

S.1

To modernize and expand the power grid for operation into the 21st century, promote renewable energy, including related interconnections, and streamline the permitting and siting processes for interstate transmission projects.

IN THE SENATE OF THE UNITED STATES

December 14, 2023

Mr. EMPERIO (for himself, Mr. HOFFMAN, Mr. ROSS, Mr. HERSEY, Mr. LeMAIRE, Mr. ANKA) submitted the following bill;
which was referred to the Committee on General Welfare.

A BILL

To modernize and expand the power grid for operation into the 21st century, promote renewable energy, including related interconnections, and streamline the permitting and siting processes for interstate transmission projects.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Energy Modernization, Power Enhancement, Renewable Integration, and Oversight Act of 2023" or the EMPERIO Act.

SEC. 2. FINDINGS.

Congress finds that— (a) the current U.S. power-grid is over a century-old, with its infrastructure failing and wholly unable to serve the demands of the 21st century;

(b) to prepare for the future, tap into renewable energy potential, and meet Federal sustainability targets, it is necessary to dramatically expand the current electric grid, including its transmission capabilities;

(c) that the U.S. requires, according to most estimates, at least 47,000 gigawatt-miles of new power lines by 2035, which requires that the pace of construction be doubled;

(d) excessive regulation and convoluted approval processes have held back new transmission projects, often requiring years and even decades just to complete preliminary approval processes;

(e) current permitting and siting processes require that separate reviews be conducted by each State and municipality that the transmission project would pass through, including several Federal agencies;

(f) antiquated environmental regulation continues to impede progress; and

(f) the federalization of permitting and siting for major transmission projects involved in interstate commerce, including a new streamlined Federal process, is necessary to meet future energy requirements;

SEC. 4. DECLARATION OF POLICY.

Section 201 of the Federal Power Act (16 U.S.C. 824) is amended by appending the following text to subsection (a):

“It is further declared that the expeditious planning, siting, and approval of new transmission facilities intended for interstate commerce is affected in the public interest, and that Federal supremacy for regulating such activities, pursuant to Article 1, Section 8, Clause 3 of the Constitution, and subject to the provisions of this Act (16 U.S.C. 824 et seq.), is necessary and in the national interest to ensure the development of a modern, sustainable, integrated, and efficient energy grid for the 21st century.”

SEC. 5. NATIONAL INTEREST TRANSMISSION CORRIDORS OVERHAUL.

Section 216 of the Federal Power Act (16 U.S.C. 824p) is amended by replacing subsection (a) with:

“(a) EXPLORATORY PROCESS.—

“(1) STUDY ON TRANSMISSION CORRIDORS.—

“(A) IN GENERAL.—No later than six months after the passage of this amendment, the Secretary whose executive jurisdiction encompasses the Department of Energy (hereafter referred to as “the Secretary”), in collaboration with the Commission, shall undertake a comprehensive study to identify regions experiencing high electric congestion, insufficient infrastructure, and insufficient capacity, assessing the need for new transmission lines and connections between electric utilities across state lines (that is, passing through no fewer than two States), designating such regions as National Interest Electric Transmission Corridors.

“(B) COLLABORATION WITH TENTATIVE STAKEHOLDERS.—In conducting a study pursuant to subparagraph (A), the Secretary shall consult with relevant State commissions, Isolated Service Providers, Regional Transmission Organizations, and any other necessary electric or transmitting utilities.

“(2) REPORT ON POSSIBLE TRANSMISSION PROJECTS.—

“(A) IN GENERAL.—The Secretary shall also concurrently conduct an investigation into possible transmission line projects in identified National Interest Electric Transmission Corridors, consulting the same entities stipulated in paragraph (1)(B) and publishing such findings in the form of a report no later than one year after the publishing of the study under subsection (a).

“(B) CAPACITY TARGETS.—A report made under subparagraph (A) shall present proposals of a capacity amounting to no less than 47,300 gigawatt-miles of new transmission lines.

“(C) TECHNOLOGICAL TARGETS.—The identified corridors and subsequent proposals should maximize opportunities to integrate:

- “(i) high-voltage direct current (HVDC)
- “(ii) dynamic line ratings;
- “(iii) topology optimization;
- “(iv) power flow control;
- “(v) advanced conductors or superconductors; and
- “(vi) storage-as-transmission technologies.

“(D) ENVIRONMENTAL TARGETS.—Any proposals made under this subsection should seek to comply, to the maximum extent possible, with federal sustainability targets and State environmental regulations, additionally ensuring that, wherever possible, the transmission connections proposed under this subsection connect facilities producing renewable energy (as defined in 42 U.S.C. 15852).

“(3) RECURRENCE.—The studies and reports authorized pursuant to subsection (a)(1) shall be carried out every five years.”

SEC. 6. PERMITS AND SITING AMENDMENTS; PRE-EMPTIVE APPROVAL.

