

Union Calendar No. 277

115TH CONGRESS
1ST SESSION

H. R. 3043

[Report No. 115–377, Part I]

To modernize hydropower policy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2017

Mrs. MCMORRIS RODGERS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Oversight and Government Reform, 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

OCTOBER 31, 2017

Reported from the Committee on Energy and Commerce with an amendment
[Strike out all after the enacting clause and insert the part printed in *italic*]

OCTOBER 31, 2017

The Committee on Oversight and Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on June 23, 2017]

A BILL

To modernize hydropower policy, 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 Policy*
5 *Modernization Act of 2017”.*

6 **SEC. 2. HYDROPOWER REGULATORY IMPROVEMENTS.**

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

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

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

17 (b) *MODIFYING THE DEFINITION OF RENEWABLE EN-*
18 *ERGY TO INCLUDE HYDROPOWER.—Section 203 of the En-*
19 *ergy Policy Act of 2005 (42 U.S.C. 15852) is amended—*

20 (1) *in subsection (a), by striking “the following*
21 *amounts” and all that follows through paragraph (3)*
22 *and inserting “not less than 15 percent in fiscal year*
23 *2017 and each fiscal year thereafter shall be renew-*
24 *able energy.” ; and*

1 (2) *in subsection (b), by striking paragraph (2)*
2 *and inserting the following:*

3 “(2) *RENEWABLE ENERGY.*—*The term ‘renewable*
4 *energy’ means electric energy generated from solar,*
5 *wind, biomass, landfill gas, ocean (including tidal,*
6 *wave, current, and thermal), geothermal, or munic-*
7 *ipal solid waste, or from a hydropower project.”.*

8 (c) *PRELIMINARY PERMITS.*—*Section 5 of the Federal*
9 *Power Act (16 U.S.C. 798) is amended—*

10 (1) *in subsection (a), by striking “three” and in-*
11 *serting “4”; and*

12 (2) *by amending subsection (b) to read as fol-*
13 *lows:*

14 “(b) *The Commission may—*

15 “(1) *extend the period of a preliminary permit*
16 *once for not more than 4 additional years beyond the*
17 *4 years permitted by subsection (a) if the Commission*
18 *finds that the permittee has carried out activities*
19 *under such permit in good faith and with reasonable*
20 *diligence; and*

21 “(2) *if the period of a preliminary permit is ex-*
22 *tended under paragraph (1), extend the period of such*
23 *preliminary permit once for not more than 4 addi-*
24 *tional years beyond the extension period granted*
25 *under paragraph (1), if the Commission determines*

1 *that there are extraordinary circumstances that war-*
2 *rant such additional extension.”.*

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

8 *(e) LICENSE TERM.—Section 15(e) of the Federal*
9 *Power Act (16 U.S.C. 808(e)) is amended—*

10 *(1) by striking “(e) Except” and inserting the*
11 *following:*

12 *“(e) LICENSE TERM ON RELICENSING.—*

13 *“(1) IN GENERAL.—Except”; and*

14 *(2) by adding at the end the following:*

15 *“(2) CONSIDERATION.—In determining the term*
16 *of a license under paragraph (1), the Commission*
17 *shall consider, among other things, project-related in-*
18 *vestments to be made by the licensee under a new li-*
19 *cence issued under this section, as well as project-re-*
20 *lated investments made by a licensee over the term of*
21 *the existing license (including any terms under an-*
22 *ual licenses). In considering such investments, the*
23 *Commission shall give the same weight to—*

1 “(A) investments to be made by the licensee
2 to implement a new license issued under this sec-
3 tion, including—

4 “(i) investments in redevelopment, new
5 construction, new capacity, efficiency, mod-
6 ernization, rehabilitation, and safety im-
7 provements; and

8 “(ii) investments in environmental,
9 recreation, and other protection, mitigation,
10 or enhancement measures that will be re-
11 quired or authorized by the license; and

12 “(B) investments made by the licensee over
13 the term of the existing license (including any
14 terms under annual licenses), beyond those re-
15 quired by the existing license when issued,
16 that—

17 “(i) resulted in, during the term of the
18 existing license—

19 “(I) redevelopment, new construc-
20 tion, new capacity, efficiency, mod-
21 ernization, rehabilitation, or safety im-
22 provements; or

23 “(II) environmental, recreation,
24 or other protection, mitigation, or en-
25 hancement measures; and

1 “(ii) did not result in the extension of
2 the term of the existing license by the Com-
3 mission.”.

