



SEARCHLIGHT INSTITUTE

MEMORANDUM

To: Interested Parties
From: Jane Flegal, Senior Policy Fellow at the Searchlight Institute, and Pavan Venkatakrishnan, Policy Fellow at the Searchlight Institute
Re: The Bipartisan American Affordability and Jobs Act (BAAJA) is a Good Deal; Here's What Democrats Have To Like

The Bipartisan American Affordability and Jobs Act (BAAJA) makes a series of reforms to grid and permitting policy that stand to benefit Democratic priorities. **BAAJA must be enacted this Congress to ensure that if Democrats recapture the Presidency in 2028, we are able to get shovels in the ground and actually build new clean energy projects, and enact more ambitious policies.**

Building a Better Grid

- The typical interstate transmission line takes anywhere between 10 to 20 years to build. One of the primary reasons for this delay is because a single state can veto the line. **BAAJA gives the federal government authority to approve an interstate transmission line if a state fails to make a decision within a year.**
- The transmission lines with the most decarbonization potential are the ones that carry energy from a region with abundant clean energy resources to one that is more limited. Almost none get built today, because no one is responsible for planning them, and neighboring regions can't agree on who pays. **BAAJA requires neighboring regions to plan these lines together and allocates costs to beneficiaries.**
- Upgrading an existing power line with modern, higher-capacity wire can add a lot of capacity fast. But even when the work stays on land the utility already uses, it can trigger federal environmental and historic preservation reviews that take months or years. **BAAJA exempts these upgrades from that review, so utilities can add capacity to the grid we already have.**
- C2ES and Greenline modeling [projects](#) that this suite of transmission reforms will add about **100 GW** of new wind, solar and storage, **40 GW** of new interregional transmission capacity, and **\$7 billion less in grid costs** by 2035.

Holding Data Centers & Utilities Accountable

- We want data centers, in communities that want them, to connect to the grid where **their investments can bring the cost of power down for the public** and they can use clean power.
- Today, data centers are building their own gas plants because they can't get power from the grid fast enough. BAAJA **reduces the incentive to build off-grid gas by speeding up grid connections**: it makes it easier to build new power lines and clean energy projects, speeds up the process of connecting to the grid, and identifies room on the grid we already have. It also allows states to offer data centers non-firm service, where they agree to cut back when the grid is stressed, so they can plug in sooner using capacity that already exists.
- BAAJA sets a floor for protecting customers and gives states the tools to build on it, without taking away their authority over their own utilities. Under BAAJA, **the incremental cost of serving a data center of 20MW+ cannot be charged to other customers**. That includes the cost of new generation, storage, transmission, and distribution needed to serve it.
- Data centers must keep paying until those costs are fully recovered, even if they end their contract or stop buying power early. Before a utility upgrades anything to serve them, they must provide financial assurances sufficient to cover the cost. Together, this **protects other customers from the risk of paying for grid updates triggered by data centers that never materialize**.
- BAAJA holds utilities accountable for wasteful spending, including via **state-triggered federal review that can result in cuts to allowed profits and multi-million dollar fines**.
- Utilities make more money building new lines than getting more out of old ones. **BAAJA requires them to use technologies that squeeze more power out of existing lines** whenever the benefits outweigh the costs.

Keeping Politics Out of Permitting

- Agencies **cannot pull already-issued permits** — as Trump has done with offshore wind projects — absent a court order, violation, fraud or proven urgent harm, with the burden on the government. Sponsors who win recover costs stemming from delay plus 25 to 50 percent of costs incurred.
- **Every federal permit gets a deadline: one year in all cases except for projects that require an Environmental Impact Statement (EIS), for which the deadline is two years**. Projects get a clear yes or no in a reasonable time, instead of waiting indefinitely.
- Targeting a class of projects is disincentivized — a **pattern of intentional delay or denial against any project type** could result in damages of 50 to 100 percent of expected construction costs paid back to project sponsors.

- **These reforms make it much harder for an administration to interfere with energy projects**, like this one halting offshore wind projects that already had their permits, or agencies quietly stalling wind and solar approvals. Once a project has its permits, the government can't pull the plug without meeting a tightly-defined legal standard, and agencies can't sit on applications indefinitely.

Cutting Red Tape

National Environmental Policy Act (NEPA) Reforms

- **Today's permitting system works against clean energy. Clean energy projects make up a growing share of what needs federal review, their size means they need more of it, and they get sued often.**
- **BAAJA sharply limits opponents' ability to kill projects through endless environmental review lawsuits.** Only people who raised concerns during public comment can sue, and they have 150 days to file. If a judge finds the review fell short, the agency fixes it while construction continues, instead of the project grinding to a halt.

National Historic Preservation Act (NHPA) Reforms

- Historic preservation reviews hit clean energy especially hard. Recent [data](#) shows clean energy and transmission projects have review areas about **10 times larger** than other projects, and are more than **8 times as likely to receive "adverse effect"** findings under NHPA. **BAAJA focuses NHPA reviews on a project's actual footprint, appropriately limits visual effects analysis, and applies the same judicial reforms as NEPA.**
- **BAAJA also protects tribes at a moment when the administration is trying to cut them out.** It writes tribes' role in historic preservation reviews into law, guaranteeing them a seat from the start of consultation through every major decision. It funds the Historic Preservation Fund, which tribal preservation offices depend on, at \$200 million a year for a decade, after years of one-year extensions. And it creates a \$20 million-a-year grant program to help tribes document cultural and sacred sites without having to disclose where they are.

Clean Water Act (CWA) Reforms

- **BAAJA limits states' ability to block pipelines and power lines under the Clean Water Act Section 401 by focusing their review on direct effects on water quality.** In the near term, that helps gas pipelines. But the tool cuts both ways. Under current law, a red state could block a power line carrying wind energy from a neighboring state using the same authority blue states have used against pipelines. BAAJA closes that door for both.

- The bill also **doubles** the maximum term of Clean Water Act Section 404 general permits from 5 to 10 years, and it requires the Army Corps of Engineers to **maintain the nationwide permit for electric transmission.**

Endangered Species Act (ESA) Reforms

- **The Endangered Species Act reforms are modest.** Agencies get 60 days to finish Section 7 consultation, challenges must be filed within 150 days, and states can take the lead on reviews. **Wind and solar projects use a lot of land, which makes them frequent targets for endangered species lawsuits.** Indeed, two such cases recently [stymied](#) a 400 MW solar project and a 100 MW wind project in West Virginia.

What Courts Can Still Do

- Courts can still stop a project on the merits if it breaks the laws that protect our air, water, and wildlife. And if an agency approves a project without good reason, including ignoring real environmental harms, a court can still throw out the approval or halt the project. What changes is that a paperwork mistake in a procedural review can't kill a project on its own.

Time is of the essence. There is no guarantee that the next Democratic Congress can secure a deal that a lame duck Trump Administration will cosign. No deal means no constraints on his power to block projects he disfavors and will ensure Democrats use up precious time in a future trifecta trying to get to agreement when there's a good deal on the table today. **The time to act is now.**