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(revise)

Amendment to the Amendment in the Nature of a Substitute

Offered by Mr. Inslee

At the end of subtitle F of title I, add the following:

“SEC. 216B. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES

“(a) SITING UNDERGROUND ELECTRIC TRANSMISSION FACILITIES IN THE EASTERN INTERCONNECTION.—

“(1) EASTERN INTERCONNECTION – This subsection applies only to States located in the Eastern Interconnection.

“(2) PURPOSES.—The purpose of this subsection is to ensure that transmission projects needed to support compliance with Federal and State renewable energy requirements, including the requirements of section 610 of the Public Utility Regulatory Policies Act, can be reasonably and timely authorized and constructed. This section applies only to those portions of any transmission project that are underground; any portions of transmission projects that are above ground would remain subject to applicable State review and certification requirements and processes

“(3) DESIGNATION OF ELIGIBILITY.—The Commission may grant an applicant that submits an application for a proposed underground transmission project a designation of eligibility for consideration under this subsection if the Commission finds that the proposed project is:

“(A) Identified in the planning process under section 216A as a project needed to support renewable energy development; or

“(B) Otherwise demonstrated by the applicant to support cost-effective renewable energy development and the Federal policies established in section 216A.

“(4) STATE REVIEW OF PROJECT SITING.—

“(A) IN GENERAL.—No developer of an eligible project may seek a certificate for construction under subsection (c) unless the developer first seeks authorization to construct the project under applicable State law concerning authorization and routing of transmission facilities.

“(B) FEDERAL AUTHORITY.—The Commission may authorize, after consultation with the affected States, in accordance with subsection (c), construction of an eligible

underground transmission project that the Commission finds to be in the public interest and in accordance with this section if the Commission finds that a State—

“(i) fails to approve construction and authorize routing of an underground transmission project within three years after the applicant submits a completed application for authorization to the State;

“(ii) rejects the application for the project within that period; or

“(iii) authorizes the project subject to conditions that unreasonably interfere with the development of the project contrary to the purposes of this section.

“(b) SITING OF TRANSMISSION FACILITIES IN THE WESTERN INTERCONNECTION.—

“(1) WESTERN INTERCONNECTION – This subsection applies only to States located in the Western Interconnection.

“(2) PURPOSES.—The purpose of this subsection is to ensure that transmission projects needed to support compliance with Federal and State renewable energy requirements, including the requirements of section 610 of the Public Utility Regulatory Policies Act, can be reasonably and timely authorized and constructed.

“(3) DESIGNATION OF ELIGIBILITY.—The Commission may grant an applicant that submits an application for a proposed transmission project in the Western interconnection a designation of eligibility for consideration under this subsection if the Commission finds that the proposed project is:

“(A) Identified in the planning process under section 216A as a project needed to support renewable energy development; or

“(B) Otherwise demonstrated by the applicant to support cost-effective renewable energy development and the Federal policies established in section 216A.

“(4) STATE REVIEW OF PROJECT SITING.—

“(A) IN GENERAL.—No developer of an eligible project may seek a certificate for construction under subsection (c) unless the developer first seeks authorization to construct the project under applicable State law concerning authorization and routing of transmission facilities.

“(B) FEDERAL AUTHORITY.—The Commission may authorize, after consultation with the affected States, in accordance with subsection (c), construction of an eligible

project that the Commission finds to be in the public interest and in accordance with this section if the Commission finds that a State—

“(i) fails to approve construction and authorize routing of a project within three years after the date the applicant submits a completed application for authorization to the State;

“(ii) rejects the application for the project; or

“(iii) authorizes the project subject to conditions that unreasonably interfere with the development of the project contrary to the purposes of this section.

“(c) CONSTRUCTION.—

“(1) APPLICATION FOR CERTIFICATE.—

“(A) IN GENERAL.—For an eligible project, the Commission may grant an applicant a certificate of public convenience and necessity with respect to the construction of an underground transmission project within a State affected by the project if the Commission finds that the State, pursuant to subsection (a) and subsection (b), respectively—

“(i) has failed to authorize construction of the project under State law within a three-year period after the date the developer submits a completed application for authorization to the State;

“(ii) rejects the application for the project without reasonable conditions for reapplication; or

“(iii) authorizes the project subject to conditions that unreasonably interfere with the development of the project contrary to the purposes of this section.

“(B) FORM.—The application for a certificate shall be made in writing in such form and containing such information as the Commission may by regulation require, provided that public health and safety conditions shall not be deemed to unreasonably interfere with the development of the project.

“(C) HEARING.—On receipt of an application under this paragraph, the Commission—

“(i) shall provide notice to interested persons and opportunity for hearing; and

“(ii) may approve (with or without conditions) or disapprove the application, in accordance with paragraph (2).

