
PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3043) TO
MODERNIZE HYDROPOWER POLICY, AND FOR OTHER
PURPOSES, AND PROVIDING FOR CONSIDERATION OF THE
BILL (H.R. 3441) TO CLARIFY THE TREATMENT OF TWO OR
MORE EMPLOYERS AS JOINT EMPLOYERS UNDER THE
NATIONAL LABOR RELATIONS ACT AND THE FAIR LABOR
STANDARDS ACT OF 1938

November 6, 2017.—Referred to the House Calendar and ordered to be
printed.

MR. BYRNE, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. __]

The Committee on Rules, having had under consideration House
Resolution ____, by a record vote of 9 to 2, report the same to the House with
the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3043, the
Hydropower Policy Modernization Act of 2017, under a structured rule. The
resolution provides one hour of general debate equally divided and controlled
by the chair and ranking minority member of the Committee on Energy and
Commerce. The resolution waives all points of order against consideration
of the bill. The resolution makes in order as original text for the purpose of
amendment the amendment in the nature of a substitute recommended by
the Committee on Energy and Commerce now printed in the bill, and
provides that it shall be considered as read. The resolution waives all points
of order against that amendment in the nature of a substitute. The
resolution makes in order only those further amendments printed in this
report. Each such amendment may be offered only in the order printed in
this report, may be offered only by a Member designated in this report, shall
be considered as read, shall be debatable for the time specified in this report
equally divided and controlled by the proponent and an opponent, shall not
be subject to amendment, and shall not be subject to a demand for division of

the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in this report. The resolution provides one motion to recommit with or without instructions.

Section 2 of the resolution provides for consideration of H.R. 3441, the Save Local Business Act, under a closed rule. The resolution provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Education and the Workforce. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Education and the Workforce now printed in the bill shall be considered as adopted and that the bill, as amended, shall be considered as read. The resolution waives all points of order against provisions in the bill, as amended. The resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of H.R. 3043, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendment in the nature of a substitute to H.R. 3043 made in order as original text, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments to H.R. 3043 printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against consideration of H.R. 3441, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against provisions in H.R. 3441, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 137

Motion by Ms. Slaughter to provide H.R. 3441 and H.R. 3043 each an open rule. Defeated: 2-9

Majority Members	Vote	Minority Members	Vote
Mr. Cole.....	Nay	Ms. Slaughter.....	Yea
Mr. Woodall.....	Nay	Mr. McGovern.....	Yea
Mr. Burgess.....	Nay	Mr. Hastings of Florida.....	
Mr. Collins.....	Nay	Mr. Polis.....	
Mr. Byrne.....	Nay		
Mr. Newhouse.....	Nay		
Mr. Buck.....	Nay		
Ms. Cheney.....	Nay		
Mr. Sessions, Chairman.....	Nay		

Rules Committee Record Vote No. 138

Motion by Mr. Cole to report the rule. Adopted: 9-2

Majority Members	Vote	Minority Members	Vote
Mr. Cole.....	Yea	Ms. Slaughter.....	Nay
Mr. Woodall.....	Yea	Mr. McGovern.....	Nay
Mr. Burgess.....	Yea	Mr. Hastings of Florida.....	
Mr. Collins.....	Yea	Mr. Polis.....	
Mr. Byrne.....	Yea		
Mr. Newhouse.....	Yea		
Mr. Buck.....	Yea		
Ms. Cheney.....	Yea		
Mr. Sessions, Chairman.....	Yea		

SUMMARY OF THE AMENDMENTS TO H.R. 3043 MADE IN ORDER

1. Pocan (WI), Grothman (WI): Requires the U.S. Department of Interior consider the threat of invasive species when it makes decisions on hydropower licensing. (10 minutes)
2. Babin (TX): Allows FERC to examine the licenses of any project located in an area that was declared by the President to be a disaster area in 2017. (10 minutes)
3. Jenkins, Evan (WV): Ensures that when hydro projects have an existing Memorandum of Understanding for non-federal hydropower with FERC that all relevant federal agencies are authorized to fully study and review the potential expansion of non-federal hydropower, including a review of seasonal pool levels and slowing flood releases. (10 minutes)
4. Rush (IL): (SUBSTITUTE) Adds a new section to the Federal Power Act (FPA) to improve the hydropower licensing process. It directs the Commission and the Federal resource agencies to convene a negotiated rulemaking within 90 days of enactment with state and local government representatives, Indian tribes, and stakeholders to develop a process that will coordinate all necessary Federal authorizations and enable the Commission to make a final decision on a license not later than 3 years of receiving a completed license application. (10 minutes)

TEXT OF AMENDMENTS TO H.R. 3043 MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE POCAN
OF WISCONSIN OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

AMENDMENT TO H.R. 3043, AS REPORTED
OFFERED BY M .

