

114TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the Federal Power Act to improve the siting of interstate electric transmission facilities, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. HEINRICH introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## **A BILL**

To amend the Federal Power Act to improve the siting of interstate electric transmission facilities, and for other purposes.

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. SITING OF INTERSTATE ELECTRIC TRANS-**  
4 **MISSION FACILITIES.**

5 Section 216 of the Federal Power Act (16 U.S.C.  
6 824p) is amended to read as follows:

7 **“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS-**  
8 **MISSION FACILITIES.**

9 **“(a) POLICY.—**It is the policy of the United States  
10 that the national interstate transmission system should be

1 guided by the goal of maximizing the net benefits of the  
2 electricity system, taking into consideration—

3 “(1) support for the development of new, clean-  
4 er power generation capacity, including renewable  
5 energy generation located distant from load centers;

6 “(2) opportunities for reduced emissions from  
7 regional power production;

8 “(3) transmission needs driven by public policy  
9 requirements established by State or Federal laws  
10 (including regulations);

11 “(4) cost savings resulting from—

12 “(A) reduced transmission congestion;

13 “(B) enhanced opportunities for  
14 intraregional and interregional electricity  
15 trades;

16 “(C) reduced line losses;

17 “(D) generation resource-sharing; and

18 “(E) enhanced fuel diversity;

19 “(5) reliability benefits, including satisfying re-  
20 liability standards and guidelines for resource ade-  
21 quacy and system security;

22 “(6) diversification of risk relating to events af-  
23 fecting fuel supply or generating resources in a par-  
24 ticular region;

1           “(7) the enhancement of competition in elec-  
2           tricity markets and mitigation of market power;

3           “(8) the ability to collocate facilities on existing  
4           rights-of-way;

5           “(9) competing land use priorities, including  
6           land protected under Federal or State law;

7           “(10) the requirements of section 217(b)(4);  
8           and

9           “(11) the contribution of demand side manage-  
10          ment (including energy efficiency and demand re-  
11          sponse), energy storage, distributed generation re-  
12          sources, and smart grid investments.

13          “(b) DEFINITIONS.—In this section:

14           “(1) HIGH-PRIORITY REGIONAL TRANSMISSION  
15          PROJECT.—The term ‘high-priority regional trans-  
16          mission project’ means an overhead, submarine, or  
17          underground transmission facility, including conduc-  
18          tors or cables, towers, manhole duct systems, reac-  
19          tors, capacitors, circuit breakers, static VAR com-  
20          pensators, static synchronous compensators, power  
21          converters, transformers, synchronous condensers,  
22          braking resistors, and any ancillary facilities and  
23          equipment necessary for the proper operation of the  
24          facility, that is selected in a regional transmission  
25          plan for the purposes of cost allocation under Order

1       Number 1000 of the Commission (or any successor  
2       order), including an interregional project selected  
3       under that plan.

4           “(2) INDIAN LAND.—The term ‘Indian land’  
5       means land—

6           “(A) the title to which is held by the  
7       United States in trust for an Indian tribe or in-  
8       dividual Indian; or

9           “(B) that is held by an Indian tribe or in-  
10      dividual Indian subject to a restriction by the  
11      United States against alienation or encum-  
12      brance.

13          “(3) INDIAN TRIBE.—The term ‘Indian tribe’  
14      means any Indian tribe, band, nation, or other orga-  
15      nized group or community, including any Alaska Na-  
16      tive village or regional or village corporation (as de-  
17      fined in or established pursuant to the Alaska Na-  
18      tive Claims Settlement Act (43 U.S.C. 1601 et seq.),  
19      which is recognized as eligible for the special pro-  
20      grams and services provided by the United States to  
21      Indians because of their status as Indians.

22          “(c) SITING.—

23           “(1) PURPOSES.—The purpose of this sub-  
24      section is to ensure that high-priority regional trans-

1 mission projects are in the public interest and ad-  
2 vance the policy established under subsection (a).

3 “(2) STATE REVIEW OF PROJECT SITING.—

4 “(A) IN GENERAL.—No developer of a  
5 high-priority regional transmission project may  
6 seek a certificate for construction under sub-  
7 section (d) unless the developer first seeks au-  
8 thorization to construct the high-priority re-  
9 gional transmission project under applicable  
10 State law concerning authorization and routing  
11 of transmission facilities.

