



Portfolio Media, Inc. | 648 Broadway, Suite 200 | New York, NY 10012 | www.law360.com
Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Planning A New Electrical Transmission Grid

Law360, New York (March 18, 2009) -- On March 5, 2009, Senate Majority Leader Harry Reid, D-Nev., introduced the Clean Renewable Energy and Economic Development Act, which presents a regulatory outline for developing a national transmission power grid.

Notably, the bill provides for federal preemption for the permitting of new electric lines, allowing the Federal Energy Regulatory Commission (FERC) to site transmission lines carrying electricity from designated renewable energy zones (REZs) that have the possibility of generating more than 1 GW of renewable energy sources, including solar, wind, geothermal, biomass, biogas, incremental hydroelectric capacity and hydrokinetic resources.

In addition, the bill grants FERC the ability to backstop planning authority, a power curtailed by *Piedmont Environmental Council v. FERC*, No. 07-1651 (4th Cir. Feb. 18, 2009), which held both that FERC had the power to permit lines only if the state had failed to make a decision after a year and that FERC lacked the authority to preempt state decisions.

Developers of renewable projects should note that the bill augments the role of the federal government in planning the electrical transmission grid.

As press releases and initial looks at the proposed legislation indicate, Section 402 of the bill authorizes the president to select new REZs or use those already chosen by current procedures. The president has 90 days after the bill is enacted to select REZs for the Western Interconnection and 270 days for the Eastern.

Section 403 requires regional planning entities (RPEs) to solicit input from all stakeholders; base their processes on federal and state renewable energy policies and goals, both current and anticipated; and study other ways to satisfy a region's electricity needs, including demand response and increased efficiency.

Planners have one year from the date by which the REZs must be established to submit their interconnection-wide green transmission plans (GTPs).

In the event that a state fails to participate in making such plans, an RPE fails to develop a methodology or an RPE misses a FERC-established deadline, FERC possesses the authority to formulate its own methodology, although FERC must first consult with the U.S. Department of Energy (DOE) and various marketing and reliability organizations when it does so.

All transmission customers will have to pay a surcharge in order to fund the planning of the new green transmission grid, with funds being distributed to RPEs and to those states whose governors certify that they are working on such planning in the first year and who subsequently present a plan that represents a broad range of stakeholders in a timely manner.

Section 404 streamlines the siting of Green Transmission Grid Project Facilities by allowing developers to apply to FERC for federal backstop siting. So long as the states participate in the interconnection-wide planning, FERC must work with them to address siting issues.

But the bill grants FERC broad powers, including the ability to issue construction permits and assert eminent domain rights, although the projects for which it issues such permits must satisfy certain criteria, including commitments to using a threshold amount of renewable energy, maximizing the efficiency of transmission capacity and offering access to power to those states through which the project's transmission lines run.

If the project cannot offer a state interconnection, the state can apply for DOE grants.

To qualify for federal siting, transmission projects must have the capability of providing renewable generation for at least 75 percent of the transmission capacity or, alternatively, for the maximum amount of capacity that will still maintain reliable interconnection.

In addition, developers of such projects must show that they can connect their projects to additional renewable generation resources (RGRs) located in those REZs to which it links.

Considerations applied to approving projects include dependability, restrictions on land use, economics and the possible generation capacity of REZs joined to the project.

Under the bill, developers employing renewable generation or load-serving entities serviced by renewable generators will receive priority when applying for transmission rights.

States and planning entities that take part in GTPs and put their plans into operation within the allotted time can receive grants under Section 405.

After consulting with FERC, the DOE can provide such grants for a variety of purposes, including development of the smart grid or energy storage projects.

Allocations authorized by the American Recovery and Reinvestment Act of 2009 will initially fund the grants, although the sale of carbon allowances may eventually provide a supplemental revenue source for GTPs.

Section 406 of the bill seeks to incentivize cooperation between states and other parties involved in formulating green transmission plans. If these parties can agree on allocating the cost, they may submit their proposals to FERC.

In the absence of such an agreement, FERC may determine a just and reasonable cost, which FERC can distribute among users, owners and bulk power system operators serviced by or serving an interconnection. The addition of new interconnects, the bill's sponsor believes, may eventually diminish rates.

Under Section 407, the bill gives federal transmitting utilities the right to undertake transmission projects, provided that the utilities wait three years before doing so and that no private entities have obligated themselves to capitalize the projects in the meantime.

Section 408 commands power marketing agencies to encourage renewable energy and increased efficiency, among other things. The bill also envisions a greater federal role in encouraging solar power; Section 409 provides for a solar energy reserve pilot project on federal lands.

Recognizing the need to incentivize private development of renewable projects, the bill gives developers of transmission projects linking RGRs to the transmission system access to the infrastructure investment incentives from the Energy Policy Act of 2005 and increases the limits on third-party financing of transmission investments.

--By Gregory K. Lawrence and Stephen White, McDermott Will & Emery LLP

Gregory Lawrence is a partner with McDermott Will & Emery in the firm's Boston offices. Stephen White is an associate in the firm's Boston office.

The opinions expressed are those of the authors and do not necessarily reflect the views of Portfolio Media, publisher of Law360.