4 (f) *ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.*—
5 *Section 33 of the Federal Power Act (16 U.S.C. 823d) is*
6 *amended—*

7 (1) *in subsection (a)—*

8 (A) *in paragraph (1), by striking “deems”*
9 *and inserting “determines”;*

10 (B) *in paragraph (2)(B), in the matter pre-*
11 *ceding clause (i), by inserting “determined to be*
12 *necessary” before “by the Secretary”;*

13 (C) *by striking paragraph (4); and*

14 (D) *by striking paragraph (5);*

15 (2) *in subsection (b)—*

16 (A) *by striking paragraph (4); and*

17 (B) *by striking paragraph (5); and*

18 (3) *by adding at the end the following:*

19 “(c) *FURTHER CONDITIONS.*—*This section applies to*
20 *any further conditions or prescriptions proposed or imposed*
21 *pursuant to section 4(e), 6, or 18.”.*

1 **SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVE-**
2 **MENTS.**

3 (a) *HYDROPOWER LICENSING AND PROCESS IMPROVE-*
4 *MENTS.—Part I of the Federal Power Act (16 U.S.C. 792*
5 *et seq.) is amended by adding at the end the following:*

6 **“SEC. 34. HYDROPOWER LICENSING AND PROCESS IM-**
7 **PROVEMENTS.**

8 “(a) *DEFINITION.—In this section, the term ‘Federal*
9 *authorization’—*

10 “(1) *means any authorization required under*
11 *Federal law with respect to an application for a li-*
12 *cence under this part; and*

13 “(2) *includes any permits, special use authoriza-*
14 *tions, certifications, opinions, or other approvals as*
15 *may be required under Federal law to approve or im-*
16 *plement the license under this part.*

17 “(b) *DESIGNATION AS LEAD AGENCY.—*

18 “(1) *IN GENERAL.—The Commission shall act as*
19 *the lead agency for the purposes of coordinating all*
20 *applicable Federal authorizations and for the pur-*
21 *poses of complying with the National Environmental*
22 *Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

23 “(2) *OTHER AGENCIES AND INDIAN TRIBES.—*

24 “(A) *IN GENERAL.—Each Federal, State,*
25 *and local government agency and Indian tribe*
26 *considering an aspect of an application for Fed-*

1 *eral authorization shall coordinate with the*
2 *Commission and comply with the deadline estab-*
3 *lished in the schedule developed for the license*
4 *under this part in accordance with the rule*
5 *issued by the Commission under subsection (c).*

6 “(B) *IDENTIFICATION.*—*The Commission*
7 *shall identify, as early as practicable after it is*
8 *notified by the applicant for a license under this*
9 *part, any Federal or State agency, local govern-*
10 *ment, or Indian tribe that may consider an as-*
11 *pect of an application for a Federal authoriza-*
12 *tion.*

13 “(C) *NOTIFICATION.*—

14 “(i) *IN GENERAL.*—*The Commission*
15 *shall notify any agency and Indian tribe*
16 *identified under subparagraph (B) of the*
17 *opportunity to participate in the process of*
18 *reviewing an aspect of an application for a*
19 *Federal authorization.*

20 “(ii) *DEADLINE.*—*Each agency and*
21 *Indian tribe receiving a notice under clause*
22 *(i) shall submit a response acknowledging*
23 *receipt of the notice to the Commission*
24 *within 30 days of receipt of such notice and*
25 *request.*

1 “(D) *ISSUE IDENTIFICATION AND RESOLU-*
2 *TION.*—

3 “(i) *IDENTIFICATION OF ISSUES.*—*Fed-*
4 *eral, State, and local government agencies*
5 *and Indian tribes that may consider an as-*
6 *pect of an application for Federal author-*
7 *ization shall identify, as early as possible,*
8 *and share with the Commission and the ap-*
9 *plicant, any issues of concern identified*
10 *during the pendency of the Commission’s*
11 *action under this part relating to any Fed-*
12 *eral authorization that may delay or pre-*
13 *vent the granting of such authorization, in-*
14 *cluding any issues that may prevent the*
15 *agency or Indian tribe from meeting the*
16 *schedule established for the license under*
17 *this part in accordance with the rule issued*
18 *by the Commission under subsection (c).*