12 “(B) FEDERAL AUTHORITY.—The Com-  
13 mission may authorize, in accordance with sub-  
14 section (d), construction of a high-priority re-  
15 gional transmission project that the Commis-  
16 sion finds to be required by the present or fu-  
17 ture public convenience and necessity and in ac-  
18 cordance with this section if—

19 “(i) a State—

20 “(I) fails to approve construction  
21 and authorize routing of a high-pri-  
22 ority regional transmission project not  
23 later than 1 year after the date the  
24 applicant submits a completed appli-  
25 cation for authorization to the State;

1                   “(II) rejects or denies the appli-  
2                   cation for a high-priority regional  
3                   transmission project;

4                   “(III) authorizes the high-pri-  
5                   ority regional transmission project  
6                   subject to conditions that unreason-  
7                   ably interfere with the development of  
8                   a high-priority regional transmission  
9                   project contrary to the purposes of  
10                  this section; or

11                  “(IV) does not have authority to  
12                  approve the siting of the high-priority  
13                  regional transmission project; or

14                  “(ii) the developer seeking a certifi-  
15                  cate for construction under subsection (d)  
16                  does not qualify to apply for State author-  
17                  ization to construct a high-priority regional  
18                  transmission project because the developer  
19                  does not serve end-users in the State.

20                  “(d) CONSTRUCTION.—

21                   “(1) APPLICATION FOR CERTIFICATE.—

22                   “(A) IN GENERAL.—An applicant for a  
23                   high-priority regional transmission project may  
24                   apply to the Commission for a certificate of  
25                   public convenience and necessity with respect to

1 construction of the high-priority regional trans-  
2 mission project only under a circumstance de-  
3 scribed in subsection (c)(2)(B).

4 “(B) FORM.—The application for a certifi-  
5 cate shall be made in writing in such form and  
6 containing such information as the Commission  
7 may by regulation require.

8 “(C) HEARING.—On receipt of an applica-  
9 tion under this paragraph, the Commission—

10 “(i) shall provide public notice and op-  
11 portunity for hearing; and

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

15 “(D) ADMINISTRATION.—

16 “(i) IN GENERAL.—The Commission  
17 shall act as the lead agency for purposes of  
18 coordinating all applicable Federal author-  
19 izations and related environmental reviews  
20 for a high-priority regional transmission  
21 project under this section.

22 “(ii) COORDINATION.—To the max-  
23 imum extent practicable, the Commission  
24 shall—

1                   “(I) coordinate the Federal au-  
2                   thorization and related environmental  
3                   review process with any Indian tribe,  
4                   multistate entity, or State agency re-  
5                   sponsible for conducting any separate  
6                   permitting or environmental review of  
7                   a high-priority regional transmission  
8                   project;

9                   “(II) ensure timely and efficient  
10                  review and permit decisions.

11                  “(iii) **TIMELINE.**—The Commission,  
12                  in consultation with the applicable agencies  
13                  described in clause (ii)(I) and consistent  
14                  with applicable law, shall establish a co-  
15                  ordinated project plan with milestones for  
16                  all Federal authorizations described in  
17                  clause (i).

18                  “(2) **GRANT OF CERTIFICATE.**—

19                  “(A) **IN GENERAL.**—A certificate shall be  
20                  issued to a qualified applicant for a certificate  
21                  authorizing the whole or partial operation, con-  
22                  struction, acquisition, or modification covered  
23                  by the application, if the Commission deter-  
24                  mines that the proposed operation, construc-  
25                  tion, acquisition, or modification, to the extent

1 authorized by the certificate, is required by the  
2 present or future public convenience and neces-  
3 sity.

4 “(B) TERMS AND CONDITIONS.—The Com-  
5 mission shall have the power to attach to the  
6 issuance of a certificate under this paragraph  
7 and to the exercise of the rights granted under  
8 the certificate such reasonable terms and condi-  
9 tions as the public convenience and necessity  
10 may require.

11 “(C) RECORD OF STATE PROCEEDING.—  
12 Any party, including the State, to a State pro-  
13 ceeding in which an application for a high-pri-  
14 ority regional transmission project was rejected  
15 or denied may file with the Commission for its  
16 consideration any portion of the record of the  
17 State proceeding.

