The recent passage of the SPEED Act highlights one angle in current permitting reform debates: A focus on NEPA, which as a procedural statute might be more feasible to reform than other substantive statutes. Advocates for the SPEED Act have argued that it will help with a range of infrastructure projects, including transmission. But a key question is what do changes to NEPA alone get us in terms of clean energy infrastructure, versus other kinds of infrastructure projects, and what that might mean for climate policy?

First, as I've recently pointed out, the SPEED Act is really only about NEPA – even the permit certainty provisions appear to only matter for NEPA. So what would something like the SPEED Act get us?

Here, I'll focus on perhaps the most important infrastructure issue for a clean energy transition: electricity transmission, which is vital to allowing for the expansion of clean energy production, and more affordable electrification of transportation and other economic activities. Decarbonizing the economy will require massive amounts of transmission build out going forward. But we are doing a terrible job of building more transmission.

This recent infographic makes the case that NEPA matters for a lot of the transmission lines that will be constructed going forward. And that makes sense: long linear infrastructure projects like transmission will run into a lot of potential obstacles that might trigger federal permitting, such as cross federal lands, large waterway crossings, endangered species habitat, and more. So reducing NEPA compliance would help solve our problem, right?

Unfortunately, addressing NEPA compliance is necessary, but not sufficient, to facilitate more transmission build out. In particular, there are two other critical obstacles to transmission construction in the US that NEPA changes will not solve. First, there have long been major obstacles at the Federal Energy Regulatory Commission in terms of allocating the costs of major interstate electricity transmission projects among utilities and consumers – fights over cost allocation have led to litigation trench warfare that has caused enormous costs and delays.

But even more important has been the fact that states (and in some states, local governments) can veto passage of projects through their borders by denying eminent domain, or through rejecting regulatory approval requirements. Those problems do not apply to natural gas pipelines, which have federal eminent domain powers, and federal preemption of state and local permitting. In theory, there is

currently very limited federal preemption for permitting of electricity transmission, but courts have interpreted that power very narrowly, making it basically useless. Reforming both FERC cost allocation and state and local regulatory power is thus equally (if not more) essential as NEPA changes to addressing our transmission bottlenecks for transmission.

But that is not the case if we are talking about, for example, fossil fuel projects. Those projects don't have the same cost allocation problems from FERC. And they (generally) do not have the same problem of needing permissions from many different state or local governments to be approved. Production facilities for fossil fuels generally are located in individual jurisdictions, so they do not face the same collective action problem. (The same is true of individual wind and solar projects as a general matter.) And as noted above, natural gas pipelines enjoy federal preemption of local and state permitting. So just doing NEPA reform is likely to differentially advantage fossil fuel infrastructure versus electric or clean energy infrastructure. That's why past permitting reform proposals (such as the Manchin/Barrasso proposal from 2024) linked changes to NEPA and other permitting elements with transmission reform. Unfortunately, with a Republican party that is increasingly hostile to non-fossil fuel energy, such a deal may be hard to make – one reason I am pessimistic about the near-term politics for federal permitting reform.