

**AMENDMENT OFFERED BY MRS. McMORRIS ROD-
GERS OF WASHINGTON TO THE AMENDMENT
IN THE NATURE OF A SUBSTITUTE FOR H.R.
8**

Page 71, strike line 22 and all that follows through
page 72, line 4.

Page 80, after line 2, insert the following:

1 **SEC. 1305. ADMINISTRATIVE EFFICIENCY AND TRANS-**
2 **PARENCY.**

3 (a) GENERAL POWERS OF COMMISSION.—Section 4
4 of the Federal Power Act (16 U.S.C. 797) is amended by
5 adding at the end the following new subsections:

6 “(h) ADMINISTRATION OF HYDROPOWER LI-
7 CENSES.—To administer the licenses and exemptions
8 issued under this part. The Commission shall have exclu-
9 sive authority to enforce, amend, approve compliance with,
10 and otherwise administer all terms, conditions, prescrip-
11 tions, certifications, articles, and all other requirements
12 included in any license or exemption issued under this
13 part.

14 “(i) EFFECTIVE USE OF EXISTING INFORMATION.—
15 To use scientific and other technical data, regardless of

1 source, that are available to the Commission at the time
2 a licensing process for a project is commenced, or another
3 action is taken, under this part, and that the Commission
4 determines are accurate, reliable, and relevant for use in
5 each such action. The Commission shall seek to minimize
6 duplicative studies and process costs by requiring the con-
7 duct of studies or other information-gathering activities
8 only when the Commission determines that new data or
9 other information are necessary to support decisionmaking
10 and that the value of such new data or other information
11 outweighs the cost of producing it. Any determination by
12 the Commission to require a study or other information
13 gathering activity shall be accompanied by an explanation,
14 supported by information in the Commission's record, that
15 demonstrates the inadequacy of existing information.

16 “(j) INFORMAL MEETINGS WITH COMMISSION
17 STAFF.—To hold informal meetings upon the request of
18 a licensee, applicant, or party to any license proceeding
19 under this part, for purposes of discussing technical or
20 procedural matters in any ongoing license proceeding. The
21 Commission shall not be required to provide public notice
22 in advance of such meetings, but shall provide public no-
23 tice following any such meeting of the subject matter of
24 such meeting.”.

1 (b) ANNUAL CHARGES.—Section 10(e)(1) of the Fed-
2 eral Power Act (16 U.S.C. 803(e)) is amended by—

3 (1) striking “the costs” and inserting “the
4 Commission’s costs”;

5 (2) striking “Part, including” and inserting
6 “Part and”;

7 (3) striking “recompensing it” and inserting
8 “recompensing the United States”; and

9 (4) striking “remain available until expended:”
10 and inserting “remain available until expended: *Pro-*
11 *vided*, That the Commission shall establish, by rule,
12 standards and procedures for fixing all such reason-
13 able annual charges under this subsection, which
14 procedures shall include annual public notice of all
15 charges proposed for inclusion in bills for the annual
16 charges, an opportunity for comment and hearing
17 prior to billing, public access to all documentation
18 supporting such charges, and an explanation sup-
19 porting the Commission’s determination of the rea-
20 sonableness of such charges:”.

21 **SEC. 1306. PROMOTING NEW HYDROPOWER INFRASTRUC-**
22 **TURE AND EARLY IMPLEMENTATION OF EN-**
23 **VIRONMENTAL ENHANCEMENT MEASURES.**

24 Section 6 of the Federal Power Act (16 U.S.C. 799)
25 is amended by—

1 (1) striking “Licenses” and inserting the fol-
2 lowing:

3 “(a) IN GENERAL.—Licenses”; and

4 (2) adding at the end the following new sub-
5 section:

6 “(b) EXTENSION OF LICENSE TERM.—Upon applica-
7 tion by a licensee, the Commission shall, for any license
8 issued under this part (including any new or annual li-
9 cense issued under section 15), extend the term of the li-
10 cense up to a total term of 70 years to account for any
11 project-related investments by the licensee that—

12 “(1) resulted in new development, construction,
13 capacity, or environmental measures; and

14 “(2) were not considered by the Commission
15 when last establishing the term of the license.”.

