



Energy Law

May 3, 2024



IRA's Energy Infrastructure Reinvestment Program

- **The EIR project category can support a wide range of projects that utilize existing energy infrastructure and revitalize communities, including:**
 - Upgrading or upgrading energy infrastructure so it can restart or operate more efficiently, at higher output, or with lower emissions;
 - Replacing retired energy infrastructure with clean energy infrastructure; and
 - Building new facilities for clean energy purposes that utilize legacy energy infrastructure.
- **Additionally, the scope of a project receiving EIR financing may include remediation of environmental damage associated with legacy energy infrastructure.**

Source: <https://www.energy.gov/lpo/energy-infrastructure-reinvestment>

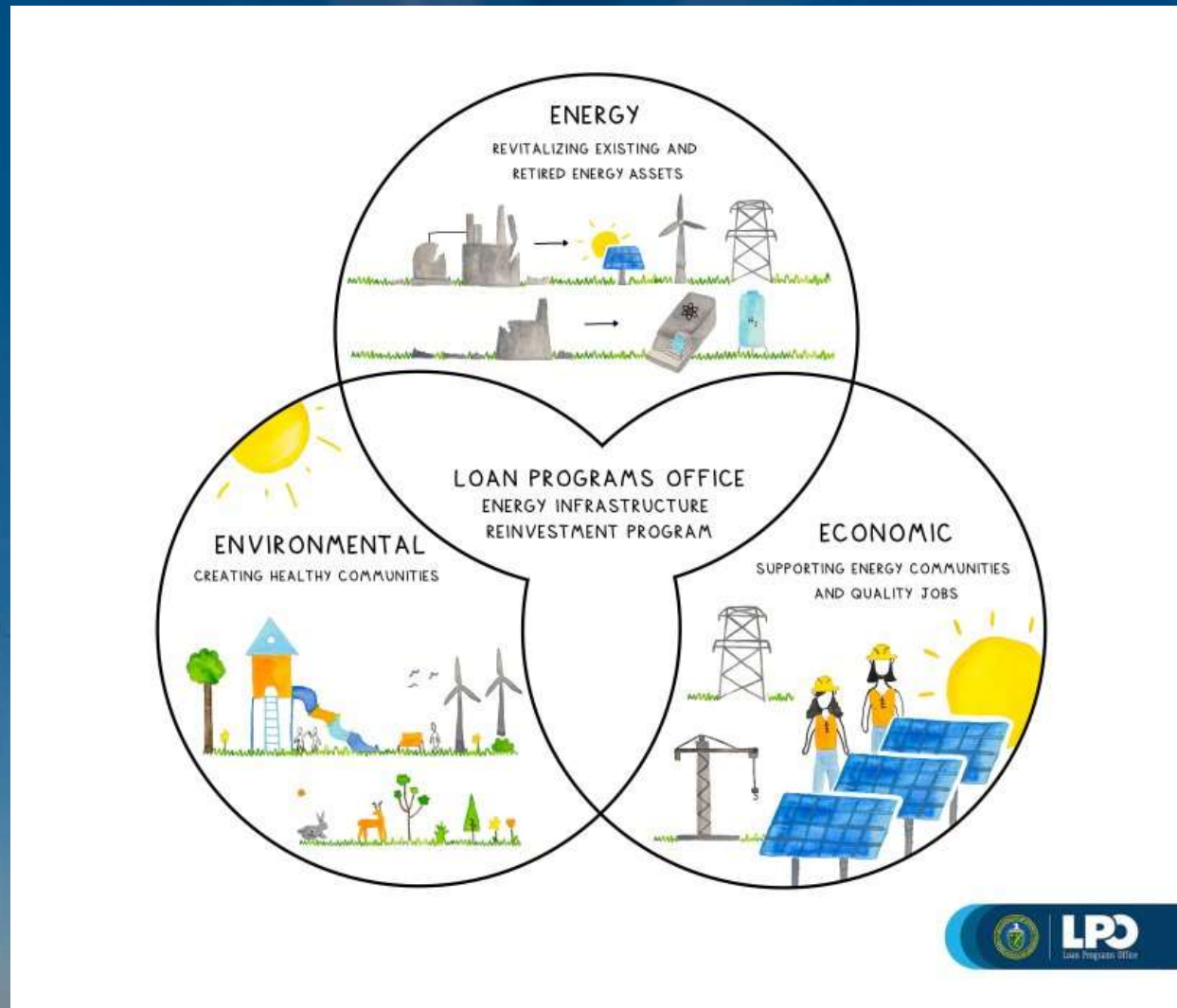
Relevant Regulations 1

- **10 C.F.R. § 609.3(e): An eligible Energy Infrastructure Reinvestment Project is a project that:**
 - (1) Is located in the United States;
 - (2) Either:
 - (i) Enables operating Energy Infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases; or
 - (ii) Retools, repowers, repurposes, or replaces Energy Infrastructure that has ceased operations; provided that if such project involves electricity generation through the use of fossil fuels, such project shall be required to have controls or technologies to avoid, reduce, utilize, or sequester air pollutants and anthropogenic emissions of greenhouse gases; and
 - (3) **May include the remediation of environmental damage associated with Energy Infrastructure.**

Relevant Regulations 2

- **10 C.F.R. § 609.10(b): Project Costs for Energy Infrastructure Reinvestment Projects include:**
 - (1) Costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, **site restoration**, access roads, and fencing;
