

**SIDE-BY-SIDE COMPARISON OF KEY PROVISIONS – TRANSMISSION BILLS DURING THE 111<sup>TH</sup> CONGRESS**

<b>Provision Topics</b>	<b>Current Law</b>	<b>S.539 (Reid) – Introduced Mar. 5</b>	<b>S.[DRAFT] (Bingaman) (Mar. 9)</b>	<b>S.774 (Dorgan) – Introduced Apr. 1</b>	<b>S.807 (Nelson) – Introduced Apr. 2</b>	<b>Comments</b>
	Federal Power Act (FPA), 16 U.S.C. § 791a, <i>et seq.</i>	The Clean Renewable Energy and Economic Development Act amends the FPA by adding a new Part IV – National Renewable Energy Zones and Green Transmission.	Amends FPA § 216– replacing subsections (a) – (c); redesignating subsections (d)-(h) as (c) - (g); inserting new subsections (h) – (m); redesignating subsections (j) & (k) as (n) & (o).	Title I of the National Energy Security Act (NESA) amends FPA § 216 – replacing subsections (a) – (g); amends subsection (h) and redesignates it as subsection (e); adds new subsections (f) & (g).	Title I of the Sound Management of America’s Resources & Technologies (SMART) for Energy Act, by adding at the end of Part II of the FPA new sections 224 & 225; and amending FPA § 216(h).	
<b>Designation of National Zones</b>	<b>Sec. 216(a).</b> The Secretary of Energy may designate “ <i>national interest electric transmission corridors,</i> ” <i>i.e.</i> , geographic areas experiencing electric energy transmission capacity constraints or congestion.	<b>Sec. 402.</b> The President may designate areas with significant potential to generate renewable energy but with insufficient transmission to deliver it as a Renewable Energy Zone (REZ). <ul style="list-style-type: none"><li>○ Planning, cost allocation and siting provisions apply to certain projects within an REZ.</li></ul>	No similar provision.	No similar provision.	Does not alter existing authority under FPA § 216(a).	<ul style="list-style-type: none"><li>○ Bingaman draft and Dorgan bill eliminate the process for the designation of national interest electric transmission corridors.</li></ul>
<b>Regional Planning</b>	No similar provision	<b>Sec. 403(a), (b) &amp; (c).</b> 120 days after enactment FERC must designate regional planning entities to prepare, in consultation with the states and stakeholders, interconnection-wide <i>green transmission project</i> plans in the Eastern & Western Interconnections for FERC approval.  <b>Sec. 403(d) &amp; (e).</b> The Plan shall identify <i>green transmission grid projects</i> needed to bring renewable generation from REZs to areas	<b>Sec. 216(i)(1), (2) &amp; (3).</b> 120 days after enactment FERC must designate regional planning entities to prepare a centralized interconnection-wide transmission grid project plans for the addition of “ <i>high-priority national transmission lines</i> ” for FERC approval or modification.  <b>Sec. 216(i)(5).</b> Planning goals include: development of renewable resources, reduce emissions, reduce transmission congestion, enhance	<b>Sec. 101(1)(b)(2).</b> 180 days after enactment FERC must certify at least 1, but not more than 4, regional planning entities for each interconnection to prepare long-term integrated plan for the addition of “ <i>Clean Energy Superhighway facilities</i> ” and transmission infrastructure needed to be added or upgraded for FERC approval or modification.  <b>Sec. 101(1)(b)(5).</b> The Plan for the Interconnection must evaluate	<b>Sec. 224(c), (d), (f).</b> FERC has 1 year to produce and submit to Congress & the President a plan for a national <i>Interstate Energy Superhighway</i> . Provided that Congress does <u>not</u> issue a resolution of disapproval, FERC has exclusive jurisdiction over planning, permitting, siting and construction decisions and actions necessary to establish the <i>Energy Superhighway</i> plan.	<ul style="list-style-type: none"><li>○ Reid bill, Bingaman draft, &amp; Dorgan bill establish interconnection-wide planning</li><li>○ Reid bill planning process is limited to “green” projects.</li></ul>

