PERMITTING REFORM BRIEFING

Briefing for National Association of State Utility Consumer Advocates

Deep Dive into the Bipartisan American Affordability and Jobs Act (BAAJA) (current as of November 10th Manager's Amendment in Senate)

Electricity Customer Alliance

Agenda for Today's Briefing

- Introduction and Welcome
- Brief Mid-Term Elections Recap
- Overview of Bipartisan American Affordability and Jobs Act (BAAJA) and Status
- Walkthrough of Key BAAJA Provisions for Electricity Customers
  - Environmental Reviews
  - Transmission Permitting
  - Regional and Interregional Transmission Planning (including Rights of First Refusal)
  - Cost Allocation and Ratepayer Protection (including special provisions for computational loads)
  - Local Transmission Spending Investigations
  - RTO Governance Reform
  - Advanced Transmission Technologies
  - Market Access for Distributed Energy Systems
  - Generator Interconnection Reforms
  - Data Center Community Assistance Program

What the 2026 Midterms Mean for Energy

1

Affordability now frames energy policy for both parties

Voters focused on high electricity prices rather than policy or party labels. Every 2027–28 energy proposal will be judged primarily by its effect on bills.

2

Opportunities for energy action in 2027 moves to states, utility commissions and attorneys general

With Washington gridlocked, power costs, siting and data center rules will be set in 2027 legislative sessions and rate cases. Many states already have actions in place for data center moratoriums or regulation.

3

Divided government means oversight, appropriations and confirmations, rather than new law

Expect subpoenas, spending riders and slow-walked nominees from Congress while the administration keeps governing by executive action. Additional negotiation will be required to avoid a veto of passed bills.

4

New majority in Congress will explore renewed federal pathways for action

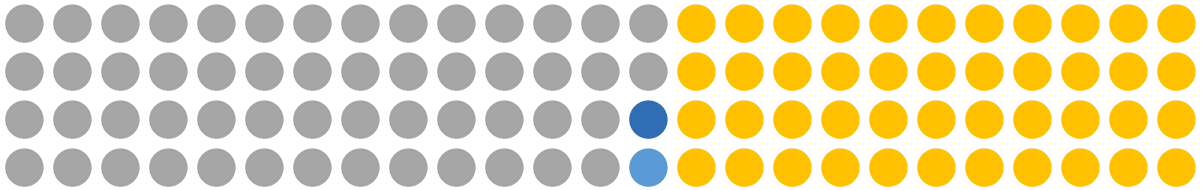
While veto will still exist, House Democrats will push federal action on transmission, clean energy, tax credits, and more; permitting bill will impact scope of those ambitions

120th Congress Landscape – Senate

55
Democratic caucus

1
Uncalled

44
Republicans



51 seats needed for a majority. Before the election: 53 Republicans, 47 Democratic caucus.

Net so far: Democrats +8, no Democratic-held seats lost.
Winning the uncalled race would make it 56–44.

Eight Republican-held seats flipped

Iowa (open): Josh Turek

Kansas: Adam Hamilton over Sen. Roger Marshall

Maine: Troy Jackson over Sen. Susan Collins

North Carolina (open): Roy Cooper

Ohio (special): Sherrod Brown over Sen. Jon Husted

South Carolina (special): Annie Andrews over Darline Graham

Texas: James Talarico over Ken Paxton

Mississippi: Scott Colom over Cindy Hyde-Smith

Primary upsets

Ken Paxton ousted Sen. John Cornyn; Julia Letlow ousted Sen. Bill Cassidy, then held Louisiana by about 2 points.

Still uncalled

Alaska: Mary Peltola (D) leads Sen. Dan Sullivan by 11,475 votes; final count due Nov. 18

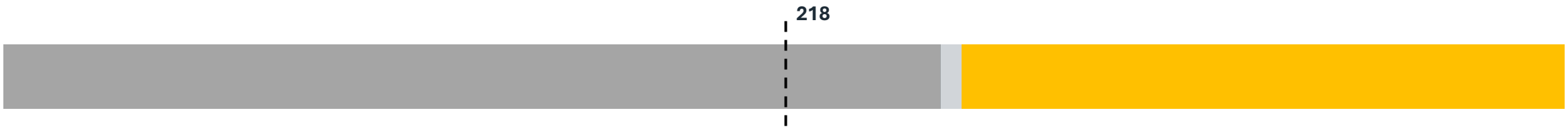
120th Congress Landscape – House

218
Needed for a majority

256
Democrats (called)

8
Uncalled

171
Republicans (called)



How we got here

- Before the election: 214 Democratic seats
- 44 districts flipped to Democrats, 3 to Republicans