19 “(ii) *ISSUE RESOLUTION.*—*The Com-*
20 *mission may forward any issue of concern*
21 *identified under clause (i) to the heads of*
22 *the relevant State and Federal agencies (in-*
23 *cluding, in the case of an issue of concern*
24 *identified by a State or local government*
25 *agency or Indian tribe, the Federal agency*

1 *overseeing the delegated authority, or the*
2 *Secretary of the Interior with regard to an*
3 *issue of concern identified by an Indian*
4 *tribe, as applicable) for resolution. If the*
5 *Commission forwards an issue of concern to*
6 *the head of a relevant agency, the Commis-*
7 *sion and the relevant agency shall enter*
8 *into a memorandum of understanding to fa-*
9 *facilitate interagency coordination and reso-*
10 *lution of such issues of concern, as appro-*
11 *priate.*

12 *“(c) SCHEDULE.—*

13 *“(1) COMMISSION RULEMAKING TO ESTABLISH*
14 *PROCESS TO SET SCHEDULE.—Not later than 180*
15 *days after the date of enactment of this section the*
16 *Commission shall, in consultation with the appro-*
17 *priate Federal agencies, issue a rule, after providing*
18 *for notice and public comment, establishing a process*
19 *for setting a schedule following the filing of an appli-*
20 *cation under this part for a license for the review and*
21 *disposition of each Federal authorization.*

22 *“(2) ELEMENTS OF SCHEDULING RULE.—In*
23 *issuing a rule under this subsection, the Commission*
24 *shall ensure that the schedule for each Federal author-*
25 *ization—*

1 “(A) includes deadlines for actions by—

2 “(i) any Federal or State agency, local
3 government, or Indian tribe that may con-
4 sider an aspect of an application for the
5 Federal authorization;

6 “(ii) the applicant;

7 “(iii) the Commission; and

8 “(iv) other participants in any appli-
9 cable proceeding;

10 “(B) is developed in consultation with the
11 applicant and any agency and Indian tribe that
12 submits a response under subsection
13 (b)(2)(C)(ii);

14 “(C) provides an opportunity for any Fed-
15 eral or State agency, local government, or Indian
16 tribe that may consider an aspect of an applica-
17 tion for the applicable Federal authorization to
18 identify and resolve issues of concern, as pro-
19 vided in subsection (b)(2)(D);

20 “(D) complies with applicable schedules es-
21 tablished under Federal and State law;

22 “(E) ensures expeditious completion of all
23 proceedings required under Federal and State
24 law, to the extent practicable; and

1 “(F) facilitates completion of Federal and
2 State agency studies, reviews, and any other pro-
3 cedures required prior to, or concurrent with, the
4 preparation of the Commission’s environmental
5 document required under the National Environ-
6 mental Policy Act of 1969 (42 U.S.C. 4321 et
7 seq.).

8 “(d) TRANSMISSION OF FINAL SCHEDULE.—

9 “(1) IN GENERAL.—For each application for a
10 license under this part, the Commission shall establish
11 a schedule in accordance with the rule issued by the
12 Commission under subsection (c). The Commission
13 shall publicly notice and transmit the final schedule
14 to the applicant and each agency and Indian tribe
15 identified under subsection (b)(2)(B).

16 “(2) RESPONSE.—Each agency and Indian tribe
17 receiving a schedule under this subsection shall ac-
18 knowledge receipt of such schedule in writing to the
19 Commission within 30 days.

20 “(e) ADHERENCE TO SCHEDULE.—All applicants,
21 other licensing participants, and agencies and Indian tribes
22 considering an aspect of an application for a Federal au-
23 thorization shall meet the deadlines set forth in the schedule
24 established pursuant to subsection (d)(1).