 - (12) With respect to Energy Infrastructure Reinvestment Projects, **the cost of remediation of environmental damage associated with the Energy Infrastructure**; and . . .

Goals of EIR Program



Source: Artwork by Nicole Kelner; <https://www.energy.gov/lpo/energy-infrastructure-reinvestment>

Examples of Eligible Projects

- **Retired power plant (or other qualifying energy infrastructure) retooled, repowered, repurposed, or replaced with:**
 - Renewable energy and/or storage
 - Distributed energy (e.g., virtual power plant)
 - Transmission interconnection to off-site clean energy
 - New manufacturing facilities for clean energy products or services
 - Nuclear energy
 - Fossil or biomass generation with carbon capture and sequestration
- **Reconductoring transmission lines and upgrading voltage**
- **Retrofitting of fossil-fuel power plant with carbon capture and sequestration**
- **Repurposing oil and gas pipelines (e.g., for H₂, CO₂)**
- **Upgrading or retrofitting refineries (e.g., for biofuels or hydrogen)**
- **Upgrading or upgrading existing generation facilities (with emissions control technologies for projects involving fossil generation)**
- **Energy infrastructure repurposing for decarbonization**

Source: <https://www.energy.gov/lpo/energy-infrastructure-reinvestment>

Clean Repowering

Executive Summary

More than 1.3 TW of proposed clean energy projects are stuck waiting years for permission to connect to the grid, while the demand for reliable, clean energy is skyrocketing.

Clean repowering – siting clean energy alongside existing fossil generators to leverage their grid connections via much faster surplus or generator replacement processes – is a near-term fix to help break this logjam.

