sales for both traditional and renewable energy development. The Biden Administration has come under serious criticism from mostly Republicans in Congress for offshore leasing pauses and a watered down five-year-plan for oil and natural gas exploration and production.

Title IV: Electric Transmission

The sections of Title IV address the three major transmission barriers – planning, permitting and paying – and fill in the gaps that the recent Federal Energy Regulatory Commission (FERC) Order 1920 transmission planning rule could not do. The bill helps resolve the cost allocation, or paying, challenge by establishing a standard definition of “transmission benefits” so that costs can be allocated consistently and fairly across customers. Additionally, it sets a minimum specified list of electric reliability and affordability benefits to customers to consider when developing interregional transmission plans.

The bill directs FERC to promulgate a rule on interregional transmission planning within 180 days. The rule would require neighboring transmission planning regions to create joint plans for constructing interregional transmission with a common set of assumptions and time horizons to maximize the use of existing infrastructure and rights of way. Interregional transmission planning will serve to increase the ability of regions to support each other during severe weather events and maximize customer savings.

Finally, with respect to permitting, it makes FERC the lead agency for conducting environmental reviews of transmission projects that are subject to the National Environmental Policy Act (NEPA) and simplifies the backstop authority by making FERC the siting authority for lines that meet certain

requirements. It removes the U.S. Department of Energy's (DOE) previous role in designating national interest corridors.

The text also requires consideration of advanced conductors and reconductoring of existing lines and directs the Interior Department and U.S. Department of Agriculture to adopt new categorical exclusions based on DOE's for building transmission facility rights-of-way corridors, upgrades to existing transmission and grid infrastructure within rights of way or previously disturbed land, and deployment of energy storage technologies on previously disturbed lands.

Title V: Electric Reliability

Requires NERC to conduct an assessment and report to FERC on a federal agency rule, regulation or proposal that has a reasonably foreseeable adverse effect on grid reliability, consider available ways to mitigate the effects and account for input from affected RTOs/ISOs.

Title VI: Liquefied Natural Gas Exports

Sets a 90-day deadline for the U.S. Energy Secretary to approve or deny all pending and future liquefied natural gas (LNG) export facilities once FERC or the U.S. Maritime Administration (MARAD) publishes the final environmental review document for the exporting facility.

The Biden Administration, via DOE, put a pause on approving any additional LNG facilities until the DOE could undertake a "public interest" determination on whether the approval of more LNG exports from the U.S. was in the best interest of the country. This was viewed by many as a political stunt by the Biden Administration. This provision seeks to restrict DOE from taking any lengthy delays to approve or deny an LNG export facility.

Title VII: Hydropower

Establishes a path forward for hydropower projects to extend their licenses if they are a "covered project."

Chairman Manchin indicated that Title VII was a late add to the legislation, but he wanted to include a section on it because he understood the importance to the legislation. Senator Lisa Murkowski (R-Alaska) was very keen on this section, having filed several amendments to improve it. Though she offered and then withdrew her amendments, it is clear that the bill will enjoy Senator Murkowski's support without major additions to this section.

IN SUMMARY

- After two years in the making, the U.S. Senate Committee on Energy and Natural Resources conducted a markup of S. 4753, the Energy

Permitting Reform Act of 2024.

- The committee advanced the legislation on a bipartisan 15-4 vote on August 2, 2024.
- Most senators agreed that more work must be done on the overall legislation. It is unclear when the permitting bill will advance to the floor, but it is highly unlikely to do so before the November elections.