

# FASTER ACT

FACILITATING AMERICA'S SITING OF TRANSMISSION AND ELECTRIC RELIABILITY

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## SECTION 1. SHORT TITLE

This Act may be cited as the “Facilitating America’s Siting of Transmission and Electric Reliability Act of 2023” or the “FASTER Act of 2023.”

## SEC. 2. NATIONAL INTEREST ELECTRIC TRANSMISSION FACILITIES

Subsection 2(a)—Amends Section 216 of the Federal Power Act (16 U.S.C. 824p)

Subsection 216(a)—Key Terms, including:

- *Community Benefit Agreement*—A ‘community benefit agreement’ (CBA) is an agreement between CBA parties, including, at a minimum, at least 1 entity (County, Tribe, any other State, Tribal, or local entity, as the Commission or the parties to the applicable agreement determine to be appropriate) and a “CBA Party”, which includes at minimum: the project sponsor, an agreement entity, a community group, and a labor union, or equivalent organization, representing workers or trades that will be needed for each of the construction and operation.
- *National Interest Electric Transmission Facility*—A national interest electric transmission facility (NIETC) is either located in a national interest electric transmission corridor designated by the Secretary *or* an electric transmission facility that has a transmission capacity of not less than 345 kilovolts; or 750 megawatts; is located in not fewer than 2 States.

Subsection 216(b)—Study, Report, and Designation of National Interest Electric Transmission Corridors

- *Study Report and Designation*— Maintains requirement that the Department of Energy (DOE) publish a study of capacity constraints and congestion not less frequently than once every 3 years.
- *Designation by Request*—Establishes process by which the developer of a project to construct or modify an electric transmission facility may submit to the Secretary an application to designate 1 or more proposed routes associated with the project as an NIETC. Demonstrates that certain engagement efforts between developers and stakeholders have occurred. Directs DOE to promulgate a rulemaking to allow other Tribal authority, a State, a non-transmission-owning utility (such as a transmission-dependent utility), a local government, a generation developer, or any other appropriate entity, to submit an application for the designation of a particular route as a national interest electric transmission corridor.

### Subsection 216(c)—Permit for Construction or Modification of National Interest Electric Transmission Facilities

- *In General*—Maintains backstop siting authority for the Federal Energy Regulatory Commission (FERC) to issue permits for construction or modification of national interest electric transmission facilities.
- *Requirement*— FERC may issue a permit after FERC finds that a State or transmitting utility applying for a permit does not have authority for siting approvals, a State commission does not make a determination on an application within 1 year or has conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission capacity or congestion, is not economically feasible, or has denied an application seeking approval pursuant to applicable law; makes all applicable findings and determinations that the facility is a national interest electric transmission facility; if FERC provides notice and opportunity for hearing; and if the applicant engages in the prefiling process.
- *Simultaneous Proceedings*— Allows project sponsors to initiate prefiling concurrently with the state review process.

Subsection 216(d)—Allows State in which a transmission facility covered by the permit is or will be located, each affected Federal agency and Indian Tribe, private property owners, and other interested persons, a reasonable opportunity to present their views and recommendations with respect to the need for and impact of a facility covered by the permit.

Subsection 216(e)—Allows a permit holder to acquire the right-of-way by the exercise of the right of eminent domain if the permit holder has made good faith efforts to engage with affected landowners and other stakeholders early in the applicable permitting process.

- *Good Faith Efforts to Engage with Affected Landowners and Other Stakeholders*— Allows project sponsors to satisfy FERC’s Good Faith Engagement requirement by either engaging in a meaningful process to develop and negotiate a community benefit agreement or by entering into a community benefit agreement with the community in which the affected landowners or other stakeholders are located. Provides for technical assistance, including, as DOE determines to be appropriate, legal counsel, mediation, and guidance, to help the community develop and negotiate a Community Benefit Agreement with the project sponsor.
- *Applicant Code of Conduct for Engagement with Affected Landowners*—Requires FERC to establish a new landowner engagement process and require developers to meet certain conditions to protect landowners.
- *Good Faith Efforts Determination*— Allows project sponsors to satisfy FERC’s Good Faith Engagement requirement by either engaging in a meaningful process to develop and negotiate a community benefit agreement or by entering into a community benefit agreement; and by complying with the applicant code of conduct for engagement with affected landowners.
- *Effect of Community Benefits Agreement on Eligibility for Certain Grants*—Allows project sponsors to apply for a grant under section 50152 of Public Law 117–169 (42

U.S.C. 18715a) on behalf of, or jointly with, the applicable Community Benefit Agreement entity or any other entity eligible to apply for a grant.

Subsection 216(f)—Requires that permit holders must compensate landowners an amount equal to the fair market value (including applicable severance damages) of the property taken on the date of the exercise of eminent domain authority.

Subsection 216(g)—Clarifies that nothing in this section precludes any person from constructing or modifying any transmission facility in accordance with State law.

