

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 4045
OFFERED BY M . _____**

Page 4, after line 11, insert the following:

1 (f) CONDUIT EXEMPTIONS.—Section 30(c) of the
2 Federal Power Act (16 U.S.C. 823a(c)) is amended in the
3 matter preceding paragraph (1), by inserting “, and with
4 affected Indian Tribes, as appropriate,” before “and shall
5 include”.

6 (g) ENVIRONMENTAL EFFECTS.—

7 (1) DEFINITIONS.—In this subsection:

8 (A) NONRECURRING PAST EFFECT.—The
9 term “nonrecurring past effect”, with respect to
10 a project, means an environmental effect that—

11 (i) may have been caused by—

12 (I) the original construction or
13 development of the project; or

14 (II) prior operations of the
15 project; but

16 (ii) has no ongoing effect on environ-
17 mental resources.

18 (B) ONGOING EFFECT.—The term “ongo-
19 ing effect”, with respect to a project, means a

1 material environmental effect that would not
2 occur or that would be different, but for the
3 continued existence, operation, or maintenance
4 of the project.

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

8 (D) REASONABLY FORESEEABLE EF-
9 FECT.—The term “reasonably foreseeable ef-
10 fect”, with respect to a project, means a mate-
11 rial future environmental effect that—

12 (i)(I) in the case of new construction,
13 would not occur or would be different, but
14 for the construction, existence, operation,
15 or maintenance of the project; or

16 (II) in the case of no new construc-
17 tion, would not occur or would be different,
18 but for the existence, operation, or mainte-
19 nance of the project; and

20 (ii) the Federal Energy Regulatory
21 Commission, another agency, or an Indian
22 Tribe determines, based on substantial evi-
23 dence—

24 (I) is not speculative or improb-
25 able; and

1 (II) is supported by monitoring,
2 modeling, or other scientific analysis
3 that is generally accepted in the sci-
4 entific community.

5 (2) REQUIRED CONSIDERATIONS.—In carrying
6 out any authorities and responsibilities under part I
7 of the Federal Power Act (16 U.S.C. 792 et seq.)
8 with respect to resources affected by the project, the
9 Federal Energy Regulatory Commission, other agen-
10 cies, and Indian Tribes—

11 (A) shall consider ongoing effects and rea-
12 sonably foreseeable effects of any existing dam
13 and other appurtenant project works included
14 as part of an application under part I of the
15 Federal Power Act (16 U.S.C. 792 et seq.);

16 (B) shall not consider nonrecurring past
17 effects of the dam and other appurtenant works
18 of the project; and

19 (C)(i) shall consider whether the project
20 has an adverse effect on any fish species; and

21 (ii) if a determination is made in the af-
22 firmative under clause (i), shall consider pas-
23 sage and nonpassage strategies for reasonably
24 mitigating the adverse effect, as appropriate,
25 based on—

1 (I) the extent and quality of habitat
2 upstream and downstream of the project,
3 including the feasibility of creating new
4 habitat or improving existing habitat
5 through habitat improvement projects;

6 (II) risks to the health of the fish and
7 the river system associated with both pas-
8 sage and nonpassage strategies;

9 (III) costs of construction, operation,
10 and maintenance associated with both pas-
11 sage and nonpassage strategies; and

12 (IV) such other biological, operational,
13 and economic factors determined to be rel-
14 evant by the Federal Energy Regulatory
15 Commission, other agencies, and Indian
16 Tribes.

Page 5, line 5, strike “40” and insert “20”.

Page 6, line 6, strike “40” and insert “20”.

Page 7, beginning on line 1, strike subparagraph
(B) (and make such conforming changes as may be nec-
essary).

Page 10, line 8, insert “, together with supporting
information, which shall inform the determination of the
Commission under paragraph (2)” after “Commission”.

Page 10, after line 13, insert the following paragraph (and make such conforming changes as may be necessary):

1 “(2) COMMISSION DETERMINATION.—Not later
2 than 90 days after the date on which an applicant
3 files a notification of intent under paragraph (1),
4 the Commission, after providing notice and an op-
5 portunity for public comment, shall—

6 “(A) issue a determination of whether the
7 project for which the notification is filed is a
8 next-generation hydropower project; and

9 “(B) include in such determination infor-
10 mation, including analyses supported by infor-
11 mation in the public record, relating to the fac-
12 tual basis for the determination.”.

Page 10, beginning on line 18, strike “filing the notification of intent under paragraph (1)” and insert “the date on which the Commission issues a determination pursuant to paragraph (2) that the project for which the notification is filed is a next-generation hydropower project”.