5

At the end of the bill, add the following new section:

1 SEC. 5. CONSIDERATION OF INVASIVE SPECIES.

2 Section 18 of the Federal Power Act (16 U.S.C. 811)
3 is amended by inserting after “the Secretary of Com-
4 merce.” the following: “In prescribing a fishway, the Sec-
5 retary of Commerce or the Secretary of the Interior, as
6 appropriate, shall consider the threat of invasive species.”.



2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BABIN
OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

SLR

**AMENDMENT TO H.R. 3043, AS REPORTED
OFFERED BY MR. BABIN OF TEXAS**

At the end of the bill, add the following new section:

1 **SEC. 5. EXAMINATION OF LICENSES FOR PROJECTS LO-**
2 **CATED IN DISASTER AREAS.**

3 Not later than one year after the date of enactment
4 of this Act, the Federal Energy Regulatory Commission
5 may examine the license issued by the Commission under
6 part I of the Federal Power Act for any project that is
7 located in an area that was declared by the President to
8 be a disaster area in 2017.



3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JENKINS OF WEST VIRGINIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

7L

**AMENDMENT TO H.R. 3043, AS REPORTED
OFFERED BY MR. JENKINS OF WEST VIRGINIA**

At the end of the bill, add the following new section:

1 SEC. 5. STUDIES FOR NON-FEDERAL HYDROPOWER.

2 Notwithstanding any other provision of law, if the
3 Federal Energy Regulatory Commission has in place a
4 memorandum of understanding with another Federal
5 agency for non-federal hydropower with respect to a
6 project licensed under part I of the Federal Power Act
7 (regardless of explicit Congressional authorization for
8 such non-federal hydropower), the other Federal agency
9 may fully study and review the potential expansion of such
10 non-federal hydropower at the project, including a review
11 of seasonal pool levels and slowing flood releases.



4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RUSH
OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

6R

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3043, AS REPORTED
OFFERED BY M. _____**

Strike all after the enacting clause and insert the
following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Hydropower Policy
3 Modernization Act of 2017”.

4 **SEC. 2. HYDROPOWER REGULATORY IMPROVEMENTS.**

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

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

11 (2) the United States should increase substan-
12 tially the capacity and generation of clean, renewable
13 hydropower that would improve environmental qual-
14 ity in the United States.

15 (b) MODIFYING THE DEFINITION OF RENEWABLE
16 ENERGY TO INCLUDE HYDROPOWER.—Section 203 of the
17 Energy Policy Act of 2005 (42 U.S.C. 15852) is amend-
18 ed—

1 (1) in subsection (a), by amending paragraphs
2 (1) through (3) to read as follows:

3 “(1) Not less than 17 percent in fiscal years
4 2017 through 2019.

5 “(2) Not less than 20 percent in fiscal years
6 2020 through 2024.

7 “(3) Not less than 25 percent in fiscal year
8 2025 and each fiscal year thereafter.”; and

9 (2) in subsection (b), by striking paragraph (2)
10 and inserting the following:

11 “(2) RENEWABLE ENERGY.—The term ‘renew-
12 able energy’ means electric energy generated from
13 solar, wind, biomass, landfill gas, ocean (including
14 tidal, wave, current, and thermal), geothermal, or
15 municipal solid waste, or from a hydropower
16 project.”.

17 (c) PRELIMINARY PERMITS.—Section 5 of the Fed-
18 eral Power Act (16 U.S.C. 798) is amended—

19 (1) in subsection (a), by striking “three” and
20 inserting “4”; and

21 (2) by amending subsection (b) to read as fol-
22 lows:

23 “(b) The Commission may—

24 “(1) extend the period of a preliminary permit
25 once for not more than 4 additional years beyond

1 the 4 years permitted by subsection (a) if the Com-
2 mission finds that the permittee has carried out ac-
3 tivities under such permit in good faith and with
4 reasonable diligence; and

5 “(2) if the period of a preliminary permit is ex-
6 tended under paragraph (1), extend the period of
7 such preliminary permit once for not more than 4
8 additional years beyond the extension period granted
9 under paragraph (1), if the Commission determines
10 that there are extraordinary circumstances that war-
11 rant such additional extension.”.

12 (d) TIME LIMIT FOR CONSTRUCTION OF PROJECT
13 WORKS.—Section 13 of the Federal Power Act (16 U.S.C.
14 806) is amended in the second sentence by striking “once
15 but not longer than two additional years” and inserting
16 “for not more than 8 additional years,”.

17 (e) CONSIDERATIONS FOR RELICENSING TERMS.—
18 Section 15(e) of the Federal Power Act (16 U.S.C.
19 808(e)) is amended—

20 (1) by striking “(e) Except” and inserting the
21 following:

22 “(e) LICENSE TERM ON RELICENSING.—

23 “(1) IN GENERAL.—Except”; and

24 (2) by adding at the end the following:

1 “(2) CONSIDERATION.—In determining the
2 term of a license under paragraph (1), the Commis-
3 sion shall consider project-related investments by the
4 licensee over the term of the existing license (includ-
5 ing any terms under annual licenses) that resulted
6 in new development, construction, capacity, effi-
7 ciency improvements, or environmental measures,
8 but which did not result in the extension of the term
9 of the license by the Commission.”.

