

AMENDMENT TO H.R. 1
OFFERED BY MR. TERRY OF NEBRASKA

Page 647, after line 12, add the following new section:

1 **SEC. 7008. AUTHORIZATION TO CONSTRUCT AND RECOVER**
2 **COSTS OF INCREMENTAL TRANSFER CAPA-**
3 **BILITY TO FACILITATE RENEWABLE ENERGY**
4 **DEVELOPMENT.**

5 (a) IN GENERAL.—Part II of the Federal Power Act
6 (16 U.S.C. 824 et seq.) is amended by adding after section
7 223 thereof the following new section:

8 **“SEC. 224. AUTHORIZATION TO CONSTRUCT AND RECOVER**
9 **COSTS OF INCREMENTAL TRANSFER CAPA-**
10 **BILITY TO FACILITATE RENEWABLE ENERGY**
11 **DEVELOPMENT AND DEPLOYMENT.**

12 “(a) DEFINITIONS.—For the purposes of this section:

13 “(1) INCREMENTAL TRANSFER CAPABILITY.—
14 The term ‘incremental transfer capability’ means
15 any of the following:

16 “(A) The transfer capability of additional
17 electrical transmission circuits primarily within
18 the same right-of-way as core transmission fa-

1 facilities described in subsection (b) and tra-
2 versing substantially all of its length.

3 “(B) The additional transfer capability
4 that results from installing a transmission line
5 of increased voltage in comparison with core
6 transmission facilities described in subsection
7 (b).

8 “(C) The additional cost of substations to
9 transform the power from the higher capacity
10 lines to a lower voltage for use by those cus-
11 tomers for which the core transmission require-
12 ments were originally intended.

13 The incremental transfer capability shall equal a
14 minimum of one-third of the transfer capability of
15 the core transmission facilities.

16 “(2) RENEWABLE ENERGY RESOURCES.—The
17 term ‘renewable energy resource’ means solar, wind,
18 ocean, tidal, geothermal energy, biomass, landfill
19 gas, or incremental hydropower.

20 “(3) SECRETARY.—The term ‘Secretary’ means
21 the Secretary of Energy unless otherwise expressly
22 described.

23 “(4) CORE TRANSMISSION FACILITIES.—The
24 term ‘core transmission facilities’ means trans-
25 mission facilities for which a project sponsor has

1 demonstrated financial or regulatory commitments
2 to construct, operate, and maintain, which the
3 project sponsor would construct regardless of Fed-
4 eral incentives, and which has the demonstrated abil-
5 ity to add incremental transfer capability through ei-
6 ther the addition of electrical circuits or increasing
7 the operating voltage of the transmission facilities.

8 “(5) UNCOMMITTED TRANSFER CAPABILITY.—
9 The term ‘uncommitted transfer capability’ means
10 transfer capability, and associated transmission fa-
11 cilities using a pro-rata calculation, which is above
12 the needs demonstrated by the core transmission fa-
13 cilities, that—

14 “(A) are not paid for through long-term
15 transmission service agreements filed with the
16 Commission;

17 “(B) are not allocated through an Open
18 Access Same-Time Information System posting
19 to network customers and recovered via embed-
20 ded transmission rates; or

21 “(C) do not receive payment of their asso-
22 ciated rates via a regional transmission organi-
23 zation’s tariff which is on file with the Commis-
24 sion.

1 “(6) FINANCIAL OR REGULATORY COMMIT-
2 MENT.—The term ‘financial or regulatory commit-
3 ment’ means a commitment via—

4 “(A) transmission service agreements ac-
5 cepted or on file with the Commission;

6 “(B) allocations to network customers
7 posted on Open Access Same-Time Information
8 System; or

9 “(C) a ruling granting full future cost re-
10 covery through a regional transmission organi-
11 zation’s tariff which is on file with the Commis-
12 sion.

13 “(7) PROJECT SPONSOR.—The term ‘project
14 sponsor’ means an entity who proposes to include in-
15 cremental transfer capability as part of a core trans-
16 mission facilities project.

17 “(8) PRO-RATA.—The term ‘pro-rata’ means
18 the incremental transfer capability divided by the
19 total transfer capability of the transmission facili-
20 ties.

21 “(b) AUTHORIZATION TO CONSTRUCT.—Notwith-
22 standing any provision relating to the rates or charges for
23 electric service or transmission of electric energy of this
24 Act or of State law, a project sponsor may construct incre-
25 mental transfer capability to core transmission facilities

1 to increase the ability to transmit electric energy in inter-
2 state commerce, and shall be entitled to collect payment
3 and recover costs of such incremental transfer capability
4 as set forth in subsection (d) if the project sponsor(s) of
5 such incremental transfer capability have filed a cost re-
6 covery plan described in subsection (d) with the Commis-
7 sion, and the Commission finds that the project sponsor
8 has demonstrated the following:

9 “(1) The transmission project constitutes a core
10 transmission facility.

