

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

Page 73, after line 14, insert the following:

1 **SEC. 1304. HYDROPOWER LICENSING AND PROCESS IM-**
2 **PROVEMENTS.**

3 Part I of the Federal Power Act (16 U.S.C. 792 et
4 seq.) is amended by adding at the end the following:

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

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

9 “(1) means any authorization required under
10 Federal law with respect to an application for a li-
11 cense, license amendment, or exemption under this
12 part; and

13 “(2) includes any permits, special use author-
14 izations, certifications, opinions, or other approvals
15 as may be required under Federal law to approve or
16 implement the license, license amendment, or exemp-
17 tion under this part.

18 “(b) DESIGNATION AS LEAD AGENCY.—

1 “(1) IN GENERAL.—The Commission shall act
2 as the lead agency for the purposes of coordinating
3 all applicable Federal authorizations and for the
4 purposes of complying with the National Environ-
5 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

6 “(2) OTHER AGENCIES AND INDIAN TRIBES.—

7 “(A) IN GENERAL.—Each Federal, State,
8 and local government agency and Indian tribe
9 considering an aspect of an application for Fed-
10 eral authorization shall coordinate with the
11 Commission and comply with the deadline es-
12 tablished in the schedule developed for the
13 project in accordance with the rule issued by
14 the Commission under subsection (c).

15 “(B) IDENTIFICATION.—The Commission
16 shall identify, as early as practicable after it is
17 notified by the applicant of a project or facility
18 requiring Commission action under this part,
19 any Federal or State agency, local government,
20 or Indian tribe that may consider an aspect of
21 an application for a Federal authorization.

22 “(C) NOTIFICATION.—

23 “(i) IN GENERAL.—The Commission
24 shall notify any agency and Indian tribe
25 identified under subparagraph (B) of the

1 opportunity to participate in the process of
2 reviewing an aspect of an application for a
3 Federal authorization.

4 “(ii) DEADLINE.—Each agency and
5 Indian tribe receiving a notice under clause
6 (i) shall submit a response acknowledging
7 receipt of the notice to the Commission
8 within 30 days of receipt of such notice
9 and request.

10 “(D) ISSUE IDENTIFICATION AND RESOLU-
11 TION.—

12 “(i) IDENTIFICATION OF ISSUES.—
13 Federal, State, and local government agen-
14 cies and Indian tribes that may consider
15 an aspect of an application for Federal au-
16 thorization shall identify, as early as pos-
17 sible, and share with the Commission and
18 the applicant, any issues of concern identi-
19 fied during the pendency of the Commis-
20 sion’s action under this part relating to
21 any Federal authorization that may delay
22 or prevent the granting of such authoriza-
23 tion, including any issues that may prevent
24 the agency or Indian tribe from meeting
25 the schedule established for the project in

1 accordance with the rule issued by the
2 Commission under subsection (c).

3 “(ii) ISSUE RESOLUTION.—The Com-
4 mission may forward any issue of concern
5 identified under clause (i) to the heads of
6 the relevant State and Federal agencies
7 (including, in the case of scheduling con-
8 cerns identified by a State or local govern-
9 ment agency or Indian tribe, the Federal
10 agency overseeing the delegated authority,
11 or the Secretary of the Interior with re-
12 gard to scheduling concerns identified by
13 an Indian tribe) for resolution. The Com-
14 mission and any relevant agency shall
15 enter into a memorandum of under-
16 standing to facilitate interagency coordina-
17 tion and resolution of such issues of con-
18 cern, as appropriate.

19 “(c) SCHEDULE.—

20 “(1) COMMISSION RULEMAKING TO ESTABLISH
21 PROCESS TO SET SCHEDULE.—Within 180 days of
22 the date of enactment of this section the Commis-
23 sion shall, in consultation with the appropriate Fed-
24 eral agencies, issue a rule, after providing for notice
25 and public comment, establishing a process for set-

1 ting a schedule following the filing of an application
2 under this part for the review and disposition of
3 each Federal authorization.