10 **SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVE-**
11 **MENTS.**

12 (a) HYDROPOWER LICENSING AND PROCESS IM-
13 PROVEMENTS.—Part I of the Federal Power Act (16
14 U.S.C. 792 et seq.) is amended by adding at the end the
15 following:

16 **“SEC. 34. HYDROPOWER LICENSING AND PROCESS IM-**
17 **PROVEMENTS.**

18 “(a) DEFINITION.—In this section, the term ‘Federal
19 authorization’—

20 “(1) means any authorization required under
21 Federal law with respect to an application for a li-
22 cense under this part; and

23 “(2) includes any conditions, prescriptions, per-
24 mits, special use authorizations, certifications, opin-
25 ions, or other approvals as may be required under

1 Federal law to approve or implement the license
2 under this part.

3 “(b) DESIGNATION AS LEAD AGENCY.—The Com-
4 mission shall act as the lead agency for the purposes of
5 complying with the National Environmental Policy Act of
6 1969 (42 U.S.C. 4321 et seq.) with respect to an applica-
7 tion for a license under this part.

8 “(c) RULEMAKING TO ESTABLISH PROCESS TO SET
9 SCHEDULE.—

10 “(1) NEGOTIATED RULEMAKING.—Not later
11 than 90 days after the date of enactment of this sec-
12 tion the Commission, the Secretary of Agriculture,
13 the Administrator of the National Oceanic and At-
14 mospheric Administration, and the Secretary of the
15 Interior shall enter into a negotiated rulemaking
16 pursuant to subchapter III of chapter 5 of title 5,
17 United States Code, to develop and publish a rule
18 providing a process for the Commission to evaluate,
19 and issue a final decision on, a completed applica-
20 tion for a license under this part.

21 “(2) NEGOTIATED RULEMAKING COMMITTEE.—
22 The negotiated rulemaking committee established
23 pursuant to the negotiated rulemaking process en-
24 tered into under paragraph (1) shall include rep-
25 resentatives of State and Indian tribal governments,

1 and other stakeholders who will be significantly af-
2 fected by a rule issued under this subsection.

3 “(3) DEADLINES.—

4 “(A) PROPOSED RULE.—Not later than 2
5 years after the date of enactment of this sec-
6 tion, the Commission shall publish a proposed
7 rule resulting from the negotiated rulemaking
8 under this subsection.

9 “(B) FINAL RULE.—Not later than 3
10 years after the date of enactment of this sec-
11 tion, the Commission shall publish a final rule
12 resulting from the negotiated rulemaking under
13 this subsection.

14 “(4) ELEMENTS OF RULE.—In publishing a
15 rule under this subsection, the Commission shall en-
16 sure that—

17 “(A) the rule includes a description of the
18 Commission’s responsibility as the lead agency
19 in coordinating Federal authorizations;

20 “(B) the rule includes a process for devel-
21 opment of a schedule for the review and disposi-
22 tion of a completed application for a license
23 under this part;

24 “(C) each schedule developed pursuant to
25 such process shall—

1 “(i) include deadlines for actions on
2 the applicable completed application—

3 “(I) that are consistent with the
4 duties of each agency under this Act
5 and under applicable State, tribal, and
6 other Federal laws; and

7 “(II) by—

8 “(aa) each Federal agency
9 responsible for a Federal author-
10 ization;

11 “(bb) each State agency,
12 local government, or Indian tribe
13 that may consider an aspect of
14 an application for a Federal au-
15 thorization or is responsible for
16 conducting any separate permit-
17 ting and environmental reviews of
18 the applicable project;

19 “(cc) the applicant;

20 “(dd) the Commission; and

21 “(ee) other participants in a
22 license proceeding;

23 “(ii) facilitate the identification and
24 completion of Federal, State, and tribal
25 agency-requested studies, reviews, and any

1 other procedures required to be conducted
2 prior to, or concurrent with, the prepara-
3 tion of the Commission's environmental re-
4 view required under the National Environ-
5 mental Policy Act of 1969 (42 U.S.C.
6 4321 et seq.), to the extent practicable;
7 and

8 “(iii) provide for a final decision on
9 the applicable completed application to be
10 made by not later than 3 years after the
11 date on which the Commission receives
12 such completed application;

13 “(D) the rule includes a mechanism for re-
14 solving issues of concern that may delay the
15 completion of a license application or review of
16 a completed application;

17 “(E) the rule includes a definition of a
18 completed application; and

19 “(F) the rule provides for an opportunity
20 for public notice and comment on—

21 “(i) a completed application; and

22 “(ii) the schedule developed for the re-
23 view and disposition of the application.