16 **SEC. 1307. PROMOTING ACCOUNTABILITY, REQUIRING BAL-**
17 **ANCED AND EFFICIENT DECISIONMAKING,**
18 **AND REDUCING DUPLICATIVE OVERSIGHT.**

19 (a) ALTERNATIVE CONDITIONS AND PRESCRIP-
20 TIONS.—Section 33 of the Federal Power Act (16 U.S.C.
21 823d) is amended—

22 (1) in subsection (a)—

23 (A) in paragraph (1), by striking “deems”
24 and inserting “determines”;

25 (B) in paragraph (2)—

1 (i) by striking “in paragraph (1),
2 and” and inserting “in paragraph (1), as
3 submitted and without modification, and”;

4 (ii) by striking “if the Secretary de-
5 termines,” and inserting “if the Commis-
6 sion determines,”;

7 (iii) by striking “otherwise available to
8 the Secretary” and inserting “otherwise
9 available to the Commission”;

10 (iv) in subparagraph (A), by striking
11 “provides for the adequate protection and
12 utilization of the reservation” and insert-
13 ing “adequately protects the reservation
14 from project effects”; and

15 (v) in subparagraph (B), by inserting
16 “determined necessary” before “the Sec-
17 retary”;

18 (C) in paragraph (3)—

19 (i) by striking “Secretary” each place
20 it appears and inserting “Commission”;
21 and

22 (ii) by striking “evidence provided by
23 the Commission” and inserting “evidence
24 provided by the Secretary”;

25 (D) by striking paragraph (4); and

1 (E) by striking paragraph (5); and

2 (2) in subsection (b)—

3 (A) in paragraph (2)—

4 (i) by striking “referred to in para-
5 graph (1), if the Secretary of the appro-
6 priate department” and inserting “referred
7 to in paragraph (1), as submitted and
8 without modification, if the Commission”;
9 and

10 (ii) by striking “otherwise available to
11 the Secretary” and inserting “otherwise
12 available to the Commission”;

13 (B) in paragraph (3)—

14 (i) by striking “the Secretary shall
15 consider” and inserting “the Commission
16 shall consider”;

17 (ii) by striking “otherwise available to
18 the Secretary” and inserting “otherwise
19 available to the Commission”; and

20 (iii) by striking “evidence provided by
21 the Commission” and inserting “evidence
22 provided by the Secretary concerned”;

23 (C) by striking paragraph (4); and

24 (D) by striking paragraph (5).

1 (b) COORDINATING SUBMITTAL AND ADOPTION OF
2 CONDITIONS AND PRESCRIPTIONS.—The Federal Power
3 Act (16 U.S.C. 791a et seq.) is amended by adding after
4 section 34 (as added by section 1304 of this Act) the fol-
5 lowing new section:

6 **“SEC. 35. PROCEDURES FOR CERTAIN CONDITIONS AND**
7 **PRESCRIPTIONS.**

8 “(a) SUBMITTAL OF CONDITIONS AND FISHWAY
9 PRESCRIPTIONS.—For any condition determined nec-
10 essary by a Secretary under section 4(e), or fishway pre-
11 scribed by a Secretary under section 18, the Secretary
12 concerned shall submit into the public record of the Com-
13 mission proceeding—

14 “(1) a written statement explaining the basis
15 for the condition or prescription that demonstrates,
16 based on such information as may be available to
17 the Secretary, that the Secretary gave equal consid-
18 eration to the effects of the condition or prescription
19 on—

20 “(A) energy supply, distribution, cost, and
21 use;

22 “(B) flood control;

23 “(C) navigation;

24 “(D) water supply;

25 “(E) air quality; and

1 “(F) the preservation of other aspects of
2 environmental quality; and

3 “(2) all studies, data, and other factual infor-
4 mation available to the Secretary and relevant to the
5 condition or prescription.