11 “(2) The core transmission facility and incre-
12 mental transfer capability will facilitate development
13 or transmission of electric energy generated from re-
14 newable energy resources to load centers.

15 “(3) The process for seeking approval of siting
16 and construction of the core transmission facilities
17 in the State(s) in which the facilities will be located,
18 or by the Commission pursuant to section 216, but
19 are not yet in operation, has been initiated by the
20 date on which the cost recovery plan is submitted to
21 the Commission for approval.

22 “(4) The core transmission facilities include at
23 least 50 miles of new transmission lines.

1 “(5) The facilities providing the incremental
2 transfer capability will operate at a nominal voltage
3 of 345 kilovolts or greater.

4 “(6) The incremental transfer capability is like-
5 ly to promote the reliable and economically efficient
6 transmission and generation of electricity or reduce
7 transmission congestion.

8 “(7) In the case of a project sponsor that has
9 on file with the Commission and is operating subject
10 to an Open Access Transmission Tariff, the transfer
11 capability of the core transmission facilities, without
12 the incremental transfer capability, is sufficiently
13 committed through transmission service agreements
14 accepted by or on file with the Commission or as al-
15 located to network or native customers pursuant to
16 the project sponsor’s Open Access Transmission
17 Tariff.

18 “(8) In the case of a project sponsor that must
19 obtain approval from any regional transmission or-
20 ganization (as defined in 16 U.S.C. 796) prior to
21 constructing such facilities, all required approvals
22 from any regional transmission organization for its
23 core transmission facilities have been obtained.

1 “(9) The ability to finance construction of the
2 core transmission facilities absent the incremental
3 transfer capability.

4 “(10) A commitment to undertake all reason-
5 able and prudent efforts to construct the core trans-
6 mission facilities in such a way to provide the incre-
7 mental transfer capability as outlined in their plan
8 if the Commission grants the cost recovery incen-
9 tives for the incremental transfer capability under
10 subsection (d).

11 “(c) AUTHORIZATION TERMINATION.—The author-
12 ization set forth under subsection (b) shall terminate De-
13 cember 31, 2014, provided that the monies deposited into
14 the fund established pursuant to subsection (d) shall re-
15 main available until expended.

16 “(d) COST RECOVERY PLAN.—

17 “(1) IN GENERAL.—As provided for in this sub-
18 section, the Commission shall approve the recovery
19 of costs for incremental transfer capability added to
20 core transmission facilities pursuant to a plan sub-
21 mitted by the project sponsor consistent with the
22 subsection (b) above. Such plan shall include either
23 (A) a proposal for rates and charges for the uncom-
24 mitted transfer capability to be paid annually by the
25 Secretary to the project sponsor for a period of ten

1 years once the transmission facilities are placed in
2 service, or (B) a proposal for the Secretary to pur-
3 chase from the project sponsor and hold the rights
4 to the uncommitted transfer capability on a pro-rata
5 basis based on the final cost of the assets providing
6 the uncommitted transfer capability. Under either
7 option, the project sponsor shall own, operate, and
8 maintain the facilities providing the uncommitted
9 transfer capability.

10 “(2) DIRECT PAYMENT FOR UNCOMMITTED
11 TRANSFER CAPABILITY.—Upon the request of the
12 project sponsor and if approved by the Commission,
13 the Secretary shall pay the project sponsor, on a pro
14 rata basis, for all prudently incurred costs and asso-
15 ciated return on equity of constructing, owning, and
16 operating the uncommitted transfer capability for a
17 period of ten years once the transmission facilities
18 are placed in service. In determining whether rates
19 and charges pursuant to this subsection for use of
20 uncommitted transfer capability are just and reason-
21 able and not unduly discriminatory or preferential,
22 the Commission shall consider the public interest to
23 increase transmission transfer capability to facilitate
24 the development and transmission of renewable en-
25 ergy, and shall account for the cost of constructing

1 the uncommitted transfer capability separately from
2 the cost that would have been incurred to construct
3 the transmission facility without the uncommitted
4 transfer capability using a pro-rata calculation.

5 “(3) DIRECT PURCHASE OF UNCOMMITTED
6 TRANSFER CAPABILITY.—Upon the request of the
7 project sponsor and if approved by the Commission,
8 the Secretary shall purchase from the project spon-
9 sor and hold the rights to the uncommitted transfer
10 capability on a pro-rata basis once the transmission
11 facilities are placed in service. Notwithstanding the
12 foregoing, the Secretary shall not purchase any un-
13 committed transfer capability rights under this sec-
14 tion until the Secretary has deposited into the Re-
15 newable Energy Incremental Transmission Account
16 amounts sufficient to cover the price of such rights
17 as set forth in the plan approved by the Commission.