Subsection 216(h)—Coordination of Federal Authorizations for National Interest Electric Transmission Facilities

- *Lead Agency and Coordination*—Designates FERC as the lead agency to coordinate the Federal authorization and review process with any Indian Tribes, multistate entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the facility, to ensure timely and efficient review and permit decisions.
- *Deadlines and Milestones*—Ensures to the maximum extent practicable that the period between the date that the pre-filing process is initiated and the date on which either a notice to proceed is issued or application for permit is denied does not exceed 3 years.
- *Certain Deadlines*—Requires that all permit decisions and related environmental reviews shall be completed within one year once an application has been submitted with such data as FERC considers necessary.
- *Process for Prompt Disclosure of Certain Information*—Directs FERC to establish a process to compel cooperating agencies to provide a response within 60 days of a prospective applicant's request during pre-filing, including the likelihood of approval for a potential facility and the key issues of concern to the agencies and the public.
- *Single Environmental Review*—Requires FERC to prepare a single environmental review document, which shall be used as the basis for all decisions on the qualifying project
- *Streamlined Review and Permitting Within Certain Corridors*—Requires the heads of other agencies to streamline the review and permitting of transmission within corridors designated under section 503 of the Federal Land Policy and Management Act (43 U.S.C. 1763) by fully accounting for prior analyses and decisions relating to the corridors.
- *Appeal to the President*— Upholds existing Presidential appeal process. Maintains that if any agency has denied a Federal authorization required for a transmission facility, or has failed to act by the deadline established by FERC (previously DOE), the applicant or any State in which the facility would be located may file an appeal with the President, who shall, in consultation with the affected agency, review the denial or failure to take action on the pending application not later than 90 days after the date of the filing of the appeal.
- *Application of Fast-41 Procedures*—Applies Fast-41 procedures to qualifying

- projects. Allows use of Environmental Review Improvement Fund established under section 41009(d) of the FAST Act (42 U.S.C. 4370m–8(d)) to compensate agencies participating in the pre-filing process. Requires that the Fast-41 Permitting Council account for whether, and the extent to which, the participating agency or cooperating agency participated in the pre-filing process in subsequent funding decisions associated with qualifying projects.
- *Prefiling*— Mandates each Federal participating agency with respect to a project for which a permit is sought under that subsection participate in the pre-filing process. State, Tribal, and local agencies, including any State commission or other stakeholders are encouraged to participate in the pre-filing process for a qualifying project.
  - *Expediting Application Processing*—Authorizes third party application processing at the state and federal level for transmission permits, include language making clear the provision is voluntary; that the use of third-party contractors should not impact impartial decisions; and imposes reporting requirements.
  - *Categorical Exclusions*— Expands list of categorical exclusions including energy storage devices at existing or planned energy facilities, and repair, maintenance, upgrade, optimization, or minor addition to existing transmission and distribution infrastructure. FERC must first determine if categorical exclusions would reduce processing times or costs for the issuance of permits under subsection without significantly affecting the human environment.
  - *NEPA Processes and Compliance*— Ensures that there is no duplication of effort or processes with respect to environmental reviews relating to the siting, construction, or modification of national interest electric transmission facilities in national interest electric transmission corridors designated by DOE.
  - *Federal Land Use Authorizations*—Allows FERC (previously DOE) to renew land use authorizations taking into account reliance on such electricity infrastructure, recognizing the importance of the authorization for public health, safety, and economic welfare and as a legitimate use of federal land.
  - *Consultation*—Requires FERC (previously DOE) to consult with DOE, electric reliability organizations, and transmission organization.

Subsection 216(i)— Allows states to enter into interstate compacts for the purposes of siting transmission facilities. Directs FERC (previously DOE) to provide technical assistance to regional transmission siting agencies.

Subsection 216(j)—Establishes relationship of Section 216 to other environmental laws.

Subsection 216(k)—Applicability of section describing ERCOT.

#### Subsection 2(b)

- *Grants to Facilitate the Siting of Interstate Electricity Transmission Lines*—Directs DOE to allocate 70 percent of funds from the program established in section 50152 of Public Law 117–169 (42 U.S.C. 18715a) to fund economic development initiatives and provide support to communities that are among the most significantly impacted by project development, construction, or local operations activities relating to the covered

transmission projects for which a grant under that subsection is sought. Allocates the remaining 30 percent to siting activities, such as analyzing the benefits of proposed interregional transmission.

- *Additional Economic Development Funding*—Requires the sponsor of the applicable covered transmission project to contribute, to the recipient of the grant, \$1 for every \$5 provided by the Secretary to that recipient pursuant to the grant.

#### Subsection 2(c)

- Provides conforming amendments to Energy Policy Act of 2005, Infrastructure Investment and Jobs Act, and Inflation Reduction Act of 2022.

### SEC. 3. SUPPORT FOR REGIONAL OFFICES OF COOPERATING AGENCIES.

- Authorizes to be appropriated to the Federal Energy Regulatory Commission such sums as are necessary to provide funding to cooperating agencies (as defined in section 1508.1 of title 40, Code of Federal Regulations (or a successor regulation)) with respect to qualifying projects (as defined in section 216(a) of the Federal Power Act (16 U.S.C. 824p(a))) to help cover the costs of the staff and resources of the cooperating agency that relate to the qualifying project in order to focus those staff and resources on an expeditious review of the qualifying project.

### SEC. 4. FERC HIRING AND COMPENSATION AUTHORITY.

- Gives the Chairman of FERC expanded hiring and compensation authorities. Ensures the annual rate of basic pay for such an individual may not exceed the per annum rate of salary payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

### SEC. 5. DISPOSITION OF CERTAIN REVENUES.

- Establishes a revenue sharing mechanism to distribute certain revenues derived from amounts collected as bonus bids, rentals, fees, or other payments under a right-of-way, permit, lease, or other authorization. Directs 25 percent to the state where development occurs, 25 percent to the counties of origin, 15 percent (10 percent beginning Jan. 1, 2040) for the purposes of more efficiently processing permit applications and reducing the backlog of renewable energy permits, and 35 percent (40 percent beginning Jan. 1, 2040) deposited into a fund for conservation purposes.