



Edison Electric
INSTITUTE

Siting & Permitting: Electric Transmission & Natural Gas Pipeline Infrastructure

Infrastructure Review and Permitting: Is Change in the Wind?

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Required Approvals: Wires & Pipes

§ Multiple federal approvals can be needed to site & permit energy infrastructure like electric transmission lines & natural gas pipelines, including:

- National Environmental Policy Act (NEPA)
- Clean Water Act (CWA)
- Endangered Species Act (ESA)
- Natural Gas Act
- Migratory Bird Treaty Act (MBTA)
- National Historic Preservation Act (NHPA)

§ Other approvals can be required

- State and local permits & approvals
- Access to rights-of-way on federal & Tribal lands
- Cross-border approvals

Siting & Permitting Reform Goals

- § Make process more efficient
 - Approvals can take years and add significant costs to projects
- § Coordinate agency reviews
 - Many agencies have jurisdiction over projects
- § Get to final decisions faster
- § Provide reasonable mitigation options
- § Ensure public & stakeholder participation
 - Timely input can be critical

Status of Reform Legislation-1

- § Vegetation management—signed into law as part of H.R. 1625, FY 2018 omnibus appropriations
- § Hydropower licensing reform
 - H.R. 3043 (McMorris Rodgers) passed House 257-166 in Nov 2017
 - Sec. 3001 of S. 1460 (Senate energy bill)
- § Natural gas pipeline permitting reform
 - H.R. 2910 (Flores) passed House 248-179 in July 2017
 - S. 1844 (Inhofe) introduced in Senate in Sept 2017

Status of Reform Legislation-2

§ Cross-border energy infrastructure

- H.R. 2883 (Mullin) passed House 254-175 in July 2017

§ Migratory Bird Treaty Act (MBTA)

- Cheney amendment to H.R. 4239 SECURE America Act reported by House Natural Resources Committee in Nov 2017

§ Corps of Engineers permit processing cost-sharing authority

- S. 2585 (Donnelly-Portman)
- House Transportation & Infrastructure Committee may address in WRDA bill

Status of Reform Legislation-3

§ NEPA/FAST 41 permitting & siting reform

- Several bills introduced, but no primary vehicle

§ Clean Water Act

- Discussion of legislation to address Sections 401, 402, 404

§ Endangered Species Act

- No major legislative vehicle yet, although most issues can be addressed through administrative/regulatory actions

Administration's Infrastructure Legislative Outline

- § Released Feb 12, 2018
- § Part 1: Funding and financing infrastructure improvements
- § Part 2: Additional provisions for infrastructure improvements
- § Part 3: Infrastructure permitting improvement
- § Part 4: Workforce development

Executive Branch Landscape

- § Energy development a major priority for Administration
- § In August 2017, President Trump issued Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”
 - Lays out framework for the Administration’s efforts to improve the federal process
 - Calls for “One Federal Decision” for major infrastructure projects
 - 12 federal Agencies signed MOU to implement “One Federal Decision” on April 9, 2018

EO 13807

- § Conduct environmental reviews & authorizations in a coordinated, consistent, predictable & timely manner
- § Take a coordinated approach when conducting environmental reviews & making authorization decisions
- § Complete all federal review & authorization decisions, including NEPA, within 2 years
- § Infrastructure plan aims to make the EO components more durable through legislation

One Federal Decision

- § EO 13807 identified the “One Federal Decision” process to be used by federal agencies reviewing major infrastructure projects
- § A lead federal Agency responsible for navigating a project through the environmental review & authorization process
- § CEQ overseeing the MOU process with the federal environmental permitting & authorization Agencies

FAST-41

- § EO 13807 attempts to give teeth to the Federal Permitting Improvement Steering Council (FPISC) established by the FAST-41 legislation
- § FAST-41, the result of bipartisan congressional legislation, establishes new procedures that standardize interagency consultation and coordination practices for review of major infrastructure projects
- § Created a new authority for Agencies to issue regulations for the collection of fees, which will allow FPISC to direct resources to critical functions within the interagency review process

FAST-41 (2)