4 “(2) ELEMENTS OF SCHEDULING RULE.—In
5 issuing a rule under this subsection, the Commission
6 shall ensure that the schedule for each Federal au-
7 thorization—

8 “(A) includes deadlines for actions by—

9 “(i) any Federal or State agency, local
10 government, or Indian tribe that may con-
11 sider an aspect of an application for the
12 Federal authorization;

13 “(ii) the applicant;

14 “(iii) the Commission; and

15 “(iv) other participants in a pro-
16 ceeding;

17 “(B) is developed in consultation with the
18 applicant and any agency and Indian tribe that
19 submits a response under subsection
20 (b)(2)(C)(ii);

21 “(C) provides an opportunity for any Fed-
22 eral or State agency, local government, or In-
23 dian tribe that may consider an aspect of an
24 application for the applicable Federal authoriza-

1 tion to identify and resolve issues of concern, as
2 provided in subsection (b)(2)(D);

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

5 “(E) ensures expeditious completion of all
6 proceedings required under Federal and State
7 law, to the extent practicable; and

8 “(F) facilitates completion of Federal and
9 State agency studies, reviews, and any other
10 procedures required prior to, or concurrent
11 with, the preparation of the Commission’s envi-
12 ronmental document required under the Na-
13 tional Environmental Policy Act of 1969 (42
14 U.S.C. 4321 et seq.).

15 “(d) TRANSMISSION OF FINAL SCHEDULE.—

16 “(1) IN GENERAL.—For each application for a
17 license, license amendment, or exemption under this
18 part, the Commission shall establish a schedule in
19 accordance with the rule issued by the Commission
20 under subsection (c). The Commission shall publicly
21 notice and transmit the final schedule to the appli-
22 cant and each agency and Indian tribe identified
23 under subsection (b)(2)(B).

24 “(2) RESPONSE.—Each agency and Indian
25 tribe receiving a schedule under this subsection shall

1 acknowledge receipt of such schedule in writing to
2 the Commission within 30 days.

3 “(e) ADHERENCE TO SCHEDULE.—All applicants,
4 other licensing participants, and agencies and tribes con-
5 sidering an aspect of an application for a Federal author-
6 ization shall meet the deadlines set forth in the schedule
7 established pursuant to subsection (d)(1).

8 “(f) APPLICATION PROCESSING.—The Commission,
9 Federal, State, and local government agencies, and Indian
10 tribes may allow an applicant seeking a Federal authoriza-
11 tion to fund a third party contractor selected by such
12 agency or tribe to assist in reviewing the application. All
13 costs of an agency or tribe incurred pursuant to direct
14 funding by the applicant, including all costs associated
15 with the third party contractor, shall not be considered
16 costs of the United States for the administration of this
17 part under section 10(e).

18 “(g) COMMISSION RECOMMENDATION ON SCOPE OF
19 ENVIRONMENTAL REVIEW.—For the purposes of coordi-
20 nating Federal authorizations for each project, the Com-
21 mission shall consult with and make a recommendation
22 to agencies and Indian tribes receiving a schedule under
23 subsection (d) on the scope of the environmental review
24 for all Federal authorizations for such project. Each Fed-
25 eral and State agency and Indian tribe shall give due con-

1 sideration and may give deference to the Commission’s
2 recommendations, to the extent appropriate under Federal
3 law.

4 “(h) FAILURE TO MEET SCHEDULE.—A Federal,
5 State, or local government agency or Indian tribe that an-
6 ticipates that it will be unable to complete its disposition
7 of a Federal authorization by the deadline set forth in the
8 schedule established under subsection (d)(1) may file for
9 an extension as provided under section 313(b)(2).

10 “(i) CONSOLIDATED RECORD.—The Commission
11 shall, with the cooperation of Federal, State, and local
12 government agencies and Indian tribes, maintain a com-
13 plete consolidated record of all decisions made or actions
14 taken by the Commission or by a Federal administrative
15 agency or officer (or State or local government agency or
16 officer or Indian tribe acting under delegated Federal au-
17 thority) with respect to any Federal authorization. Such
18 record shall constitute the record for judicial review under
19 section 313(b).”.

20 **SEC. 1305. JUDICIAL REVIEW OF DELAYED FEDERAL AU-**
21 **THORIZATIONS.**

22 Section 313(b) of the Federal Power Act (16 U.S.C.
23 825l(b)) is amended—

24 (1) by inserting “(1) IN GENERAL.—” before
25 “Any party to a proceeding”; and