24 “(d) APPLICATION PROCESSING.—The Commission,
25 Federal, State, and local government agencies, and Indian

1 tribes may allow an applicant seeking a Federal authoriza-
2 tion to fund a third-party contractor selected by such an
3 agency or tribe to assist in reviewing the application. All
4 costs of an agency or tribe incurred pursuant to direct
5 funding by the applicant, including all costs associated
6 with the third party contractor, shall not be considered
7 costs of the United States for the administration of this
8 part under section 10(e).

9 “(e) **ISSUE RESOLUTION.**—The Commission may for-
10 ward any issue of concern that has delayed either the com-
11 pletion of the application or the issuance of a license for
12 a completed application beyond the deadline set forth in
13 the schedule established under the final rule published
14 under subsection (c) to the heads of the relevant State,
15 Federal, or Indian tribal agencies for resolution. If the
16 Commission forwards an issue of concern to the head of
17 a relevant agency, the Commission and the relevant agen-
18 cy shall enter into a memorandum of understanding to fa-
19 cilitate interagency coordination and resolution of the
20 issue of concern, as appropriate.

21 “(f) **NO EFFECT ON OTHER LAWS.**—Nothing in this
22 section—

23 “(1) expands or limits the application of any
24 power or authority vested in an agency, State, or In-
25 dian tribe by any applicable law or regulation;

1 “(2) shall be construed to affect any require-
2 ments of State, tribal, or other Federal law (includ-
3 ing under the Federal Water Pollution Control Act,
4 the Fish and Wildlife Coordination Act, the Endan-
5 gered Species Act of 1973, section 14 of the Act of
6 March 3, 1899 (commonly known as the Rivers and
7 Harbors Appropriation Act of 1899), the Coastal
8 Zone Management Act of 1972, the Magnuson-Ste-
9 vens Fishery Conservation and Management Act,
10 and those provisions in subtitle III of title 54,
11 United States Code, commonly known as the Na-
12 tional Historic Preservation Act) with respect to an
13 application for a license under this part; or

14 “(3) abrogates, diminishes, or otherwise affects
15 any treaty or other right of any Indian tribe.

16 **“SEC. 35. LICENSING STUDY IMPROVEMENTS.**

17 “(a) IN GENERAL.—To facilitate the timely and effi-
18 cient completion of the license proceedings under this part,
19 the Commission shall, in consultation with applicable Fed-
20 eral and State agencies and interested members of the
21 public—

22 “(1) compile current and accepted best prac-
23 tices in performing studies required in such license
24 proceedings, including methodologies and the design
25 of studies to assess the full range of environmental

1 impacts of a project that reflect the most recent
2 peer-reviewed science;

3 “(2) compile a comprehensive collection of stud-
4 ies and data accessible to the public that could be
5 used to inform license proceedings under this part;
6 and

7 “(3) encourage license applicants, agencies, and
8 Indian tribes to develop and use, for the purpose of
9 fostering timely and efficient consideration of license
10 applications, a limited number of open-source meth-
11 odologies and tools applicable across a wide array of
12 projects, including water balance models and
13 streamflow analyses.

14 “(b) USE OF STUDIES.—To the extent practicable,
15 the Commission and other Federal, State, and local gov-
16 ernment agencies and Indian tribes considering an aspect
17 of an application for Federal authorization (as defined in
18 section 34) shall use relevant, existing studies and data
19 and avoid duplicating such studies that are applicable to
20 the project. Studies repeated for the purpose of character-
21 izing seasonal or annual variation of a relevant char-
22 acteristic or resource shall not be considered duplicative.

23 **“SEC. 36. EVALUATION OF EXPEDITED LICENSING FOR**
24 **QUALIFYING PROJECT UPGRADES.**

25 “(a) DEFINITIONS.—In this section:

1 “(1) EXPEDITED LICENSE AMENDMENT PROC-
2 ESS.—The term ‘expedited license amendment proc-
3 ess’ means an expedited process for issuing an
4 amendment to an existing license issued under this
5 part for a project.

6 “(2) QUALIFYING PROJECT UPGRADE.—The
7 term ‘qualifying project upgrade’ means a change—

8 “(A) to a project; and

9 “(B) that meets the criteria under sub-
10 section (b).

11 “(b) IN GENERAL.—To improve the regulatory proc-
12 ess and reduce the time and cost of making upgrades to
13 existing projects, the Commission shall investigate the fea-
14 sibility of implementing an expedited license amendment
15 process for a change to a project that meets the following
16 criteria:

17 “(1) The change to the project—

18 “(A) is limited to the power house equip-
19 ment of the project; or

20 “(B) will result in environmental protec-
21 tion, mitigation, or enhancement measures to
22 benefit fish and wildlife resources or other nat-
23 ural or cultural resources.

