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Climate law: What to watch at Interior, FERC and DOE

By Heather Richards, David Iaconangelo, Miranda Willson | 09/12/2022 06:54 AM EDT

The success of the Inflation Reduction Act hinges in part on how federal agencies distribute billions of dollars. Are they prepared, and what are their roles in implementing the law?

Bureau of Safety and Environmental Enforcement BSEE/Flickr (Offshore platform); Francis Chung/E&E News (Granholm and FERC headquarters)

The Department of Energy, Interior Department and Federal Energy Regulatory Commission are grappling with how to implement the landmark climate law and carry out President Joe Biden's priorities for shifting the country towards low-carbon energy.

Biden's signing of the Inflation Reduction Act — hatched in a deal between Senate Majority Leader Chuck Schumer and Energy and Natural Resources Chair Joe Manchin — set off a sprint for agencies to advance new programs, directives and rulemakings. That ranges from assisting the Internal Revenue Service in advancing clean energy tax credits to carrying out an overhaul of public land policies that advance wind, solar and new oil and gas.

"Since it was dropped by Manchin and Schumer as a done deal, everybody's trying to figure out how to implement," said Kathleen Sgamma, president of the Western Energy Alliance in Denver.

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Along with requiring extensive coordination between agencies, the implementation will likely kick off lengthy rulemakings amid challenging regulatory bottlenecks for large energy projects.

"Money isn't everything," said Kristin Eberhard, director of climate at the Niskanen Center. "There's also barriers to clean energy in the form of regulatory burdens and sort of NIMBY objections to actually citing transmission lines, and solar plants and wind farms and geothermal."

The climate law also will provide billions in incentives to upgrade and expand the electric grid and develop power lines for offshore wind and other resources, adding pressure to the Federal Energy Regulatory Commission's efforts to address bottlenecks in transmission development.

Since last year, the commission has weighed and proposed changes to the process for building new transmission infrastructure, which observers say is needed to support more carbon-free power.

In a letter to FERC last month, Democratic members of the House and Senate called on the agency to strengthen the policies it has issued thus far, describing its role as "complementary" to that of Congress with the passage of the climate law and other legislation.

"Clear direction from FERC is now more important than ever," the lawmakers said in their letter (https://subscriber.politicopro.com/eenews/f/eenews/?id=00000182-fe9a-df9d-a986-ff9f82990000).

The law also comes during an uncertain landscape for energy politics, considering the midterm elections and the prospect of Republicans gaining more seats in Congress.

Eberhard said the administration faces pressure to quickly implement climate and energy provisions that are sweeteners in red states — to evade "obstructionist" attitudes from GOP members.

"It's just a race against the clock to get some of those things flowing," she said.

But experts say it won't be easy for DOE, FERC and Interior to rapidly develop the rules and programs called for in the law, which included $369 billion for climate and energy. Here's what to watch at the agencies in coming months.

DOE

The Inflation Reduction Act is setting off DOE on a new bureaucratic odyssey, even as the department continues to grapple with how to dole out billions from last year's bipartisan infrastructure law.

The climate law will fund everything from building electrification with $4.5 billion in rebates to the repurposing of former fossil fuel power plants for clean power generation through a $250 billion loan program for "energy infrastructure reinvestment financing." It also offers a suite of new or extended tax credits for wind, solar, energy storage, low-carbon hydrogen and other technologies (*Energywire* (https://subscriber.politicopro.com/article/eenews/2022/07/29/how-manchin-schumer-would-change-energy-from-oil-to-solar-00048518), July 29).

Before the funds start flowing, DOE will have to write regulations and informal guidelines guiding the law's new programs and support the IRS in its management of clean energy tax credits. And eventually, it will have to help see through the siting, permitting and construction of new energy facilities funded by the law.

Former DOE officials say those tasks, which will kick off this year, are a monumental challenge.

"I actually do worry that a year from now, we might be talking about why [Inflation Reduction Act] funding is taking so long to start flowing," said Dan Reicher, a former assistant secretary of Energy during the Clinton administration and a onetime member of former President Barack Obama's transition team for energy.

