

**DOJ Anticompetitive Regulations Task Force:**  
***Targeting Red Tape that Hinders Free Market Competition***

**Response from NetChoice**

May 28, 2025

NetChoice commends the Department of Justice's newly established Anticompetitive Regulations Task Force and its mission to eliminate unnecessary regulatory barriers that hinder free market competition. As a trade association representing America's leading internet businesses committed to promoting free markets and limited government intervention, we recognize this initiative as a significant opportunity to address regulatory overreach that has stifled innovation and limited growth across the digital economy.

The task force's focus on identifying regulations that "impose undue burdens on small businesses and impede private enterprise and entrepreneurship" aligns with our longstanding advocacy for policies that enable American businesses to thrive in competitive markets without unnecessary government constraints.

We believe the Task Force represents a significant opportunity to address regulatory overreach that has accumulated over time, creating barriers to entry, and stifling innovation. As President Trump noted in Executive Order 14192, alleviating "unnecessary regulatory burdens placed on the American people" is essential to economic growth and prosperity.

In our comments below, we focus on energy-related barriers – a priority area identified in DoJ's public inquiry. The energy sector faces particularly burdensome regulatory barriers that limit competition, innovation, and consumer choice. Swift action to address these could unleash unprecedented economic growth and restore American technological leadership

### **Unleashing America's Energy Future**

Many federal and state regulations are well-intentioned but create or entrench market barriers. Nowhere is this more evident than in the energy sector, where overlapping regulatory regimes and outdated market rules hinder urgently needed investment in new energy generation, storage, and transmission.

America stands at an inflection point in energy demand. The rapid expansion of artificial intelligence, data centers, and cloud computing infrastructure is driving unprecedented electricity consumption growth. Meanwhile, the ongoing electrification of transportation, heating, and industrial processes is creating additional strain on an already stressed grid.

This surge in demand comes at a time when aging power plants are retiring faster than new capacity is being added, creating reliability risks and supply shortages. Yet our regulatory framework remains stuck in the past, creating barriers that prevent the rapid deployment of new generation, storage, and transmission infrastructure needed to power America's digital and economic future. Overlapping federal and state regulations designed for a different era now actively hinder the competitive market solutions required to meet 21st-century energy demands.

The stakes could not be higher. Without regulatory reform, America risks losing its competitive edge in AI and quantum computing to countries with more agile energy policies. Data center developers consider power availability in their location decisions, and some are exploring offshore alternatives to avoid domestic grid capacity problems. The economic implications extend far beyond the energy sector—reliable, abundant electricity is foundational to maintaining America's technological leadership and economic competitiveness.

The regulatory obstacles outlined below suppress competition, reduce capacity, jeopardize reliability, and deter innovation precisely when we need the opposite. Each barrier not only increases costs and delays but also compounds the others, creating a regulatory web that strangles energy innovation. Addressing these barriers is not just about energy policy—it's about ensuring America can power the technologies that will define the next century.

Below we offer several regulatory and structural obstacles that suppress competition, reduce capacity, jeopardize reliability, and deter innovation in the energy sector. We also offer concrete actions to address them.

### ***1. New Source Performance Standards for GHGs from Power Plants Are Hindering Competitive Gas Development***

The EPA's recent rules—New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39,798 (May 9, 2024), codified at 40 C.F.R. Part 60, Subpart TTTTA and 40 C.F.R. Part 60, Subpart UUUUb—impose unattainable greenhouse gas emissions limitations that are already forcing premature retirement of dispatchable generation. Primarily, these rules require continuous year-round capture, transportation, and storage of 90% of all CO<sub>2</sub> emissions from new gas and existing coal plants—a technological feat that, however desirable, has never been accomplished.

Electric generating plants that are unable to implement this undemonstrated system either must artificially limit their electrical generation or prematurely shut down. These rules stifle the ability to finance and permit new gas-fired generation at a time of growing demand, undermining both reliability and competition in the energy space. They will also force premature retirement of reliable coal plants, also undermining reliability and competition. While the rules are currently under litigation and may be reconsidered, the rule remains in effect and is impacting decisions now.

Requested Action: The Administration has indicated it will withdraw these rules, and DOJ should recommend and support the swift completion of a rulemaking to withdraw these regulations.

## ***2. A Suite of Misplaced Power Plant Rules Are Forcing Retirements Without Risk Justification***

A suite of misplaced rules are forcing the premature retirement of coal-fired power plants, which are needed as baseload and dispatchable generation at least until replacement, dispatchable generation can be deployed. For example, EPA's updated National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units (a.k.a. the "Mercury and Air Toxics Standards"), 89 Fed. Reg. 38,508 (May 7, 2024), codified at 40 C.F.R. Part 63, imposes new requirements based on unproven technologies that do not meaningfully address the risks the underlying statute was intended to mitigate. The federal "Good Neighbor Plan" over-reached with requirements that have been stayed by the U.S. Supreme Court pending challenges. The similarly misplaced Steam Electric Effluent Limitation Guidelines and Legacy Coal Combustion Residuals Rules disproportionately affect legacy coal-fired plants and contributes to reduced grid capacity and competitive generation diversity.

Requested Action: DOJ should recommend withdrawal of these rules through expedited notice-and-comment rulemaking.

## ***3. Interconnection Queue Delays Are Throttling New Entrants***

Before a generator can operate, it must obtain interconnection approval through the regional transmission organizations (RTOs) or independent system operators (ISOs), under FERC's oversight. Current queues are backlogged by 3–5 years. Some estimate that this represents over 2.5 terawatts of proposed resources. Potential solutions include market-based allocation of interconnection, more stringent penalties for those causing delays, and requiring more streamlined and proactive approaches to interconnection.

