

DOE ramps up transmission support as Congress wrangles with permitting reform

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Market Intelligence

The US Energy Department is taking new action to speed transmission development as Congress wrangles over legislation to improve the infrastructure permitting process.

With the fate of those bills up in the air, the DOE and other agencies are trying to spur power line construction using existing authorities and funding, with the US potentially needing to double its rate of transmission build-out to reach national climate goals.

"We have a grid that is failing in so many ways," Energy Secretary Jennifer Granholm said May 16 during Accelerator for America's Infrastructure Week 2023.

With help from the Inflation Reduction Act and the bipartisan infrastructure law of 2021, the DOE is investing \$10 billion to encourage a transmission build-out, Granholm noted. The investments include a \$2.5 billion revolving loan program in which the DOE can be an "anchor tenant" in new transmission projects.

In addition, a group of federal agencies signed a recent memorandum of understanding (MOU) to move more quickly on permitting large transmission projects running through public lands.

The new agreement "uses the powers of the [Federal Power Act] to ... give the Department of Energy the ability to put a two-year shot-clock on transmission build-out," Granholm said.

Interagency pact, corridors proposal

Under the MOU, agencies will seek to limit the federal process of permitting electric transmission projects to two years after the government publishes a notice of intent to prepare an environmental impact statement.

The agreement was signed by the White House, seven agencies and the Federal Permitting Improvement Steering Council. The MOU directs the DOE to use its authority under Section 216(h) of the Federal Power Act to coordinate onshore transmission planning and permitting activities "across the federal government," according to a White House fact sheet released May 10.

Agencies must complete permit decisions and environmental reviews within two years. If the government misses a deadline or denies authorization, project applicants can petition the president directly for a permit.

Also in early May, the DOE sought comment on improving its process for designating "national interest electric transmission corridors" (NIETC). Transmission projects in those corridors can qualify for a range of federal support, including funding and advanced permitting procedures.

Under its new proposal, the DOE would form a process to designate "route-specific" corridors in which an individual transmission developer can propose a NIETC. Currently, the Secretary of Energy designates an area as a NIETC if existing or expected transmission constraints or congestion are adversely affecting consumers.

In its notice of intent, the DOE said it expected most proposed NIETC routes to "be associated with specific transmission projects under active development."

Renewable power trade groups praised the administration's recent actions.

The efforts "will unlock new financing and regulatory tools, improve coordination among federal agencies and transmission developers, establish clear milestones and deadlines for decisions, and provide early and meaningful consultation with impacted communities and key constituents," said Gregory Wetstone, president and CEO of the American Council on Renewable Energy. "These helpful actions demonstrate a commitment to building out the electric grid we need to realize America's clean energy future."

Berkshire Hathaway Energy, which has a number of transmission projects in the works, also backed the MOU and corridor proposal.

"The Biden administration has taken an important set of steps to expedite high-voltage transmission siting, working within existing statutes," the company said in an emailed statement. "Creating more certainty will ultimately reduce customer costs for much-needed new transmission projects."

Codifying those actions into law will "provid[e] additional certainty as we make material investments," the company added.

Legislative versus executive action

Updating US permitting laws has been a bipartisan focus for lawmakers this Congress. Both Democrats and Republicans have proposed a wave of bills to reform what can be a decade-plus process to approve large infrastructure projects.

Republicans are pushing to attach permitting reforms to a bill to avoid a government default that could happen as soon as early June. But Democrats want more help for transmission, one of many party-line divides that could defer enactment of permitting legislation.

With the legislative outlook unclear, Biden is going the administrative route.

"The federal government has many oars in the waters of the transmission project approval process," said Larry Gasteiger, executive director of the transmission advocacy group WIRES. "Getting all those oars rowing at the same time and in the same direction can help get needed transmission projects built and in service sooner and faster."

Although the efficacy of a new corridor designation process "remains to be seen," Gasteiger said the NIETC identification proposal "could prove to be a useful tool for getting certain types of transmission projects moving forward and remove logjams that have at times curtailed progress."

But lasting change will require action by Congress, particularly since a new administration could undo Biden's executive actions, said Ken Irvin, co-leader of law firm Sidley Austin LLP's global energy practice.

Although Biden can tell agencies to move faster on permitting, Irvin said the administration cannot change project opponents' rights to intervene. Updates to public comment periods and how appeals to agency decisions are brought and litigated will require action from Congress.

Furthermore, the Federal Energy Regulatory Commission is undertaking a number of transmission siting, planning and cost allocation rulemakings that will take time.

"I just don't know if [the MOU is] going to shave that 4.8-year environmental impact statement by a year or more," Irvin said in an interview. "I don't know how much it will move the needle as opposed to statutory changes that could cut that timeline in half."

Granholm also said permitting legislation will be needed to better upgrade and expand the grid. "We need Congress to really juice this," she said.

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