18 “(D) PUBLIC CONVENIENCE AND NECES-  
19 SITY.—In making a determination with respect  
20 to public convenience and necessity, the Com-  
21 mission shall consider whether the facilities cov-  
22 ered by an application are included in an Inter-  
23 connection-wide transmission grid plan for a  
24 high-priority regional transmission project.

1           “(3) RIGHT OF EMINENT DOMAIN.—If any  
2 holder of a certificate issued under paragraph (2)  
3 cannot acquire by contract, or is unable to agree  
4 with the owner of property on the compensation to  
5 be paid for, the necessary right-of-way to construct,  
6 operate, and maintain the high-priority regional  
7 transmission project to which the certificate relates,  
8 and the necessary land or other property necessary  
9 to the proper operation of the high-priority regional  
10 transmission project, the holder may acquire the  
11 right-of-way by the exercise of the right of eminent  
12 domain in—

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

15                   “(B) a State court.

16           “(4) FEDERAL, STATE AND TRIBAL REC-  
17 OMMENDATIONS.—In granting a certificate under  
18 paragraph (2), the Commission shall—

19                   “(A) seek from Federal resource agencies,  
20 State regulatory agencies, and affected Indian  
21 tribes recommended mitigation measures, based  
22 on habitat protection, environmental consider-  
23 ations, or cultural site protection; and

24                   “(B)(i) incorporate those identified mitiga-  
25 tion measures as conditions to the certificate; or

1           “(ii) if the Commission determines that a  
2 recommended mitigation measure is incon-  
3 sistent with the purposes of this section or with  
4 other applicable provisions of law, is infeasible  
5 or not cost-effective, or for any other reason—

6           “(I) consult with the Federal resource  
7 agency, State regulatory agency, and af-  
8 fected Indian tribe to seek to resolve the  
9 issue;

10           “(II) incorporate as conditions to the  
11 certificate such recommended mitigation  
12 measures as are determined to be appro-  
13 priate by the Commission, based on those  
14 consultations and the record before the  
15 Commission; and

16           “(III) if, after consultation, the Com-  
17 mission does not adopt in whole or in part  
18 a recommendation of an agency or affected  
19 Indian tribe, publish a statement of a find-  
20 ing that the adoption of the recommenda-  
21 tion is infeasible, not cost-effective, or oth-  
22 erwise inconsistent with this section or  
23 other applicable provisions of law.

24           “(5) STATE OR LOCAL AUTHORIZATIONS.—An  
25 applicant receiving a certificate under this sub-

1 section with respect to construction or modification  
2 of a high-priority regional transmission project in a  
3 State shall not be required to obtain a separate  
4 siting authorization from the State or any local au-  
5 thority within the State.

6 “(6) RIGHTS-OF-WAY OVER INDIAN LAND.—  
7 Notwithstanding paragraph (3), in the case of siting,  
8 construction, operation, and maintenance of a trans-  
9 mission facility to be located on or over Indian land,  
10 a certificate holder under this section shall comply  
11 with the requirements of Federal law for obtaining  
12 rights-of-way on or over Indian land.

13 “(e) RELATIONSHIP TO OTHER LAWS.—

14 “(1) IN GENERAL.—Except as specifically pro-  
15 vided in this section, nothing in this section affects  
16 any requirement of an environmental or historic  
17 preservation law of the United States, including—

18 “(A) the National Environmental Policy  
19 Act of 1969 (42 U.S.C. 4321 et seq.);

20 “(B) the Wilderness Act (16 U.S.C. 1131  
21 et seq.); or

22 “(C) the National Historic Preservation  
23 Act (16 U.S.C. 470 et seq.).

24 “(2) STATE LAW.—Nothing in this section pre-  
25 cludes any person from constructing or modifying

1 any transmission facility in accordance with State  
2 law.

3 “(f) APPLICABILITY.—

4 “(1) PROJECT DEVELOPERS.—Nothing in this  
5 section precludes the development, subject to appli-  
6 cable regulatory requirements, of transmission  
7 projects that are not selected in a regional trans-  
8 mission plan.

9 “(2) EXCLUSIONS.—This section does not apply  
10 in the State of Alaska or Hawaii or to the Electric  
11 Reliability Council of Texas.”.