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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hydropower Policy Modernization Act of 2017".

SEC. 2. HYDROPOWER REGULATORY IMPROVEMENTS.

(a) SENSE OF CONGRESS ON THE USE OF HYDROPOWER RENEWABLE RESOURCES.—It is the sense of Congress that—

(1) hydropower is a renewable resource for purposes of all Federal programs and is an essential source of energy in the United States; and

(2) the United States should increase substantially the capacity and generation of clean, renewable hydropower that would improve environmental quality in the United States.

(b) MODIFYING THE DEFINITION OF RENEWABLE ENERGY TO INCLUDE HYDROPOWER.—Section 203 of the Energy Policy Act of 2005 (42 U.S.C. 15852) is amended—

(1) in subsection (a), by striking "the following amounts" and all that follows through paragraph (3) and inserting "not less than 15 percent in fiscal year 2017 and each fiscal year thereafter shall be renewable energy." ; and

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

"(2) RENEWABLE ENERGY.—The term 'renewable energy' means electric energy generated from solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, or municipal solid waste, or from a hydropower project.".

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

(1) in subsection (a), by striking "three" and inserting "4"; and

(2) by amending subsection (b) to read as follows:

"(b) The Commission may—

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

"(2) if the period of a preliminary permit is extended under paragraph (1), extend the period of such preliminary permit once for not more than 4 additional years beyond the extension period granted under paragraph (1), if the Commission determines

that there are extraordinary circumstances that warrant such additional extension.".

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

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

(1) by striking "(e) Except" and inserting the following:

"(e) LICENSE TERM ON RELICENSING.—

"(1) IN GENERAL.—Except"; and

(2) by adding at the end the following:

"(2) CONSIDERATION.—In determining the term of a license under paragraph (1), the Commission shall consider, among other things, project-related investments to be made by the licensee under a new license issued under this section, as well as project-related investments made by a licencee over the term of the existing license (including any terms under annual licenses). In considering such investments, the Commission shall give the same weight to—

"(A) investments to be made by the licensee to implement a new license issued under this section, including—

"(i) investments in redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation, and safety improvements; and

"(ii) investments in environmental, recreation, and other protection, mitigation, or enhancement measures that will be required or authorized by the license; and

"(B) investments made by the licensee over the term of the existing license (including any terms under annual licenses), beyond those required by the existing license when issued, that—

"(i) resulted in, during the term of the existing license—

"(I) redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation, or safety improvements; or

"(II) environmental, recreation, or other protection, mitigation, or enhancement measures; and

"(ii) did not result in the extension of the term of the existing license by the Commission.".

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

(1) in subsection (a)—

(A) in paragraph (1), by striking "deems" and inserting "determines";

(B) in paragraph (2)(B), in the matter preceding clause (i), by inserting "determined to be necessary" before "by the Secretary";

(C) by striking paragraph (4); and

(D) by striking paragraph (5);

(2) in subsection (b)—

(A) by striking paragraph (4); and

(B) by striking paragraph (5); and

(3) by adding at the end the following:

"(c) FURTHER CONDITIONS.—This section applies to any further conditions or prescriptions proposed or imposed pursuant to section 4(e), 6, or 18.".

SEC. 3. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

(a) HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.—Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

"SEC. 34. HYDROPOWER LICENSING AND PROCESS IMPROVEMENTS.

"(a) DEFINITION.—In this section, the term 'Federal authorization'—

"(1) means any authorization required under Federal law with respect to an application for a license under this part; and

"(2) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law to approve or implement the license under this part.

"(b) DESIGNATION AS LEAD AGENCY.—

"(1) IN GENERAL.—The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(2) OTHER AGENCIES AND INDIAN TRIBES.—

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

eral authorization shall coordinate with the Commission and comply with the deadline established in the schedule developed for the license under this part in accordance with the rule issued by the Commission under subsection (c).

"(B) IDENTIFICATION.—The Commission shall identify, as early as practicable after it is notified by the applicant for a license under this part, any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for a Federal authorization.

"(C) NOTIFICATION.—

"(i) IN GENERAL.—The Commission shall notify any agency and Indian tribe identified under subparagraph (B) of the opportunity to participate in the process of reviewing an aspect of an application for a Federal authorization.

"(ii) DEADLINE.—Each agency and Indian tribe receiving a notice under clause (i) shall submit a response acknowledging receipt of the notice to the Commission within 30 days of receipt of such notice and request.

"(D) ISSUE IDENTIFICATION AND RESOLUTION.—

"(i) IDENTIFICATION OF ISSUES.—Federal, State, and local government agencies and Indian tribes that may consider an aspect of an application for Federal authorization shall identify, as early as possible, and share with the Commission and the applicant, any issues of concern identified during the pendency of the Commission's action under this part relating to any Federal authorization that may delay or prevent the granting of such authorization, including any issues that may prevent the agency or Indian tribe from meeting the schedule established for the license under this part in accordance with the rule issued by the Commission under subsection (c).

"(ii) ISSUE RESOLUTION.—The Commission may forward any issue of concern identified under clause (i) to the heads of the relevant State and Federal agencies (including, in the case of an issue of concern identified by a State or local government agency or Indian tribe, the Federal agency

overseeing the delegated authority, or the Secretary of the Interior with regard to an issue of concern identified by an Indian tribe, as applicable) for resolution. If the Commission forwards an issue of concern to the head of a relevant agency, the Commission and the relevant agency shall enter into a memorandum of understanding to facilitate interagency coordination and resolution of such issues of concern, as appropriate.

