

# Federal Energy Policy Update

Electric Power in the West  
January 26, 2023



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## Federal Electricity Policy – Big Picture



- FERC
  - Agenda of new Chair Phillips
  - Fate of pending initiatives with 2-2 FERC
- DOE
  - Infrastructure Investment and Jobs Act implementation
- Treasury/IRS
  - Inflation Reduction Act implementation
- EPA
  - Regulation under CAA, CWA, and RCRA
- SEC
  - Proposed climate disclosure requirements
- Government procurement of clean electricity
- Congress
  - Possible permitting reform
  - House oversight

## Washington Context



- Congress
  - Republicans hold a 222-213 majority in the House
  - Democrats have 51-49 majority (including 3 independents) in the Senate
  - Divided Congress makes energy legislation less likely
- Biden Administration energy agenda
  - Climate change and clean energy
  - Job creation/preservation
  - Environmental justice
  - Likely focus on administrative, rather than legislative, initiatives
- Overarching factors
  - European energy demand as a result of war in Ukraine
  - Inflation
  - Supply chain

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## FERC – Structure



- Independent agency
- Five commissioner slots
  - No more than 3 commissioners from one party
  - Serve for staggered 5-year terms
  - Appointments require Senate confirmation
- Chairman
  - Designated by the President from among sitting commissioners
  - Sets agenda

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## Composition of FERC



- Chairman Glick not reconfirmed
  - Sen. Manchin blocked consideration
- Comm'r Phillips designated as new Chairman
- Other commissioners
  - Comm'r Allison Clements (Democrat; term expires June 2024)
  - Comm'r James Danly (Republican; term expires June 2023)
  - Comm'r Mark Christie (Republican; term expires June 2025)
- One current vacancy
  - White House may pair a Democratic nominee and a Republican nominee in the confirmation process
  - Signal that Democratic nominee could be designated as the chair may complicate confirmation

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## FERC Agenda



- Key issues under former Chairman Glick
  - Policies to support clean energy transition
    - Transmission planning and cost allocation
    - Generator interconnection
  - Organized market expansion
  - Resource adequacy, capacity markets and relationship to state clean energy policies
  - Pipeline certificate policies – NEPA and need
- Early indications of Chairman Phillips' priorities
  - Reliability
  - Affordability
  - Transmission and interconnection reforms
  - Environmental justice

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# Transmission Planning NOPR



- FERC issued transmission planning NOPR in April 2022
  - One dissent and two concurrences
- Aimed at transmission grid planning needed to efficiently support clean energy transformation and electrification
- Augmented regional transmission planning
  - Would add long-term regional planning, with consideration of needs and benefits over 20+ years
  - Consideration of broad range of benefits – scenario analysis to capture range of futures
- Cost allocation for regionally planning projects
  - Gives affected states a chance to agree on project cost allocation
    - Ex ante, for all cost-allocated projects
    - Ex post, on a project-by-project basis
- Return of federal ROFR for jointly owned projects
  - Would reverse Order No. 1000 in part, by authorizing ROFRs for incumbents in FERC-jurisdictional tariffs for projects to be owned jointly by an incumbent and non-incumbent

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# Interconnection NOPR



- FERC issued interconnection NOPR in June 2022
  - Two concurrences
- Aimed at fixing generator interconnection log jams, which are significant obstacles to clean energy project development
- Proposes move to annual first-ready, first-served cluster studies
  - Cluster studies are a tool for evaluating a collection of viable projects at once and identifying needed upgrades efficiently
  - Focus is on projects in the queue that are ready to proceed with development
  - Network upgrade costs for cluster shared using proportional impact method; later interconnection customers share in cost if they benefit
- Would set higher study deposits, tougher site control and commercial readiness requirements, and add withdrawal penalties
- Proposes deadlines for study completion and penalties for transmission providers that miss completion deadlines
- Would standardize and accelerate the affected system study process

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## Transmission Cost Management

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- FERC held a technical conference on Oct. 6
- Concern about choosing cost-effective solutions and effective project cost management, especially for local projects that fall outside the rigors of the regional planning process
- Issues raised include:
  - Transparency of the local planning processes
  - Whether state regulators have sufficient resources to effectively oversee local project plans and costs
  - Possibly creating independent transmission monitors

## Other Pending Transmission Issues

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- Backstop siting
  - NOPR to implement IIJA reforms issued in December 2022
- Interregional transfer capacity
  - Technical conference held December 2022
- Base return on equity policy
  - DC Circuit vacated and remanded latest FERC opinions on base ROE policy
- Transmission incentives
  - NOPR and Supplemental NOPR pending

# IIJA



- Infrastructure Investment and Jobs Act (IIJA) enacted in late 2021
  - Bipartisan support
  - Authorizes \$970B over 5 years to support infrastructure investment
- Elements of particular interest to power sector
  - Transmission Facilitation Program (\$2.5B revolving fund)
  - Grid resilience grants (\$5B)
  - Smart grid grants (\$3B)
  - Hydrogen hub grants (\$8B)
  - CCUS support (\$8B)
  - Electric vehicle charging grants (\$7.5B)
  - Amendments to FPA 216 on backstop siting

# DOE Implementation of IIJA



- DOE reorganization in response to IIJA
  - New Undersecretary of Energy for Infrastructure
- DOE's Building a Better Grid Initiative
  - IIJA funding:
    - \$2.5B Transmission Facilitation Program
    - \$3B expansion of the Smart Grid Investment Grant Program
    - \$10B in grants for states, Tribes, and utilities to enhance grid resilience
  - Plus \$3B WAPA Transmission Infrastructure Program
  - Loan guarantees through the Loan Programs Office

