

118TH CONGRESS
1ST SESSION

H. R. 4045

To modernize the hydropower licensing process and to promote next-generation hydropower projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2023

Mrs. RODGERS of Washington introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Oversight and Accountability, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To modernize the hydropower licensing process and to promote next-generation hydropower projects, 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. SHORT TITLE.**

4 This Act may be cited as the “Hydropower Clean En-
5 ergy Future Act”.

1 **SEC. 2. CONFIRMING THAT HYDROPOWER IS AN ESSENTIAL**
2 **RENEWABLE RESOURCE.**

3 (a) SENSE OF CONGRESS ON THE USE OF HYDRO-
4 POWER RENEWABLE RESOURCES.—It is the sense of Con-
5 gress that—

6 (1) hydropower is a renewable resource for pur-
7 poses of all Federal programs and is an essential
8 source of energy in the United States; and

9 (2) the United States should protect existing
10 hydropower resources and increase substantially the
11 capacity and generation of clean, renewable hydro-
12 power resources to address a changing climate and
13 improve environmental quality in the United States.

14 (b) MODIFYING DEFINITIONS OF RENEWABLE EN-
15 ERGY TO INCLUDE HYDROPOWER.—

16 (1) ENERGY POLICY ACT OF 2005.—Section 203
17 of the Energy Policy Act of 2005 (42 U.S.C. 15852)
18 is amended—

19 (A) in subsection (a), by amending para-
20 graphs (1) through (3) to read as follows:

21 “(1) Not less than 20 percent in fiscal years
22 2024 through 2025.

23 “(2) Not less than 23 percent in fiscal years
24 2026 through 2027.

25 “(3) Not less than 25 percent in fiscal year
26 2028 and each fiscal year thereafter.”; and

1 (B) in subsection (b), by striking para-
2 graph (2) and inserting the following:

3 “(2) RENEWABLE ENERGY.—The term ‘renew-
4 able energy’ means energy produced from solar,
5 wind, biomass, landfill gas, ocean (including tidal,
6 wave, current, and thermal), geothermal, municipal
7 solid waste, or hydropower.”.

8 (2) OTHER FEDERAL REGULATIONS, ORDERS,
9 AND POLICIES.—Not later than 180 days after the
10 date of enactment of this Act, each Federal depart-
11 ment and agency shall submit to the Committee on
12 Energy and Natural Resources of the Senate and
13 the Committee on Energy and Commerce of the
14 House of Representatives a report demonstrating
15 that the department or agency has amended any ap-
16 plicable regulation, order, or other policy of the de-
17 partment or agency related to renewable energy to
18 ensure treatment of hydropower by the Federal Gov-
19 ernment consistent with the amendments made by
20 paragraph (1).

21 (c) LICENSES FOR CONSTRUCTION.—Section 4(e) of
22 the Federal Power Act (16 U.S.C. 797(e)) is amended,
23 in the first sentence, by inserting “to mitigate the effects
24 of the applicable project on such reservation, so as to pro-
25 vide” after “deem necessary” in the first proviso.

1 (d) OPERATION OF NAVIGATION FACILITIES.—Sec-
2 tion 18 of the Federal Power Act (16 U.S.C. 811) is
3 amended by adding before the period at the end of the
4 first sentence “to mitigate effects of the applicable
5 project”.

6 **SEC. 3. PROTECTING AND PROMOTING SMALL AND NEXT-**
7 **GENERATION HYDROPOWER PROJECTS.**

8 (a) EXEMPTIONS FROM LICENSING REQUIREMENTS
9 FOR CERTAIN SMALL HYDROELECTRIC POWER
10 PROJECTS.—Section 405 of the Public Utility Regulatory
11 Policies Act of 1978 (16 U.S.C. 2705) is amended by
12 striking subsection (d) and inserting the following:

13 “(d) EXEMPTIONS FROM LICENSING IN CERTAIN
14 CASES.—

15 “(1) IN GENERAL.—Subject to paragraphs (2)
16 and (3), the Commission may in its discretion (by
17 rule or order), upon application and on a case-by-
18 case basis or on the basis of classes or categories of
19 projects, grant an exemption in whole or in part
20 from the requirements (including the licensing re-
21 quirements) of part I of the Federal Power Act to
22 any small hydroelectric power project—