1 “(f) *APPLICATION PROCESSING.*—*The Commission,*
2 *Federal, State, and local government agencies, and Indian*
3 *tribes may allow an applicant seeking a Federal authoriza-*
4 *tion to fund a third-party contractor selected by such an*
5 *agency or tribe to assist in reviewing the application. All*
6 *costs of an agency or tribe incurred pursuant to direct fund-*
7 *ing by the applicant, including all costs associated with the*
8 *third party contractor, shall not be considered costs of the*
9 *United States for the administration of this part under sec-*
10 *tion 10(e).*

11 “(g) *COMMISSION RECOMMENDATION ON SCOPE OF*
12 *ENVIRONMENTAL REVIEW.*—*For the purposes of coordi-*
13 *nating Federal authorizations for each license under this*
14 *part, the Commission shall consult with and make a rec-*
15 *ommendation to agencies and Indian tribes receiving a*
16 *schedule under subsection (d) on the scope of the environ-*
17 *mental review for all Federal authorizations for such li-*
18 *cense. Each Federal and State agency and Indian tribe*
19 *shall give due consideration and may give deference to the*
20 *Commission’s recommendations, to the extent appropriate*
21 *under Federal law.*

22 “(h) *EXTENSION OF DEADLINE.*—

23 “(1) *APPLICATION.*—*A Federal, State, or local*
24 *government agency or Indian tribe that is unable to*
25 *complete its disposition of a Federal authorization by*

1 *the deadline set forth in the schedule established under*
2 *subsection (d)(1) shall, not later than 30 days prior*
3 *to such deadline, file for an extension with the Com-*
4 *mission.*

5 *“(2) EXTENSION.—The Commission shall only*
6 *grant an extension filed for under paragraph (1) if*
7 *the agency or Indian tribe demonstrates, based on the*
8 *record maintained under subsection (i), that com-*
9 *plying with the schedule established under subsection*
10 *(d)(1) would prevent the agency or tribe from com-*
11 *plying with applicable Federal or State law. If the*
12 *Commission grants the extension, the Commission*
13 *shall set a reasonable schedule and deadline, that is*
14 *not later than 90 days after the deadline set forth in*
15 *the schedule established under subsection (d)(1), for*
16 *the agency or tribe to complete its disposition of the*
17 *Federal authorization.*

18 *“(i) CONSOLIDATED RECORD.—The Commission shall,*
19 *with the cooperation of Federal, State, and local govern-*
20 *ment agencies and Indian tribes, maintain a complete con-*
21 *solidated record of all decisions made or actions taken by*
22 *the Commission or by a Federal administrative agency or*
23 *officer (or State or local government agency or officer or*
24 *Indian tribe acting under delegated Federal authority) with*

1 *respect to any Federal authorization. Such record shall con-*
2 *stitute the record for judicial review under section 313(b).*

3 “(j) *SUBMISSION OF LICENSE RECOMMENDATIONS,*
4 *CONDITIONS, AND PRESCRIPTIONS.—*

5 “(1) *SUBMISSION OF RECOMMENDATIONS.—Any*
6 *Federal or State agency that is providing rec-*
7 *ommendations with respect to a license proceeding*
8 *under this part shall submit to the Commission for*
9 *inclusion in the consolidated record relating to the li-*
10 *cence proceeding maintained under subsection (i)—*

11 “(A) *the recommendations;*

12 “(B) *the rationale for the recommendations;*

13 *and*

14 “(C) *any supporting materials relating to*
15 *the recommendations.*

16 “(2) *WRITTEN STATEMENT.—In a case in which*
17 *a Federal agency is making a determination with re-*
18 *spect to a covered measure (as defined in section*
19 *35(a)), the head of the Federal agency shall submit to*
20 *the Commission for inclusion in the consolidated*
21 *record, in addition to the information required under*
22 *paragraph (1), a written statement demonstrating*
23 *that the Federal agency gave equal consideration to*
24 *the effects of the covered measure on—*

1 “(A) energy supply, distribution, cost, and
2 use;

3 “(B) flood control;

4 “(C) navigation;

5 “(D) water supply; and

6 “(E) air quality and the preservation of
7 other aspects of environmental quality.

8 “(3) INFORMATION FROM OTHER AGENCIES.—In
9 preparing a written statement under paragraph (2),
10 the head of a Federal agency may make use of infor-
11 mation produced or made available by other agencies
12 with relevant expertise in the factors described in sub-
13 paragraphs (A) through (E) of that paragraph.

14 “(k) DELEGATION.—A Secretary may delegate the au-
15 thority to determine a condition to be necessary under sec-
16 tion 4(e), or to prescribe a fishway under section 18, to an
17 officer of the applicable department based, in part, on the
18 ability of the officer to evaluate the broad effects of such
19 condition or prescription on—

20 “(1) the applicable project; and

21 “(2) the factors described in subparagraphs (A)
22 through (E) of subsection (j)(2).