6 “(b) PROCEDURES FOR CERTAIN APPLICABLE CON-
7 DITIONS.—

8 “(1) TRIAL-TYPE HEARING.—For any applica-
9 ble condition, the license applicant and any other
10 party to the license proceeding shall be entitled to a
11 determination on the record, after opportunity for a
12 trial-type hearing before the Commission, on any
13 disputed issues of material fact with respect to such
14 applicable condition.

15 “(2) PROCEDURES RELATED TO TRIAL-TYPE
16 HEARINGS.—Not later than 180 days after the date
17 of enactment of this subsection, the Commission
18 shall establish, by rule, procedures related to trial-
19 type hearings under this subsection. Such proce-
20 dures shall—

21 “(A) provide the opportunity for partici-
22 pants in the trial-type hearing to undertake dis-
23 covery and cross-examine witnesses;

24 “(B) establish that the proponent of an ap-
25 plicable condition bears the burden of proof

1 with respect to such applicable condition during
2 the trial-type hearing;

3 “(C) provide for any such trial-type hear-
4 ing to extend for a period of not more than 90
5 days, and also provide for additional reasonable
6 periods—

7 “(i) prior to the trial-type hearing for
8 discovery, motions, and other pre-trial-type
9 hearing activities; and

10 “(ii) following the trial-type hearing
11 for briefing, motions, decisionmaking, and
12 other post-trial-type hearing activities;

13 “(D) ensure the integration of all applica-
14 ble conditions in the trial-type hearing such
15 that the findings of fact resulting from the
16 trial-type hearing are accounted for in any de-
17 termination that is related to—

18 “(i) such an applicable condition; and

19 “(ii) any—

20 “(I) modified condition or modi-
21 fied prescription, submitted pursuant
22 to subparagraph (E)(i); or

23 “(II) alternative to such a modi-
24 fied condition or modified prescrip-

1 tion, submitted pursuant to subpara-
2 graph (E)(ii);

3 “(E) authorize and establish standards and
4 deadlines for—

5 “(i) in accordance with subsection (a),
6 the submittal, by the Secretary concerned,
7 following the trial-type hearing—

8 “(I) in accordance with section
9 4(e), of a modification, as appro-
10 prium, to a condition determined nec-
11 essary by a Secretary previously in
12 the proceeding under such section;
13 and

14 “(II) in accordance with section
15 18, of a modification, as appropriate,
16 to a fishway prescribed by a Secretary
17 previously in the proceeding under
18 such section; and

19 “(ii) the submittal, in accordance with
20 section 33, by the license applicant or any
21 other party to the license proceeding, fol-
22 lowing submittal of a modified condition or
23 modified prescription pursuant to clause
24 (i), of an alternative to such modified con-
25 dition or modified prescription; and

1 “(iii) a determination, by the Commis-
2 sion, in accordance with the standards of
3 section 33, with respect to an alternative
4 to a modified condition or modified pre-
5 scription submitted pursuant to clause (ii);
6 and

7 “(F) with respect to a license proceeding,
8 prohibit a Secretary, following a trial-type hear-
9 ing, from determining any other condition nec-
10 essary under section 4(e) or prescribing any
11 other fishway under section 18 (not including
12 the submittal of a modification to the initial
13 condition or initial prescription pursuant to
14 subparagraph (E)) that addresses any impact
15 or resource related to a fact established with re-
16 spect to the trial-type hearing.

17 “(c) NO REQUIREMENT TO EXHAUST.—By electing
18 not to request a trial-type hearing under subsection (a),
19 a license applicant and any other party to a license pro-
20 ceeding shall not be considered to have waived its right
21 to raise any issue of fact or law on rehearing or judicial
22 review of the Commission’s license decision.