23 “(A) having a proposed installed capacity
24 of 40 megawatts or less; or

1 “(B) for which a license was issued under
2 part I of the Federal Power Act and the li-
3 censee applies for an exemption under this sub-
4 section, if—

5 “(i) the license was issued after the
6 date of enactment of the Electric Con-
7 sumers Protection Act of 1986;

8 “(ii) the Commission determines,
9 based on information available to the Com-
10 mission, that continued operation of the
11 project is not likely to jeopardize the con-
12 tinued existence of any species listed as a
13 threatened species or an endangered spe-
14 cies under the Endangered Species Act of
15 1973;

16 “(iii) the Commission determines,
17 based on information available to the Com-
18 mission, that continued operation of the
19 project is not likely to result in the de-
20 struction or adverse modification of an
21 area designated as critical habitat for any
22 species listed as a threatened species or an
23 endangered species under the Endangered
24 Species Act of 1973; and

1 “(iv) the project has an installed ca-
2 pacity of 40 megawatts or less.

3 “(2) REQUIREMENTS.—An exemption granted
4 under paragraph (1) shall be subject to the same
5 limitations (to ensure protection for fish and wildlife
6 as well as other environmental concerns) as those
7 which are set forth in subsections (c) and (d) of sec-
8 tion 30 of the Federal Power Act with respect to de-
9 terminations made and exemptions granted under
10 subsection (b) of such section 30 and subsections (c)
11 and (d) of such section 30 shall apply with respect
12 to actions taken and exemptions granted under this
13 subsection.

14 “(3) EFFECTS.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), the granting of an exemp-
17 tion to a project under this subsection shall in
18 no case have the effect of waiving or limiting
19 the application (to such project) of the second
20 sentence of subsection (b) of this section.

21 “(B) ENVIRONMENTAL REVIEW.—The
22 Commission granting an exemption under para-
23 graph (1) may not be considered a major Fed-
24 eral action under section 102(2)(C) of the Na-
25 tional Environmental Policy Act of 1969.

1 “(A) will produce electricity from a gener-
2 ator driven by a turbine that converts the po-
3 tential energy of falling or flowing water;

4 “(B) will utilize turbine or generating tech-
5 nology, an energy storage method, or a measure
6 to protect, mitigate, or enhance environmental
7 resources, that is not in widespread, utility-
8 scale use in the United States as of the date of
9 enactment of this section;

10 “(C) will not be, based on information
11 available to the Commission, likely to jeopardize
12 the continued existence of any species listed as
13 a threatened species or an endangered species
14 under the Endangered Species Act of 1973; and

15 “(D) will not be, based on information
16 available to the Commission, likely to result in
17 the destruction or adverse modification of an
18 area designated as critical habitat for any spe-
19 cies listed as a threatened species or an endan-
20 gered species under the Endangered Species
21 Act of 1973.

22 “(2) NEXT-GENERATION HYDROPOWER
23 PROJECT.—The term ‘next-generation hydropower
24 project’ means a project that—

25 “(A) may be licensed under this Act;

1 “(B) is not—

2 “(i) a qualifying conduit hydropower
3 facility under section 30; or

4 “(ii) exempted from licensing under—

5 “(I) section 30; or

6 “(II) section 405 of the Public
7 Utility Regulatory Policies Act of
8 1978; and

9 “(C) is—

10 “(i) an emerging hydropower tech-
11 nology project;

12 “(ii) a qualifying facility, as defined in
13 section 34;

14 “(iii) a qualifying closed-loop pumped
15 storage project, as defined in section 35;

16 “(iv) a marine or hydrokinetic project,
17 including a project that utilizes a wave
18 technology, tidal technology, or in-river
19 technology; or

20 “(v) a hydropower facility within an
21 irrigation, water supply, industrial, agricul-
22 tural, or other open or closed water con-
23 duit system.

24 “(c) EXPEDITED LICENSING PROCESS.—

25 “(1) NOTIFICATION OF INTENT.—

1 “(A) FILING OF NOTIFICATION.—An appli-
2 cant for any next-generation hydropower project
3 shall commence the licensing process by filing a
4 notification of intent with the Commission.