23 “(l) NO EFFECT ON OTHER LAWS.—Nothing in this
24 section shall be construed to affect any requirement of the
25 Federal Water Pollution Control Act, the Fish and Wildlife

1 *Coordination Act, the Endangered Species Act of 1973, sec-*
2 *tion 14 of the Act of March 3, 1899 (commonly known as*
3 *the Rivers and Harbors Appropriation Act of 1899), and*
4 *those provisions in subtitle III of title 54, United States*
5 *Code commonly known as the National Historic Preserva-*
6 *tion Act, with respect to an application for a license under*
7 *this part.*

8 **“SEC. 35. TRIAL-TYPE HEARINGS.**

9 “(a) *DEFINITION OF COVERED MEASURE.—In this sec-*
10 *tion, the term ‘covered measure’ means—*

11 “(1) *a condition determined to be necessary*
12 *under section 4(e), including an alternative condition*
13 *proposed under section 33(a);*

14 “(2) *fishways prescribed under section 18, in-*
15 *cluding an alternative prescription proposed under*
16 *section 33(b); or*

17 “(3) *any action by the Secretary to exercise re-*
18 *served authority under the license to prescribe, sub-*
19 *mit, or revise any condition to a license under the*
20 *first proviso of section 4(e) or fishway prescribed*
21 *under section 18.*

22 “(b) *AUTHORIZATION OF TRIAL-TYPE HEARING.—An*
23 *applicant for a license under this part (including an appli-*
24 *cant for a license under section 15) and any party to a*
25 *license proceeding shall be entitled to a determination on*

1 *the record, after opportunity for a trial-type hearing of not*
2 *more than 120 days, on any disputed issues of material*
3 *fact with respect to an applicable covered measure.*

4 “(c) *DEADLINE FOR REQUEST.*—*A request for a trial-*
5 *type hearing under this section shall be submitted not later*
6 *than 60 days after the date on which, as applicable—*

7 “(1) *the Secretary determines the condition to be*
8 *necessary under section 4(e) or prescribes the fishway*
9 *under section 18; or*

10 “(2) *the Secretary exercises reserved authority*
11 *under the license to prescribe, submit, or revise any*
12 *condition to a license under the first proviso of sec-*
13 *tion 4(e) or fishway prescribed under section 18, as*
14 *appropriate.*

15 “(d) *NO REQUIREMENT TO EXHAUST.*—*By electing*
16 *not to request a trial-type hearing under subsection (c), a*
17 *license applicant and any other party to a license pro-*
18 *ceeding shall not be considered to have waived the right of*
19 *the applicant or other party to raise any issue of fact or*
20 *law in a non-trial-type proceeding, but no issue may be*
21 *raised for the first time on rehearing or judicial review of*
22 *the license decision of the Commission.*

23 “(e) *ADMINISTRATIVE LAW JUDGE.*—

24 “(1) *IN GENERAL.*—*All disputed issues of mate-*
25 *rial fact raised by a party in a request for a trial-*

1 *type hearing submitted under subsection (c) shall be*
2 *determined in a single trial-type hearing to be con-*
3 *ducted by an Administrative Law Judge within the*
4 *Office of Administrative Law Judges and Dispute*
5 *Resolution of the Commission, in accordance with the*
6 *Commission rules of practice and procedure under*
7 *part 385 of title 18, Code of Federal Regulations (or*
8 *successor regulations), and within the timeframe es-*
9 *tablished by the Commission for each license pro-*
10 *ceeding (including a proceeding for a license under*
11 *section 15) under section 34(d).*

12 *“(2) REQUIREMENT.—The trial-type hearing*
13 *shall include the opportunity—*

14 *“(A) to undertake discovery; and*

15 *“(B) to cross-examine witnesses, as applica-*
16 *ble.*

17 *“(f) STAY.—The Administrative Law Judge may im-*
18 *pose a stay of a trial-type hearing under this section for*
19 *a period of not more than 120 days to facilitate settlement*
20 *negotiations relating to resolving the disputed issues of ma-*
21 *terial fact with respect to the covered measure.*

22 *“(g) DECISION OF THE ADMINISTRATIVE LAW*
23 *JUDGE.—*

24 *“(1) CONTENTS.—The decision of the Adminis-*
25 *trative Law Judge shall contain—*

1 “(A) findings of fact on all disputed issues
2 of material fact;

3 “(B) conclusions of law necessary to make
4 the findings of fact, including rulings on materi-
5 ality and the admissibility of evidence; and

6 “(C) reasons for the findings and conclu-
7 sions.