23 “(d) COORDINATION OF FEDERAL AUTHORIZA-
24 TIONS.—

1 “(1) REQUIREMENT TO IMPLEMENT OR COMPLY
2 WITH CERTAIN FEDERAL AUTHORIZATIONS.—Not-
3 withstanding any other provision of Federal law, a
4 licensee shall be required to implement or comply
5 with a condition or other requirement of a Federal
6 authorization that applies to any portion of a res-
7 ervation occupied by a project, or concerns the con-
8 struction, maintenance, or operation of a fishway,
9 only if such condition or other requirement has
10 been—

11 “(A) determined necessary or prescribed by
12 a Secretary under section 4(e) or 18, as appro-
13 priate; and

14 “(B) included in the license issued by the
15 Commission.

16 “(2) COORDINATION.—Federal and State agen-
17 cies issuing Federal authorizations concerning res-
18 ervations and fishways shall coordinate with the Sec-
19 retary concerned, in accordance with the schedule
20 issued by the Commission under section 308(c).

21 “(e) DEFINITIONS.—In this section:

22 “(1) APPLICABLE CONDITION.—The term ‘ap-
23 plicable condition’ means—

24 “(A) a condition determined necessary by
25 a Secretary under section 4(e);

1 “(B) a fishway prescribed by a Secretary
2 under section 18;

3 “(C) an alternative condition proposed by
4 a license applicant or any other party to the li-
5 cense proceeding under section 33(a); and

6 “(D) an alternative prescription proposed
7 by a license applicant or any other party to the
8 license proceeding under section 33(b).

9 “(2) FEDERAL AUTHORIZATION.—The term
10 ‘Federal authorization’ has the meaning given such
11 term in section 308(a).”.

12 (c) CONFORMING AND CLARIFYING AMENDMENTS.—

13 (1) CONDITIONS.—Subsection (e) of section 4
14 of the Federal Power Act (16 U.S.C. 797(e)) is
15 amended to read as follows:

16 “(e) To issue licenses to citizens of the United States,
17 or to any association of such citizens, or to any corpora-
18 tion organized under the laws of the United States or any
19 State thereof, or to any State or municipality for the pur-
20 pose of constructing, operating, and maintaining dams,
21 water conduits, reservoirs, power houses, transmission
22 lines, or other project works necessary or convenient for
23 the development and improvement of navigation and for
24 the development, transmission, and utilization of power
25 across, along, from, or in any of the streams or other bod-

1 ies of water over which Congress has jurisdiction under
2 its authority to regulate commerce with foreign nations
3 and among the several States, or upon any part of the
4 public lands and reservations of the United States (includ-
5 ing the Territories), or for the purpose of utilizing the sur-
6 plus water or water power from any Government dam, ex-
7 cept as herein provided: *Provided*, That licenses shall be
8 issued within any reservation only after a finding by the
9 Commission that the license will not interfere or be incon-
10 sistent with the purpose for which such reservation was
11 created or acquired, and shall be subject to and contain
12 such conditions as the Secretary of the department under
13 whose supervision such reservation falls determines are
14 necessary for the adequate protection and utilization of
15 the portion of such reservation occupied by the project and
16 will mitigate adverse effects of the project, if any, except
17 that no such condition may impose a requirement that im-
18 pairs project operations, management, or utilization of
19 lands or resources outside such portion of the reservation
20 occupied by the project: *Provided further*, That no license
21 affecting the navigable capacity of any navigable waters
22 of the United States shall be issued until the plans of the
23 dam or other structures affecting navigation have been ap-
24 proved by the Chief of Engineers and the Secretary of the
25 Army. Whenever the contemplated improvement is, in the