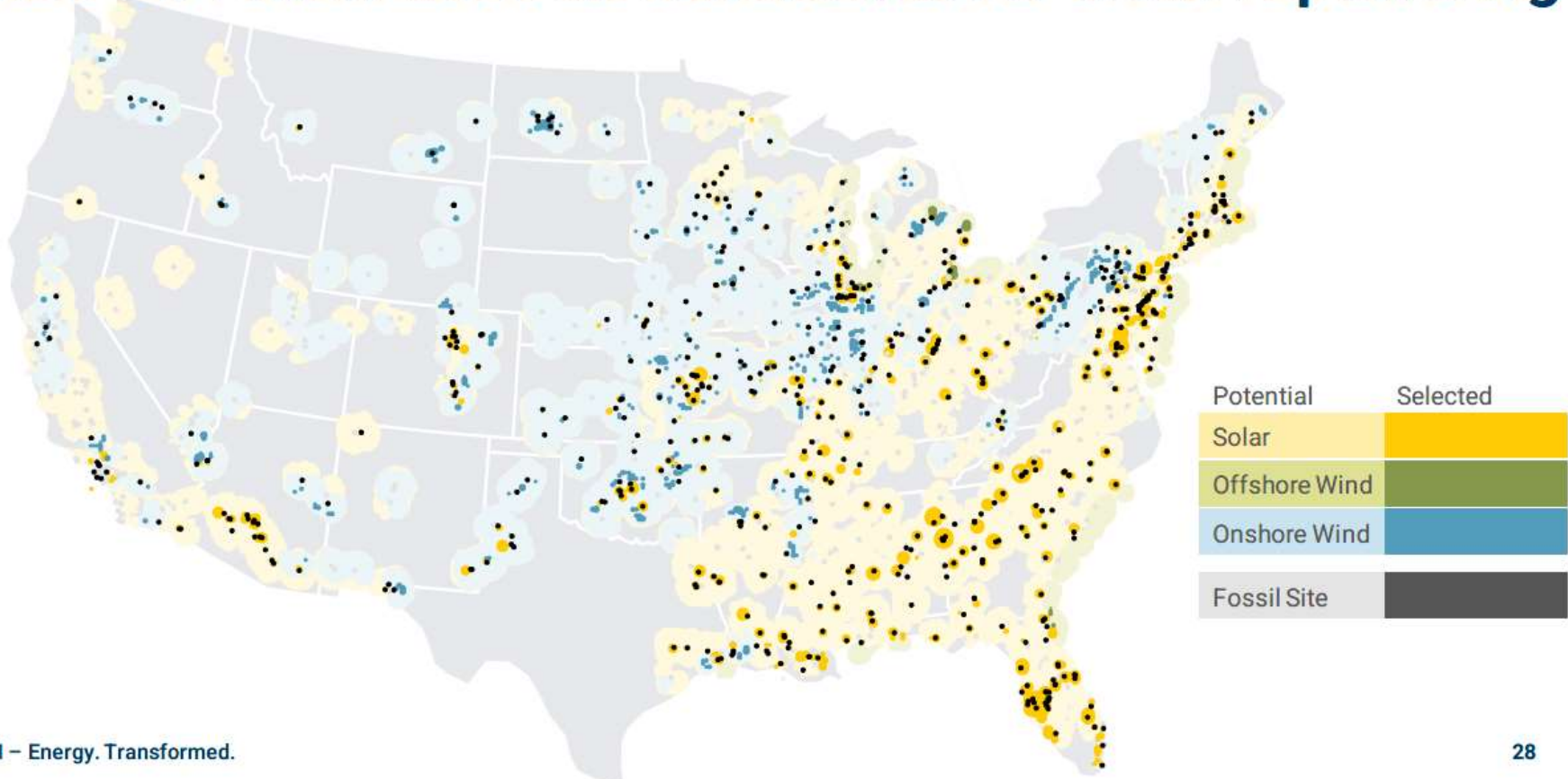
We have identified 250 GW of economic clean repowering opportunities on an asset-by-asset level across the country that make use of new IRA incentives and surplus interconnection or generator replacement processes.

These are “no-regrets” opportunities, as they can reduce NPV of system costs by \$21B through 2054 relative to BAU without impacting grid reliability, and are primarily concentrated in MISO, PJM, and the Southeast.

Establishing a generator replacement process in regions currently lacking a streamlined process could further expand this opportunity, unlocking up to 36 GW in PJM and ERCOT.

Location of Potential Clean Repowering Projects

The model selected the most economically attractive sites for renewables as candidates for clean repowering



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Managing Environmental Liability/Risk

- **Conduct robust environmental due diligence, directed by environmental counsel, to identify and quantify known and likely environmental risks, including some or all of the following:**
 - a. Phase I environmental site assessment;
 - b. Phase II environmental site assessment(s);
 - c. Review and evaluation of environmental documentation disclosed by seller/lessor;
 - d. Review and evaluation of environmental agency files;
 - e. Assessment of how project construction and operation will intersect with current and future investigation/remediation activity; and
 - f. Development of order-of-magnitude remedial cost estimates for a reasonable range of scenarios.

Managing Environmental Liability/Risk

- Once due diligence is completed, identify and evaluate both cost and effectiveness of available liability/risk transfer strategies, which could include:
 - a. Insurance products;
 - b. Statutory protection, such as CERCLA liability protection via compliance with “all appropriate inquiries” standard;
 - c. Regulatory protection, such as comfort letter or agreement to limit cleanup liability; and
 - d. Contractual protection, via representations, warranties, and indemnities by seller/lessor.

Questions?



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