5 “(B) DEADLINE FOR FILING.—Notwith-
6 standing section 15(b)(1), an applicant for a
7 next-generation hydropower project shall file a
8 notification of intent at least 2 years before the
9 expiration of the existing license, if applicable.

10 “(2) FILING OF APPLICATION.—

11 “(A) GENERAL DEADLINE.—An applicant
12 for a next-generation hydropower project shall
13 submit to the Commission an application not
14 later than 1 year after filing the notification of
15 intent under paragraph (1).

16 “(B) EXISTING LICENCEE DEADLINE.—
17 Notwithstanding section 15(c)(1), an applica-
18 tion for any next-generation hydropower project
19 shall be filed with the Commission at least 1
20 year before the expiration of the term of the ex-
21 isting license, if applicable.

22 “(3) DEADLINE FOR ISSUANCE.—The Commis-
23 sion shall take final action on a license for a next-
24 generation hydropower project under this section not
25 later than 2 years after the applicant notifies the

1 Commission of its intent to file an application for a
2 license, as provided under paragraph (1).

3 “(d) REQUIREMENTS.—In issuing a license under
4 this section the Commission and all resource agencies with
5 regulatory responsibilities in the licensing process shall—

6 “(1) maximize reliance on existing studies and
7 information and require any person or agency re-
8 questing a new study or information to demonstrate
9 that collection of any new data or preparation of any
10 new study will not jeopardize the Commission’s abil-
11 ity to meet the licensing deadline under subsection
12 (c)(3);

13 “(2) consider whether obligations under the Na-
14 tional Environmental Protection Act of 1969 may be
15 met through preparation of an environmental assess-
16 ment or supplementing a previously prepared envi-
17 ronmental assessment or environmental impact
18 statement;

19 “(3) eliminate any nonessential meetings, re-
20 ports, and paperwork, including interim study re-
21 ports and a draft license application or similar docu-
22 ment, without compromising effective consultation
23 with, and participation of, Federal and State re-
24 source agencies, Indian tribe, and the public; and

1 “(4) consider existing project works and other
2 infrastructure to be included in the environmental
3 baseline.

4 “(e) RULE.—Not later than 90 days after the date
5 of enactment of this section, and after consultation with
6 the task force described in subsection (f), which 90 days
7 shall include public notice and opportunity for comment,
8 the Commission shall issue a rule implementing this sec-
9 tion. Such rule shall include a process, not to exceed 60
10 days, for the Commission to determine on a case-by-case
11 basis whether a proposed or existing project qualifies as
12 a next-generation hydropower project prior to the initi-
13 ation of the licensing or relicensing process.

14 “(f) TASK FORCE.—The Commission shall convene a
15 task force, with appropriate Federal and State agencies,
16 Indian tribes, and licensees under this part represented,
17 to coordinate the regulatory processes associated with the
18 authorizations required to license next-generation hydro-
19 power projects pursuant to this section.”.

20 **SEC. 4. IDENTIFYING AND REMOVING MARKET BARRIERS**
21 **TO HYDROPOWER.**

22 (a) REPORT ON HYDROPOWER BARRIERS.—

23 (1) IN GENERAL.—Not later than 270 days
24 after the date of enactment of this Act, the Federal
25 Energy Regulatory Commission, in consultation with

1 the Secretary of Energy, shall submit to the Com-
2 mittee on Energy and Natural Resources of the Sen-
3 ate and the Committee on Energy and Commerce of
4 the House of Representatives a report—

5 (A) describing any barriers to the develop-
6 ment and proper compensation of conventional,
7 storage, conduit, and emerging hydropower
8 technologies caused by—

9 (i) rules of Transmission Organiza-
10 tions (as defined in section 3 of the Fed-
11 eral Power Act (16 U.S.C. 796));

12 (ii) regulations or policies—

13 (I) of the Commission; or

14 (II) under the Federal Power Act
15 (16 U.S.C. 791a et seq.); or

16 (iii) other Federal and State laws and
17 policies unique to hydropower development,
18 operation, and regulation, as compared to
19 other sources of electricity;

20 (B) containing recommendations of the
21 Commission for reducing barriers described in
22 subparagraph (A) across regulatory and market
23 sectors;

1 (C) identifying and determining any regu-
2 latory, market, procurement, or cost recovery
3 mechanisms that would—

4 (i) encourage development of conven-
5 tional, storage, conduit, and emerging hy-
6 dropower technologies; and