"It's one thing to have the money and complete the regs," said Reicher. "But then you've got to go and actually site the major facilities that are going to be the beneficiaries of the new financial support. And that can be more challenging than getting the law passed and the regs written."

New DOE staff will also need to be brought on and trained, he added. DOE officials pledged last spring to hire as many as 1,000 people, but it's unclear if there is full staffing to implement the laws. DOE spokespeople did not respond to E&E News inquiries about how far along the department is in the hiring process (*Energywire* (https://subscriber.politicopro.com/article/eenews/2022/05/24/doe-eyes-up-to-1-000-new-workers-in-infrastructure-push-00034398), May 24).

DOE's Office of Inspector General, meanwhile, has questioned whether the department is well-prepared for the infusion of cash.

In a report issued late last month, the OIG wrote that DOE needs to improve its internal controls to prevent "fraud, waste and abuse" and hire more staff, if it is to effectively monitor Inflation Reduction Act spending (*Energywire* (https://subscriber.politicopro.com/article/eenews/2022/08/22/doe-poorly-equipped-to-handle-climate-law-cash-ig-00052690), Aug. 22).

In particular, the report focused on the mission of the Office of Clean Energy Demonstrations, which was created by the infrastructure law to fund large-scale demonstrations of clean hydrogen, carbon capture, advanced nuclear and other emerging energy technologies.

The Office of Clean Energy Demonstrations has spent much of the past year figuring out the design of those demonstration programs, which were funded with $5.8 billion under the climate law and another $21.5 billion from the infrastructure law. This fall, the office is expected to begin accepting the first project proposals.

Considering the magnitude of that funding, the Energy Department needs to recognize the "immense risks associated with these new programs and take assertive steps to mitigate" them, wrote the OIG in its report.

Tristan Abbey, who served as an energy and environment director to the National Security Council during the Trump administration, echoed the inspector general's warnings. He predicted that the Energy Department would find it a "huge challenge" to successfully oversee the construction of large new demonstration facilities.

"This is an agency that can't even throw things away on schedule," he said, recalling the department's delays in moving radioactive plutonium from a South Carolina facility for treatment and use in nuclear power (*Greenwire* (https://subscriber.politicopro.com/article/eenews/2021/09/29/sc-senators-debate-how-to-spend-525m-in-plutonium-deal-281347), Sept. 29, 2021).

The first phase of the Inflation Reduction Act's implementation also may reveal much about the Biden administration's approach on environmental justice. The president has pledged to reserve 40 percent of the "benefits" of federal clean energy investments for disadvantaged areas.

Yet-to-be-released DOE guidelines for Inflation Reduction Act programs could give further definition around what that pledge means, particularly for states that help disburse the federal funds.

Some environmental justice advocates, however, have served more as critics than as allies of the administration because of the Office of Clean Energy Demonstrations' soon-to-emerge demonstration programs for technologies like carbon capture and hydrogen made with fossil fuels.

Meanwhile, conservative groups are beginning to stir up the ghost of Solyndra — the solar manufacturer that won a half-billion-dollar loan backing from the Obama administration before going bankrupt in 2011 — when discussing the climate law, which passed Congress without a single Republican vote.

For example, the Republican National Committee on August 23 dubbed the law's clean energy provisions "Solyndra Scandal 2.0" in a Twitter post.

Backers of DOE's Loan Programs Office, which made the award to Solyndra, point out that despite the bankruptcy, the office's overall portfolio is currently operating in the black, given the success of other energy projects that won LPO loan guarantees.

"We've long, long ago paid off the loss," said Reicher. Meanwhile, the loan office has been deeply instrumental in advancing clean energy, including through a $465 million award to Tesla that helped the future juggernaut develop its factory in Fremont, Calif., supporters say.

But the political blowback that accompanied Solyndra's bankruptcy contributed to a slowdown of clean energy work at LPO, which finalized only one loan award during the Trump administration.

For LPO's defenders, memory of that blowback "remains a touchy subject," said Reicher, who has been a prominent advocate for ramped-up activity at the office.