24 “(2) The change to the project is unlikely to
25 adversely affect any species listed as threatened or

1 endangered under the Endangered Species Act of
2 1973 (16 U.S.C. 1531 et seq.), as determined by the
3 Secretary of the Interior.

4 “(3) The Commission ensures, in accordance
5 with section 7 of the Endangered Species Act of
6 1973 (16 U.S.C. 1536), that the change to the
7 project will not result in the destruction or modifica-
8 tion of critical habitat.

9 “(4) The change to the project is consistent
10 with any applicable comprehensive plan under sec-
11 tion 10(a).

12 “(5) The change to the project is unlikely to
13 adversely affect water quality and water supply, as
14 determined in consultation with any applicable State
15 or Indian tribe.

16 “(6) Any adverse environmental effects result-
17 ing from the change to the project will be insignifi-
18 cant.

19 “(c) WORKSHOPS AND PILOTS.—The Commission
20 shall—

21 “(1) not later than 60 days after the date of
22 enactment of this section, hold an initial workshop
23 to solicit public comment and recommendations on
24 how to implement an expedited license amendment
25 process for qualifying project upgrades;

1 “(2) evaluate pending applications for an
2 amendment to an existing license of a project for a
3 qualifying project upgrade that may benefit from an
4 expedited license amendment process;

5 “(3) not later than 180 days after the date of
6 enactment of this section, identify and solicit partici-
7 pation by project developers in, and begin implemen-
8 tation of, a 3-year pilot program to evaluate the fea-
9 sibility and utility of an expedited license amend-
10 ment process for qualifying project upgrades; and

11 “(4) not later than 3 months after the end of
12 the 3-year pilot program under paragraph (3), hold
13 a final workshop to solicit public comment on the ex-
14 pedited license amendment process.

15 “(d) MEMORANDUM OF UNDERSTANDING.—The
16 Commission shall, to the extent practicable, enter into a
17 memorandum of understanding with any applicable Fed-
18 eral, State, or tribal agency to implement the pilot pro-
19 gram described in subsection (c).

20 “(e) REPORTS.—Not later than 3 months after the
21 date of the final workshop held pursuant to subsection
22 (c)(4), the Commission shall submit to the Committee on
23 Energy and Commerce of the House of Representatives
24 and the Committee on Energy and Natural Resources of
25 the Senate a report that includes—

1 “(1) a summary of the public comments re-
2 ceived as part of the initial workshop held under
3 subsection (c)(1);

4 “(2) a summary of the public comments re-
5 ceived as part of the final workshop held under sub-
6 section (c)(4);

7 “(3) a description of the expedited license
8 amendment process for qualifying project upgrades
9 evaluated under the pilot program, including—

10 “(A) a description of the procedures or re-
11 quirements that were waived under the expe-
12 dited license amendment process;

13 “(B) a comparison between—

14 “(i) the average amount of time re-
15 quired to complete the licensing process for
16 an amendment to a license under the expe-
17 dited license amendment process tested
18 under the pilot program; and

19 “(ii) the average amount of time re-
20 quired to complete the licensing process for
21 a similar amendment to a license under
22 current Commission processes;

23 “(4) the number of requests received by the
24 Commission to participate in the expedited license
25 amendment process for qualifying project upgrades;

1 “(5) a description of changes to Commission
2 rules required to create and standardize an expedited
3 license amendment process for qualifying
4 project upgrades;

5 “(6) a description of factors that prevented any
6 participant in the pilot program from completing the
7 expedited license amendment process in the expedited
8 time frame.

9 “(f) IMPLEMENTATION.—If the Commission determines,
10 based upon the workshops and results of the pilot
11 program under subsection (c), that an expedited license
12 amendment process will reduce the time and costs for
13 issuing amendments to licenses for qualifying project upgrades,
14 the Commission shall revise its policies and regulations,
15 in accordance with applicable law, to establish an
16 expedited license amendment process.

17 “(g) PUBLIC INPUT.—In carrying out subsection (f),
18 the Commission shall solicit and consider public comments
19 before finalizing any change to policies or regulations.”.

20 **SEC. 4. PILOT PROGRAM FOR CONSOLIDATED LICENSING**
21 **PROCESS FOR INTRA-WATERSHED PROJECTS.**

22 “(a) DEFINITIONS.—In this section:

23 (1) COMMISSION.—The term “Commission”
24 means the Federal Energy Regulatory Commission.

1 (2) PROJECT.—The term “project” has the
2 meaning given such term in section 3 of the Federal
3 Power Act (16 U.S.C. 796).

4 (b) INITIAL WORKSHOP.—Not later than 3 months
5 after the date of enactment of this Act, the Commission
6 shall hold a workshop to solicit public comment and rec-
7 ommendations on how to implement a pilot program de-
8 scribed in subsection (c).