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		<p>where electricity will be consumed.</p> <p><i>Green transmission grid projects</i> are (i) new transmission 345 kV and above to transmit renewable energy or (ii) new feeder lines to connect renewable generation to the extra high voltage grid [Sec. 401(8)].</p> <p><b>Sec. 403(h).</b> FERC, through rulemaking, after consultation with stakeholders (not including IOUs or public utilities), steps in for planning entity or state if plan is not submitted or if state does not participate.</p>	<p>fuel diversity, increase reliability, and enhance competition.</p> <p><i>High-priority national transmission lines</i> are (i) facilities operated at or above 345 kV (AC), or facilities operated at or above 400 kV (DC), or renewable feeder lines; and (ii) facilities included in a regional plan [Sec. 216(a)(2)].</p> <p><b>Sec. 216(i)(6).</b> FERC, through a rulemaking, must consider comments by stakeholders (not including IOUs or public utilities), steps in for planning entity or state if plan is not submitted or if state does not participate.</p>	<p>location-constrained resources, improve system reliability, reduce congestion, and meet future load demand requirements.</p> <p><i>Clean Energy Superhighway facilities</i> are (i) facilities operated at or above 345 kV (AC), (ii) facilities operated at or above 400 kV (DC), (iii) a renewable feeder line, or (iv) a necessary upgrade to an existing line [Sec. 101(1)(a)(3)].</p> <p><b>Sec. 101(b)(11).</b> FERC will assume responsibility for a regional plan if it has not certified a plan for a region by 18 months after the date of the certification of the regional planning authority.</p>	<p>The plan should consider input from all stakeholders, include at least 10,000 miles of high voltage lines to be integrated into the bulk electric system, comply with NERC reliability standards, and support interconnection or operability with all three Interconnections.</p> <p><i>Energy Superhighway</i> consists of (i) high voltage transmission lines 400 kV or higher; (ii) a siting preference using <i>existing</i> Federal, State or other rights-of-way; and (iii) smart grid technologies [Sec. 224(b)(2)].</p>	<ul style="list-style-type: none"> <li>○ Bingaman draft, and Dorgan &amp; Nelson bills planning process is <u>not</u> limited to “green” projects.</li> <li>○ Nelson bill national planning by FERC.</li> </ul>
<b>FERC Siting Authority</b>	<p><b>Sec. 216(b).</b> FERC may issue <i>permits</i> for construction or modification of transmission facilities in <i>national interest electric transmission corridors</i> if it finds that the project: (a) a State lacks authority to approve the siting or consider the interstate benefits of the project; (b) the applicant is a transmitting utility that does not qualify to apply for a permit or siting approval in a State because the</p>	<p><b>Sec. 404(a).</b> New FERC siting authority limited to <i>green transmission projects</i> that – (i) are included in an interconnection-wide plan or the project developer assumes all of the risk and cost, (ii) optimize transmission capability and potential renewable generation, and (iii) project owner has failed to make reasonable progress in getting State siting approval.</p> <p><b>Sec. 404(g).</b> When permitting <i>green transmission project</i>, FERC must consider siting constraints and mitigation measures proposed by the States that participate in the</p>	<p><b>Sec. 216(b).</b> Exclusive FERC siting authority over <i>high priority national transmission projects by public utilities</i>.</p> <p><b>Sec. 216(b)(2).</b> A certificate of public convenience and necessity must be obtained in order to construct, acquire or operate any new <i>high-priority national transmission projects</i>.</p> <p><b>Sec. 216(b)(3).</b> FERC must presume public need for a proposed project that is part of an interconnection-wide transmission grid project plan.</p>	<p><b>Sec. 101(1)(d).</b> Exclusive FERC siting authority over new transmission facilities included in the FERC-approved plans, but FERC must conform to reasonable siting constraints submitted by the States during the pre-filing process.</p> <p>Applicants proposing to build transmission facilities included in the regional plan approved by FERC must pre-file with FERC to prove the proposed facilities are part of the regional plan approved by FERC. During the pre-filing period, States have the opportunity to identify siting constraints and mitigation</p>	<p><b>Sec. 224(c).</b> As noted above, exclusive FERC jurisdiction over planning, permitting, siting and construction decisions and actions necessary to establish the <i>Energy Superhighway</i>.</p> <p><b>Sec. 224(e).</b> FERC also has backstop authority for siting Secondary Connections to Energy Superhighway, including new lines and lines that have been re-routed or converted, and secondary line connections that will promote renewable energy development</p>	<ul style="list-style-type: none"> <li>○ Bingaman draft &amp; Dorgan bill eliminate current FERC back-stop siting authority and replaces it with FERC exclusive authority for certain new projects.</li> <li>○ Reid bill supplements existing FERC authority but still only back-</li> </ul>