“(2) GRANT OF CERTIFICATE.—

“(A) IN GENERAL.—A certificate shall be issued to a qualified applicant for a certificate authorizing the whole or partial construction or modification covered by the application, only if the Commission determines that—

“(i) the applicant is able and willing—

“(I) to do the acts and to perform the service proposed; and

“(II) to comply with this Act (including regulations); and

”(ii) the proposed construction or modification, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity.

“(B) TERMS AND CONDITIONS.—The Commission shall have the power to attach to the issuance of a certificate under this paragraph and to the exercise of the rights granted under the certificate such reasonable terms and conditions as the public convenience and necessity may require, and such conditions shall include public health and safety conditions.

“(C) EVALUATION OF ABILITIES OF APPLICANT.—

“(i) IN GENERAL.—In evaluating the ability of an applicant described in subparagraph (A)(i), the Commission shall consider whether the financial and technical capabilities of the applicant are adequate to support construction and operation of the transmission project proposed in the application.

“(ii) JOINT OWNERSHIP PROJECTS.—

In evaluating applications involving joint ownership projects by multiple entities, the Commission shall consider benefits from the greater diversification of financial risk inherent in the applications.

“(3) RIGHT OF EMINENT DOMAIN.—

“(A) IN GENERAL.—If any holder of a certificate issued under paragraph (2) cannot acquire by contract, or is unable to agree with the owner of property on the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain the underground transmission project to which the certificate relates, and the necessary land or other property necessary to the proper operation of the underground transmission project, the holder may acquire the right-of-way

by the exercise of the right of eminent domain in—

“(i) the United States district court for the district in which the property is located; or

“(ii) a State court.

“(B) PRACTICE AND PROCEDURE.—The practice and procedure for any action or proceeding described in subparagraph (A) in a United States district court shall conform, to the maximum extent practicable, to the practice and procedure for similar actions or proceedings in the courts of the State in which the property is located.

“(4) STATE RECOMMENDATIONS ON RESOURCE PROTECTION AND ROUTING.—In granting a certificate under paragraph (2), the Commission shall—

“(A) permit State regulatory agencies to recommend mitigation measures, based on habitat protection, environmental considerations, or cultural site protection; and

“(B)(i) incorporate those identified mitigation measures, including recommendations related to project routing, as conditions on the certificate; or

“(ii) if the Commission determines that a recommended mitigation measure is inconsistent with the purposes of this section, infeasible, or not cost-effective—

“(I) consult with State regulatory agencies to seek to resolve the issue;

“(II) incorporate as conditions on the certificate such recommended mitigation measures as are determined to be appropriate by the Commission, based on consultation by the Commission with State regulatory agencies, the purposes of this section, and the record before the Commission; and

“(III) if, after consultation, the Commission does not adopt in whole or in part a recommendation of an agency, publish a statement of a finding that the adoption of the recommendation is infeasible, not cost effective, or inconsistent with this section or other applicable provisions of law.

“(5) STATE OR LOCAL AUTHORIZATIONS.—An applicant receiving a certificate under this subsection with respect to construction or modification of an underground transmission project

or underground portion of a transmission project in a State within the Eastern Interconnection or a transmission project within the Western Interconnection shall not require a separate siting authorization from the State or any local authority within the State.

“(6) STANDARD FOR INTERCONNECTION.—

(A) RULE.—Any certificate issued under this subsection for constructing a transmission project shall incorporate a condition that the direct interconnection to the transmission line is limited to any electricity generator that has a greenhouse gas emission rate greater than that of a single-cycle natural gas-fired combustion turbine, as determined by the Commission.

(B) SUNSET.—Any certificate conditions adopted pursuant to subparagraph (A) shall become inapplicable upon the full implementation of the standards under section 812(b) of the Clean Air Act, as amended under this Act.

“(7) FEDERAL AGENCY COORDINATION.—

“(A) RIGHTS-OF-WAY ON FEDERAL LANDS.— With respect to any transmission project issued a certificate under this subsection, the functions under section 216(h) of this Act of the Department of Energy and the Secretary of Energy shall be exercised by the Commission in coordination with the affected land management agency.

“(B) NEPA REVIEW.— With respect to any transmission project issued a certificate under this subsection, the Commission shall be the lead Federal agency for purposes of Federal environmental review and, in consultation with affected agencies, shall prepare a single environmental review document that would be used as the basis for all decisions under Federal law related to the proposed project. In doing so, the Commission may take full account of any environmental analysis or impact assessment that was conducted during the State consideration of the application for such project.

“(8) CONSISTENCY WITH ENVIRONMENTAL LAWS.—

Nothing in this Act shall be deemed to waive any existing Federal or State environmental protection provision, including the requirements of.—

“(A) the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.);

“(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

“(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4231 et seq.);

“(D) the Federal Water Pollution Control Act of 1969 (33 U.S.C. 1251 et seq.); or

“(E) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

“(9) EXCLUSIONS.—This section does not apply in the State of Alaska or Hawaii or to the ERCOT, unless the State or ERCOT voluntarily elects to participate under this section.