9 (c) ESTABLISHMENT OF PILOT PROGRAM.—The
10 Commission shall establish a voluntary pilot program to
11 enable the Commission to consider multiple projects to-
12 gether in a consolidated licensing process in order to issue
13 a license under part I of the Federal Power Act (16 U.S.C.
14 792 et seq.) for each such project.

15 (d) CANDIDATE PROJECT IDENTIFICATION.—Not
16 later than 1 year after the date of enactment of this Act,
17 the Commission, in consultation with the head of any ap-
18 plicable Federal or State agency or Indian tribe and li-
19 censees, shall identify and solicit candidate projects to par-
20 ticipate in the pilot program established under subsection
21 (c). In order to participate in such pilot program a project
22 shall meet the following criteria:

23 (1) The current license for the project expires
24 between 2019 and 2029 or the project is not li-

1 censed under part I of the Federal Power Act (16
2 U.S.C. 792 et seq.).

3 (2) The project is located within the same wa-
4 tershed as other projects that are eligible to partici-
5 pate in the pilot program.

6 (3) The project is located in sufficiently close
7 proximity and has environmental conditions that are
8 sufficiently similar to other projects that are eligible
9 to participate in the pilot program so that water-
10 shed-wide studies and information may be developed,
11 thereby significantly reducing the need for, and
12 scope of, individual project-level studies and infor-
13 mation.

14 (e) DESIGNATION OF INDIVIDUAL PROJECTS AS A
15 SINGLE GROUP.—The Commission may designate a group
16 of projects to be considered together in a consolidated li-
17 censing process under the pilot program established under
18 subsection (c). The Commission may designate such a
19 group only if each licensee (or applicant) for a project in
20 the group, on a voluntary basis and in writing, agrees—

21 (1) to participate in the pilot program; and

22 (2) to a cost-sharing arrangement with other li-
23 censees (or applicants) and applicable Federal and
24 State agencies with respect to the conduct of water-

1 shed-wide studies to be considered in support of the
2 license applications for the group of projects.

3 (f) PROJECT LICENSE TERMS.—The Commission
4 may change the term of any existing license for an indi-
5 vidual licensee in a group designated under subsection (e)
6 by up to 5 years—

7 (1) to provide sufficient time to develop a con-
8 solidated study plan for—

9 (A) studies for individual projects in the
10 group, as necessary; and

11 (B) relevant watershed-wide studies for
12 purposes of the consolidated licensing process
13 under the pilot program established under sub-
14 section (c) that will be applicable to each
15 project in the group; and

16 (2) to align the terms of the existing licenses
17 such that they expire on the same date.

18 (g) MEMORANDUM OF UNDERSTANDING.—The Com-
19 mission shall, to the extent practicable, enter into a memo-
20 randum of understanding with any applicable Federal or
21 State agency or Indian tribe to implement the pilot pro-
22 gram established under subsection (c).

23 (h) INITIAL REPORT.—Not later than 3 months after
24 the date of the initial workshop held pursuant to sub-
25 section (b), the Commission shall submit to the Committee

1 on Energy and Commerce of the House of Representatives
2 and the Committee on Energy and Natural Resources of
3 the Senate a report that includes—

4 (1) a summary of the public comments received
5 as part of such initial workshop; and

6 (2) a preliminary plan for identifying and solici-
7 ting participants in the pilot program established
8 under subsection (c).

9 (i) INTERIM REPORT.—Not later than 4 years after
10 the establishment of the pilot program under subsection
11 (c), the Commission shall submit to the Committee on En-
12 ergy and Commerce of the House of Representatives and
13 the Committee on Energy and Natural Resources of the
14 Senate a report that includes—

15 (1) a description of the status of the pilot pro-
16 gram, including a description of the individual
17 projects that are participating in the pilot program
18 and the watersheds in which such projects are lo-
19 cated; or

20 (2) if no projects are participating in the pilot
21 program, a summary of any barriers the Commis-
22 sion has identified to proceeding with the pilot pro-
23 gram and the reasons provided by potential partici-
24 pants for their preference for using an individual li-
25 cense process.

1 **SEC. 5. INTERAGENCY COMMUNICATIONS AND COOPERA-**
2 **TION.**

3 Part I of the Federal Power Act (16 U.S.C. 792 et
4 seq.) is further amended by adding at the end the fol-
5 lowing new section:

6 **“SEC. 37. INTERAGENCY COMMUNICATIONS AND COOPERA-**
7 **TION.**

8 “(a) EX PARTE COMMUNICATIONS.—Interagency
9 communications relating to the preparation of environ-
10 mental documents under the National Environmental Pol-
11 icy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to
12 an application for a license under this part, or to the li-
13 censing process for a license under this part, shall not be
14 considered to be ex parte communications under Commis-
15 sion rules.