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	applicant does not serve end-use customers in the State; or (c) the State has withheld approval for more than one year after the latter of the filing of an application or the designation of the <i>national interest electric transmission corridor</i> .	<p>planning process.</p> <p><b>Sec. 404(k).</b> The owner/operator of a FERC-sited projects must certify annually that at least 75 percent of capacity will be available to renewables.</p> <p>[Note: this is in addition to existing authority under FPA § 216(b)]</p>		<p>measures.</p> <p>If a project developer and State have a dispute about the siting constraints, an appeal will be heard by a siting dispute resolution board made up of representatives from the affected State, FERC and independent experts. FERC will consider recommendations from the Board when issuing a certificate.</p>	<p>and deployment.</p> <p>[Note: this is in addition to existing authority under FPA § 216(b)]</p>	<p>stop authority applicable to REZs.</p> <ul style="list-style-type: none"> <li>○ Bingaman draft and Dorgan &amp; Nelson bills <u>no</u> renewable requirement.</li> <li>○ Nelson bill exclusive siting authority for facilities in the plan; existing back-stop authority for other.</li> </ul>
<b>Eminent Domain Rights</b>	<b>Sec. 216(e).</b> A holder of a <i>permit</i> to construct facilities in a national interest electric transmission corridor may obtain necessary rights-of-way by the exercise of eminent domain rights in Federal district court or State court.	<b>Sec. 404(f).</b> A holder of a <i>permit</i> to construct <i>green transmission projects</i> may obtain necessary rights-of-way by the exercise of eminent domain rights in Federal district court or State court.  [Note: this is in addition to existing authority under FPA § 216(e)]	<b>Sec. 216(b)(4).</b> A holder of a <i>certificate</i> to construct, operate, and maintain any <i>new high-priority national transmission project</i> may obtain necessary rights-of-way by the exercise of eminent domain rights in Federal district court or State court.	<b>Sec. 101(1)(d)(10).</b> A holder of a <i>certificate</i> to construct facilities included in the <i>Clean Energy Superhighway plan</i> certified by FERC may obtain necessary rights-of-way by the exercise of eminent domain rights in Federal district court or State court.	In addition to existing authority under FPA § 216(e), FERC is required, to the extent possible, to utilize existing Federal, State or other rights-of-way [ <b>Sec. 224(a)(2)</b> ].	<ul style="list-style-type: none"> <li>○ Reid bill limited to “green” projects.</li> <li>○ Bingaman draft no “green” requirement.</li> <li>○ Dorgan limited to facilities in the Plan.</li> </ul>
<b>Lead Agency Authority</b>	<b>Sec. 216(h).</b> DOE given lead agency to coordinate Federal authorizations and environmental reviews for siting of new transmission facilities.	<b>Sec. 404(h).</b> FERC given lead agency authority to coordinate Federal authorizations and environmental reviews for new <i>green transmission grid projects</i> (as described above).	<b>Sec. 216(b)(5).</b> Leaves unresolved whether FERC or the Department of Interior has lead agency authority to coordinate Federal authorizations and environmental reviews.	<b>Sec. 101(3) &amp;(4).</b> FERC given lead agency to coordinate Federal authorizations and environmental reviews for siting of new transmission facilities.	<b>Amended Sec. 216(h).</b> FERC given lead agency to coordinate Federal authorizations and environmental reviews for new transmission facilities.	<ul style="list-style-type: none"> <li>○ Reid, Dorgan, &amp; Nelson bills designate FERC.</li> <li>○ Bingaman draft unresolved –</li> </ul>

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	<ul style="list-style-type: none"> <li>o DOE delegated lead agency status to FERC for construction permit phase.</li> </ul>					either FERC or DOI.