Notable Republican losses

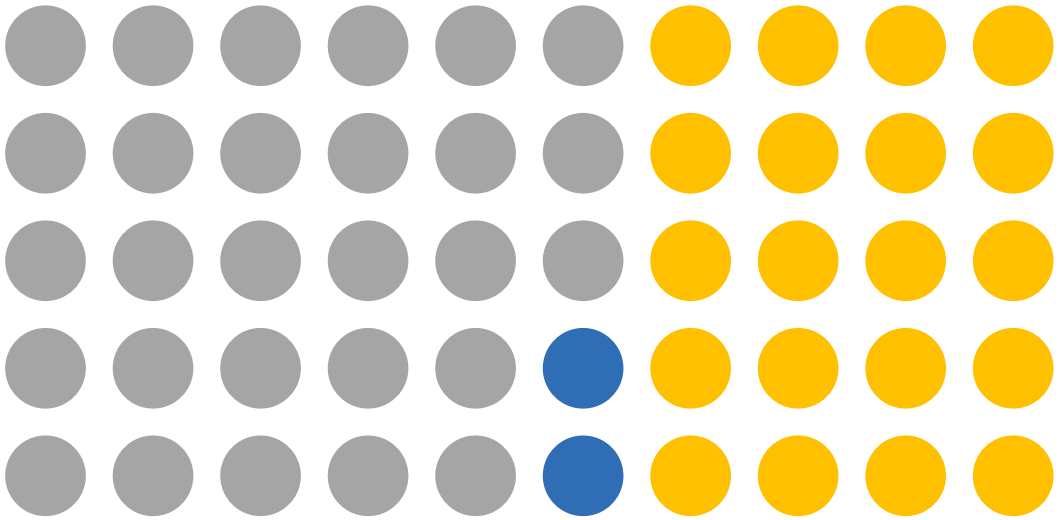
Richard Hudson (NC), chair of the National Republican Congressional Committee (NRCC)

Mike Turner (OH)
Mike Lawler (NY)
Jeff Van Drew (NJ)
Juan Ciscomani (AZ)
Jeff Crank (CO)
Rob Wittman (VA)
Addison McDowell (NC)
Brad Knott (NC)
Tim Moore (NC)

2027 Landscape – Governors

30 Democrats

20 Republicans



Before the election: 26 Republicans, 24 Democrats.

Six Republican-held states flipped

Georgia (open): Keisha Lance Bottoms

Iowa (open): Rob Sand

Nevada: Aaron Ford over Gov. Joe Lombardo

Ohio (open): Amy Acton over Vivek Ramaswamy

Texas: Gina Hinojosa over Gov. Greg Abbott

Alaska (open): Jonathan Kreiss-Tomkins

Other notable winners

Democrats: Klobuchar (MN), Haaland (NM), Benson (MI), Shapiro (PA), Crowley (WI)

Republicans: Donalds (FL), Blackburn (TN), Tuberville (AL)

Overview of the Bipartisan American Affordability & Jobs Act

- Overall, **we view the package as net positive for electricity customers**, addressing key long-held customer priorities and providing advocates with new tools, including:
  - Interregional and regional transmission planning, permitting, and cost allocation
  - Increased oversight of inefficient utility spending on low voltage local transmission projects
  - Ratepayer protection and cost allocation guidance regarding data centers
  - Greater use of Advanced Transmission Technologies
  - More competition in transmission investment
  - RTO governance reform
  - Opportunities for customer-sited resources to participate in markets

Bill dynamics and text are changing rapidly – ECA is engaged, educating Congress, providing recommendations, and updating customers

Environmental Reviews and Permit Certainty

What the Bill Would Do:

- Permit Certainty – Seeks to prevent federal agencies from arbitrarily revoking or delaying final authorizations for projects that have already been approved
- NEPA – Establishes firm timelines, a strict 150-day window to file legal challenges, and dispute resolution mechanisms
- Clean Water Act – Streamlines CWA 401 state water quality certifications and harmonizes litigation timelines and standards
- Judicial Review – Centralizes jurisdiction where project is located, limits judicial remedies by allowing projects to proceed as agencies address procedural issues, established standard of review for challenges to permit revocations

Why it Matters:

- These permitting reforms would increase project certainty and speed infrastructure development across the board

Implications for Customers:

- Improved investment certainty and faster permitting would allow energy to come online at a faster pace, strengthening grid reliability and speed-to-power.