16 “(b) PARTICIPATION IN PROCEEDINGS.—Interagency
17 cooperation, at any time, in the preparation of environ-
18 mental documents under the National Environmental Pol-
19 icy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to
20 an application for a license under this part, or in the li-
21 censing process for a license under this part, shall not pre-
22 clude an agency from participating in a licensing pro-
23 ceeding under this part.

24 “(c) SEPARATION OF STAFF.—Notwithstanding sub-
25 section (a), to the extent the Commission determines nec-
26 essary, the Commission may require Federal and State

1 agencies participating as cooperating agencies under the
2 National Environmental Policy Act of 1969 (42 U.S.C.
3 4321 et seq.) to demonstrate a separation of staff that
4 are cooperating with the Commission with respect to a
5 proceeding under this part from staff that may participate
6 in an intervention in the applicable proceeding.”.

7 **SEC. 6. HYDROELECTRIC PRODUCTION INCENTIVES AND**
8 **EFFICIENCY IMPROVEMENTS.**

9 (a) HYDROELECTRIC PRODUCTION INCENTIVES.—
10 Section 242 of the Energy Policy Act of 2005 (42 U.S.C.
11 15881) is amended—

12 (1) in subsection (c), by striking “10” and in-
13 serting “20”;

14 (2) in subsection (f), by striking “20” and in-
15 serting “30”; and

16 (3) in subsection (g), by striking “each of the
17 fiscal years 2006 through 2015” and inserting “each
18 of fiscal years 2017 through 2026”.

19 (b) HYDROELECTRIC EFFICIENCY IMPROVEMENT.—
20 Section 243(c) of the Energy Policy Act of 2005 (42
21 U.S.C. 15882(c)) is amended by striking “each of the fis-
22 cal years 2006 through 2015” and inserting “each of fis-
23 cal years 2017 through 2026”.”.

1 **SEC. 7. TECHNICAL AMENDMENTS.**

2 (a) ALTERNATIVE CONDITIONS.—Section
3 33(a)(2)(B) of the Federal Power Act (16 U.S.C.
4 823d(a)(2)(B)) is amended, in the matter preceding clause
5 (i), by inserting “deemed necessary” before “by the Sec-
6 retary”.

7 (b) LICENSES.—Section 4(e) of the Federal Power
8 Act (16 U.S.C. 797(e)) is amended by striking “adequate
9 protection and utilization of such reservation” and all that
10 follows through “That no license affecting the navigable
11 capacity” and inserting “adequate protection and utiliza-
12 tion of such reservation. The license applicant and any
13 party to the proceeding shall be entitled to a determination
14 on the record, after opportunity for an agency trial-type
15 hearing of no more than 90 days, on any disputed issues
16 of material fact with respect to such conditions. All dis-
17 puted issues of material fact raised by any party shall be
18 determined in a single trial-type hearing to be conducted
19 by the relevant resource agency in accordance with the
20 regulations promulgated under this subsection and within
21 the time frame established by the Commission for each
22 license proceeding. Within 90 days of the date of enact-
23 ment of the Energy Policy Act of 2005, the Secretaries
24 of the Interior, Commerce, and Agriculture shall establish
25 jointly, by rule, the procedures for such expedited trial-
26 type hearing, including the opportunity to undertake dis-

1 covery and cross-examine witnesses, in consultation with
2 the Federal Energy Regulatory Commission: *Provided fur-*
3 *ther*, That no license affecting the navigable capacity”.

4 **SEC. 8. IMPROVING CONSULTATION WITH INDIAN TRIBES.**

5 (a) GUIDANCE DOCUMENT.—

6 (1) IN GENERAL.—Not later than one year
7 after the date of enactment of this Act, the Federal
8 Energy Regulatory Commission and the Secretary of
9 the Interior shall prepare, in consultation with inter-
10 ested Indian tribes, licensees under part I of the
11 Federal Power Act, and the public, a guidance docu-
12 ment that identifies best practices for the Commis-
13 sion, Federal and State resource agencies, Indian
14 tribes, and applicants for licenses under part I of the
15 Federal Power Act for effective engagement of In-
16 dian tribes in the consideration of applications for li-
17 censes under part I of the Federal Power Act that
18 may affect an Indian reservation, a treaty, or other
19 right of an Indian tribe.

20 (2) UPDATES.—The Commission and Secretary
21 shall update the guidance document prepared under
22 paragraph (1) every 10 years.

23 (3) PUBLIC PARTICIPATION.—In preparing or
24 updating the guidance document, the Commission
25 and the Secretary shall convene public meetings at

1 different locations in the United States, and shall
2 provide an opportunity for written public comments.

3 (b) PUBLIC WORKSHOPS.—

4 (1) IN GENERAL.—Not later than one year
5 after preparing or updating the guidance document
6 under subsection (a), the Commission shall convene
7 public workshops, held at different locations in the
8 United States, to inform and educate Commission
9 staff, Federal and State resource agencies, Indian
10 tribes, applicants for licenses under part I of the
11 Federal Power Act, and interested members of the
12 public, on the best practices identified in the guid-
13 ance document.