18 “(4) ACCESS TO UNCOMMITTED TRANSFER CA-
19 PABILITY.—The Commission shall ensure, to the
20 maximum extent practicable, that the project spon-
21 sor and third-party transmission customers that pur-
22 chase or sell renewable energy resources developed
23 and delivered pursuant to this section have equal
24 and preferential access to purchase all or parts of
25 the rights to the uncommitted transfer capability

1 held by the Secretary for a period of ten years, pro-
2 vided that such preference does not have a negative
3 impact on electric reliability. The price at which the
4 Secretary's rights may be purchased shall equal the
5 amount paid by the Secretary net of accumulated
6 depreciation for the rights plus interest compounded
7 annually at the two-year Treasury note rate, multi-
8 plied by the percentage of the Secretary's rights to
9 the uncommitted transfer capability of the project
10 being purchased.

11 “(5) REMARKETING UNCOMMITTED TRANSFER
12 CAPABILITY.—In order to minimize Federal Govern-
13 ment outlays and reduce the amount of total uncom-
14 mitted transfer capability still held by the Federal
15 Government at the end of the ten-year reservation
16 period set forth under paragraph (4), the project
17 sponsor shall thereafter post on an Open Access
18 Same Time Information System and remarket the
19 rights to the residual uncommitted transfer capa-
20 bility. The project sponsor shall then repurchase
21 these rights as new long-term transmission service
22 agreements or network commitments are made.
23 Nothing in this paragraph shall be deemed to estab-
24 lish the project sponsor as an agency of the Federal
25 Government.

1 “(e) RENEWABLE ENERGY INCREMENTAL TRANS-
2 MISSION ACCOUNT.—There is established in the Treasury
3 an account known as the Renewable Energy Incremental
4 Transmission Account. The Secretary of the Treasury
5 shall deposit into the fund, without any appropriation
6 therefor, the amount of \$15,000,000,000, as soon as prac-
7 ticable after the effective date of this section or, at the
8 latest, at the beginning of the next fiscal year, October
9 1, 2009. Monies in the fund shall be available to the Sec-
10 retary for expenditure under this part without fiscal year
11 limitation, to remain available until expended. The Sec-
12 retary shall deposit into this account payments by any
13 non-Federal source for the purpose of purchasing uncom-
14 mitted transfer capability rights held by the Secretary.
15 The Secretary may receive and accept payments from any
16 non-Federal source, and amounts deposited into the ac-
17 count, deposited by the Secretary of the Treasury or re-
18 ceived from a non-Federal source, shall be available to the
19 Secretary, without further appropriation, for the purchase
20 of uncommitted transfer capability under this section. The
21 Secretary shall file with Congress annually a report of the
22 Secretary’s activities under this section.

23 “(f) FACILITATING RENEWABLE ENERGY RE-
24 SOURCES.—For purposes of satisfying the cost recovery
25 authorization requirements set forth in subsection (b), an

1 incremental transfer capability project facilitates develop-
2 ment or transmission of electric energy generated from re-
3 newable energy resources if it—

4 “(1) is constructed in whole or in part between
5 an electrical load center and an area that has been
6 determined by the Commission to have the potential
7 to generate in excess of one gigawatt of electricity
8 from renewable energy resources;

9 “(2) is consistent with transmission facilities
10 identified as needed in the transmission planning
11 initiatives associated with a regional renewable en-
12 ergy zone identification process which is undertaken
13 with the involvement of State and Federal agencies;
14 or

15 “(3) is consistent with areas which have been
16 identified in a report issued by the Secretary under
17 section 216 as an area in which electric energy
18 transmission transfer capability constraints or con-
19 gestion exists, may be emerging, or could occur if
20 large amounts of renewable generation resources
21 were developed without development of associated in-
22 cremental transfer capability.

23 “(g) RULEMAKING REQUIREMENT.—The Commis-
24 sion shall, by rule(s) promulgated within 90 days of the
25 date of enactment of this section, establish—

1 “(1) appropriate final procedural requirements
2 specifying the process by which a project sponsor
3 shall submit and the Commission shall evaluate the
4 cost recovery plan provided for in this section; and
5 “(2) incentive-based rate treatments for invest-
6 ments in incremental transfer capability projects au-
7 thorized by the Commission under this section that
8 expand the transfer capability of core transmission
9 facilities currently being permitted, sited, or con-
10 structed, beyond their initial planned transfer capa-
11 bility, to accommodate increased future growth of
12 renewable energy. Such incentive treatments shall
13 recognize the scale of investment required, the ex-
14 traordinary financial and non-financial risks and
15 challenges impeding this investment, and the wide-
16 ranging public interest benefits provided by devel-
17 oping such projects. In establishing the appropriate
18 procedural requirements necessary to carry out this
19 subsection, the Commission shall grant such incen-
20 tive rates independently from other incentive rates
21 that the Commission is authorized to provide pursu-
22 ant to section 219.”.

1 (b) BONDS.—There is no private use issue for tax
2 exempt bonds used for renewable energy transmission
3 projects.