- § Electric transmission & generation & pipeline projects eligible
- § Project sponsor participation is voluntary
- § Several electric infrastructure projects are currently on the permitting dashboard
- § Too early to judge the effectiveness of the program
- § A FPISC Executive Director has not been appointed, which has slowed full implementation of the program

Key Federal Agencies

- § Department of the Interior
- § Department of Agriculture
- § Department of Energy
- § EPA
- § FERC
- § CEQ

Department of the Interior

- § Extensive amount of nation's energy resources are located on or beneath the lands & waters managed by DOI
- § Thousands of miles of power line rights-of-way & renewable energy sites are located on lands administered by DOI's Bureau of Land Management
- § Secretary Zinke tasked with increasing the development & production of energy resources

DOI – Endangered Species Act

- § Energy infrastructure projects are subject to various ESA provisions
- § U.S. Fish & Wildlife Service (FWS) is responsible for implementing ESA for terrestrial & fresh water species
- § FWS & the National Marine Fisheries Service regulations give very authority, especially with respect to habitat determinations and mitigation
- § FWS is expected to issue a proposed rule soon on improving ESA implementation; final rule likely before end of year

DOI - Avian

- § December 2017 DOI Solicitor's "M" Opinion states MBTA does not create incidental take criminal liability arising from otherwise lawful activities
- § 2016 Bald and Golden Eagle Protection Act (BGEPA) rule for incidental take permits is complex & does not provide meaningful conservation benefits
 - BGEPA implementing regulations should be modified to simplify & expedite the process for obtaining incidental take permits for generation facilities & the energy grid

DOI - NEPA

- § Secretary Zinke issued Secretarial Order 3355 to implement President's EO 13807 with a focus on improving DOI NEPA reviews
- § DOI agencies must complete each final EIS within one year from the issuance of a Notice of Intent to prepare an EIS
- § In parallel, CEQ is in the process of developing new guidance to streamline the NEPA process across all federal agencies

DOI – National Historic Preservation Act

- § NHPA is administered by the Advisory Council on Historic Preservation (ACHP) & the National Park Service
- § Inconsistent implementation of NHPA Section 106 consultation requirements within & across agencies creates unnecessary delays & uncertainty for project schedules & budgets
- § No consistent standards & timeframes for project reviews & consultation requirements, which causes delays at each step of a multi-step process

U.S. Department of Agriculture – Forest Service

- § As is the case with DOI's BLM, thousands of miles of ROWs are located on National Forest lands with similar challenges for the siting, permitting & maintenance of electric infrastructure
- § ROW vegetation management on National Forests is a major issue
- § Utilities require access to perform vegetation management within & adjacent to ROWs to meet NERC reliability standards & reduce wildfire risk

Forest Service & Vegetation Management

- § Recent legislation establishes a more consistent & streamlined process for development, approval & implementation of VM, inspection, and O&M plans by electric companies, including timelines & benchmarks for approvals

Department of Energy

- § EOs 10485 & 12038 require a Presidential permit be issued by DOE before electric transmission facilities may be constructed or connected at the U.S. border
- § There are a number of transmission projects proposed or in the planning stage in the New England and the Great Plains states to import or export electricity across the U.S.-Canada border
- § DOE's implementation of EO 13807 should improve the efficiency of issuing Presidential permits

EPA

- § Clean Water Act sections 402 and 404 permit lengths should be extended to 10 or more years from the current five-year terms
 - The WH proposal includes extending 402 to 15 years, but not 404 permits
- § Some discussion of limiting state CWA 401 to limited to conformance with water quality standards & not activities outside states' authority
 - This would have to be done legislatively

EPA (2)

- § Reform Clean Air Act modeling tools to streamline the individual source permitting process
 - This would prevent the need for costly & time-consuming air quality modeling; EPA guidance on this issue is at OMB
- § Reform New Source Review (NSR) program to ensure it is not triggered when sources undertake efficiency improvements that don't increase hourly emissions
 - EPA is releasing new NSR guidance documents every month or so; most aimed at other industries except for “no second guessing” memo

The **Edison Electric Institute** (EEI) is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for about 220 million Americans, and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States.

In addition to our U.S. members, EEI has more than 60 international electric companies, with operations in more than 90 countries, as International Members, and hundreds of industry suppliers and related organizations as Associate Members.

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