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S. 23

To establish a more uniform, transparent, and modern process to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity.

IN THE SENATE OF THE UNITED STATES

JANUARY 23 (legislative day, JANUARY 3), 2023

Mr. MULLIN introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To establish a more uniform, transparent, and modern process to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Promoting Cross-bor-
5 der Energy Infrastructure Act”.

1 **SEC. 2. STRENGTHENING NORTH AMERICAN ENERGY SECUR-**
2 **RITY.**

3 (a) DEFINITIONS.—In this section:

4 (1) BORDER-CROSSING FACILITY.—The term
5 “border-crossing facility” means the portion of an oil
6 or natural gas pipeline or electric transmission facil-
7 ity that is located at an international boundary of
8 the United States.

9 (2) ELECTRIC RELIABILITY ORGANIZATION; RE-
10 GIONAL ENTITY.—The terms “Electric Reliability
11 Organization” and “regional entity” have the mean-
12 ings given those terms in section 215(a) of the Fed-
13 eral Power Act (16 U.S.C. 824o(a)).

14 (3) INDEPENDENT SYSTEM OPERATOR; RE-
15 GIONAL TRANSMISSION ORGANIZATION.—The terms
16 “Independent System Operator” and “Regional
17 Transmission Organization” have the meanings
18 given those terms in section 3 of the Federal Power
19 Act (16 U.S.C. 796).

20 (4) MODIFICATION.—The term “modification”
21 includes a reversal of flow direction, change in own-
22 ership, change in flow volume, addition or removal
23 of an interconnection, or an adjustment to maintain
24 flow (such as a reduction or increase in the number
25 of pump or compressor stations).

1 (5) NATURAL GAS.—The term “natural gas”
2 has the meaning given that term in section 2 of the
3 Natural Gas Act (15 U.S.C. 717a).

4 (6) OIL.—The term “oil” means petroleum or
5 a petroleum product.

6 (b) AUTHORIZATION OF CERTAIN ENERGY INFRA-
7 STRUCTURE PROJECTS AT AN INTERNATIONAL BOUND-
8 ARY OF THE UNITED STATES.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (3) and subsection (e), no person may con-
11 struct, connect, operate, or maintain a border-cross-
12 ing facility for the import or export of oil or natural
13 gas, or the transmission of electricity, across an
14 international border of the United States without
15 obtaining a certificate of crossing for the border-
16 crossing facility under this subsection.

17 (2) CERTIFICATE OF CROSSING.—

18 (A) REQUIREMENT.—Not later than 120
19 days after the date on which final action is
20 taken by the relevant official or agency de-
21 scribed in subparagraph (B) under the National
22 Environmental Policy Act of 1969 (42 U.S.C.
23 4321 et seq.) with respect to a border-crossing
24 facility for which a person requests a certificate
25 of crossing under this subsection, the relevant

1 official or agency, in consultation with appro-
2 priate Federal agencies, shall issue a certificate
3 of crossing for the border-crossing facility un-
4 less the relevant official or agency finds that
5 the construction, connection, operation, or
6 maintenance of the border-crossing facility is
7 not in the public interest of the United States.

8 (B) RELEVANT OFFICIAL OR AGENCY DE-
9 SCRIBED.—The relevant official or agency re-
10 ferred to in subparagraph (A) is—

11 (i) the Federal Energy Regulatory
12 Commission with respect to border-cross-
13 ing facilities consisting of oil or natural
14 gas pipelines; and

15 (ii) the Secretary of Energy, with re-
16 spect to border-crossing facilities consisting
17 of electric transmission facilities.

18 (C) ADDITIONAL REQUIREMENT FOR
19 ELECTRIC TRANSMISSION FACILITIES.—In the
20 case of a request for a certificate of crossing for
21 a border-crossing facility consisting of an elec-
22 tric transmission facility, the Secretary of En-
23 ergy shall require, as a condition of issuing the
24 certificate of crossing under subparagraph (A),
25 that the border-crossing facility be constructed,

1 connected, operated, or maintained consistent
2 with all applicable policies and standards of—

3 (i) the Electric Reliability Organiza-
4 tion and the applicable regional entity; and

5 (ii) any Regional Transmission Orga-
6 nization or Independent System Operator
7 with operational or functional control over
8 the border-crossing facility.

9 (3) EXCLUSIONS.—

10 (A) IN GENERAL.—This subsection shall
11 not apply to any construction, connection, oper-
12 ation, or maintenance of a border-crossing facil-
13 ity for the import or export of oil or natural
14 gas, or the transmission of electricity if—

15 (i) the border-crossing facility is oper-
16 ating for such import, export, or trans-
17 mission as of the date of enactment of this
18 Act;

19 (ii) a permit described in subsection
20 (e) for the construction, connection, oper-
21 ation, or maintenance has been issued; or

22 (iii) subject to subparagraph (B), an
23 application for a permit described in sub-
24 section (e) for the construction, connection,

1 operation, or maintenance is pending on
2 the date of enactment of this Act.