1 judgment of the Commission, desirable and justified in the
2 public interest for the purpose of improving or developing
3 a waterway or waterways for the use or benefit of inter-
4 state or foreign commerce, a finding to that effect shall
5 be made by the Commission and shall become a part of
6 the records of the Commission: *Provided further*, That in
7 case the Commission shall find that any Government dam
8 may be advantageously used by the United States for pub-
9 lic purposes in addition to navigation, no license therefor
10 shall be issued until two years after it shall have reported
11 to Congress the facts and conditions relating thereto, ex-
12 cept that this provision shall not apply to any Government
13 dam constructed prior to June 10, 1920: *And provided*
14 *further*, That upon the filing of any application for a li-
15 cense which has not been preceded by a preliminary permit
16 under subsection (f) of this section, notice shall be given
17 and published as required by the proviso of said sub-
18 section. In deciding whether to issue any license under this
19 Part for any project, the Commission, in addition to the
20 power and development purposes for which licenses are
21 issued, shall give equal consideration to the purposes of
22 energy conservation, the protection, mitigation of damage
23 to, and enhancement of, fish and wildlife (including re-
24 lated spawning grounds and habitat), the protection of
25 recreational opportunities, the preservation of other as-

1 pects of environmental quality, and minimizing infringe-
2 ment on the useful exercise and enjoyment of property
3 rights held by nonlicensees.”.

4 (2) FISHWAYS.—Section 18 of the Federal
5 Power Act (16 U.S.C. 811) is amended to read as
6 follows:

7 “SEC. 18. The Commission shall require the con-
8 struction, maintenance, and operation by a licensee at its
9 own expense of such lights and signals as may be directed
10 by the Secretary of the Department in which the Coast
11 Guard is operating, and such fishways as are necessary
12 to mitigate effects of the project on fish populations as
13 may be prescribed by the Secretary of the Interior or the
14 Secretary of Commerce, as appropriate. The operation of
15 any navigation facilities which may be constructed as a
16 part of or in connection with any dam or diversion struc-
17 ture built under the provisions of this Act, whether at the
18 expense of a licensee hereunder or of the United States,
19 shall at all times be controlled by such reasonable rules
20 and regulations in the interest of navigation, including the
21 control of the level of the pool caused by such dam or di-
22 version structure as may be made from time to time by
23 the Secretary of the Army, and for willful failure to com-
24 ply with any such rule or regulation such licensee shall
25 be deemed guilty of a misdemeanor, and upon conviction

1 thereof shall be punished as provided in section 316 here-
2 of.”.

3 **SEC. 1308. PROMOTING EFFICIENT AND TIMELY DECISION-**
4 **MAKING.**

5 (a) PROCESS COORDINATION.—Section 308 of the
6 Federal Power Act (16 U.S.C. 825g) is amended—

7 (1) in the section heading, by striking “**HEAR-**
8 **INGS**” and inserting “**PROCESS COORDINATION;**
9 **HEARINGS**”;

10 (2) by redesignating subsections (a) and (b) as
11 subsections (e) and (f), respectively; and

12 (3) by inserting, before subsection (e), as reded-
13 icated by paragraph (2), the following subsections:

14 “(a) FEDERAL AUTHORIZATION.—In this section, the
15 term ‘Federal authorization’—

16 “(1) means any authorization required under
17 Federal law with respect to a project licensed or ex-
18 empted under part I or section 405(d) of the Public
19 Utility Regulatory Policies Act of 1978; and

20 “(2) includes any permits, special use author-
21 izations, certifications, opinions, consultations, deter-
22 minations, or other approvals as may be required
23 under Federal law with respect to a project licensed
24 or exempted under part I or section 405(d) of the
25 Public Utility Regulatory Policies Act of 1978.

1 “(b) DESIGNATION AS LEAD AGENCY.—

2 “(1) IN GENERAL.—The Commission shall act
3 as the lead agency for the purposes of coordinating
4 all applicable Federal authorizations and for the
5 purposes of complying with the National Environ-
6 mental Policy Act of 1969, and any applicable envi-
7 ronmental review under State law.

8 “(2) OTHER AGENCIES.—Each Federal and
9 State agency considering an aspect of an application
10 for Federal authorization shall cooperate with the
11 Commission and comply with the deadlines estab-
12 lished by the Commission.