8 “(2) *LIMITATION.*—The decision of the Adminis-
9 trative Law Judge shall not contain conclusions as to
10 whether—

11 “(A) any condition or prescription should
12 be adopted, modified, or rejected; or

13 “(B) any alternative condition or prescrip-
14 tion should be adopted, modified, or rejected.

15 “(3) *FINALITY.*—A decision of an Administrative
16 Law Judge under this section with respect to a dis-
17 puted issue of material fact shall not be subject to fur-
18 ther administrative review.

19 “(4) *SERVICE.*—The Administrative Law Judge
20 shall serve the decision on each party to the hearing
21 and forward the complete record of the hearing to the
22 Commission and the Secretary that proposed the
23 original condition or prescription.

24 “(h) *SECRETARIAL DETERMINATION.*—

1 “(1) *IN GENERAL.*—Not later than 60 days after
2 the date on which the Administrative Law Judge
3 issues the decision under subsection (g) and in ac-
4 cordance with any applicable schedule established by
5 the Commission under section 34(d), the Secretary
6 proposing a covered measure shall file with the Com-
7 mission a final determination to adopt, modify, or
8 withdraw any condition or prescription that was the
9 subject of a hearing under this section, based on the
10 decision of the Administrative Law Judge.

11 “(2) *RECORD OF DETERMINATION.*—The final
12 determination of the Secretary filed with the Commis-
13 sion shall identify the reasons for the decision and
14 any considerations taken into account that were not
15 part of, or were inconsistent with, the findings of the
16 Administrative Law Judge and shall be included in
17 the consolidated record maintained under section
18 34(i).

19 “(i) *RESOLUTION OF MATTERS.*—Notwithstanding
20 sections 4(e) and 18, if the Commission finds that a final
21 determination under (h)(1) of the Secretary is inconsistent
22 with the purposes of this part or other applicable law, the
23 Commission may enter into a memorandum of under-
24 standing with the Secretary to facilitate interagency coordi-
25 nation and resolve the matter.

1 “(j) *JUDICIAL REVIEW.*—*The decision of the Adminis-*
2 *trative Law Judge and the record of determination of the*
3 *Secretary shall be included in the record of the applicable*
4 *licensing proceeding and subject to judicial review of the*
5 *final licensing decision of the Commission under section*
6 *313(b).*

7 “**SEC. 36. LICENSING STUDY IMPROVEMENTS.**

8 “(a) *IN GENERAL.*—*To facilitate the timely and effi-*
9 *cient completion of the license proceedings under this part,*
10 *the Commission shall, in consultation with applicable Fed-*
11 *eral and State agencies and interested members of the pub-*
12 *lic—*

13 “(1) *compile current and accepted best practices*
14 *in performing studies required in such license pro-*
15 *ceedings, including methodologies and the design of*
16 *studies to assess the full range of environmental im-*
17 *pacts of a project that reflect the most recent peer-re-*
18 *viewed science;*

19 “(2) *compile a comprehensive collection of stud-*
20 *ies and data accessible to the public that could be*
21 *used to inform license proceedings under this part;*
22 *and*

23 “(3) *encourage license applicants, agencies, and*
24 *Indian tribes to develop and use, for the purpose of*
25 *fostering timely and efficient consideration of license*

1 *applications, a limited number of open-source meth-*
2 *odologies and tools applicable across a wide array of*
3 *projects, including water balance models and*
4 *streamflow analyses.*

5 *“(b) USE OF STUDIES.—To the extent practicable, the*
6 *Commission and other Federal, State, and local government*
7 *agencies and Indian tribes considering an aspect of an ap-*
8 *plication for Federal authorization (as defined in section*
9 *34) shall use studies and data based on current, accepted*
10 *science in support of their actions. Any participant in a*
11 *proceeding with respect to such a Federal authorization*
12 *shall demonstrate that a study requested by the participant*
13 *is not duplicative of current, existing studies that are appli-*
14 *cable to the project.*

15 *“(c) INTRA-WATERSHED REVIEW.—The Commission*
16 *shall establish a program to develop comprehensive plans,*
17 *at the request of project applicants, on a watershed-wide*
18 *scale, in consultation with the applicants, appropriate Fed-*
19 *eral agencies, and affected States, local governments, and*
20 *Indian tribes, in watersheds with respect to which there are*
21 *more than one application for a project. Upon such a re-*
22 *quest, the Commission, in consultation with the applicants,*
23 *such Federal agencies, and affected States, local govern-*
24 *ments, and Indian tribes, may conduct or commission wa-*
25 *tershed-wide environmental studies, with the participation*

1 of at least 2 applicants. Any study conducted under this
2 subsection shall apply only to a project with respect to
3 which the applicants participate.