7 (ii) properly compensate conventional,
8 storage, conduit, and emerging hydropower
9 technologies for the full range of services
10 provided to the electric grid, including—

11 (I) balancing electricity supply
12 and demand;

13 (II) ensuring grid reliability;

14 (III) providing ancillary services;

15 (IV) contributing to the
16 decarbonization of the electric grid;
17 and

18 (V) integrating intermittent
19 power sources into the grid in a cost-
20 effective manner; and

21 (D) identifying ownership and development
22 models that could reduce barriers to the devel-
23 opment of conventional, storage, conduit, and
24 emerging hydropower technologies, including—

1 (i) opportunities for risk-sharing
2 mechanisms and partnerships, including
3 co-ownership models; and

4 (ii) opportunities to foster lease-sale
5 and lease-back arrangements with publicly
6 owned electric utilities.

7 (2) COMMISSION PROCEEDINGS.—The Commis-
8 sion shall base the report under paragraph (1) on
9 the findings of the Commission in—

10 (A) Docket No. AD16–20;

11 (B) Docket No. RM16–23; and

12 (C) any other relevant proceedings.

13 (3) TECHNICAL CONFERENCE AND PUBLIC
14 COMMENT.—In preparing the report under para-
15 graph (1), the Commission shall solicit public input,
16 including by convening a technical conference and
17 providing an opportunity for public submission of
18 written comments on a draft report.

19 (b) DEFINITIONS.—In this section:

20 (1) ANCILLARY SERVICES.—The term “ancil-
21 lary services” means the specialty services and func-
22 tions provided by the electric grid that facilitate and
23 support the continuous flow of electricity so that
24 supply will continually meet demand, including—

25 (A) autonomous dynamic voltage support;

- 1 (B) balancing;
2 (C) black start capabilities;
3 (D) frequency control;
4 (E) load following;
5 (F) operating, flexibility, contingency, and
6 other reserves;
7 (G) reactive power; and
8 (H) synchronized regulation.

9 (2) CONVENTIONAL, STORAGE, CONDUIT, AND
10 EMERGING HYDROPOWER TECHNOLOGIES.—The
11 term “conventional, storage, conduit, and emerging
12 hydropower technologies” means hydropower in all
13 its forms and modes of operation, including—

14 (A) the use of dams or similar infrastruc-
15 ture to store water in a reservoir or divert flows
16 from a waterway, and to release stored or di-
17 verted water through a turbine to generate elec-
18 tricity according to any mode of operation, such
19 as run-of-river, peaking, reregulating, storage,
20 or load following;

21 (B) a configuration of two water reservoirs
22 at different elevations that can generate power
23 as water moves down through a turbine, and
24 pump water back to the upper reservoir when

1 the turbine operations are reversed, including
2 both closed- and open-loop systems;

3 (C) marine and hydrokinetic technologies,
4 including wave, tidal, and in-river systems;

5 (D) mini- and micro-hydropower facilities
6 within irrigation, water supply, industrial, agri-
7 cultural, or other open or closed water conduit
8 systems; and

9 (E) other facilities that produce electricity
10 from generators driven by turbines that convert
11 the potential energy of falling or flowing water.

12 **SEC. 5. MODERNIZING HYDROPOWER LICENSING.**

13 Part I of the Federal Power Act (16 U.S.C. 792 et
14 seq.) is further amended by adding at the end the fol-
15 lowing:

16 **“SEC. 38. LICENSING PROCESS COORDINATION AND IM-
17 PROVEMENT.**

18 “(a) DEFINITION OF FEDERAL AUTHORIZATION.—In
19 this section, the term ‘Federal authorization’ means any
20 authorization required under Federal law (including any
21 license, condition of any license by a Secretary under sec-
22 tion 4(e), prescription submitted by a Secretary under sec-
23 tion 18, permit, special use authorization, certification,
24 opinion, consultation, determination, or other approval)
25 with respect to an application for a license under this part.

1 “(b) DESIGNATION AS LEAD AGENCY.—

2 “(1) IN GENERAL.—The Commission shall act
3 as the lead agency for purposes of all applicable
4 Federal authorizations (including for purposes of
5 complying with the National Environmental Policy
6 Act of 1969), and for purposes of complying with
7 any required State or local environmental reviews.