<b>Transmission Cost Allocation</b>	No similar provision	<p><b>Sec. 406(a) &amp; (b).</b> Planning entities and states can propose cost allocation for new <i>green transmission grid projects</i> to FERC for approval.</p> <p><b>Sec. 406(c)(1) &amp; (2).</b> If no allocation proposal is submitted, FERC is to allocate the costs broadly to all LSEs within the interconnection or within a part of the interconnection.</p> <p><b>Sec. 406(c)(3).</b> Costs of feeder lines can be allocated broadly if at least one project is signed up, with new projects to assume a pro rata share of the costs in the future.</p>	<p><b>Sec. 216(j)(1).</b> Planning entities, after consultation with the states, can propose cost allocation for projects developed pursuant to the plan to FERC for approval.</p> <p><b>Sec. 216(j)(3).</b> If no allocation proposal is submitted, FERC will assume the allocation of costs to be allocated broadly within the interconnection or within part of the interconnection.</p>	<p><b>Sec. 101(1)(c)(2).</b> Regional planning authorities may submit a single integrated interconnection-wide cost allocation plan to FERC.</p> <p><b>Sec. 101(c)(5).</b> If FERC finds the cost-allocation plan would <u>not</u> result in J&amp;R rates, or finds that a region or state bears a disproportionate amount of the costs, FERC may modify or reject the proposal. If FERC rejects the plan, the regional planning authorities may amend and re-file the plan. If no plan is submitted, or FERC does not approve the plan, costs will be allocated over the entire interconnection.</p>	<p><b>Sec. 224(d)(1)(C).</b> FERC shall allocate the costs of establishing the <i>Energy Superhighway</i> among the Federal Government and as many States and public and private entities that have interests in or would benefit from the <i>Energy Superhighway</i>. The Federal share must not exceed 90 percent.</p> <p><b>Sec. 224(g).</b> Rebates for any tariff charged for electricity transmitted on the <i>Energy Superhighway</i> will be provided such that renewable electricity will be rebated one-half of the tariff and nuclear will be rebated one-third.</p> <p><b>Sec. 225.</b> Allows transmission project sponsors to collect payment and recover costs from the Secretary for “<i>incremental transmission capability</i>” added to <i>core transmission facilities</i> for electricity generated from renewable resources if the plan</p>	<ul style="list-style-type: none"> <li>o Reid bill applies to “green” transmission projects.</li> <li>o Bingaman draft and Dorgan &amp; Nelson bills apply to all projects built pursuant to the plan.</li> <li>o Bingaman draft no separate cost allocation for feeder lines.</li> <li>o Nelson bill includes separate provisions for cost allocation of <i>Energy Superhighway</i> &amp; incremental transmission capability projects.</li> </ul>

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					is approved by FERC.	
<b>Transmission Surcharge for Planning Costs</b>	No similar provision	<b>Sec. 403(j).</b> Imposes a transmission surcharge to collect up to \$80 million annually from LSEs in the interconnections to fund planning costs of the planning entities and States.	<b>Sec. 216(i)(8).</b> Imposes a transmission surcharge to collect up to \$80 million annually from LSEs in the interconnections to fund planning costs of the planning entities and States.	<b>Sec. 101(1)(b)(12).</b> Imposes a transmission surcharge to collect up to \$80 million annually from LSEs within the regional planning authorities to fund planning costs of the planning authority and the states.	No similar provision.	Bingaman draft and Reid & Dorgan bills -- total amount of surcharge imposed nationally is not to exceed \$80 million.
<b>Federal Utilities</b>	No similar provision	<b>Sec. 401(7).</b> Federal Transmitting Utility (FTU) is (i) a Federal power marketing agency that owns or operates an electric transmission facility; or (ii) the Tennessee Valley Authority.  <b>Sec. 407.</b> FTUs within an REZ must finance identified renewable-related projects if no private entity has committed to finance it within three years.  <b>Sec. 408(c).</b> FTUs must promote renewable energy electric resource development including the integration of solar energy. <i>See also</i> Sec. 409 – Solar Reserve Pilot Project.	No similar provision, however, <ul style="list-style-type: none"> <li>○ <b>Sec. 216(b)(1)(B).</b> Provides public power &amp; coops the option to use new FERC siting authority.</li> <li>○ <b>Sec. 216(i)(9).</b> Provides that the planning and cost allocation provisions apply to public power and coops.</li> </ul>	No similar provisions.	<b>Sec. 224(h).</b> If the Federal share of the cost of a facility constructed for the <i>Energy Superhighway</i> is more than 50 percent, ownership of the facility shall be deeded to federally owned utilities operating under regional entities of NERC to operate and maintain the facilities in accordance with NERC requirements.	N/A
<b>ERCOT</b>	Section 216 does not apply to ERCOT [ <b>Sec. 216(k)</b> ].	Voluntary Participation [ <b>Sec. 403(j)(6)(B)</b> – interconnection-wide planning; <b>Sec. 406(e)(3)</b> – cost allocation agreements]	Voluntary Participation [ <b>Sec. 216(k)</b> ].	Voluntary Participation [ <b>Sec. 101(5)</b> ].	No similar provision.	N/A