14 (2) CONSULTATION.—In preparing the agenda
15 for such workshops, the Commission shall consult
16 with the Secretary of the Interior, interested Indian
17 tribes, and licensees under part I of the Federal
18 Power Act.

19 **SEC. 9. TRIBAL MANDATORY CONDITIONS.**

20 (a) IN GENERAL.—Section 4 of the Federal Power
21 Act (16 U.S.C. 797) is amended—

22 (1) in subsection (e), in the first proviso, by in-
23 serting “, or, in the case of tribal land, subject to
24 subsection (h), the Indian tribe having jurisdiction

1 over the tribal land,” after “under whose supervision
2 such reservation falls”; and

3 (2) by adding at the end the following:

4 “(h) TRIBAL MANDATORY CONDITIONS.—

5 “(1) CRITERIA.—An Indian tribe may deem
6 conditions necessary under the first proviso of sub-
7 section (e) only if the Secretary of the Interior (re-
8 ferred to in this subsection as the ‘Secretary’) deter-
9 mines that the Indian tribe has—

10 “(A) confirmed the intent of the Indian
11 tribe to deem conditions necessary under the
12 first proviso of subsection (e) by resolution or
13 other official action by the governing body of
14 the Indian tribe;

15 “(B) demonstrated financial stability and
16 financial management capability over the 3-fis-
17 cal-year period preceding the date of the deter-
18 mination of the Secretary under this paragraph;
19 and

20 “(C) demonstrated the ability to plan, con-
21 duct, and administer all services, functions, and
22 activities that would otherwise be administered
23 by the Secretary with respect to deeming condi-
24 tions necessary on tribal land under the first
25 proviso of subsection (e).

1 “(2) DETERMINATION ON REQUEST.—On re-
2 quest of an Indian tribe, not later than 1 year after
3 the date on which the Secretary receives the request,
4 the Secretary shall make the determination under
5 paragraph (1).

6 “(3) WITHDRAWAL OF DETERMINATION.—

7 “(A) IN GENERAL.—Subject to subpara-
8 graph (B), if the Secretary determines that an
9 Indian tribe no longer meets the criteria under
10 paragraph (1), the Secretary may withdraw the
11 determination under paragraph (2).

12 “(B) NOTICE AND OPPORTUNITY TO RE-
13 SPOND.—Before withdrawing a determination
14 under subparagraph (A), the Secretary shall
15 provide to the Indian tribe—

16 “(i) notice of the proposed with-
17 drawal; and

18 “(ii) an opportunity to respond and, if
19 necessary, redress the deficiencies identi-
20 fied by the Secretary.”.

21 (b) ALTERNATIVE CONDITIONS.—Section 33(a) of
22 the Federal Power Act (16 U.S.C. 823d(a)) is amended—

23 (1) in paragraph (1), by inserting “or an In-
24 dian tribe” before “deems a condition”;

1 (2) in paragraph (2), by inserting “or Indian
2 tribe” after “the Secretary” each place it appears;

3 (3) in paragraph (3), by inserting “or Indian
4 tribe” after “the Secretary” each place it appears;

5 (4) in paragraph (4)—

6 (A) by inserting “or Indian tribe” before
7 “concerned shall submit”;

8 (B) by inserting “or Indian tribe” before
9 “gave equal consideration”;

10 (C) by inserting “or Indian tribe” after
11 “may be available to the Secretary”;

12 (D) by inserting “or Indian tribe” before
13 “shall also submit,”; and

14 (E) by striking “available to the Secretary
15 and relevant to the Secretary’s decision” and
16 inserting “available to the Secretary or Indian
17 tribe and relevant to the decision of the Sec-
18 retary or Indian tribe”; and

19 (5) in paragraph (5)—

20 (A) by striking “Secretary’s final condi-
21 tion” and inserting “final condition of the Sec-
22 retary or Indian tribe”;

23 (B) by inserting “or Indian tribe” after
24 “consult with the Secretary”;

1 (C) by inserting “or Indian tribe” before
2 “may accept the Dispute Resolution”;

3 (D) by inserting “or Indian tribe” after
4 “advisory unless the Secretary”;

5 (E) by inserting “or Indian tribe” before
6 “shall submit the advisory and”; and

7 (F) by striking “Secretary’s final written
8 determination” and inserting “final written de-
9 termination of the Secretary or Indian tribe”.

10 **SEC. 10. CONSIDERATION OF INVASIVE SPECIES.**

11 Section 18 of the Federal Power Act (16 U.S.C. 811)
12 is amended by inserting after “the Secretary of Com-
13 merce.” the following: “In prescribing a fishway, the Sec-
14 retary of Commerce or the Secretary of the Interior, as
15 appropriate, shall consider the threat of invasive species.”.