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

2 “(2) DELAY OF A FEDERAL AUTHORIZATION.—

3 Any Federal, State, or local government agency or
4 Indian tribe that will not complete its disposition of
5 a Federal authorization by the deadline set forth in
6 the schedule by the Commission under section 34
7 may file for an extension in the United States court
8 of appeals for any circuit wherein the project or pro-
9 posed project is located, or in the United States
10 Court of Appeals for the District of Columbia. Such
11 petition shall be filed not later than 30 days prior
12 to such deadline. The court shall only grant an ex-
13 tension if the agency or tribe demonstrates, based on
14 the record maintained under section 34, that it oth-
15 erwise complied with the requirements of section 34
16 and that complying with the schedule set by the
17 Commission would have prevented the agency or
18 tribe from complying with applicable Federal or
19 State law. If the court grants the extension, the
20 court shall set a reasonable schedule and deadline,
21 not to exceed 90 days, for the agency to act on re-
22 mand. If the court denies the extension, or if an
23 agency or tribe does not file for an extension as pro-
24 vided in this subsection and does not complete its
25 disposition of a Federal authorization by the applica-

1 ble deadline, the Commission and applicant may
2 move forward with the proposed action.”.

3 **SEC. 1306. LICENSING STUDY IMPROVEMENTS.**

4 Part I of the Federal Power Act (16 U.S.C. 792 et
5 seq.), as amended by section 1304, is further amended by
6 adding at the end the following:

7 **“SEC. 35. 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
12 public—

13 “(1) compile current and accepted best prac-
14 tices in performing studies required in such license
15 proceedings, including methodologies and the design
16 of studies to assess the full range of environmental
17 impacts of a project that reflect the most recent
18 peer-reviewed 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,
6 the Commission and other Federal, State, and local gov-
7 ernment agencies and Indian tribes considering an aspect
8 of an application for Federal authorization shall use cur-
9 rent, accepted science toward studies and data in support
10 of their actions. Any participant in a proceeding with re-
11 spect to a Federal authorization shall demonstrate a study
12 requested by the party is not duplicative of current, exist-
13 ing studies that are applicable to the project.

14 “(c) BASIN-WIDE OR REGIONAL REVIEW.—The
15 Commission shall establish a program to develop com-
16 prehensive plans, at the request of project applicants, on
17 a regional or basin-wide scale, in consultation with the ap-
18 plicants, appropriate Federal agencies, and affected
19 States, local governments, and Indian tribes, in basins or
20 regions with respect to which there are more than one
21 project or application for a project. Upon such a request,
22 the Commission, in consultation with the applicants, such
23 Federal agencies, and affected States, local governments,
24 and Indian tribes, may conduct or commission regional or
25 basin-wide environmental studies, with the participation of

1 at least 2 applicants. Any study conducted under this sub-
2 section shall apply only to a project with respect to which
3 the applicant participates.”.

4 **SEC. 1307. CLOSED-LOOP PUMPED STORAGE PROJECTS.**

5 Part I of the Federal Power Act (16 U.S.C. 792 et
6 seq.), as amended by section 1306, is further amended by
7 adding at the end the following:

8 **“SEC. 36. CLOSED-LOOP PUMPED STORAGE PROJECTS.**

9 “(a) DEFINITION.—For purposes of this section, a
10 closed-loop pumped storage project is a project—

11 “(1) in which the upper and lower reservoirs do
12 not impound or directly withdraw water from navi-
13 gable waters; or

14 “(2) that is not continuously connected to a
15 naturally flowing water feature.

16 “(b) IN GENERAL.—As provided in this section, the
17 Commission may issue and amend licenses and prelimi-
18 nary permits, as appropriate, for closed-loop pumped stor-
19 age projects.

20 “(c) DAM SAFETY.—Before issuing any license for a
21 closed-loop pumped storage project, the Commission shall
22 assess the safety of existing dams and other structures
23 related to the project (including possible consequences as-
24 sociated with failure of such structures).

1 “(d) LICENSE CONDITIONS.—With respect to a
2 closed-loop pumped storage project, the authority of the
3 Commission to impose conditions on a license under sec-
4 tion 4(e), 10(a), 10(g), and 10(j) shall not apply, and any
5 condition included in or applicable to a closed-loop pumped
6 storage project licensed under this section, including any
7 condition or other requirement of a Federal authorization,
8 shall be limited to those that are—

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

10 “(2) reasonable, economically feasible, and es-
11 sential to prevent loss of or damage to, or to miti-
12 gate adverse effects on, fish and wildlife resources
13 directly caused by the construction and operation of
14 the project, as compared to the environmental base-
15 line existing at the time the Commission completes
16 its environmental review.