Requested Action: DOJ should encourage FERC to reconvene a stakeholder process with an emphasis on accelerating interconnection approvals and clearing existing backlogs.

## ***4. Transmission Upgrade Costs Are a Major Barrier to New Market Entrants***

Under current policy, when a new project triggers transmission upgrades—such as substation enhancements or line expansions—the generator is typically required to fund the full cost, even when upgrades benefit the broader grid. This creates steep barriers to entry, especially for smaller and independent generators.

Requested Action: DOJ should advocate for cost allocation frameworks that appropriately distribute transmission upgrade costs among all beneficiaries, including provisions for broadly beneficial network improvements.

### **5. FERC Rules Create Transmission Bottlenecks, Blocking New Energy Projects**

Many regions face acute transmission bottlenecks that prevent new generation from connecting to the grid at all, even where local demand and economics would otherwise support it. Reforming FERC regulations to allow for better competition by transmission owners (*e.g.* utilities) and for better regional transmission planning would help reduce the bottleneck.

Requested Action: DOJ should recommend federal support for multistate, forward-looking transmission infrastructure investments to unlock new generation capacity.

### **6. Regulatory Frameworks Are Ill-Suited to Small Modular Nuclear Reactors**

Small Modular Reactors (SMRs) offer a low-emissions, firm-power solution. Compared to traditional large reactors, SMRs are constructed from a standard design (rather than bespoke to each site), require lower capital costs, can be sited in more locations, and can come online faster. Unfortunately, however, the licensing process at the Nuclear Regulatory Commission (NRC) remains calibrated to legacy, large-scale reactors. Licensing can take 5–10 years and cost hundreds of millions of dollars. NEPA reviews, especially for first-of-a-kind reactors, create further delay. While the NRC is developing revised rules to accommodate small reactors, they are not expected before 2027. See <https://www.nrc.gov/reactors/new-reactors/advanced/modernizing/rulemaking/part-53.html>.

Requested Action: DOJ should recommend that NRC accelerate its rulemaking and permitting modernization efforts for advanced reactors to promote competition to swiftly deploy these promising resources.

### **7. Barriers to Behind-the-Meter Storage Undermine Resilience and Competition**

Behind-the-meter battery storage—customer-sited systems capable of reducing peak demand and improving reliability—faces unnecessary interconnection costs and restrictions on market participation. Many utilities also impose costly system upgrade requirements. These barriers prevent efficient participation in both retail and wholesale markets.

Requested Action: DOJ should encourage FERC to update regulations to allow behind-the-meter storage to compete fully in energy markets administered by RTOs and ISOs.

### **8. State and RTO Rules Block Deployment of Microgrids**

Microgrids—localized generation and storage systems—are restricted by laws in many states that prohibit private entities from distributing electricity across property lines. Additionally, RTOs and ISOs often create unjustified interconnection hurdles for microgrid systems. Other barriers continue to exist to aggregation of distributed energy resources (DERs).

Requested Action: DOJ should recommend federal support for state legislative reform, and encourage FERC to remove unnecessary state, local, and RTO/ISO barriers to microgrid interconnection.

### ***9. Environmental Review Delays Impede Market Entry***

Many generation projects, particularly those involving innovative technologies or new siting, are delayed by environmental reviews under the National Environmental Policy Act (NEPA). These delays impact all technologies and inhibit competitive market entry. Potential reforms include narrowing the set of actions that trigger NEPA review (major federal actions) and Environmental Impact Statement requirements, adding more categorical exclusions (CATEX), imposing limits on the length and depth of NEPA documents, and setting stricter rules on judicial review.

Requested Action: DOJ should support the dedication of additional federal resources for timely, robust NEPA reviews in line with recent NEPA reforms. Further, the administration should work, in concert with the Council on Environmental Quality (CEQ), to expand CATEX actions.

### ***10. Restrictions on Access to New Resources***

Significant energy resources lie within public lands and offshore. The prior administration had attempted to withdraw large areas from even being considered for leasing. A competitive approach to leasing public lands and the outer continental shelf will increase access to these much-needed energy reserves.

Requested Action: DOJ should support efforts by the Department of Interior to expand access to public lands and offshore resources.

### ***11. Barriers to Co-Location of Large Generation Resources with Data Centers***

Because of the high energy demands of data centers that power the AI revolution, one potential solution is to co-locate data centers with large electric generating facilities dedicated to providing power to the data center. This reduces concerns that the load imposed by data centers will jeopardize grid-wide reliability, reduces the need for building and connecting to transmission infrastructure, avoids increased costs to consumers, and provide the data center with consistent and contractual energy. But as of yet, there are no clear pathways on a state or federal level to provide regulatory certainty for co-location.

Requested Action: DOJ should encourage FERC to provide a clear regulatory pathway for approving co-location arrangements, including specifying which co-location arrangements do not require FERC approval, and work to craft state-level regulatory reform that enables co-location.

## **Conclusion**

NetChoice strongly supports the Anticompetitive Regulations Task Force's mission and appreciates the opportunity to provide these comments focused on energy. We believe targeted regulatory reform in these sectors can unleash significant economic growth, foster innovation, and enhance consumer welfare through more competitive markets.

The Task Force's work represents an important step toward realizing what Assistant Attorney General Slater described as "President Trump's economic Golden Age" by "unwinding burdensome regulations that stifle free market competition." We look forward to continuing engagement with the Department of Justice on these important issues and would welcome the opportunity to provide additional information on any of the regulatory barriers identified in our comments.