



Update on the Implementation of

**The Infrastructure, Investment
and Jobs Act Of 2021**

and

**The Inflation Reduction Act Of
2022**

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The Infrastructure, Investment, and Jobs Act of 2021 (IIJA)

(H.R. 3684, 117th Congress, 2021-2022)

Public Law No: 117-58 (11/15/2021)

Among other provisions, this bill provides new funding for infrastructure projects, including for

- roads, bridges, and major projects;
- passenger and freight rail;
- highway and pedestrian safety;
- public transit;
- broadband;
- ports and waterways;
- airports;
- water infrastructure;
- **power and grid reliability and resiliency;**
- resiliency, including funding for coastal resiliency, ecosystem restoration, and weatherization;
- clean school buses and ferries;
- **electric vehicle charging;**
- addressing legacy pollution by cleaning up Brownfield and Superfund sites and reclaiming abandoned mines; and
- Western Water Infrastructure.

Inflation Reduction Act of 2022 (IRA)

(Pub. L. 117-169, 136 Stat. 1818)

The IRA was signed into law on August 16, 2022, and directs new federal spending toward reducing carbon emissions, lowering healthcare costs, funding the Internal Revenue Service, and improving taxpayer compliance.

The IRA aims to catalyze investments in domestic manufacturing capacity, encourage procurement of critical supplies domestically or from free-trade partners, and jump-start R&D and commercialization of leading-edge technologies such as carbon capture and storage and clean hydrogen. It also directly funds environmental justice priorities and requires recipients of many funding streams to demonstrate equity impacts.



Inflation Reduction Act of 2022 (IRA)

The IRA directs nearly \$400 billion in federal funding to clean energy, with the goal of substantially lowering the nation's carbon emissions by the end of this decade. The funds will be delivered through a mix of tax incentives, grants, and loan guarantees. Clean electricity and transmission command the biggest slice, followed by clean transportation, including electric-vehicle (EV) incentives.



The IIJA and IRA created numerous programs to help modernize energy infrastructure. These include:

The Energy Infrastructure Reinvestment (EIR) program. With authorization to provide up to \$250 billion in loans, the EIR incentivizes communities to transform outdated legacy energy infrastructure to more efficient and clean alternatives.

Transmission Facility Financing and Transmission Facilitation programs. DOE can award \$2 billion in direct loans to construct or upgrade the transmission systems in designated areas of national interest. Under the Transmission Facilitation Program, DOE can borrow an additional \$2.5 billion to develop new interregional transmission lines and connect microgrids across the U.S., as well as upgrade the existing system.

Assistance for Rural Electric Cooperatives. Focused on communities serviced by rural electric cooperatives, this opportunity opens up \$9.7 billion in loans and grants for the purchase of renewable and clean energy infrastructure, or to improve energy generation and transmission efficiency.

Grid Resilience Grants programs. DOE's Grid Deployment Office is providing **\$5 billion to states, territories, Tribes, and grid operators to modernize the power grid** to better withstand natural disasters, and to reduce the likelihood of outages and disruptions.



FERC'S Backstop Authority

Congress promulgated FERC's authority to issue permits for the construction or modification of certain interstate transmission lines, i.e., FERC's "backstop authority," in the Energy Policy Act of 2005 ("EP Act of 2005"). The EP Act of 2005 added Section 216 to the Federal Power Act ("FPA"), which allows FERC to issue a federal permit to site projects located in National Interest Electric Transmission Corridors ("NIETCs") once they are designated by DOE.

However, federal circuit court decisions over a decade ago stymied FERC's backstop authority and vacated the only two NIETCs that DOE designated. DOE has not designated a NIETC since that time. The IIJA attempted to rectify this problem by adding more objective criteria to the list of considerations DOE uses to select and designate NIETCs and by clarifying when FERC can exercise its backstop authority.



Notice of Intent and Request for Information Regarding NIETCs

On May 9, 2023, the DOE's Grid Deployment Office issued a Notice of Intent and Request for Information ("NOI") regarding the designation of NIETCs. DOE's NOI is the first step in establishing a process to designate NIETCs under FPA Section 216(a), as amended by the IIJA.

NIETC designations open the door statutorily to all federal siting powers for transmission facilities. Under the prior process, DOE would study and designate a generally defined NIETC area. DOE now seeks comments from the public and interested parties to identify program elements that should be included to assist in developing final guidelines, procedures, and evaluation criteria for creating an applicant-driven, route-specific NIETC designation process.