If Republicans capture the White House in 2024 or one of the chambers of Congress in 2022, new obstacles could emerge for moving funds from the Inflation Reduction Act, he added.

"'Beware of the political winds' is one of the lessons here," he said.

Interior

The climate and infrastructure laws come as the Interior Department is also planning release of a mining road map and navigating how to boost both oil drilling on public lands and large renewable energy projects on the ground — and in the water.

"The stuff that's suddenly on DOI's plate is how to implement the [Inflation Reduction Act]," said Aaron Weiss, deputy director for the Center for Western Priorities, noting the law's updates to the oil and gas program for public lands like increased royalty rates.

"There are going to have to be a bunch of new rules and procedures to make the new leasing system happen, and I presume they're going to want to hold at least some lease sales in order to get permitting done on renewable projects."

The climate law hitched renewable permitting on public lands to ongoing oil and gas leasing. That opens the door to more oil sales from the Biden administration, which has slow-walked oil and gas leasing due to its climate commitments and held just one suite of onshore oil sales thus far. Interior still hasn't announced plans for new auctions, and its timetable in the wake of the climate law remains murky.

The Interior Department declined to answer questions on leasing for this article, but it shared a prior statement on the "historic and transformational investment" the Inflation Reduction Act will make towards the Biden administration's climate goals.

“We are committed to implementing the law, including direction regarding the federal oil and gas programs,” said Melissa Schwartz, Interior’s communications director, in the statement.

Sgamma, with Western Energy Alliance, said Interior needs to “get on with it.”

“It is clear that Interior needs to move forward with leasing,” she said. “Congress gave clear support for federal leasing in this bill.”

Offshore leasing for oil and gas is also in limbo, but Interior has a clearer path ahead for planning oil sales off the nation’s coasts.

Next week, the Bureau of Ocean Energy Management will hold a virtual forum to take comments on its five-year leasing plan for offshore oil and gas. The draft plan released earlier this summer was controversial and didn’t reveal the direction the administration would take with leases. It instead offered a range of scenarios, from holding no new leases for five years to conducting eleven auctions.

But because the Inflation Reduction Act requires ongoing offshore oil leasing to greenlight new offshore wind leasing, it is likely that new oil auctions will be scheduled in the coming months to meet a separate mandate in the climate law. That mandate would revive recently canceled offshore leases sales and quickly reinstate one held in the Gulf of Mexico last year that was later struck by the courts.

Offshore wind is a key priority for the White House, and Interior has plans to hold several wind lease sales — in the Gulf of Mexico and off the West Coast — while also developing future auctions in the Atlantic and Gulf of Maine. Under the law, new offshore wind auctions will have to take place within a year of an offshore oil and gas lease sale.

The agency has more than a dozen offshore wind projects seeking approval on existing leases. Last week, it released a draft environmental review on the latest — the 704-to-880-megawatt Revolutions Wind farm proposed off the New England coast. So far, Interior has approved just two of its target 16 utility-scale offshore wind farms in the U.S. by 2025.

Separately, the agency is aiming in the months ahead to advance its goal under the Energy Act of 2020 to permit renewable energy projects on land capable of producing 25,000 megawatts of electricity by 2025.

Solar power development is leading the pack, with BLM announcing last month that the 457-megawatt Palen Solar Project — which was approved during the Trump administration and guided through five phases of construction by the Biden administration — is now operational inside the Desert Renewable Energy Conservation Plan (DRECP) (*Greenwire* (https://subscriber.politicopro.com/article/eenews/2022/08/09/large-solar-project-now-operating-inside-blm-energy-zone-00050523), Aug. 9).

The Palen project, by EDF Renewable Energy, sits near three additional solar projects — the Oberon, Arica and Victory Pass photovoltaic power projects — that in the past nine months have been approved and were recently authorized to begin construction. Those three projects will have the capacity to produce 965 MW of electricity, or enough to power about 278,000 homes.

