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ESSAY

For a Clean-Energy Future, We Need Deregulation

Environmental protections from decades past are blocking the infrastructure urgently needed to combat climate change

By Ted Nordhaus

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Diablo Canyon, California's last operational nuclear plant, is due to be shut down in 2024. PHOTO: GEORGE ROSE/GETTY IMAGES

In Nevada's Black Rock Desert, local environmentalists and devotees of the Burning Man festival are using the National Environmental Policy Act (NEPA) to oppose a geothermal energy plant. Further south, the Sierra Club has joined with all-terrain vehicle enthusiasts to stop development of what would be the nation's largest solar farm, which it says threatens endangered tortoises. Along the Atlantic seaboard, plans for major offshore wind farms have been hogtied by provisions of the Jones Act, an obscure law that requires maritime cargo to be transported exclusively by U.S.-flagged ships when it is shipped between domestic ports. It is an obstacle that may ultimately prove beside the point because proposals to develop wind energy in American coastal regions have also faced a constant barrage of NEPA and Endangered Species Act (ESA) lawsuits designed to stop them.

The problem isn't limited to renewable energy. In California, environmentalists have used a state law designed to protect fish eggs as a pretext to close the Diablo Canyon Nuclear

Power Plant, the state's largest source of clean energy, while the California Environmental Quality Act has hobbled efforts to build both high-speed rail and high-voltage transmission lines that the state is counting on to meet its climate commitments. In Washington, D.C., meanwhile, the Nuclear Regulatory Commission peremptorily rejected last month the application of the first advanced nuclear reactor developer to seek a license before the commission, to cheers from leading environmental groups.

Across the country, foundational laws established in the 1960s and 70s to protect the environment are today a major obstacle to efforts to build the infrastructure and energy systems that we need to safeguard public health and save the climate. Though the Biden administration and Democrats currently propose to spend close to a trillion dollars on low-carbon infrastructure and technology, there is little reason to believe the U.S. is capable of building any of it in a timely or cost-effective way.

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Residents of Falmouth, Mass., rally against wind turbines, Feb 27, 2016. PHOTO: MERRILY CASSIDY-USA TODAY NETWORK

Indeed, far from clearing a path for the construction of a low-carbon, clean-energy economy, Democrats and environmentalists propose to add still more bureaucratic and regulatory requirements to the already Kafkaesque process of building any major energy or infrastructure project. President Biden's landmark executive order on environmental justice, for example, has directed every federal agency to screen all new infrastructure and clean-energy spending for disparate racial impact while carving out 40% of all spending for marginalized communities. Congress, meanwhile, has produced complicated formulas to guide its proposed new clean-energy investments in order to encourage the use of union labor and to achieve various other wage and occupational outcomes.

Greater equity and inclusion and more high-wage jobs are laudable goals, but these new policies are sure to make the already slow, costly business of building new infrastructure and energy projects even slower and more costly. And make no mistake, such projects are already shockingly difficult to build. Merely completing an environmental-impact statement for infrastructure projects now takes almost five years on average.

The implications are daunting for efforts to make progress against climate change. To reach "net-zero" greenhouse gas emissions over the next several decades, the best current modeling suggests that the U.S. will need to triple its existing transmission infrastructure for electricity in order to carry power from wind and solar farms and other renewable sources. Yet, over the last decade, the U.S. hasn't constructed a single major new transmission line.

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infrastructure and technology.

Other analyses, more pessimistic about renewable energy and our ability to build a massive continental electricity grid to support it, assume instead that the nation will produce close to half its electricity with a new generation of small modular nuclear reactors. But since its founding in 1975, the Nuclear Regulatory Commission has never licensed a new commercial nuclear reactor design that was subsequently built. The two most recent developers to try, Westinghouse and Nuscale, have been at it for well over a decade and have yet to generate a single electron.

Environmentalists have long argued that tackling climate change will require regulations to discourage fossil-fuel use, such as a carbon tax or a cap-and-trade program. In reality, there is no plausible path to a low-carbon economy without a serious deregulatory program. Today's thicket of environmental regulation at the federal and state levels thwarts permitting, siting, construction and operation of virtually every class of new infrastructure and technology. There are simply too many veto points and opportunities for obstruction, at too many procedural and jurisdictional levels, to conceivably embark on a rapid mission to remake the nation's energy economy.

Past Democratic administrations have made halfhearted "surgical" attempts to fast-track targeted infrastructure, such as wind and solar projects on public lands, without running afoul of their environmental supporters. Republicans, for their part, have made headline-grabbing proposals to repeal the National Environmental Policy Act and the Endangered Species Act, without much follow through, while simultaneously opposing eminent domain and the ability of federal authorities to pre-empt local control over issues like siting and permitting.

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