Transmission Permitting (Section 2101)

What the Bill Would Do:

- Removes DOE's authority to designate National Interest Electric Transmission Corridors (NIETCs) as a trigger for FERC backstop permitting authority
- Revises FERC backstop authority by applying it to a smaller subset of lines that are over 230 kV and that meet customer benefit, public interest, and reliability gating criteria
- States still have 1 year to act; bill includes new requirements for state consultation and FERC consideration of state record

Why it Matters:

- Clarifies and narrows FERC backstop siting authority to target key lines that would benefit customers but face state permitting challenges
- More transmission would make more capacity available on the grid for both generation and loads to interconnect and secure grid service

Implications for Customers:

- When combined with regional and interregional planning provisions, creates pathway for permitting, constructing, and paying for high-capacity lines that deliver cost savings and more efficient outcomes (see ECA's Powering Growth and Affordability: The Role of Transmission in Economic and National Security Study)

Planning for Regional and Interregional Transmission (including Rights of First Refusal)

What the Bill Would Do:

- Requires a ***new*** interregional transmission planning process using common assumptions and timelines (Section 2103)
- Codifies existing regional planning requirements (FERC Order No. 1920)
- Establishes a defined list of transmission benefits to guide planning and cost allocation
- Must update regional and interregional planning processes every four years
- Prohibits federal rights of first refusal (ROFR) for projects selected in a regional or interregional plan (Section 2105)

Why it Matters:

- Lack of interregional planning process is a major gap in economic planning processes
- Codifying transmission benefits reduces disputes over cost allocation
- Codifying ROFR removal opens investment opportunities to non-incumbents

Implications for Customers:

- When combined with permitting provisions, creates pathway for permitting, constructing, and paying for high-capacity lines that deliver cost savings and more efficient outcomes (see ECA's Powering Growth and Affordability: The Role of Transmission in Economic and National Security Study)

Cost Allocation and Ratepayer Protection (Section 2107)

What the Bill Would Do:

- Applies new cost allocation requirements applicable to “computational load customers” (aka data centers)
- Establishes national policy that data centers bear the full cost of electric service
- FERC must revise 1994 Transmission Pricing Policy Statement to charge data centers rates that include both embedded cost and a reasonable assessment of the incremental cost of their transmission service
  - Incremental costs must be credited to annual revenue requirements to avoid double recovery
  - Explicitly requires FERC to develop lower rate for non-firm transmission service
  - FERC must propose rules for conducting a standardized analysis to identify a reasonable assessment of increment costs and evaluate cost reduction options
  - Applies to new and existing customers (from the date of a final rule)
  - Requires coordination with interregional and regional transmission planning and consolidate planning processes
- Directs states/utilities to:
  - Set a “ratepayer protection floor” that prevent any ”portion of the retail incremental cost” to serve data centers to be charged to other customers
  - Require financial assurance from data centers and charge them the full retail incremental cost even if they exit early

Cost Allocation and Ratepayer Protection (cont.)

- Additionally allows states to:
  - Charge data centers a rate in excess of retail incremental cost, with surplus rebated to other customers
  - Use open seasons to allocate service to data centers
  - Condition service on data centers bringing their own generation or taking interruptible service

Why it Matters:

- Fundamental reset of existing cost allocation practices for data centers
- Directly addresses calls to protect existing ratepayers from data center-driven costs
- Places new requirements on states/gives them new authorities

Implications for Customers:

- For data centers, mandates significant additional charges, w/ revenues used to reduce rates for others
- Mandates lower transmission charge for flexible computational loads than can take non-firm service, encouraging flexibility
- Depending on implementation, could result in revenue requirement changes and shifts with attendant impacts to rates; implications and scope of opening existing agreements unclear
- Scope of open season opportunity is unclear given state-federal jurisdictional issues and could require multistate coordination to be effective

Local Transmission Planning and Spending Reviews (Section 2104)

What the Bill Would Do:

- Creates new process for state public utility commissions to refer utility planning and development of local transmission to FERC for investigation
- Investigative team includes FERC staff and state PUC staff; must issue preliminary findings with 120 days
- Remedies available to FERC include requiring changes to local planning processes, reducing ROE on the local facilities in question, or imposing a fine (up to $5m) for investment found imprudent or harmful

Why it Matters:

- Local transmission spending is increasing in many regions, adding to customer bills and likely crowding out more cost-effective investments
- Local transmission planning and spending faces little review today and jurisdictional uncertainty; bill clarifies review authority and makes impactful remedies available

Implications for Customers:

- Addresses a key driver of rising electricity rates and directs incentives away from local projects to more cost-effective and efficient regional and interregional projects
- Reliance on PUCs to make referrals could limit impact if they lack resources to monitor and prepare referrals

RTO Governance Reform (Section 2116)

What the Bill Would Do:

- Amends Sections 205 and 206 of the Federal Power Act to clarify that FERC has jurisdiction over the "corporate governance" of RTOs/ISOs

Why it Matters:

- RTO/ISO governance—i.e., how they make decisions, and who participates in those decisions--has a direct impact on the market rules and tariffs they file with FERC
- Customers and states often lack adequate representation and a role in RTO/ISO governance

Implications for Customers:

- Provide an opportunity for customers and states to gain a greater voice in RTO/ISO decision-making, a long-sought objective

Grid-Enhancing Technologies and Advanced Transmission Technologies (Section 2109)

What the Bill Would Do:

- Directs FERC to establish best-available conductor standard (similar to *High-Capacity Grid Act*)
- Requires that utilities use GETs and ATTs, including best-available conductors, for new or modified transmission projects where the benefits would exceed the costs
- Establishes a presumption of prudence for filings seeking recovery of the costs of GETS and ATTs
- Adopts statutory definition of GETs to include dynamic line rating, advanced power flow control, transmission topology optimization, high-performance conductors
- Exempts upgrades within existing rights-of-way from environmental and historic preservation reviews

Why it Matters:

- A higher level of GETs/ATT adoption would unlock more capacity using the existing grid at lower cost

Implications for Customers:

- Makes needed grid capacity available and reduces costly congestion more quickly and at lower cost
- FERC requirements and presumption of prudence eases burden on customers to demonstrate that failing to invest in GETs/ATTs is unjust and unreasonable; presumption could also present risk of utility overspending on such technologies

Market Access for Distributed Energy Systems (Section 2108)

What the Bill Would Do:

- Declares it unjust and unreasonable for RTOs/ISOs to prevent the participation of qualifying behind-the-meter (BTM) distributed energy system (DES) aggregations (defined in the bill) in wholesale energy, capacity, or ancillary services markets
- Adopts specific statutory prohibitions on RTOs/ISOs imposing conditions on participation such as inappropriate metering and telemetry requirements or requirements to participate in energy markets
- Allows BTM DES facilities to participate in state programs while prohibiting double compensation in wholesale and retail markets for the same service
- Prevents distribution utilities requiring different metering and telemetry from that used by the wholesale market

Why it Matters:

- Bolsters existing regulatory efforts to open wholesale markets to distributed energy resource aggregations and removes known metering and telemetry and other barriers to participation

Implications for Customers:

- Makes new sets of resources available to participate in wholesale markets and drive down prices
- Provides new revenue opportunities for customer-sited resources and flexible loads

Generator Interconnection Reforms (Sections 2106, 2110, and 2111)

What the Bill Would Do:

- Requires adoption of computing technologies, such as AI, machine learning, and automation, to evaluate and process generator interconnection requests and expedite studies (Section 2110)
- Implements grid data access, transparency, and interoperability requirements to improve study accuracy and timeliness (Section 2111)
- Requires RTOs/ISOs to adopt a consolidated generator and load interconnection and transmission planning process (modeled after Southwest Power Pool's Consolidated Planning Process (CPP), with addition of planned customer load interconnections) (Section 2106)

Why it Matters:

- Generator interconnection delays continue to stall new supply needed to put downward pressure on rates
- Bill would address some of the drivers of study delays that cause interconnection queue bottlenecks
- CPP-like process intended to address delays caused by uncertain network upgrade costs

Implications for Customers:

- Takes additional steps to address causes of interconnection delays (but leaves many causes unresolved)
- Could reduce interconnection costs for new generation and find new transmission planning efficiencies through co-optimized consideration of generation and load

Data Center Community Assistance Program (Section 2117)

What the Bill Would Do:

- Creates a new program at DOE to provide technical assistance to state, local, and tribal governments regarding potential energy, water, infrastructure, economic, and other community impacts of data centers
- Requires DOE to create a Data Center Community Toolkit
- Allows DOE to provide an independent analysis of the impacts of a specific data center at the request of a state, local, or tribal government; DOE may not provide a recommendation and must remain neutral

Why it Matters:

- Addresses escalating local opposition to data centers by providing opportunities for analysis and assistance in understanding impacts

Implications for Customers:

- Provides an opportunity for state, local, and tribal governments to request technical assistance and analysis to inform energy-related impacts of data center projects

Thank You

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