4 **“SEC. 37. LICENSE AMENDMENT IMPROVEMENTS.**

5 “(a) *QUALIFYING PROJECT UPGRADES.*—

6 “(1) *IN GENERAL.*—As provided in this section,
7 the Commission may approve an application under
8 this section for an amendment to a license issued
9 under this part for a qualifying project upgrade.

10 “(2) *APPLICATION.*—A licensee filing an applica-
11 tion for an amendment to a project license, for which
12 the licensee is seeking approval as a qualified project
13 upgrade under this section, shall include in such ap-
14 plication information sufficient to demonstrate that
15 the proposed change to the project described in the ap-
16 plication is a qualifying project upgrade.

17 “(3) *NOTICE AND INITIAL DETERMINATION ON*
18 *QUALIFICATION.*—Not later than 30 days after receipt
19 of an application under paragraph (2), the Commis-
20 sion, in consultation with other Federal agencies,
21 States, and Indian tribes the Commission determines
22 appropriate, shall publish in the Federal Register a
23 notice containing—

24 “(A) notice of the application filed under
25 paragraph (2);

1 “(B) an initial determination as to whether
2 the proposed change to the project described in
3 the application for a license amendment is a
4 qualifying project upgrade; and

5 “(C) a request for public comment on the
6 application and the initial determination.

7 “(4) *PUBLIC COMMENT AND CONSULTATION.*—
8 *The Commission shall, for a period of 45 days begin-*
9 *ning on the date of publication of a notice under*
10 *paragraph (3)—*

11 “(A) accept public comment regarding the
12 application and whether the proposed license
13 amendment is for a qualifying project upgrade;
14 and

15 “(B) consult with each Federal, State, and
16 local government agency and Indian tribe con-
17 sidering an aspect of an application for any au-
18 thorization required under Federal law with re-
19 spect to the proposed license amendment, as well
20 as other interested agencies and Indian tribes.

21 “(5) *FINAL DETERMINATION ON QUALIFICA-*
22 *TION.*—*Not later than 15 days after the end of the*
23 *public comment and consultation period under para-*
24 *graph (4), the Commission shall publish in the Fed-*
25 *eral Register a final determination as to whether the*

1 *proposed license amendment is for a qualifying*
2 *project upgrade.*

3 “(6) *FEDERAL AUTHORIZATIONS.*—*In estab-*
4 *lishing the schedule for a proposed license amendment*
5 *for a qualifying project upgrade, the Commission*
6 *shall require final disposition of all authorizations re-*
7 *quired under Federal law with respect to an applica-*
8 *tion for such license amendment, other than final ac-*
9 *tion by the Commission, by not later than 120 days*
10 *after the date on which the Commission publishes a*
11 *final determination under paragraph (5) that the*
12 *proposed license amendment is for a qualifying*
13 *project upgrade.*

14 “(7) *COMMISSION ACTION.*—*Not later than 150*
15 *days after the date on which the Commission pub-*
16 *lishes a final determination under paragraph (5) that*
17 *a proposed license amendment is for a qualifying*
18 *project upgrade, the Commission shall take final ac-*
19 *tion on the license amendment application.*

20 “(8) *LICENSE AMENDMENT CONDITIONS.*—*Any*
21 *condition or prescription included in or applicable to*
22 *a license amendment for a qualifying project upgrade*
23 *approved under this subsection, including any condi-*
24 *tion, prescription, or other requirement of a Federal*
25 *authorization, shall be limited to those that are—*

1 “(A) necessary to protect public safety; or

2 “(B) reasonable, economically feasible, and
3 essential to prevent loss of or damage to, or to
4 mitigate adverse effects on, fish and wildlife re-
5 sources, water supply, and water quality that
6 are directly caused by the construction and oper-
7 ation of the qualifying project upgrade, as com-
8 pared to the environmental baseline existing at
9 the time the Commission approves the applica-
10 tion for the license amendment.