8 “(2) OTHER AGENCIES.—Each Federal, State,
9 and local government agency considering an aspect
10 of an application for a Federal authorization shall
11 coordinate with the Commission and comply with the
12 deadline established in the schedule developed for
13 the license under this part, in accordance with the
14 rule issued under subsection (d)(2)(C).

15 “(c) USE OF EXISTING STUDIES.—

16 “(1) IN GENERAL.—To the maximum extent
17 practicable and in accordance with the best available
18 science, the Commission and other Federal and
19 State agencies with a responsibility for a Federal au-
20 thorization shall—

21 “(A) use relevant existing studies and
22 data; and

23 “(B) avoid duplicating current, existing
24 studies that are applicable to the relevant
25 project.

1 “(2) DEMONSTRATION.—When requiring any
2 new study or collection of information, the Commis-
3 sion or other Federal or State agency with a respon-
4 sibility for a Federal authorization shall—

5 “(A) explain how the new study or other
6 information is necessary to support the agency’s
7 decisionmaking with respect to the Federal au-
8 thorization;

9 “(B) identify how existing information rea-
10 sonably available to the agency is inadequate to
11 support the agency’s decisionmaking with sub-
12 stantial evidence; and

13 “(C) include an analysis of how the value
14 of the required new study or other information
15 outweighs the cost of producing it.

16 “(d) SCHEDULE.—

17 “(1) TIMING FOR ISSUANCE.—It is the sense of
18 Congress that, except as otherwise provided in this
19 part, all Federal authorizations required for a
20 project should be issued within a reasonable time, so
21 as to facilitate a final Commission licensing decision
22 within 2 years after the date on which the license
23 application for the project under this part is consid-
24 ered to be complete by the Commission.

25 “(2) COMMISSION SCHEDULE.—

1 “(A) IN GENERAL.—The Commission, in
2 accordance with the rule issued under subpara-
3 graph (C), shall—

4 “(i) establish a schedule for—

5 “(I) all filings and issuances nec-
6 essary and appropriate for its
7 issuance of a license issued under this
8 part; and

9 “(II) the issuance of all Federal
10 authorizations for the applicable
11 project; and

12 “(ii) issue such schedule when the
13 Commission determines that the license ap-
14 plication for the project is ready for envi-
15 ronmental analysis.

16 “(B) REQUIREMENTS.—In establishing the
17 schedule under subparagraph (A), the Commis-
18 sion shall—

19 “(i) consult and cooperate with the
20 Federal and State agencies responsible for
21 a Federal authorization;

22 “(ii) ensure the expeditious comple-
23 tion of all proceedings relating to a Fed-
24 eral authorization; and

1 “(iii) comply with applicable schedules
2 established by Federal law with respect to
3 a Federal authorization.

4 “(C) RULEMAKING.—

5 “(i) COMMISSION RULEMAKING TO ES-
6 TABLISH PROCESS TO SET SCHEDULE.—
7 Not later than 180 days after the date of
8 enactment of this section, the Commission,
9 in consultation with appropriate Federal
10 and State agencies and after providing no-
11 tice and opportunity for public comment,
12 shall issue a final rule establishing a proc-
13 ess for setting a schedule under subpara-
14 graph (A).

15 “(ii) CONSIDERATIONS.—In issuing a
16 rule under this subparagraph, the Commis-
17 sion shall ensure that the schedule for each
18 Federal authorization—

19 “(I) includes deadlines for ac-
20 tions by—

21 “(aa) any Federal or State
22 agency with responsibilities for a
23 Federal authorization;

24 “(bb) the applicant;

25 “(cc) the Commission; and

1 “(dd) other agencies and
2 participants in a proceeding;

3 “(II) is developed in consultation
4 with the applicant and any Federal or
5 State agency with responsibility for
6 the applicable Federal authorization;

7 “(III) provides an opportunity
8 for any Federal or State agency with
9 responsibility for a Federal authoriza-
10 tion to identify and resolve issues of
11 concern, consistent with subsections
12 (e) and (f);

13 “(IV) complies with applicable
14 schedules established under Federal
15 law;

16 “(V) ensures expeditious comple-
17 tion of all proceedings required under
18 Federal and State law, to the max-
19 imum extent practicable; and

20 “(VI) facilitates completion of
21 Federal and State agency studies, re-
22 views, and any other procedures re-
23 quired prior to, or concurrent with,
24 the preparation of the environmental
25 document of the Commission required

1 under the National Environmental
2 Policy Act of 1969, to the maximum
3 extent practicable.

