

How Infrastructure Act May Spur New Transmission Projects

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For decades, federal financial incentives for electric infrastructure have focused on electric generation, part of a long-standing effort to move the U.S. generation fleet away from carbon-emitting resources. To that end, solar generation, wind power and other zero-emission resources have benefited from specific financial incentives.

These incentives have typically taken the form of tax credits, such as the solar investment tax credit or the wind production tax credit. The recently enacted Infrastructure Investment and Jobs Act represents, for the first time, a major step in a new direction: direct funding for electric transmission investments, and new rules that could serve to speed the often winding road to the successful construction of major transmission projects.

Given the long lead time on major transmission projects, it will take time to see the results of this effort. But the wide variety of tools that Congress is bringing to bear to incentivize transmission investment suggests that the federal government is now firmly on the side of transmission expansion.

If successful, this new investment should serve to strengthen the electric system against extreme weather, reduce the cost of delivered power and increase the integration of emission-free resources into the U.S. generation mix.

Direct Funding for Transmission Projects

Much of the funding for transmission in the act is in the form of direct investment, including money allocated to particular items of concern.

For example, under Section 40101, the act establishes a \$5 billion program over the next five years to be administered by the U.S. Department of Energy for making grants related to, among other things, hardening the electric system against weather, including by undergrounding equipment; reducing the risk of wildfires from electric facilities; increasing the resiliency of the system to avoid disturbances; improving monitoring and control technologies; and replacing aged conductors.



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A similar program is contained in Section 40103, which provides \$5 billion over five years to be used for the development of demonstration projects for a variety of grid improvement purposes, including innovative transmission projects.

Investments in Electric Transmission as a Customer

In a novel approach to encouraging transmission development, the act for the first time allows the federal government itself, acting through the Department of Energy, to become a transmission customer of a new transmission facility.

Section 40106 of the act creates a transmission facilitation program. This program, funded by a direct investment of \$2.5 billion, and by the revenue the program itself generates, applies to significant new projects — either 1,000 megawatts in capacity, or 500 MW of capacity in an existing utility or transportation corridor.

Developers of such projects can apply to the Department of Energy asking the department to subscribe to a certain amount of capacity in the project, becoming an anchor customer, and even participating in designing, developing, constructing, operating, maintaining or owning an eligible project. The department can also issue a loan for such projects.

The program allows the department to purchase up to 50% of the capacity of the project at fair market value for up to 40 years, and then act as any other holder of transmission capacity, monetizing that capacity by reselling it, using it or the like. This new authority may act as a key financial support for assisting major transmission projects in moving forward.

Given the long lead time in developing a transmission project, it can be difficult to find customers willing to commit to a substantial portion of the transmission capacity. Under this new program, the Department of Energy can be that first key customer — providing the financial assurance necessary to attract additional customers who may hesitate to be first movers themselves.

Federal Siting Authority

The act also attempts to plug the holes in federal siting authority for certain electric transmission that exist in Section 216 of the Federal Power Act — which was added as part of the Energy Policy Act of 2005 — while also reinvigorating that effort to ensure the federal government takes an active role in transmission development for critical transmission infrastructure.

Section 216 required the Department of Energy to identify certain national interest electric transmission corridors, a study that the department has undertaken and revised over time. The point of these studies has been to identify the areas of the country where new transmission development meeting certain criteria is needed, due to congestion and other system constraints.

The act now requires that these studies be conducted at least every three years, ensuring these designations remain up to date. Where these new designations provide value is that the Federal Energy Regulatory Commission now has newly reinvigorated authority to site transmission facilities in these corridors if the relevant states will not do so.

Transmission siting authority — the authorization needed to construct electric transmission facilities in a given area — was formerly reserved to the states. Section 216 revised that in a narrow manner, allowing

prospective transmission developers of projects in these designated corridors meeting certain statutory criteria to seek authorization to construct from FERC.

But court decisions limited that authority, allowing these appeals to FERC only when the relevant state authority refused to act. Thus, rejections of siting applications could not be appealed. The act removes this limit.

Under the revised statutory text, if the applicable state agency denies the application to construct a transmission facility, or conditions approval so heavily that "the proposed construction or modification will not significantly reduce transmission capacity constraints or congestion in interstate commerce or is not economically feasible," the transmission developer can ask FERC to approve the project instead.

This change adds real teeth to FERC's backstop siting authority. No longer will the statute simply force state authorities to act within a year. If that state decision is negative or makes the project economically problematic, FERC can simply impose its own decision.

This could be essential for much-needed transmission development. Major transmission projects often run for hundreds of miles, sometimes across multiple states, but often serve transmission needs unrelated to the electric customers where the project will be built.

Long lines to bring emission-free generation from remote locations to major load centers are a good example. These projects are often unpopular, and therefore hard to develop, given the many landowners and other stakeholders affected.

Now transmission developers that have hit a wall in receiving state approvals can seek relief from FERC. It's likely those proceedings will remain contested at the federal level, and place intense scrutiny on FERC's decision making, especially if the transmission developer's application was ignored, rejected or too heavily conditioned at the state level.

Other Efforts

In addition to direct and indirect funding and the siting authority improvements, the act also includes various other efforts that could serve to indirectly assist the electric transmission industry, including:

- The development of an analytical framework for assessing electric system resilience, reliability, safety and security through a joint effort by the U.S. Department of Homeland Security, FERC, the North American Electric Reliability Corporation and interested stakeholders; and
- The assessment of high-voltage transformer risks and inventory, and how high-voltage transformers can be stored and deployed for recovery efforts.

Taken as a whole, these various programs, together with the reinvigorated federal backstop siting authority, represent the beginning of a new age in transmission infrastructure investment in the U.S. Although the electric industry has itself invested billions in transmission development, particularly in recent years, this legislation for the first time places the federal government in partnership with the electric industry on these issues.

In addition to the act, President Joe Biden's Build Back Better framework seeks to advance even more programs dedicated to zero-emission energy and other climate initiatives. For example, draft social

spending legislation pending before Congress to implement that agenda includes various transmission-related programs, including grants for transmission development, modeling and an investment tax credit for transmission developers.

The Infrastructure Investment and Jobs Act and the Build Back Better proposal recognize how transmission infrastructure and its ability to provide reliable and low-emission electricity will remain a key economic engine.

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