## Inflation Reduction Act



- The Inflation Reduction Act (IRA) was enacted in August 2022 through the budget reconciliation process
  - Extends/creates large tax incentives for clean energy transition
  - Credit structures encourage:
    - Payment of prevailing wages and apprenticeship programs
    - Investments in energy transition communities
    - Domestic content
  - Direct pay for government utilities and cooperatives
- Extended clean energy production tax credit (PTC) (IRC 45) and clean energy investment tax credit (ITC) (IRC 48) for projects that start construction before 1/1/25

## Inflation Reduction Act (cont'd)



- New technology-neutral PTC (IRC 45Y)
  - For zero-GHG projects placed in service after 12/31/24
  - Credit of 1.5¢/kwh (with labor-related bonus) for first 10 years of operation
- New clean electricity ITC (IRC 48E)
  - Zero-GHG projects placed in service after 12/31/24
  - Base credit of 6% or bonus credit (complying with prevailing wage and apprenticeship conditions) of 30%
  - 10% bonus if domestic content requirements are met
  - 10% bonus for facility located in an energy community

## Inflation Reduction Act (cont'd)



- New Hydrogen PTC (IRC 45V)
  - Base credit amount of 60 cents per kilogram of clean hydrogen, multiplied by a factor varying with lifecycle emissions rate
  - Bonus credit amount equal to five times the base credit amount, topping out at \$3.00 per kilogram of clean hydrogen
- New Nuclear PTC (IRC 45U)
  - Base credit rate of 0.3 cents per kWh or a bonus credit of 1.5 cents per kWh
  - Credit reduced for sales at over 2.5 cents
- Amended Carbon Sequestration Credit (IRC 45Q)
  - Extended credit to projects that begin construction before January 1, 2033
  - Increased top credit values
  - Added new tax credit value category for direct air capture

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## Key EPA Activity Affecting Power Sector



- Biden Administration goal of carbon-free power sector by 2035
- Greenhouse gas performance standards for existing fossil generators under CAA 111(d)
  - Would replace vacated ACE rule (and CPP)
  - NOPR expected April 2023
  - Action informed by *West Virginia v. EPA*
- Greenhouse gas performance standards for new and modified fossil generators under CAA 111(b)
  - NOPR expected April 2023

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## Key EPA Activity Affecting Power Sector (cont'd)



- Hazardous air pollutant regulation under CAA §112
  - Action expected this spring to reaffirm MATS rule
  - Possible further action on hazardous air pollutants from coal plants
- EPA's proposed ozone transport rule based on 2015 ozone NAAQS would impose new NOx controls in 25 states
  - Final rule expected this spring
- EPA issued NOPR on fine particulate NAAQS this month
  - Final rule expected in fall
- Coal combustion residuals regulation under RCRA
- Effluent limitation guideline revisions for steam plants under CWA
  - NOPR expected March 2023
- Proposed rule on state water quality certifications under CWA § 401
  - Final rule expected late 2023

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## SEC Proposal on Climate Disclosures



- SEC proposed rule for mandatory climate risk disclosure in March 2022
- Applies to public companies
- Rationale:
  - Information on climate risk and climate risk management is material
  - Consistent, comparable, and reliable disclosures would aid investors and capital markets
  - Proposed rule builds on/standardizes existing reporting formats
- No announced schedule for final rule

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# Federal Procurement of Carbon-Free Electricity



- Executive Order No. 14057, issued in Dec. 2021
  - “Through a coordinated whole-of-government approach, the Federal Government shall use its scale and procurement power to achieve:
    - (i) 100 percent carbon pollution-free electricity on a net annual basis by 2030, including 50 percent 24/7 carbon pollution-free electricity”
  - ““Carbon pollution-free electricity” means electrical energy produced from resources that generate no carbon emissions, including marine energy, solar, wind, hydrokinetic (including tidal, wave, current, and thermal), geothermal, hydroelectric, nuclear, renewably sourced hydrogen, and electrical energy generation from fossil resources to the extent there is active capture and storage of carbon dioxide emissions that meets EPA requirements”
  - ““24/7 carbon pollution-free electricity” means carbon pollution-free electricity procured to match actual electricity consumption on an hourly basis and produced within the same regional grid where the energy is consumed”

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# Possible Permitting Reform



- Senator Manchin (D-WV), with the agreement of Democratic leadership, developed a permitting reform bill after enactment of the IRA
  - Proposal did not get enacted in 2022
- Proposal included amendment to FPA § 216 to provide more potent Federal authority to permit transmission projects
  - First step would be designation of a project as a national interest facility by DOE, after opportunity for hearing. DOE consideration of a project would be triggered by a FERC request.
  - The criteria for DOE project designation and for FERC construction permit were broad enough that many new projects could likely qualify.
    - Federal eminent domain would be available to projects receiving a FERC permit.
  - FERC construction permit would presumably preempt siting requirements under state/local law.
    - State regulation under delegated federal authorities (eg, CWA 401) would remain unchanged.
  - Bill was silent on relationship to regional transmission planning.
  - Bill would codify an approach to cost allocation for projects found consistent with national interest criteria:
    - Costs allocated in a manner roughly commensurate with estimated benefits distribution.
    - Suggests cost allocation across regions if justified by benefits.
- Unclear if/how permitting reform proposals will be taken up in the 118<sup>th</sup> Congress, with control of the chambers split

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## Wild Cards



- War of Ukraine, and European efforts to secure alternatives to Russian natural gas supply
  - US LNG exports part of the response
- Inflation and gasoline prices
  - Focus on rising energy costs for consumers
- Supply chain issues
  - Delaying project development and increasing costs

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Questions?

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