

Written Testimony of Alexander Herrgott President and

CEO, The Permitting Institute

Before the Subcommittee on Government Operations and Border Management
of the U.S. Senate Committee on Homeland Security and Governmental Affairs

Strategies for Improving Critical Energy Infrastructure

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Via Videoconference

Chairman Sinema and Ranking Member Lankford, my name is Alex Herrgott, President of The Permitting Institute (“TPI”). TPI is a Washington D.C.-based non-profit, non-partisan organization actively engaged nationwide, whose purpose is to accelerate the modernization of America’s aging infrastructure while protecting our environmental, cultural, and historic resources. I appreciate the opportunity to discuss targeted actions Congress can take to remove permitting obstacles blocking expansion of affordable, reliable, and resilient energy infrastructure.

Congress must address and unravel the bureaucratic gridlock faced by new energy and infrastructure projects. Without action, escalating national household and commercial energy costs will cause serious economic harm, both now and in the future.

Volatility in energy markets continues to increase as the country transitions from conventional to renewable energy resources. Many of the renewable energy projects needed to meet this Administration’s greenhouse gas emissions targets remain in various stages of planning and development. Simultaneously, some conventional energy generation sources, such as coal, are decreasing production or being retired early. This mismatch between planned generation and generation retirement are causing supply and demand issues that are responsible for rapid increases in global energy costs.

These increases are expected to worsen this winter, especially here in the U.S. Analysts predict that a colder than expected winter could trigger a 25% jump in U.S. natural gas and home heating costs. Presently, the U.S. oil benchmark, West Texas Intermediate, is closing in on \$85 per barrel, a price not seen since November 2014. Deutsche Bank recently wrote, “The importance of these moves on inflation, growth and external accounts are not to be underestimated. These price moves are a big

deal.” An equally big deal is the \$600-\$800 billion in private investment for new wind, solar, transmission, storage, and carbon capture waiting on the sidelines for clarity and certainty. Those investments, if realized, can help add 200-300 GW of utility scale renewable energy generation capacity to the grid, the equivalent of the electricity needed to power approximately 30 million homes. These “big deal” numbers are further informed by an April 2021 report by Grid Strategies LLC, released during a Department of Energy event, that shows 22 shovel-ready transmission lines that would deliver renewable energy to market but are stalled in various phases of the permitting process, with no resolution in sight.

Accordingly, project developers and TPI members are hesitant to invest due to the fact that projects initiated today will not be realized for 7-to-10 years. As this summary timeline articulates, our nation’s permitting system does not solve problems, it creates them. To illustrate:

- **2-to-3 years** of project design, engineering, permitting, planning, and financing
- **2-to-4 years** of formal permitting process submission and review – a timeline that pushes orders for new windmills, solar panels, transmission lines, charging stations, construction equipment, steel, concrete, and labor contracts years into the future.
- **2-to-3 years** of construction – this assumes permitting approvals are granted and supply chain orders are aligned

Despite these challenges, I am here today to shine a light on near-term opportunities for progress. Many obstacles impeding the energy projects required to meet President Biden’s emission reduction targets are avoidable; and they must be avoided to have any hope of reaching the Administration’s ambitious goals. Reaching net zero emissions by 2050 will require more than 200 GW of generation capacity, which means we must double last year’s record-breaking annual growth in renewable energy generation and then maintain that rate of growth year-over-year consistently for the next decade, in addition to other decarbonization efforts and advances in technology.

TPI members, and members of this committee, know all too well that energy projects are routinely stymied at various phases of project development by disconnected and fragmented federal and state review processes. Permitting processes are marred by contradictory rules, timelines, and policies

that cause delays, cost overruns, and in some cases, project abandonment.

Each of these permitting problems are exacerbated by the lack of government accountability inherent in the federal permitting system. We have a system that has allowed agencies to sit on applications for decades, in some cases, with no promise of project approval on the horizon. While the focus in most permitting timeline discussions often centers on the National Environmental Policy Act (“NEPA”), NEPA is just one procedural hurdle among more than 60 possible federal permits that may be required, spread across 13 federal agencies, not including a myriad of state and local permitting obligations.

Many otherwise “shovel-ready” infrastructure projects spend years in bureaucratic gridlock. Developers routinely find themselves struggling through the informal pre-permitting, planning, and application process – again, often for years – with extensive ongoing submission and review cycles before equally cumbersome formal NEPA processes commence. Consider these examples:

- Multiple offshore wind projects, including Skipjack, Mayflower, and Bay State, even after becoming a clear priority for the Biden Administration, have yet to receive a preliminary permitting timetable from federal agencies, even for those projects who are statutorily required to have a permitting timetable.
- Proposed renewable energy projects on federal lands continue to face project delays and cancellations. Noted problems within the federal permitting process are exacerbated on federal lands due to the Bureau of Land Management’s (BLM) staffing decreases, the closing of its national project manager program, and its “prioritization” policy that keeps projects in limbo.
- To make matters worse, some agencies have identified new formal or informal policies over the past several years to frontload preliminary biological, cultural, and historical survey requirements prior to formally starting the review process—pushing the starting point even further into the future. In some cases, frontloading project pre-planning increases efficiency and substantial discussion early in the process, but in others it creates unintended and unpredictable obstacles to additional investment while “hiding” the full duration of the

permitting review process timelines.