11 “(9) *RULEMAKING.*—Not later than 180 days
12 after the date of enactment of this section, the Com-
13 mission shall, after notice and opportunity for public
14 comment, issue a rule to implement this subsection.

15 “(10) *DEFINITIONS.*—For purposes of this sub-
16 section:

17 “(A) *QUALIFYING PROJECT UPGRADE.*—The
18 term ‘qualifying project upgrade’ means a
19 change to a project licensed under this part that
20 meets the qualifying criteria, as determined by
21 the Commission.

22 “(B) *QUALIFYING CRITERIA.*—The term
23 ‘qualifying criteria’ means, with respect to a
24 project licensed under this part, a change to the
25 project that—

1 “(i) if carried out, would be unlikely to
2 adversely affect any species listed as threat-
3 ened or endangered under the Endangered
4 Species Act of 1973 or result in the destruc-
5 tion or adverse modification of critical
6 habitat, as determined in consultation with
7 the Secretary of the Interior or Secretary of
8 Commerce, as appropriate, in accordance
9 with section 7 of the Endangered Species
10 Act of 1973;

11 “(ii) is consistent with any applicable
12 comprehensive plan under section 10(a)(2);

13 “(iii) includes only changes to project
14 lands, waters, or operations that, in the
15 judgment of the Commission, would result
16 in only insignificant or minimal cumu-
17 lative adverse environmental effects;

18 “(iv) would be unlikely to adversely af-
19 fect water quality or water supply; and

20 “(v) proposes to implement—

21 “(I) capacity increases, efficiency
22 improvements, or other enhancements
23 to hydropower generation at the li-
24 censed project;

1 “(II) *environmental protection,*
2 *mitigation, or enhancement measures*
3 *to benefit fish and wildlife resources or*
4 *other natural and cultural resources;*
5 *or*

6 “(III) *improvements to public*
7 *recreation at the licensed project.*

8 “(b) *AMENDMENT APPROVAL PROCESSES.—*

9 “(1) *RULE.—Not later than 1 year after the date*
10 *of enactment of this section, the Commission shall,*
11 *after notice and opportunity for public comment,*
12 *issue a rule establishing new standards and proce-*
13 *dures for license amendment applications under this*
14 *part. In issuing such rule, the Commission shall seek*
15 *to develop the most efficient and expedient process,*
16 *consultation, and review requirements, commensurate*
17 *with the scope of different categories of proposed li-*
18 *cence amendments. Such rule shall account for dif-*
19 *ferences in environmental effects across a wide range*
20 *of categories of license amendment applications.*

21 “(2) *CAPACITY.—In issuing a rule under this*
22 *subsection, the Commission shall take into consider-*
23 *ation that a change in generating or hydraulic capac-*
24 *ity may indicate the potential environmental effects*

1 of a proposed license amendment but is not deter-
2 minative of such effects.

3 “(3) *PROCESS OPTIONS*.—In issuing a rule
4 under this subsection, the Commission shall take into
5 consideration the range of process options available
6 under the Commission’s regulations for license appli-
7 cations and adapt such options to amendment appli-
8 cations, where appropriate.”.

9 **SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.**

10 (a) *LICENSES*.—Section 4(e) of the Federal Power Act
11 (16 U.S.C. 797(e)) is amended—

12 (1) by striking “adequate protection and utiliza-
13 tion of such reservation” and all that follows through
14 “*That no license affecting the navigable capacity*”
15 and inserting “adequate protection and utilization of
16 such reservation: Provided further, *That no license af-*
17 *fecting the navigable capacity*”; and

18 (2) by striking “deem” and inserting “deter-
19 mine”.

20 (b) *OPERATION OF NAVIGATION FACILITIES*.—Section
21 18 of the Federal Power Act (16 U.S.C. 811) is amended
22 by striking the second, third, and fourth sentences.

Union Calendar No. 277

115TH CONGRESS
1ST Session

H. R. 3043

[Report No. 115-377, Part I]

A BILL

To modernize hydropower policy, and for other purposes.

OCTOBER 31, 2017

Reported from the Committee on Energy and Commerce
with an amendment

OCTOBER 31, 2017

The Committee on Oversight and Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed