

Permitting and Infrastructure Coalition ■ December 2020

Permitting Policy Recommendations

The MJB&A Permitting and Infrastructure Coalition¹ member companies collectively engage the Administration and agencies on potential permitting modernization efforts as well as regulatory and legislative opportunities to ensure energy infrastructure projects can proceed in a timely and cost-effective manner. The member companies design, permit, and operate fossil fuel-fired and nuclear power plants; electric and natural gas transmission and distribution systems; and solar, wind, and other renewable generation. Many of these projects are impacted by the implementation of federal permitting programs.

Deployment of clean energy infrastructure at the frequency and pace necessary to replace carbon intensive generation and meet climate goals is an investment-intensive endeavor, and timely and predictable federal permitting processes are crucial to provide our industry with the confidence necessary to continue making these long-term investment decisions. The recommendations below will increase the efficiency and predictability of certain permitting programs, while ensuring legal durability of decisions and continuing to protect and enhance the quality of the environment.

Reauthorize FAST-41 and Expand Project Eligibility: FAST-41 and the Federal Permitting Improvement Steering Council (FPISC) provides concrete timelines for federal permits and approvals that can ensure projects meet important deadlines. FAST-41 has bipartisan support. Our recommendations include:

- Identify opportunities to replicate the FPISC model (FAST-41) and/or expand the types of projects that can be managed through this process.
- Ensure eligibility requirements promote renewable projects that meet commercial operation deadlines to qualify for production tax credits and/or investment tax credits.
- Consider opportunities to propose legislative changes as part of an infrastructure package and reauthorization legislation.

National Environmental Policy Act (NEPA): Timeliness and certainty in the NEPA permitting process are crucial to provide our industry with the confidence necessary to continue making long-term investment decisions in clean energy infrastructure. Our recommendations include:

- Immediately appoint a NEPA lead and a NEPA-coordinating team within the Administration to coordinate NEPA-related efforts, including:
 - Issuing guidance regarding the use of categorical exclusions; project scope and schedule agreement at the outset of projects; the role of project proponents in the document preparation process; how and when to utilize (e.g., tier off) existing environmental documents and studies; and the scope of reasonable alternatives.

¹ The [MJB&A Permitting and Infrastructure Coalition](#) member companies include Duke Energy, Entergy Corporation, NextEra Energy, and PG&E Corporation.

- Establishing a working group with project proponents and other stakeholders to provide feedback on greenhouse gas (GHG) considerations for NEPA reviews.
- Establish a lead within each federal agency who is tasked with NEPA coordination.
- Include a directive to prioritize NEPA review in any stimulus funding that supports clean energy projects.
- Identify near term solutions to mitigate the risk of applying NEPA to projects where agency jurisdiction is limited and the agency’s decision cannot control the outcome of the project. Options include:
 - Amend the definition of “major federal action” to clarify this issue either through revised NEPA regulations or specific legislation included in any infrastructure or clean energy stimulus package. For example, for projects that receive federal financing or grants (e.g., USDA) or execute agreements (e.g., power purchase agreements or large generator interconnection agreements) with a federal agency (e.g., TVA or WAPA), NEPA should be limited to an environmental assessment or categorical exclusion if the project is located on private land, and no other federal nexus is present.

Migratory Bird Treaty Act (MBTA): The energy industry takes voluntary measures (e.g., Land-Based Wind Energy Guidelines and Avian Power Line Interaction Committee guidance) to protect migratory birds, and many of our member companies’ facilities and projects are affected by the uncertainty regarding the application of and enforcement under the MBTA. Our recommendations include:

- If M-Opinion 37050 and the ongoing MBTA rulemaking are withdrawn, FWS enforcement should revert to MBTA enforcement under the Obama Administration prior to the issuance of M-Opinion 37041.

Nationwide Permits (NWP) Program: The NWP program provides timely authorizations for regulated activities while ensuring no more than minimal adverse environmental impacts. Our recommendations include:

- Establish a working group to review aspects of the NWP program to ensure it can support the construction and operation of clean energy projects with minimal adverse environmental impacts in a timely and cost effective manner.
- Support modification of NWP 12 to apply to oil and natural gas pipeline activities only and creation of new NWPs C and D for electric utility line activities and other pipeline activities, respectively.
 - Support the creation of NWP D to cover utility line activities for water and other substances, including natural gas pipelines within a local distribution company (LDC). Also clarify that “utility line” includes hydrogen for the purposes of new NWP D.
 - Hydrogen has the potential to play a prominent role in a clean energy future, not only as a source of combustion for power plants, but also as an energy carrier with significant storage potential in an increasingly intermittent energy future. The ability to transport hydrogen via pipelines will be critical to the development of hydrogen energy solutions, and the ability to utilize the NWP program for this pipeline infrastructure will ensure projects with minimal adverse environmental effects can proceed in a timely and cost effective manner.
- Remove the pilot limitation for NWP 52 (Water-Based Renewable Energy Projects) so that all qualifying projects can utilize this NWP. The restriction of NWP 52 to pilot projects limits the ability of NWP 52 to facilitate the development of offshore wind generation projects and is unnecessary to ensure that projects have no more than minimal adverse environmental impacts.

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