

## Energy Practice

NOVEMBER 2021

# Energy and the Infrastructure Bill: How Will It Solve Permitting Gridlock and Help Nuclear Power and Hydrogen Industries?

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The Infrastructure Investment and Jobs Act, which was signed into law by President Joseph Biden earlier this month, includes an important, permanent streamlining to the federal permitting and environmental review process for large infrastructure projects. The \$1.2 trillion legislative package also includes an incentives program for the country's struggling nuclear power plants, and it provides a more promising future for the country's hydrogen energy production efforts.

### What You Need To Know

- The newly-minted Infrastructure Investment and Jobs Act offers a range of new opportunities in a range of industries.
- The bill includes numerous initiatives in the energy and environment space as the Biden administration looks to curb climate change and have a carbon-free electric grid by 2035 and a carbon-free economy by 2050.

### *Streamlining Mechanism for Infrastructure Projects – One Federal Decision*

Known as "One Federal Decision" or "OFD," this inclusion has been fairly overshadowed amongst the headlines about the bill (it comprises about 15 of the 2,700 pages), but it has the potential to have a profound impact on expediency of bringing projects to completion. It codifies and combines prior executive orders from the Trump Administration, which were revoked by the Biden Administration, but are now agreed upon with bipartisan and construction industry support. It was generally viewed as a key factor in attracting Republican backing to the overall bill, which also amends and extends an Obama-era law called the Fixing America's Surface Transportation (FAST) Act.

In recent decades, large infrastructure projects have faced permitting delays with respect to, for example, the National Environmental Protection Act (NEPA), often ranging from five to ten years, incurring massive amounts of extraneous costs for owners and contractors while they navigated up to 30 different federal statutes. OFD effectively decreases the federal permitting timeline on infrastructure projects from up to ten years down to no more than two through a framework requiring, among other items, (a) agencies to coordinate immediately and create a joint schedule, (b) one agency to lead the process, (c) agencies to work at the same time and not wait in turn, (d) the generation of a readable review document with page limits, and (e) the production of a timely "record of decision" or "ROD" within 90 days of finishing review of the document.

As an indication of the magnitude of OFD's potential, a 2015 study revealed that six-year permitting delays for just roads, rails, and bridges accumulated more than \$1.65 trillion in extra costs. In other words, just fixing the permitting process could result in savings of more than the entire cost of the bill and does not require waiting to see how the new funds under the bill will be allocated. Further, even if the review results in a rejection of a project, removing years of waiting for an answer will free up capital and bandwidth for other development.

### *Nuclear Power Plants Getting a \$6 Billion Helping Hand*

Struggling nuclear power plants are getting a hand in Biden's infrastructure bill in the form of a \$6 billion tax credit program. The nuclear energy incentives program for nuclear reactors at risk of closure will be allocated across a four-year period and will not be allowed to exceed a qualifying plant's average projected annual operating loss in dollars per megawatt-hour. The credit will be available to a small

number of nuclear plants in the country, as operators will have to show that they are losing money even after receiving state funds.

However, the federal credits are good news for plants in states that do not offer subsidies. For example, this legislation could be used to support two nuclear plants in Ohio that were set to receive \$150 million in state subsidies as part of a now-defunct program. Nuclear plants in Maryland and Pennsylvania could also benefit from this program as neither state has a subsidy program for nuclear facilities.

The nuclear power industry has struggled with high operating costs and against cheaper electricity producers like natural gas and renewable energy. The number of nuclear reactors in the U.S. has decreased from 104 to 93 in the past twenty years. However, the Biden administration has said nuclear power is essential to allowing the country to have a carbon-free electric grid by 2035 and a carbon-free economy by 2050.

### *'Hydrogen Hubs'*

The legislative package includes \$8 billion to create four regional "clean hydrogen hubs" that will produce fuel for manufacturing, heating and transportation. Potential energy sources for these hubs will come from fossil fuels, renewable power, nuclear power, and possibly coal. The hubs will demonstrate hydrogen production, processing, delivery, storage and end use, with plans to grow the hubs into a national hydrogen network, the bill states.

The Secretary of Energy will oversee the program and solicit proposals for regional hubs. The four hubs have to be located in different regions of the country, with at least two hubs located in regions "with the greatest natural gas resources," the bill states. The \$8 billion is appropriated for fiscal years 2022-2026 to the newly created Office of Clean Energy Demonstrations.

The bill also earmarks an additional \$1 billion for research grants to reduce the cost of hydrogen produced by electrolysis. This research will help with producing hydrogen while reducing the environmental impact of that process.

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