FERC'S Backstop Authority Restored

On December 15, 2022, FERC issued a Notice of Proposed Rulemaking (NOPR) to revise its existing regulations concerning the exercise of FERC's backstop authority. The NOPR proposes five major changes to the regulations implementing the backstop authority. The NOPR includes the following proposals:

- **It clarifies that FERC's backstop authority may be used when a state has denied an application for qualifying transmission facilities.** The IIJA expressly gives FERC backstop authority under these circumstances and in doing so overrides the Fourth Circuit's decision in *Piedmont Environmental Council v. FERC*.



IIJA Changes to FERC'S Backstop Authority

- **It eliminates the one-year delay an applicant currently faces before it can pre-file with FERC.** Instead, the NOPR proposes allowing a developer to simultaneously file with a state and FERC. To recognize the primacy of states' roles in transmission siting, if a state has not made a determination on an application within one year of FERC commencing the federal pre-filing process, the NOPR proposes providing a 90-day window for the state to submit comments on any aspect of the federal pre-filing process and project proposal, including any information the applicant submitted.
- **It supplements the existing "Project Participation Plan."** An applicant is required to submit in the federal pre-filing process with a voluntary "Applicant Code of Conduct" that includes additional recordkeeping and information-sharing requirements for engagement between the applicant and affected landowners and general prohibitions against misconduct by an applicant. If an applicant chooses not to use the Applicant Code of Conduct, it must specify an alternative method of demonstrating that it has made "good faith efforts" to engage with landowners and other stakeholders, as required under the IIJA and explain why the alternative method is equal or superior to the Applicant Code of Conduct.

IIJA Changes to FERC'S Backstop Authority

- **It requires three new resource reports.** They include: the (1) Tribal Resource Report to identify Tribes that may attach religious and cultural significance to historic properties within the project vicinity and any other potential impacts on Tribal interests; (2) Environmental Justice Report to identify and describe impacts on environmental justice communities within the project area during construction and operation of the facilities along with any proposed mitigation measures; and (3) Air Quality and Environmental Noise Report to identify and address any reasonably foreseeable air emissions and noise impacts associated with the construction, operation, and maintenance of the proposed facilities.
- **It seeks comments on a number of procedural changes to FERC's regulations.** They include filing and formatting of applications, exhibits, notice and mailing requirements, and certain definitional changes. Specifically, the NOPR requests comments on revised definitions including: “environmental justice community,” “national interest electric transmission corridor,” “permitting entity,” “stakeholder,” and “affected landowners.”

Reactions from the Public and State Regulators

Initial comments were due May 17, 2023. FERC received a number of comments from state regulators, as well as industry and interest groups. State public utility regulators seemed to have consensus that FERC should not remove the one-year waiting period for an applicant to pre-file with FERC out of concern that the parallel review process will erode respect for states' siting procedures while causing administrative confusion and inefficiencies. Many state regulators expressed concern over FERC greenlighting projects rejected by the states.

- Southern Company Services, Inc. raised concerns similar to the state regulators that the removal of the one-year waiting period and commencement of parallel processes is inefficient and undermines states' interests in a manner contradictory to the FPA.



Reactions from the Public and State Regulators

- The Edison Electric Institute (“EEI”) and WIRES, representing investor-owned electric utilities as well as transmission providers, regional grid managers, customers, and service companies, also expressed concern that FERC not undermine state regulatory processes when developing federal pre-filing parameters.
- The EEI and WIRES joint comments also suggest increasing the length of a transmission line that would qualify for a categorical exclusion under NEPA to 100 miles (up from 10 miles or less or 20 miles or less within previously disturbed powerline or pipeline rights-of-way).

Reactions from the Public and State Regulators

The initial comments on FERC's NOPR seemed to reach consensus in supporting FERC's efforts to clarify its backstop authority and to increase public engagement and outreach to environmental justice communities.

With comments closing in June, 2023 on the NOPR, FERC now faces the difficult task of analyzing complex differences of view among the various stakeholders, especially regarding whether to provide for simultaneous federal pre-filing and state siting procedures.

Changing Political Climate

Joint Energy and Investigations & Oversight Subcommittee Hearing - Return on Unprecedented Investment: An Analysis of the Department of Energy's Implementation of the IIJA, the IRA, and the CHIPS and Science Act

May 10, 2023 Opening Statement, Energy Subcommittee Chairman Brandon Williams

“Today, the Energy Subcommittee and the Investigations and Oversight Subcommittee are holding a joint hearing on the Department of Energy's implementation of recently-passed R&D legislation, including the Infrastructure Investment & Jobs Act (IIJA), the Inflation Reduction Act (IRA), and the CHIPS and Science Act.