4 “(3) ADHERENCE TO SCHEDULE.—

5 “(A) IN GENERAL.—The Commission,
6 Federal, and State agencies with responsibility
7 for a Federal authorization, the license appli-
8 cant, and all other agencies and other partici-
9 pants in proceedings for Federal authorizations
10 for the project shall meet the deadlines estab-
11 lished by the schedule developed under para-
12 graph (2).

13 “(B) EXTENSION OF SCHEDULE DEAD-
14 LINES.—

15 “(i) FEDERAL AUTHORIZATIONS.—A
16 Federal or State agency that is unable to
17 complete its disposition of a Federal au-
18 thorization by the deadline set forth in the
19 schedule established by the Commission
20 under paragraph (2) shall, not later than
21 30 days prior to such deadline, file for an
22 extension with the Commission. The Com-
23 mission shall issue a one-time extension of
24 up to 90 days to any such Federal or State

1 agency upon a demonstration of good
2 cause.

3 “(ii) OTHER EXTENSIONS.—The Com-
4 mission may grant extensions requested by
5 the license applicant or other licensing par-
6 ticipants to facilitate settlement, address
7 unforeseen circumstances, or accommodate
8 other showings of good cause if the Com-
9 mission determines that any such extension
10 would reduce the overall time period for
11 decisionmaking on required Federal au-
12 thorizations for the project, increase the
13 administrative efficiency of the processes
14 for Federal authorizations, or improve the
15 quality of information available to Federal
16 and State agencies with a responsibility for
17 a Federal authorization.

18 “(iii) REISSUANCE OF SCHEDULE.—If
19 the Commission grants an extension under
20 this paragraph, the Commission shall re-
21 issue the schedule and applicable deadlines
22 to reflect the extension of time granted.

23 “(C) LIMITATION.—Notwithstanding the
24 Commission’s authority to extend the schedule
25 as provided in subparagraph (B), the Commis-

1 sion shall not grant any extension that would
2 increase by 1 year or longer the time period in
3 the original schedule issued under paragraph
4 (2) for obtaining all Federal authorizations for
5 the applicable project.

6 “(4) FAILURE TO MEET SCHEDULE DEAD-
7 LINES.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graph (C), if a Federal or State agency fails to
10 complete its disposition of a Federal authoriza-
11 tion in accordance with the schedule deadline
12 established under paragraph (2) (as may be ex-
13 tended under paragraph (3))—

14 “(i) in the case of a Federal agency,
15 \$5,000 of unobligated funds shall be re-
16 scinded; or

17 “(ii) in the case of a State agency,
18 \$5,000 of unobligated funds shall be re-
19 scinded from Federal fish and wildlife or
20 water resources funding programs to the
21 State.

22 “(B) SUBSEQUENT RESCISSION.—Subject
23 to subparagraph (C), for each additional week
24 after any deadline established by the Commis-
25 sion under paragraph (2) (as may be extended

1 under paragraph (3)) remains uncompleted by a
2 Federal or State agency with a responsibility
3 for a Federal authorization, an additional re-
4 scission of \$5,000 shall occur as provided in
5 subparagraph (A).

6 “(C) MAXIMUM ANNUAL RESCISSION.—For
7 each individual Federal authorization for a
8 project, the total amounts rescinded under sub-
9 paragraphs (A) and (B) shall not exceed, in any
10 fiscal year, \$100,000.

11 “(D) LIMITATION.—No head of a Federal
12 or State department or agency shall reprogram
13 funds from another Federal account or program
14 for the loss of the funds under this paragraph.
15 No head of a Federal or State agency shall re-
16 port or include any rescinded funds as an ad-
17 ministrative cost for purposes of annual charges
18 under section 10(e).