BLM announced in July that it is removing the equivalent of 185 square miles of public lands in southwest Nevada from new mining claims for two years while it studies seven proposed utility-scale solar power projects. If all seven are built as proposed, the agency said it would have the capacity to produce 5,350 MW of electricity — enough to power roughly 1.8 million homes (*E&E News PM* (https://subscriber.politicopro.com/article/eenews/2022/07/26/blm-to-study-seven-solar-projects-covering-118k-acres-00047998), July 26).

Among the seven projects is the 1,500-MW Gold Dust Solar project, proposed by Redwood City, Calif.-based Arevia Power. It would cover more than 17,000 acres of federal land, according to BLM data, and rank among the world’s largest solar projects in terms of energy output.

Overall, BLM has said it is processing applications for 64 utility-scale onshore renewable energy projects in the West, including power line projects allowing for connection to the electric power grid. If all are built, they have the capacity to add more than 41,000 MW of electricity to the Western power grid, BLM said.

But one question that will linger over the Interior Department this fall is what’s next for mining reform, considering it is leading an interagency working group created by Biden to address concerns surrounding mineral extraction.

After listening to stakeholders over the summer, the working group is expected to release recommendations by November 15 on the future of U.S. mining policy, which could affect both fossil fuel development and electric vehicles. Congress included the deadline in the recent infrastructure law that directed Interior to submit to Congress a report on modifying the permitting process for U.S. mines.

Prior to becoming secretary of the Interior, former congresswoman Deb Haaland worked with progressive lawmakers to advocate for robust changes to federal mining law, which has not been updated since 1872. Those shifts would have included the first-ever hardrock mining royalty, meaning those sorts of mines would pay the same sort of royalty for extracting resources on federal lands as oil, gas and coal projects.

However, Haaland is facing considerable pressure to abandon the mining policy principles she held in the House. Auto industry players have urged the working group not to support a new royalty or create onerous requirements for mines, citing fears about the scarcity of minerals available for electric vehicles (*Greenwire* (https://subscriber.politicopro.com/article/eenews/2022/09/01/ev-trade-group-uges-biden-to-spur-mining-on-federal-land-00054500), Sept. 1).

Both the traditional and renewable energy push under the administration could spark pushback from environmental groups, and some are already pressing for more ambitious conservation action — like the administration's initiative to protect 30 percent of U.S. lands and waters by 2030 — to protect public lands from being collateral damage to energy production.

"America's public lands are about to undergo massive industrialization from the triple whammy of [Inflation Reduction Act's] push for more oil and gas leasing, more expansive wind and solar production, and a major push for mining," said Randi Spivak, public lands director at the Center for Biological Diversity, in a statement.

"Amid the rush to ramp up renewable energy, it's essential that the administration fulfill its promise to update mining rules and not allow the free for all that exists under that are still operating under today's grossly outdated mining laws," she added.

Other pending Interior actions that could be revealed in the coming months are a decision on the Willow oil project in the Arctic — a legacy defining decision for the Biden White House (*Energywire* (https://subscriber.politicopro.com/article/eenews/2022/01/07/will-bidens-oil-plans-unleash-an-arctic-carbon-bomb-283177), Jan 7). Next steps are also expected for orphan well clean up on tribal lands funded by last year's infrastructure law.

FERC

At FERC, new rules may be finalized this fall aimed at preparing the power grid for an ongoing shift from fossil fuels to renewable energy — a transition likely to be influenced by the Inflation Reduction Act.

The independent commission proposed two rules this year as part of a sweeping undertaking intended to improve the process for building new transmission lines, allocating their costs among states and other parties and connecting clean energy projects to the grid.

"The Inflation Reduction Act was Congress putting its thumb on the scale and saying, 'We want to see even more investment in clean and advanced energy technology,'" said Jeff Dennis, general counsel and managing director at Advanced Energy Economy. "What that does is further underscores the need for FERC to act to address transmission planning problems and ensure that transmission planning is capturing all of these drivers of transmission needs."