- Project delays can stem from the sheer number of federal, state, and local agencies and their diverse permitting requirements. One egregious example is a \$3 billion project investment in a clean energy transmission line that began the permitting process more than a decade ago. The project endured seven years of review and was finally deemed “complete” by the federal government four years ago. However, it is now entangled in court proceedings because one of 49 participating government agencies pursued a separate programmatic workflow that renders the prior approval moot. That is \$3 billion in clean energy distribution delayed for more than 10 years because one hand did not know what the other was doing – within the same federal agency.

These are just a few of the hundreds of examples of project delay and cancellations that come from the U.S. permitting process. Each example points to the urgent need to repair the outdated and sclerotic permitting system that keeps the country from meeting our growing energy demands. Most major U.S. infrastructure investments in wind, solar, carbon capture, hydro, geothermal energy, broadband, electricity transmission, oil and gas pipelines, supply chain port expansion, and export development are entirely supported by U.S. companies in the private sector. Energy and infrastructure investors require predictability and prompt decision making when putting capital at risk. Unfortunately, investors are too often treated as adversaries pitted against federal regulators rather than as partners in rebuilding the nation.

Despite bipartisan agreement that the country’s permitting process is broken, outside stakeholders, each prioritizing their narrow interests, are inhibiting additional reforms. But there is a path forward.

Lawmakers should build on, and expand, the reforms enacted over the past decade. Perhaps the most notable accomplishment was the creation of the Federal Permitting Improvement Steering Council, a voluntary program for project developers charged with identifying best practices and implementing basic project management practices across 13 federal agencies. Additionally, the “One Federal Decision” framework enhances coordination among agencies with the goal of completing NEPA review for major projects in an average of 2 years.

Recent reforms have brought positive, yet incremental, transparency and showed promise in reducing average permitting timeframes. However, it is critical to note that those reduced average timeframes are just the tip of a massive permitting iceberg. They do not capture all associated phases of the project development life cycle, the years of early engagement prior to formally commencing review under NEPA, or the years that can follow the Record of Decision, which includes NEPA but does NOT address the required permits to procure land lease and use permits or authorize the project developer to commence construction. In short, these reforms improved permitting processes but also illuminated how many more opportunities remain to address the root cause of permitting delays and obstruction.

The negative consequences of only addressing parts of the process are easy to see. On average, project developers report that 20 to 30 percent of total project funding is wasted by unexpected delays and the resulting cost overruns that create an enormous disconnect between the funding Congress provides and private sector invests, and the ultimate delivery of the infrastructure America needs.

The cost of these pauses and restarts are rarely considered by lawmakers but estimates of the financial impact for major energy infrastructure projects begin at \$50 million per month in lost revenue. Add \$32 million per month in lost retainers on heavy machinery, architects, engineers, and construction crews who either sit stagnant or are reassigned to active jobs. Finally, tack on another \$50 million in annual costs as project sponsors adapt to shifting permitting goal posts requiring additional studies and mid-project redesigns, broken contract penalties, interest on purchased materials along with financial consequence of delays. That cost is ultimately passed down to citizens, either through taxes, tolls, or increased rates and usage fees.

One canard blocking progress is the notion that greater efficiency means fewer environmental protections. This is simply false. TPI is building a large coalition of diverse entities committed to achieving a balance between progress and protection. We are working with developers in every affected industry sector, officials at all levels of government, Tribes, non-government organizations, and community leaders to identify permitting “wins”. But to achieve this balance we must untangle the web of overlapping regulatory and statutory requirements, some enacted over 50 years ago, as we update and strengthen our permitting processes to meet America’s 21st

century energy and infrastructure challenges.

Congress can fix permitting problems by starting small with the creation of temporary initiatives to test new policies in the field under conditions ideal for compromise. One very achievable near-term step is to create a seven-year expedited permitting pilot program for a discrete list of the most critical projects, with focus on coordinating across all regulatory entities. Granting such an essential, yet temporary, new authority will create room to experiment with innovative and expedited permit authorizations. Outcomes can be scrutinized and studied by Congress for feasibility, then converted into more lasting reforms across all sectors.

It will not be hard to develop a list of priority projects. Just consider the offshore wind industry, which has more than 20 projects worth \$70 billion waiting to begin permitting reviews. (In many cases, review timeframes have already been extended within months of a project's initiation.) Add 22 electricity transmission lines that could deliver a 50 percent increase in U.S. wind and solar power but are struggling to get started. Major solar projects that are viable at utility scale could also be prioritized, along with critical mineral or rare earth mining projects that would bolster both U.S. mineral supply chains and national security. To ensure that a pilot program yields representative data across project types, Congress would also want to identify and study the pilot's impact on gas and water pipelines, broadband, railways, and port expansion projects.

TPI is also working to expand the permitting-council model to state and tribal governments, emulating the success achieved in Arizona earlier this year. New state coordinating offices bridge the information and communication gap between state and federal regulators. States, local governments, and Tribes often have numerous overlapping permitting responsibilities and they are rarely coordinated efficiently. State, local, and tribal permitting requirements are often best addressed in the field where the project is located, equipped with critical firsthand knowledge and expertise about local resources. State permitting councils will allow local governments to bring the federal government to the table early in the process.

To be clear, opportunities for progress are directly in front of us. The creation of FPISC and improvements offered in the "One Federal Decision" framework were just the first steps. Meaningful next steps to modernize and expand our energy infrastructure require that Congress

enact comprehensive reforms that extend beyond NEPA to eliminate avoidable delays at all phases of a project.

A project development cycle of 7-to-10 years is simply too long. Working together, we can advance permitting reforms to build 21st Century infrastructure that safeguards communities, protects the environment and cultural resources, creates jobs, and brings prosperity to every corner of America.