Page 11, beginning on line 4, strike “the applicant notifies the Commission of its intent to file an application for a license, as provided under paragraph (1)” and in-

serting “the date on which the applicant submits an application pursuant to paragraph (3)”.

Page 12, beginning on line 12, strike “Such rule shall include a process, not to exceed 60 days, for the Commission to determine on a case-by-case basis whether a proposed or existing project qualifies as a next-generation hydropower project prior to the initiation of the licensing or relicensing process.”.

Page 25, beginning on line 11, strike paragraph (4).

Page 28, beginning on line 23, strike subparagraph (B) (and make such conforming changes as may be necessary).

Page 29, beginning on line 1, strike subsection (f).

Add at the end the following section:

1 **SEC. 8. FACILITATION OF EFFICIENT ENVIRONMENTAL RE-**
2 **VIEWS.**

3 (a) IN GENERAL.—Not later than 90 days after the
4 date of enactment of this Act, the Federal Energy Regu-
5 latory Commission (in this section referred to as the
6 “Commission”) shall submit to the Committee on Energy
7 and Commerce of the House of Representatives and the
8 Committee on Energy and Natural Resources of the Sen-
9 ate a report on the efforts of the Commission to facilitate

1 efficient, timely environmental reviews of applications for
2 licenses under part I of the Federal Power Act (16 U.S.C.
3 792 et seq.) and exemptions under section 30 of such Act
4 (16 U.S.C. 823a et seq.) or section 405(d) of the Public
5 Utility Regulatory Policies Act of 1978 (16 U.S.C.
6 2705(d)), including through expanded use of categorical
7 exclusions, environmental assessments, and generic envi-
8 ronmental impact statements.

9 (b) REPORT.—In completing the report under sub-
10 section (a), the Commission shall—

11 (1) describe the actions the Commission will
12 take to implement the amendments to the National
13 Environmental Policy Act of 1969 (42 U.S.C. 4321
14 et seq.) made by section 321 of the Fiscal Responsi-
15 bility Act of 2023;

16 (2) consider—

17 (A) using, through adoption, incorporation
18 by reference, or other appropriate means, cat-
19 egorical exclusions and environmental assess-
20 ments prepared by other Federal agencies to
21 streamline environmental reviews of applica-
22 tions for licenses and exemptions described in
23 subsection (a) by the Commission;

24 (B) using categorical exclusions and envi-
25 ronmental assessments prepared by the Com-

1 mission to streamline environmental reviews of
2 applications for licenses and exemptions de-
3 scribed in subsection (a) by the Commission;

4 (C) opportunities to coordinate the devel-
5 opment of environmental assessments and envi-
6 ronmental impact statements with other Fed-
7 eral agencies to avoid duplicative environmental
8 reviews and to streamline environmental reviews
9 of applications for licenses and exemptions de-
10 scribed in subsection (a) by the Commission;

11 (D) authorizing the use of an applicant's
12 environmental impact statement as the Com-
13 mission's draft environmental impact statement,
14 consistent with section 107(f) of the National
15 Environmental Policy Act of 1969 (42 U.S.C.
16 4336a(f));

17 (E) opportunities to adopt online and dig-
18 ital technologies, including technologies that
19 would allow applicants and cooperating agencies
20 to upload documents and coordinate with the
21 Commission to edit documents in real time,
22 that would streamline communications be-
23 tween—

24 (i) the Commission and applicants;

25 and

1 (ii) the Commission and other rel-
2 evant cooperating agencies; and

3 (F) potential revisions to the Commission's
4 regulations and relevant guidance documents
5 to—

6 (i) facilitate efficient, timely environ-
7 mental reviews of applications for licenses
8 or exemptions described in subsection (a);

9 (ii) assist decision-making about rel-
10 evant environmental issues;

11 (iii) maintain openness with the pub-
12 lic;

13 (iv) meet obligations under the Na-
14 tional Environmental Policy Act of 1969
15 (42 U.S.C. 4321 et seq.); and

16 (v) reduce burdens on applicants for
17 licenses or exemptions described in sub-
18 section (a), and the Commission; and

19 (3) include a schedule for promulgating the rule
20 required under subsection (c).

21 (c) RULEMAKING.—Not later than 2 years after sub-
22 mitting the report under subsection (a), the Commission
23 shall promulgate a final rule implementing, to the max-
24 imum extent practicable, measures considered by the Com-
25 mission in such report that are necessary to streamline

- 1 the Commission's environmental review of applications for
- 2 licenses and exemptions described in subsection (a).