17 “(e) TRANSFERS.—Notwithstanding section 5, and
18 regardless of whether the holder of a preliminary permit
19 for a closed-loop pumped storage project claimed munic-
20 ipal preference under section 7(a) when obtaining the per-
21 mit, the Commission may, to facilitate development of a
22 closed-loop pumped storage project—

23 “(1) add entities as joint permittees following
24 issuance of a preliminary permit; and

1 “(2) transfer a license in part to one or more
2 non-municipal entities as co-licensees with a municipi-
3 pality.”.

4 **SEC. 1308. LICENSE AMENDMENT IMPROVEMENTS.**

5 Part I of the Federal Power Act (16 U.S.C. 792 et
6 seq.), as amended by section 1307, is further amended by
7 adding at the end the following:

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

9 “(a) QUALIFYING PROJECT UPGRADES.—

10 “(1) IN GENERAL.—As provided in this section,
11 the Commission may approve an application for an
12 amendment to a license issued under this part for a
13 qualifying project upgrade.

14 “(2) APPLICATION.—A licensee filing an appli-
15 cation for an amendment to a project license under
16 this section shall include in such application infor-
17 mation sufficient to demonstrate that the proposed
18 change to the project described in the application is
19 a qualifying project upgrade.

20 “(3) INITIAL DETERMINATION.—Not later than
21 15 days after receipt of an application under para-
22 graph (2), the Commission shall make an initial de-
23 termination as to whether the proposed change to
24 the project described in the application for a license
25 amendment is a qualifying project upgrade. The

1 Commission shall publish its initial determination
2 and issue notice of the application filed under para-
3 graph (2). Such notice shall solicit public comment
4 on the initial determination within 45 days.

5 “(4) PUBLIC COMMENT ON QUALIFYING CRI-
6 TERIA.—The Commission shall accept public com-
7 ment regarding whether a proposed license amend-
8 ment is for a qualifying project upgrade for a period
9 of 45 days beginning on the date of publication of
10 a public notice described in paragraph (3), and
11 shall—

12 “(A) if no entity contests whether the pro-
13 posed license amendment is for a qualifying
14 project upgrade during such comment period,
15 immediately publish a notice stating that the
16 initial determination has not been contested; or

17 “(B) if an entity contests whether the pro-
18 posed license amendment is for a qualifying
19 project upgrade during the comment period,
20 issue a written determination in accordance
21 with paragraph (5).

22 “(5) WRITTEN DETERMINATION.—If an entity
23 contests whether the proposed license amendment is
24 for a qualifying project upgrade during the comment
25 period under paragraph (4), the Commission shall,

1 not later than 30 days after the date of publication
2 of the public notice of the initial determination
3 under paragraph (3), issue a written determination
4 as to whether the proposed license amendment is for
5 a qualifying project upgrade.

6 “(6) PUBLIC COMMENT ON AMENDMENT APPLI-
7 CATION.—If no entity contests whether the proposed
8 license amendment is for a qualifying project up-
9 grade during the comment period under paragraph
10 (4) or the Commission issues a written determina-
11 tion under paragraph (5) that a proposed license
12 amendment is a qualifying project upgrade, the
13 Commission shall—

14 “(A) during the 60-day period beginning
15 on the date of publication of a notice under
16 paragraph (4)(A) or the date on which the
17 Commission issues the written determination
18 under paragraph (5), as applicable, solicit com-
19 ments from each Federal, State, and local gov-
20 ernment agency and Indian tribe considering an
21 aspect of an application for Federal authoriza-
22 tion (as defined in section 34) with respect to
23 the proposed license amendment, as well as
24 other interested agencies, Indian tribes, and
25 members of the public; and

1 “(B) during the 90-day period beginning
2 on the date of publication of a notice under
3 paragraph (4)(A) or the date on which the
4 Commission issues the written determination
5 under paragraph (5), as applicable, consult
6 with—

7 “(i) appropriate Federal agencies and
8 the State agency exercising administrative
9 control over the fish and wildlife resources,
10 and water quality and supply, of the State
11 in which the qualifying project upgrade is
12 located;

13 “(ii) any Federal department super-
14 vising any public lands or reservations oc-
15 cupied by the qualifying project upgrade;
16 and

17 “(iii) any Indian tribe affected by the
18 qualifying project upgrade.

19 “(7) FEDERAL AUTHORIZATIONS.—The sched-
20 ule established by the Commission under section 34
21 for any project upgrade under this subsection shall
22 require final disposition on all necessary Federal au-
23 thorizations (as defined in section 34), other than
24 final action by the Commission, by not later than
25 120 days after the date on which the Commission

1 issues a notice under paragraph (4)(A) or a written
2 determination under paragraph (5), as applicable.