(a) IN GENERAL.—Section 216 of the Federal Power Act (16 U.S.C. 824p) is amended—

(1) in subsection (b), by—

(A) replacing all instances of “Construction Permit” with “Interstate Transmission Authority Permit”, including in the subsection title;

(B) replacing “for the construction or modification” with “for the construction, modification, or operation”;

(C) striking paragraph (1) in its entirety; and

(D) inserting the following paragraph:

“(7) the proposed construction or modification is consistent with the target requirements made under subsection (b)”;

(2) by striking subsection (g) in its entirety;

(3) in subsection (f)(2), by replacing “an amount equal to” with “no less than” ;

(4) appending the following paragraph to subsection (f):

“(3) Just compensation shall also include compensation for—

“(A) lost income from the property; and

“(B) damages to any other properties of the owner”;

(5) appending the following subsection:

“(I) SUPREMACY.—Unless otherwise specified, the Commission shall have exclusive jurisdiction over, with no State or political subdivision thereof, regulating any aspect of, the siting or permitting of an energy transmission facility constructed or modified under a permit issued under subsection (a)”.

(b) PRE-EMPTIVE PERMITTING AND SITING.—Section 216 of the Federal Power Act (16 U.S.C. 824p) is amended by appending the following subsection:

“(m) PRE-EMPTIVE AUTHORIZATION.—

“(1) IN GENERAL.—Pursuant to a report filed under subsection (a)(2), the Secretary shall be empowered to preemptively authorize the construction of select transmission projects.

“(2) SCOPE.—In granting a pre-emptive authorization, the Secretary shall first rigorously develop an internal proposal for the transmission project being authorized,

after which the Secretary shall initiate a process to attain any and all Federal authorizations and environmental reviews, pursuant to subsection (h).

“(3) SITING.—In accordance with paragraph (2), the Secretary shall undertake a modified siting process, notifying and preparing affected landowners of the potential authorization of the project, soliciting their opinions, and determining the extent to which a future permit holder may need to exercise right-of-way and eminent domain, including the possible amounts of just compensation to be paid for.

“(4) AWARDING OF CONTRACTS.—The Secretary, in consultation with the Commission, shall, no later than one year after the passage of this amendment, promulgate rules to award pre-authorized projects under this subsection to interested electric or transmitting utilities, including but not limited to competitive bidding, requests for proposals, requests for qualifications, and negotiated procurement.”.

(b) CATEGORICAL EXCLUSIONS.—Section 216 of the Federal Power Act (16 U.S.C. 824p) is amended by appending the following subsection:

“(n) NEPA CATEGORICAL EXCLUSION.—The Secretary, in consultation with the Commission, shall be empowered to expedite the permitting and siting processes under this section by considering the construction or modification of a transmission project to be categorically excluded (as defined in 24 CFR 58.35) from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) if it is determined that—

“(1) the transmission project would create minimal environmental impact; or

“(2) there exists an exceptional public interest to expedite the permitting and siting process for the transmission project.”.

(c) CEFA REPEAL.—

(1) IN GENERAL.—The Clean Energy Future Act of 2022 is amended by striking section 4 and section 5 in their entirety.

(2) RETURN OF FUNDS.—Any and all funds, pursuant to authorizations made under section 13(a) of the Clean Energy Future Act of 2022, that remain unobligated as of the passage of this Act shall be returned to the General Fund of the U.S. Treasury within six months of the passage of this Act.

SEC. 7. COST RECOVERY AND OTHER INCENTIVES.

Section 205 of the Federal Power Act (16 U.S.C. 824d) is amended—

(a) in subsection (a), by inserting “including costs incurred by transmission projects authorized under section 216 (16 U.S.C 824p)” after “in connection with the transmission or sale of electric energy”; and

(b) by appending the following subsection:

“(h) COST RECOVERY INCENTIVE.—The Commission shall, no later than 1 year after the passage of this amendment, promulgate rules to enable a public utility or permit-holder developing an interstate transmission project authorized under section 216 (16 U.S.C 824p) of this Act to submit a request to recover, either partially or in whole, the costs of such a project upon its completion, if the Commission is satisfied that the project has reasonably fulfilled the stipulated expectations, requirements, and targets set forth by section 216 of this Act (16 U.S.C 824p) and any relevant contractual agreements or legal instruments.”.

SEC. 8. APPROPRIATIONS.

In addition to funds otherwise available, there is to be appropriated, out of any funds in the Treasury not otherwise appropriated, to remain until expended, the amount of—

(a) \$100,000,000, for the Department of Energy, to carry out the amendments made under sections 5 and 6; and

(b) \$50,000,000,000, for the Federal Energy Regulatory Commission, to carry out the amendments made under section 7, specifically for the purposes of cost recovery pursuant to that section.