3 (B) PENDING APPLICATIONS.—With re-
4 spect to an application described in clause (iii)
5 of subparagraph (A), the exclusion described in
6 that subparagraph shall apply until the earlier
7 of—

8 (i) the date on which the application
9 is denied; or

10 (ii) that date that is 2 years after the
11 date of enactment of this Act, if the permit
12 described in that clause has not been
13 issued by that date.

14 (4) EFFECT OF OTHER LAWS.—

15 (A) APPLICATION TO PROJECTS.—Nothing
16 in this subsection or subsection (f) shall affect
17 the application of any other Federal statute to
18 a project for which a certificate of crossing for
19 a border-crossing facility is requested under
20 this subsection.

21 (B) NATURAL GAS ACT.—Nothing in this
22 subsection or subsection (f) shall affect the re-
23 quirement to obtain approval or authorization
24 under sections 3 and 7 of the Natural Gas Act
25 (15 U.S.C. 717b, 717f) for the siting, construc-

1 tion, or operation of any facility to import or
2 export natural gas.

3 (C) OIL PIPELINES.—Nothing in this sub-
4 section or subsection (f) shall affect the author-
5 ity of the Federal Energy Regulatory Commis-
6 sion with respect to oil pipelines under section
7 60502 of title 49, United States Code.

8 (e) IMPORTATION OR EXPORTATION OF NATURAL
9 GAS TO CANADA AND MEXICO.—Section 3(c) of the Nat-
10 ural Gas Act (15 U.S.C. 717b(c)) is amended by adding
11 at the end the following: “In the case of an application
12 for the importation of natural gas from, or the exportation
13 of natural gas to, Canada or Mexico, the Commission shall
14 grant the application not later than 30 days after the date
15 on which the Commission receives the complete applica-
16 tion.”.

17 (d) TRANSMISSION OF ELECTRIC ENERGY TO CAN-
18 ADA AND MEXICO.—

19 (1) REPEAL OF REQUIREMENT TO SECURE
20 ORDER.—Section 202(e) of the Federal Power Act
21 (16 U.S.C. 824a(e)) is repealed.

22 (2) CONFORMING AMENDMENTS.—

23 (A) STATE REGULATIONS.—Section 202(f)
24 of the Federal Power Act (16 U.S.C. 824a(f))
25 is amended by striking “insofar as such State

1 regulation does not conflict with the exercise of
2 the Commission’s powers under or relating to
3 subsection (e)’’.

4 (B) SEASONAL DIVERSITY ELECTRICITY
5 EXCHANGE.—Section 602(b) of the Public Util-
6 ity Regulatory Policies Act of 1978 (16 U.S.C.
7 824a–4(b)) is amended by striking “the Com-
8 mission has conducted hearings and made the
9 findings required under section 202(e) of the
10 Federal Power Act’’ in the first sentence and
11 all that follows through the period at the end
12 of the second sentence and inserting “the Sec-
13 retary has conducted hearings and finds that
14 the proposed transmission facilities would not
15 impair the sufficiency of electric supply within
16 the United States or would not impede or tend
17 to impede the coordination in the public interest
18 of facilities subject to the jurisdiction of the
19 Secretary.’’.

20 (e) NO PRESIDENTIAL PERMIT REQUIRED.—No
21 Presidential permit (or similar permit) required under Ex-
22 ecutive Order No. 10485 (42 U.S.C. 717b note; relating
23 to providing for the performance of certain functions here-
24 tofore performed by the President with respect to electric
25 power and natural gas facilities located on the borders of

1 the United States), any other Executive order, or section
 2 301 of title 3, United States Code, shall be necessary for
 3 the construction, connection, operation, or maintenance of
 4 an oil or natural gas pipeline or electric transmission facil-
 5 ity, or any border-crossing facility thereof.

6 (f) MODIFICATIONS TO EXISTING PROJECTS.—No
 7 certificate of crossing under subsection (b), or permit de-
 8 scribed in subsection (e), shall be required for a modifica-
 9 tion to—

10 (1) an oil or natural gas pipeline or electric
 11 transmission facility that is operating for the import
 12 or export of oil or natural gas or the transmission
 13 of electricity as of the date of enactment of this Act;

14 (2) an oil or natural gas pipeline or electric
 15 transmission facility for which a permit described in
 16 subsection (e) has been issued; or

17 (3) a border-crossing facility for which a certifi-
 18 cate of crossing has previously been issued under
 19 subsection (b).

20 (g) EFFECTIVE DATE; RULEMAKING DEADLINES.—

21 (1) EFFECTIVE DATE.—Subsections (b)
 22 through (f), and the amendments made by those
 23 subsections, shall take effect on the date that is 1
 24 year after the date of enactment of this Act.

1 (2) RULEMAKING DEADLINES.—Each relevant
2 official or agency described in subsection (b)(2)(B)
3 shall—

4 (A) not later than 180 days after the date
5 of enactment of this Act, publish in the Federal
6 Register a notice of proposed rulemaking to
7 carry out the applicable requirements of sub-
8 section (b); and

9 (B) not later than 1 year after the date of
10 enactment of this Act, publish in the Federal
11 Register a final rule to carry out the applicable
12 requirements of subsection (b).

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