3 “(8) COMMISSION ACTION.—Not later than 150
4 days after the date on which the Commission issues
5 a notice under paragraph (4)(A) or a written deter-
6 mination under paragraph (5), as applicable, the
7 Commission shall take final action on the license
8 amendment application.

9 “(9) LICENSE AMENDMENT CONDITIONS.—Any
10 condition included in or applicable to a license
11 amendment approved under this subsection, includ-
12 ing any condition or other requirement of a Federal
13 authorization, shall be limited to those that are—

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

15 “(B) reasonable, economically feasible, and
16 essential to prevent loss of or damage to, or to
17 mitigate adverse effects on, fish and wildlife re-
18 sources, water supply, and water quality that
19 are directly caused by the construction and op-
20 eration of the qualifying project upgrade, as
21 compared to the environmental baseline existing
22 at the time the Commission approves the appli-
23 cation for the license amendment.

24 “(10) PROPOSED LICENSE AMENDMENTS THAT
25 ARE NOT QUALIFYING PROJECT UPGRADES.—If the

1 Commission determines under paragraph (3) or (5)
2 that a proposed license amendment is not for a
3 qualifying project upgrade, the procedures under
4 paragraphs (6) through (9) shall not apply to the
5 application.

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

10 “(12) DEFINITIONS.—For purposes of this sub-
11 section:

12 “(A) QUALIFYING PROJECT UPGRADE.—
13 The term ‘qualifying project upgrade’ means a
14 change to a project licensed under this part
15 that meets the qualifying criteria, as deter-
16 mined by the Commission.

17 “(B) QUALIFYING CRITERIA.—The term
18 ‘qualifying criteria’ means, with respect to a
19 project license under this part, a change to the
20 project that—

21 “(i) if carried out, would be unlikely
22 to adversely affect any species listed as
23 threatened or endangered under the En-
24 dangered Species Act of 1973 or result in
25 the destruction or adverse modification of

1 critical habitat, as determined in consulta-
2 tion with the Secretary of the Interior or
3 Secretary of Commerce, as appropriate, in
4 accordance with section 7 of the Endan-
5 gered Species Act of 1973;

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

8 “(iii) includes only changes to project
9 lands, waters, or operations that, in the
10 judgment of the Commission, would result
11 in only insignificant or minimal cumulative
12 adverse environmental effects;

13 “(iv) would be unlikely to adversely
14 affect water quality and water supply; and

15 “(v) proposes to implement—

16 “(I) capacity increases, efficiency
17 improvements, or other enhancements
18 to hydropower generation at the li-
19 censed project;

20 “(II) environmental protection,
21 mitigation, or enhancement measures
22 to benefit fish and wildlife resources
23 or other natural and cultural re-
24 sources; or

1 “(III) improvements to public
2 recreation at the licensed project.

3 “(b) AMENDMENT APPROVAL PROCESSES.—

4 “(1) RULE.—Not later than 1 year after the
5 date of enactment of this section, the Commission
6 shall, after notice and opportunity for public com-
7 ment, issue a rule establishing new standards and
8 procedures for license amendment applications under
9 this part. In issuing such rule, the Commission shall
10 seek to develop the most efficient and expedient
11 process, consultation, and review requirements, com-
12 mensurate with the scope of different categories of
13 proposed license amendments. Such rule shall ac-
14 count for differences in environmental effects across
15 a wide range of categories of license amendment ap-
16 plications.

17 “(2) CAPACITY.—In issuing a rule under this
18 subsection, the Commission shall take into consider-
19 ation that a change in generating or hydraulic ca-
20 pacity may indicate the potential environmental ef-
21 fects of a proposed amendment but is not determina-
22 tive of such effects.

23 “(3) PROCESS OPTIONS.—In issuing a rule
24 under this subsection, the Commission shall take
25 into consideration the range of process options avail-

1 able under the Commission’s regulations for new
2 and original license applications and adapt such op-
3 tions to amendment applications, where appro-
4 priate.”.

Page 73, line 18, strike “is amended” and insert “,
as amended by section 1308, is further amended”.

Page 73, line 19, strike “34” and insert “38”.

Page 77, line 20, through page 78, line 5, amend
paragraph (1) to read as follows:

5 “(1) FEDERAL AUTHORIZATION.—The term
6 ‘Federal authorization’ has the same meaning as
7 provided in section 34.”.

