



Transportation Infrastructure Law Includes Provisions on Energy Security

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Included in the 1,300-page transportation infrastructure bill signed by President Obama on December 4th (Fixing America's Surface Transportation (FAST) Act, Public Law No. 114-94) are amendments to the Federal Power Act (FPA) and other actions aimed at improving the security and resilience of energy infrastructure in the face of emergencies. These provisions were drawn from the House energy bill in the final stages of development of the FAST Act.

New Grid Security Order Authority for DOE

The law adds a new section 215A to the FPA, which authorizes the Secretary of Energy to order emergency measures if the President finds a grid security emergency. "Grid security emergency" is defined relatively narrowly, to include only a physical attack, "a malicious act using electronic communication or an electromagnetic pulse, or a geomagnetic storm event." In a grid security emergency, the Secretary of Energy can issue any order he or she deems necessary to protect or restore the reliability of critical electric infrastructure (defined broadly) or of defense critical electric infrastructure (electricity infrastructure serving designated critical defense facilities). Any Department of Energy (DOE) order issued expires within 15 days, but may be extended.

The law directs the Federal Energy Regulatory Commission (FERC) to provide a mechanism for cost recovery if costs for compliance with an order cannot otherwise be recovered. DOE must issue rules of procedure for exercising the new emergency authority, and must designate critical defense facilities. The law authorizes federal agencies to share classified information with key personnel at utilities subject to emergency orders.

Critical Electric Infrastructure Information

The new section 215A of the FPA also addresses the protection and voluntary sharing of critical electric infrastructure information (CEII). It expressly exempts CEII from public disclosure requirements under the Freedom of Information Act and other federal, state, local and tribal law. FERC is directed to adopt regulations to establish criteria and procedures for designating CEII, prohibit unauthorized disclosure, and facilitate voluntary sharing of CEII between government entities, the North American Electric Reliability Corporation (NERC), regional reliability bodies, and owners of critical electric infrastructure.

Potentially Conflicting Directives Related to Emergency Orders

Section 202(c) of the FPA authorizes the Secretary of Energy to order temporary inter-connections of facilities, and such generation, delivery, interchange or transmission of electricity as needed to address an emergency. Facility owners subject to such emergency orders may not be able to comply without violating a federal, state or local environmental law or regulation. The FAST Act amends section 202(c) to address such potential conflicts. It provides that any action or omission by a party that is necessary to comply with a section 202(c) order will not be deemed a violation of environmental laws or regulations or subject the party to civil or criminal liability. The amendment also provides certain new limits on section 202(c) orders. For example, an order's duration cannot exceed ninety days, and if the DOE wishes to renew or reissue the order it must consult with the relevant lead federal environmental agency. DOE must include conditions proposed by the environmental agency on any renewed or reissued order, unless DOE finds that such conditions would prevent adequate resolution of the emergency which necessitated the order.

Plan for a Strategic Transformer Reserve

The FAST Act directs the Secretary of Energy, after consultation with FERC, NERC, the owners and operators of critical electric infrastructure and others, to develop and submit to Congress a plan for a

Strategic Transformer Reserve. The reserve would be made up of “strategically located spare large power transformers and emergency mobile substations” and used to address grid emergencies arising from physical attack, cyber-attack, electromagnetic pulse, geomagnetic disturbances, severe weather, and seismic events. Section 61004 of the law outlines a number of issues the DOE plan must address, including the degree to which utility sector initiatives address the need, and the options for funding such a reserve.

Emergency Preparedness for Oil and Gas Sectors

The law requires the Secretary of Energy to develop and adopt procedures for improving the emergency preparedness of oil and natural gas infrastructure. The DOE initiative is to include improved communication and coordination between DOE, federal partners, state and local government and oil and gas companies. DOE is required to submit a report to Congress on these issues in 180 days.

Next Steps

DOE is required to adopt rules, after notice and comment, for implementing its new emergency authorities under FPA section 215A within 180 days. FERC is directed to promulgate regulations on the CEII issues within one year.

DOE is also required to develop, following consultations with stakeholders, and submit to Congress within one year a plan for a Strategic Transformer Reserve. DOE received some public input on these issues in response to a Request for Information issued earlier this year. Note that the FAST Act does not provide any new authority for DOE to create a Strategic Transformer Reserve. It is not clear whether further Congressional action would be needed to authorize creation and operation of such a reserve.

For more information

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