Changing Political Climate

With the passage of the IIJA and the IRA, the Department of Energy received an astonishing \$97 billion in additional funding outside of the regular appropriation process, of which \$45 billion falls under this Committee's jurisdiction. . . . The Department of Energy's recent facelift has rightfully received criticism from both industry and lawmakers. As members of Congress, we have a responsibility to conduct oversight of these immense new activities. I believe that we have a responsibility to question whether DOE has the protections, personnel, and expertise in place to carry out the IIJA and IRA appropriately.

Just last year, the DOE announced a \$200 million IIJA award to Microvast, a company with over 80% of its assets in China. Microvast is even listed on an SEC (SEC) watchlist of foreign companies not in compliance with the Holding Foreign Companies Accountability Act. I think we can all agree the Department's failure to adequately vet this company before making this \$200 million award is unacceptable and deeply alarming.”

Changing Political Climate

May 10, 2023 Opening Statement, Investigations and Oversight Committee Sub-Chairman Jay Obernolte

“Three weeks ago, the Committee held a hearing with many of the inspectors general in our jurisdiction to review their ongoing important work. Though I was impressed by much of the testimony, I was concerned to hear that the Energy IG, as well as the other IGs, felt as though they were not receiving the financial support necessary to conduct adequate oversight of the billions of dollars distributed from the IIJA and IRA, despite their parent agencies being well funded. . . . Of the billions of dollars that have recently been appropriated to the Department the vast majority have yet to be spent. My hope is that the Department is working closely with the OIG and others to ensure that mistakes in the planning process do not create significant problems when this money begins to be spent.”



Continuing Awards and Opportunities

Clean Energy Infrastructure Program and Funding Announcements

With \$97 billion in funding from the Bipartisan Infrastructure Law and the Inflation Reduction Act, the U.S. Department of Energy is focused on expanding its existing and creating new pathways for federal investments in research and development, demonstration, and deployment programs to help to achieve carbon-free electricity in the U.S. by 2035 and a net-zero economy by 2050.

<https://www.energy.gov/infrastructure/clean-energy-infrastructure-program-and-funding-announcements>

DOE Clean Energy Infrastructure Program & Funding Announcements

PROVISION NAME	FUNDING OPPORTUNITY ANNOUNCEMENT	STATUS	ANNOUNCEMENT DATE	RESPONSE DUE DATE
Critical Material Innovation, Efficiency, and Alternatives	Notice of Intent	N/A	7/27/2023	N/A
Carbon Utilization Procurement Grants	Funding Opportunity Announcement	Open	7/24/2023	4/30/2023
Front-End Engineering and Design (FEED) Studies for Production of Critical Minerals and Materials (CMM) from Coal-Based Resources	Funding Opportunity Announcement	Open	7/13/2023	9/11/2023
Grid Resilience State and Tribal Formula Grant Program	Awards	N/A	Summer through Fall 2023	N/A
National Interest Electric Transmission Corridor Designation Process	Request for Information	Open	5/9/2023	6/29/2023
Maintaining and Enhancing Hydroelectricity Incentives (EPACT 2005 Section 247)	Application Guidance	Open	5/8/2023	6/22/2023
Advanced Processing of Rare Earth Elements and Critical Minerals for Industrial and Manufacturing Applications	Notice of Intent	N/A	4/24/2023	N/A
Enhanced Use of Defense Production Act of 1950	Funding Opportunity Announcement	Open	4/18/2023	Concept papers - required for all applicants: May 19, 2023, at 5 p.m. ET. Full applications: August 1, 2023, at 5 p.m. ET.
Renew America's Nonprofits	Notice of Intent	N/A	4/11/2023	N/A
IAC - Centers of Excellence	Selections	N/A	4/7/2023	N/A
IAC Program and Building Training and Assessment Program	Funding Opportunity Announcement	Open	4/7/2023	Concept papers are required and are due on May 25, 2023 at 5 p.m. ET, with full applications due on July 31, 2023 at 5 p.m. ET
Technical Assistance for the Adoption of Building Energy Codes	Request for Information	Out for Comment	3/31/2023	April 26, 2023 5 pm ET
Technical Assistance for the Adoption of Building Energy Codes	Notice of Intent	N/A	3/31/2023	N/A



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