13 “(c) SCHEDULE.—

14 “(1) COMMISSION AUTHORITY TO SET SCHED-
15 ULE.—For the proceeding for each project, the Com-
16 mission shall, in consultation with appropriate Fed-
17 eral and State agencies, establish a schedule for all
18 Federal authorizations. In establishing the schedule,
19 the Commission shall—

20 “(A) ensure expeditious completion of all
21 Federal authorizations; and

22 “(B) comply with applicable schedules es-
23 tablished by Federal law.

24 “(2) FAILURE TO MEET SCHEDULE.—

1 “(A) CONDITIONS AND PRESCRIPTIONS
2 FOR LICENSES; TERMS AND CONDITIONS FOR
3 EXEMPTIONS.—If an agency does not comply
4 with the schedule established by the Commis-
5 sion with respect to a condition determined nec-
6 essary under section 4(e), a fishway prescribed
7 under section 18, or a term or condition deter-
8 mined appropriate under section 30(e) of this
9 Act or pursuant to section 405(d) of the Public
10 Utility Regulatory Policies Act of 1978, the
11 Commission may decline to include the condi-
12 tion, fishway, or term or condition in the
13 project license or exemption, as applicable.

14 “(B) AGENCY DELAY.—The failure of an
15 agency to comply with the Commission schedule
16 established pursuant to this section shall be
17 considered inconsistent with Federal law for the
18 purposes of section 313(d)(2).

19 “(d) CONSOLIDATED RECORD.—The Commission
20 shall, with the cooperation of Federal and State agencies,
21 maintain a complete consolidated record of all decisions
22 made or actions taken by the Commission or by a Federal
23 agency (or State agency acting under delegated Federal
24 authority) with respect to any Federal authorization. Such
25 record shall be the record for judicial review under section

1 313(d) of decisions made or actions taken of Federal and
2 State agencies, except that, if the Court determines that
3 the record does not contain sufficient information, the
4 Court may remand the proceeding to the Commission for
5 further development of the consolidated record.”.

6 (b) JUDICIAL REVIEW OF ACTIONS RELATED TO HY-
7 DROPOWER PROJECTS.—Section 313 of the Federal
8 Power Act (16 U.S.C. 8251) is amended by adding at the
9 end the following new subsection:

10 “(d) JUDICIAL REVIEW OF FEDERAL AND STATE
11 AGENCY ACTIONS RELATED TO HYDROPOWER
12 PROJECTS.—

13 “(1) IN GENERAL.—For any project subject to
14 licensing or exemption under part I, the United
15 States Court of Appeals for the District of Columbia
16 Circuit or the United States court of appeals for any
17 circuit wherein the licensee or applicant has its prin-
18 cipal place of business shall have original and exclu-
19 sive jurisdiction over any civil action for the review
20 of—

21 “(A) an order or action of a Federal agen-
22 cy (other than the Commission) or State agency
23 acting pursuant to Federal law to issue, carry
24 out, or deny any Federal authorization (as such
25 term is defined in section 308(a)); and

1 “(B) an alleged failure to act by a Federal
2 agency (other than the Commission) or State
3 agency acting pursuant to Federal law to issue,
4 carry out, or deny any such Federal authoriza-
5 tion.

6 “(2) COURT ACTION.—If the Court finds that
7 an order, action, or failure to act described in para-
8 graph (1) is inconsistent with the Federal law gov-
9 erning such Federal authorization and would prevent
10 the licensing, construction, expansion, or operation
11 of the project subject to licensing or exemption
12 under part I, the Court shall, as appropriate, waive
13 any requirement to obtain the Federal authorization
14 or remand the proceeding to the agency to take ap-
15 propriate action consistent with the order of the
16 Court. If the Court remands the order or action to
17 the Federal or State agency, the Court shall set a
18 reasonable schedule and deadline for the agency to
19 act on remand.

20 “(3) COMMISSION ACTION.—For any civil action
21 described in this subsection, the Commission shall
22 file with the Court the consolidated record of such
23 order or action to which the appeal hereunder re-
24 lates.

1 “(4) EXPEDITED REVIEW.—The Court shall set
2 any action brought under this subsection for expe-
3 dited consideration.”.

