Federal Policy:
Speeding Transmission Permitting and Minimizing Landowner Impacts

Key Takeaways:

- The Federal Government, via the Federal Highway Administration (FHWA), **clearly provides a pathway** for states to permit co-location of transmission lines along existing rights-of-way (ROW). (See FHWA 2021 memo discussion below.)
- State Departments of Transportation (DOT) retain authority to decide whether to permit transmission lines in state and interstate highway ROW, either through a **utility accommodation** policy or through recognition of an **alternative use**.
- 41 state DOTs have prohibitions in their utility accommodation policy preventing the co-location of transmission on interstate highway ROW.
- Federal legislation would clearly signal Congressional support for placing new transmission along existing ROW, incentivize state DOTs to adjust policies to allow for co-location, and build on decades of best practices for siting, permitting, and building this infrastructure.

A 21st century economy requires 21st century energy infrastructure. New demands are challenging the existing electric grid in new ways, requiring a significant and rapid expansion of the transmission backbone on which the grid relies. As we build out the energy system, the nation has a responsibility to consider linear infrastructure corridors for new transmission lines before asking private landowners to host them.

Benefits of Co-locating Transmission on Interstate Highway Rights-of-Way

- Speeds the transmission line permitting process: Dealing with one landowner in a state DOT compared to hundreds of private property landowners helps speed permitting and can reduce cost.
- Reduces burden on private property landowners; minimizing use of eminent domain: A transmission line project in Wisconsin that uses 100 miles of interstate highway ROW avoids impacting 300-400 private landowners.
- Mitigates environmental impacts: Highway ROW are already disturbed lands. Co-locating transmission lines in highway ROW has minimal environmental impacts.

Federal legislation would provide significant benefits, including establishing in statute that transmission can be sited on the federal highway system; allowing for a study that identifies best practices for siting, permitting, and building transmission in highway ROW; and incentivizing state DOTs to change their policies to allow for co-location by offering resources to support permitting, operational and maintenance expenses related to co-location. **Federal legislation would signal to states the value of co-location and build on decades of experience that many states have in successfully siting, permitting, and building in highway ROW.**

For More Information:

The FHWA 2021 memo State DOTs Leveraging Alternative Uses of the Highway Right-of-Way Guidance clarifies the ability to utilize the ROW for "Clean Energy and Connectivity" (CEC) projects. Notably, the guidance encourages state DOTs to leverage the highway ROW for "pressing public needs relating to climate change, equitable communications, renewable energy generation, electrical transmission and distribution projects, broadband projects, vegetation management, inductive charging in travel lanes, alternative fueling facilities, and other appropriate uses[.]"

Per the memorandum, there are two existing regulatory pathways that may be used for siting energy and communications projects in Federal-aid highway ROW. Approximately one quarter of all highways fall under this definition. Projects can obtain approval as a:

1. A **"Utility Accommodation"** allows utility facilities to be placed within highway ROW. To obtain a utility accommodation under 23 CFR 645, State law must consider the project type to be a utility. The 2021 memorandum clarifies that if State law considers renewable energy, electric transmission, or broadband to be utilities, then the utility accommodation can be used; or

2. An **"Alternative Use"** allows use of highway ROW for certain non-transportation purposes. To obtain approval as an alternative use of the highway ROW under 23 CFR 710, the FHWA must determine that "such occupancy, use, or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic." The 2021 memorandum clarifies that CEC projects are in the public interest and may be acceptable alternative uses providing that they comply with relevant regulations and statutes.

Note: The FHWA, in its 2021 memorandum, "encourages State DOTs to consider addressing these facilities through accommodation as a utility to the extent practicable and consistent with State law." However, a project that does not qualify for the utility accommodation may still use the highway ROW if the project qualifies under the alternative use provision. The FHWA had prohibited utilities in federal-aid highways since the advent of the interstate highway system but started relaxing prohibitions in 1980s in response to requests from telecommunications providers. Over the past 40 years, more allowances have been made for utility co-location.

See The Federal Government and Building Transmission Along Existing Rights of Way for additional information and sources.

About NextGen Highways

The NextGen Highways is a collaborative initiative promoting the use of highways and other existing rights-of-way as infrastructure corridors where electric and communications infrastructure are strategically and safely co-located in existing highway right-of-way. Learn more at NextGenHighways.org