19 “(e) INCONSISTENT OR CONFLICTING LICENSE
20 TERMS.—

21 “(1) CONSULTATION TO RESOLVE INCONSIST-
22 ENCY OR CONFLICT.—

23 “(A) IN GENERAL.—If a term or condition
24 of a Federal authorization submitted for inclu-
25 sion in a license under this part conflicts or is

1 otherwise inconsistent with another such term
2 or condition, the Commission shall initiate and
3 facilitate consultation between the Federal or
4 State resource agencies submitting conflicting
5 or inconsistent terms or conditions, to attempt
6 to resolve the inconsistency or conflict, includ-
7 ing with any such conditions recommended for
8 inclusion in the license by the Commission.

9 “(B) MEETINGS.—The consultation period
10 under this subsection shall extend up to 90
11 days and shall include at least one technical
12 conference or similar meeting. The Commission
13 shall issue notice of any such conference or
14 other consultation meeting, which shall be open
15 to participation by the license applicant, other
16 agencies, and other licensing participants.

17 “(C) AMENDMENT AND REISSUANCE.—If
18 the agencies submitting the terms or conditions
19 resolve the inconsistency or conflict, the Com-
20 mission and other consulting agencies shall set
21 a reasonable schedule and deadline, that is not
22 later than 90 days after the conclusion of the
23 consultation, for the agencies to amend and re-
24 issue their Federal authorizations to reflect the
25 resolution, as appropriate.

1 “(2) RESOLUTION OF INCONSISTENCY OR CON-
2 FLICT.—

3 “(A) STATEMENTS.—If agencies are un-
4 able to resolve an inconsistency or conflict
5 under paragraph (1), not later than 30 days
6 after the conclusion of the consultation process
7 under such paragraph, the agencies shall sub-
8 mit to the public record maintained by the
9 Commission a statement that identifies the in-
10 consistency or conflict, explains the position
11 taken by each agency causing the inconsistency
12 or conflict, and provides an analysis, supported
13 by information in the public record, of the fac-
14 tual basis for the inconsistent or conflicting po-
15 sition taken by each agency.

16 “(B) REFERRAL.—Following such submis-
17 sion, the Commission shall refer the matter for
18 resolution as provided in subsection (f).

19 “(f) RESOLUTION OF INTERAGENCY DISPUTES.—

20 “(1) REFERRAL TO OMB.—For any dispute
21 under subsection (c), (d), or (e) among Federal and
22 State agencies with responsibility for a Federal au-
23 thorization, as well as any dispute between any such
24 agency and the license applicant, the Commission
25 may, upon its own motion or the request of the head

1 of any such agency or the license applicant, refer the
 2 matter to the Director of the Office of Management
 3 and Budget.

4 “(2) ACTION BY OMB.—With respect to any dis-
 5 pute referred to the Director under paragraph (1),
 6 the Director, in consultation with the Chair of the
 7 Council on Environmental Quality, shall act as ap-
 8 propriate—

9 “(A) to ensure a timely participation;

10 “(B) to ensure a timely decision;

11 “(C) to mediate the dispute; or

12 “(D) to refer the matter to the President.

13 “(3) PARTICIPATION.—The license applicant
 14 and other interested participants shall be provided
 15 the opportunity to participate in the resolution of
 16 any issues under this subsection.”.

17 **SEC. 6. HYDROPOWER DEVELOPMENT AT EXISTING NON-**

18 **POWERED DAMS AND CLOSED-LOOP PUMPED**

19 **STORAGE.**

20 (a) PROMOTING HYDROPOWER DEVELOPMENT AT

21 EXISTING NONPOWERED DAMS.—Section 34 of the Fed-

22 eral Power Act (16 U.S.C. 823e) is amended—

23 (1) by amending subsection (a) to read as fol-

24 lows:

1 “(a) IN GENERAL.—The Commission may issue a li-
2 cense under section 37 for any facility the Commission de-
3 termines is a qualifying facility.”;

4 (2) by striking subsections (b) and (c); and

5 (3) by redesignating subsections (d), (e), and
6 (f) as subsections (b), (c), and (d), respectively.