But challenges and controversies may lay ahead if FERC moves forward with some of its transmission proposals. For example, a coalition of consumer advocacy groups, industrial energy consumers and others have come out against FERC's proposed plan to give electric utilities the exclusive right to build transmission projects in certain circumstances. While utilities argue that the proposal could spur innovative transmission solutions, critics say it would roll back competition in the energy industry and could make clean energy more expensive (*Energywire* (https://www.eenews.net/articles/get-rid-of-competition-ferc-and-the-push-for-power-lines/), May 6).

Some observers also say that FERC's reforms haven't gone far enough for renewables.

While the commission floated multiple new policies last year as an advance notice of proposed rulemaking, some ideas have not yet been introduced as proposed rules. That includes changes to the existing "participant funding" model, whereby generators are expected to fund upgrades that must be made to the transmission system to accommodate their expected load. Those network upgrade costs can be expensive, sometimes leading developers to cancel their projects, clean energy advocates say.

Other industry groups want FERC to establish an independent transmission monitor, an idea that the commission floated last year. While groups such as the Electricity Consumers Resource Council, which represents large industrial consumers of power, are worried about the cost implications for consumers from FERC's transmission reforms broadly, having an independent entity monitoring the transmission planning process could help alleviate that concern, said Karen Onaran, vice president of the Electricity Consumers Resource Council. However, she noted that the idea has not been included in FERC's proposed rules.

"Yes, we need more comprehensive planning that results in larger, more cost-effective solutions," Onaran said in an email. "Yet, FERC's push to widely socialize those transmission costs based on expected benefits will unduly saddle customers with costs for which they receive little to no tangible benefit."

Other than transmission, a major question for FERC in the coming months is its handling of applications for new natural gas pipelines and export terminals.

In July, FERC Chair Richard Glick said he hoped to revisit an earlier effort by the commission to update its approach to reviewing gas projects. Glick has argued that FERC is legally obligated to more thoroughly consider how new pipeline projects would contribute to climate change and affect communities in which they'd be built. But an attempt this year by the commission's Democratic majority to advance changes along those lines was ultimately withdrawn after industry groups and members of Congress protested the proposals.

With power prices in Europe having reached record highs this month, there will continue to be pressure on FERC to process gas export terminals, said Jon Wellinghoff, CEO and founder at Grid Policy Inc. who served as FERC chair during the Obama administration. At the same time, FERC must try to minimize climate change-causing methane emissions from the pipelines and other infrastructure it oversees, Wellinghoff said.

"FERC is going to have to look at those issues as well and try to do so in a way that can minimize emissions, minimize the escape of methane and do it as efficiently and cost effectively as possible," he said.

The commission's actions on natural gas in the coming months could influence the confirmation process for Glick, whose term formally ended June 30th. Glick was nominated by Biden to serve another term, but the Senate Energy and Natural Resources Committee has not yet scheduled a hearing to consider his nomination. Some observers have said they expect that all the Republicans on the committee will vote against him.

Aside from gas pipelines and transmission lines, the commission is expected to continue playing a role in the rollout of emerging energy resources. That includes hydrogen pipelines, as the Inflation Reduction Act said that FERC has oversight over future proposals to transport hydrogen gas across state lines.

In addition, FERC has not yet approved proposals from four out of six regional transmission organizations (RTOs) to incorporate small-scale energy resources like rooftop solar and home batteries into their power markets. Under a FERC order issued in 2020, RTOs and similar organizations that oversee the flow of power across swaths of the U.S. must permit those distributed energy resources to fully participate in their markets.

"If you don't have resources on the other side — battery resources, demand response and other flexible load control — that can ultimately integrate wind and solar, then your transmission doesn't do you any good anyway," Wellinghoff said.

Meanwhile, a proposal issued in June to try to speed up the interconnection process for new generation could help put battery storage resources on an "equal footing" with other, traditional generators, said Chip Cannon, a partner at Allen & Overly LP focused on energy regulation and the power sector.

"The new rules will go a long way toward streamlining the process for large-scale battery storage on the grid," Cannon said. "Just like hydrogen, in this new world we're in, it's going to be those types of technologies that are really the game-changer."

Reporters Scott Streater and Jael Holzman contributed.

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