7 (b) CLOSED-LOOP PUMPED STORAGE PROJECTS.—
8 Section 35 of the Federal Power Act (16 U.S.C. 823f)
9 is amended—

10 (1) by amending subsection (a) to read as fol-
11 lows:

12 “(a) IN GENERAL.—The Commission may issue a li-
13 cense under section 37 for any project the Commission
14 determines is a qualifying closed-loop pumped storage
15 project.”;

16 (2) by striking subsections (b), (c), (e), (g), and
17 (h);

18 (3) by redesignating subsections (d) and (f) as
19 subsections (b) and (c), respectively; and

20 (4) by adding at the end the following:

21 “(d) NO LICENSE REQUIRED FOR CERTAIN
22 PROJECTS.—Notwithstanding section 23(b), a closed-loop
23 pumped storage project shall not be required to be licensed
24 under this part if the closed-loop pumped storage
25 project—

1 “(1) is not located upon any part of the public
2 lands or reservations of the United States; and

3 “(2) does not use a federally owned dam or res-
4 ervoir.

5 “(e) DEFINITIONS.—For purposes of this section:

6 “(1) CLOSED-LOOP PUMPED STORAGE
7 PROJECT.—The term ‘closed-loop pumped storage
8 project’ means a project for the generation of elec-
9 tric power—

10 “(A) that—

11 “(i) is configured to use 2 or more
12 natural or artificial reservoirs or other
13 water bodies at different elevations; and

14 “(ii) can generate electric power as
15 water moves down through a turbine and
16 recharge by pumping water to the upper
17 reservoir;

18 “(B) that will be constructed, operated,
19 and maintained for the generation of electric
20 power in a manner that ensures that the upper
21 and lower reservoirs or other water bodies do
22 not impound any stream channel of any surface
23 body of water over which Congress has jurisdic-
24 tion under its authority to regulate commerce

1 with foreign nations and among the several
2 States; and

3 “(C) in which any infrastructure con-
4 necting a project reservoir and a natural sur-
5 face waterway is used for the sole purpose of
6 the initial fill and periodic recharge of res-
7 ervoirs needed for project operation.

8 “(2) QUALIFYING CLOSED-LOOP PUMPED STOR-
9 AGE PROJECT.—The term ‘qualifying closed-loop
10 pumped storage project’ means a closed-loop
11 pumped storage project that, as of the date of enact-
12 ment of the Hydropower Clean Energy Future Act,
13 is not licensed under, or exempted from the license
14 requirements contained in, this part.

15 “(f) SAVINGS CLAUSES.—Nothing in this section af-
16 fects—

17 “(1) any requirement of the Endangered Spe-
18 cies Act of 1973 (16 U.S.C. 1531 et seq.), the Fed-
19 eral Water Pollution Control Act (33 U.S.C. 1251 et
20 seq.), or the National Environmental Policy Act of
21 1969 (42 U.S.C. 4231 et seq.) that may apply to the
22 construction, operation, or maintenance of a closed-
23 loop pumped storage project; or

1 “(2) except as provided in subsection (d), any
2 authority of the Commission to license a closed-loop
3 pumped storage project under this part.”.

4 **SEC. 7. EXTENSION OF TIME TO COMMENCE CONSTRU-**
5 **CTION OF CERTAIN HYDROPOWER PROJECTS.**

6 (a) **DEFINITION OF COVERED PROJECT.**—In this sec-
7 tion, the term “covered project” means a hydropower
8 project with respect to which—

9 (1) the Federal Energy Regulatory Commission
10 issued a license under the Federal Power Act before
11 March 13, 2020; and

12 (2) construction has not commenced on the
13 date of enactment of this Act.

14 (b) **AUTHORIZATION OF EXTENSION.**—Notwith-
15 standing section 13 of the Federal Power Act (16 U.S.C.
16 806), on the request of a licensee of a covered project,
17 the Federal Energy Regulatory Commission may, after
18 reasonable notice and for good cause shown, extend in ac-
19 cordance with subsection (c) of this section the period dur-
20 ing which the licensee is required to commence construc-
21 tion of the covered project for an additional 4 years be-
22 yond the 8 years authorized by such section 13.

23 (c) **PERIOD OF EXTENSION.**—An extension of time
24 to commence construction of a covered project under sub-
25 section (b) shall—

1 (1) begin on the date on which the final exten-
2 sion of the period for commencement of construction
3 granted to the licensee under section 13 of the Fed-
4 eral Power Act (16 U.S.C. 806) expires; and

5 (2) end on the date that is 4 years after the lat-
6 est date to which the Federal Energy Regulatory
7 Commission is authorized to extend the period for
8 commencement of construction under such section
9 13.

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