"(c) SCHEDULE.—

"(1) COMMISSION RULEMAKING TO ESTABLISH PROCESS TO SET SCHEDULE.—Not later than 180 days after the date of enactment of this section the Commission shall, in consultation with the appropriate Federal agencies, issue a rule, after providing for notice and public comment, establishing a process for setting a schedule following the filing of an application under this part for a license for the review and disposition of each Federal authorization.

"(2) ELEMENTS OF SCHEDULING RULE.—In issuing a rule under this subsection, the Commission shall ensure that the schedule for each Federal authorization—

"(A) includes deadlines for actions by—

"(i) any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for the Federal authorization;

"(ii) the applicant;

"(iii) the Commission; and

"(iv) other participants in any applicable proceeding;

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

"(C) provides an opportunity for any Federal or State agency, local government, or Indian tribe that may consider an aspect of an application for the applicable Federal authorization to identify and resolve issues of concern, as provided in subsection (b)(2)(D);

"(D) complies with applicable schedules established under Federal and State law;

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

"(F) facilitates completion of Federal and State agency studies, reviews, and any other procedures required prior to, or concurrent with, the preparation of the Commission's environmental document required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(d) TRANSMISSION OF FINAL SCHEDULE.—

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

"(2) RESPONSE.—Each agency and Indian tribe receiving a schedule under this subsection shall acknowledge receipt of such schedule in writing to the Commission within 30 days.

"(e) ADHERENCE TO SCHEDULE.—All applicants, other licensing participants, and agencies and Indian tribes considering an aspect of an application for a Federal authorization shall meet the deadlines set forth in the schedule established pursuant to subsection (d)(1).

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

"(g) COMMISSION RECOMMENDATION ON SCOPE OF ENVIRONMENTAL REVIEW.—For the purposes of coordinating Federal authorizations for each license under this part, the Commission shall consult with and make a recommendation to agencies and Indian tribes receiving a schedule under subsection (d) on the scope of the environmental review for all Federal authorizations for such license. Each Federal and State agency and Indian tribe shall give due consideration and may give deference to the Commission's recommendations, to the extent appropriate under Federal law.

"(h) EXTENSION OF DEADLINE.—

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

the deadline set forth in the schedule established under subsection (d)(1) shall, not later than 30 days prior to such deadline, file for an extension with the Commission.

"(2) EXTENSION.—The Commission shall only grant an extension filed for under paragraph (1) if the agency or Indian tribe demonstrates, based on the record maintained under subsection (i), that complying with the schedule established under subsection (d)(1) would prevent the agency or tribe from complying with applicable Federal or State law. If the Commission grants the extension, the Commission shall set a reasonable schedule and deadline, that is not later than 90 days after the deadline set forth in the schedule established under subsection (d)(1), for the agency or tribe to complete its disposition of the Federal authorization.

"(i) CONSOLIDATED RECORD.—The Commission shall, with the cooperation of Federal, State, and local government agencies and Indian tribes, maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State or local government agency or officer or Indian tribe acting under delegated Federal authority) with

respect to any Federal authorization. Such record shall constitute the record for judicial review under section 313(b).

"(j) SUBMISSION OF LICENSE RECOMMENDATIONS, CONDITIONS, AND PRESCRIPTIONS.—

"(1) SUBMISSION OF RECOMMENDATIONS.—Any Federal or State agency that is providing recommendations with respect to a license proceeding under this part shall submit to the Commission for inclusion in the consolidated record relating to the license proceeding maintained under subsection (i)—

"(A) the recommendations;

"(B) the rationale for the recommendations; and

"(C) any supporting materials relating to the recommendations.

"(2) WRITTEN STATEMENT.—In a case in which a Federal agency is making a determination with respect to a covered measure (as defined in section 35(a)), the head of the Federal agency shall submit to the Commission for inclusion in the consolidated record, in addition to the information required under paragraph (1), a written statement demonstrating that the Federal agency gave equal consideration to the effects of the covered measure on—

"(A) energy supply, distribution, cost, and use;

"(B) flood control;

"(C) navigation;

"(D) water supply; and

"(E) air quality and the preservation of other aspects of environmental quality.

"(3) INFORMATION FROM OTHER AGENCIES.—In preparing a written statement under paragraph (2), the head of a Federal agency may make use of information produced or made available by other agencies with relevant expertise in the factors described in subparagraphs (A) through (E) of that paragraph.

"(k) DELEGATION.—A Secretary may delegate the authority to determine a condition to be necessary under section 4(e), or to prescribe a fishway under section 18, to an officer of the applicable department based, in part, on the ability of the officer to evaluate the broad effects of such condition or prescription on—

"(1) the applicable project; and

"(2) the factors described in subparagraphs (A) through (E) of subsection (j)(2).

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

Coordination Act, the Endangered Species Act of 1973, section 14 of the Act of March 3, 1899 (commonly known as the Rivers and Harbors Appropriation Act of 1899), and those provisions in subtitle III of title 54, United States Code commonly known as the National Historic Preservation Act, with respect to an application for a license under this part.

"SEC. 35. TRIAL-TYPE HEARINGS.

"(a) DEFINITION OF COVERED MEASURE.—In this section, the term 'covered measure' means—

"(1) a condition determined to be necessary under section 4(e), including an alternative condition proposed under section 33(a);

"(2) fishways prescribed under section 18, including an alternative prescription proposed under section 33(b); or

"(3) any action by the Secretary to exercise reserved authority under the license to prescribe, submit, or revise any condition to a license under the first proviso of section 4(e) or fishway prescribed under section 18.

"(b) AUTHORIZATION OF TRIAL-TYPE HEARING.—An applicant for a license under this part (including an applicant for a license under section 15) and any party to a license proceeding shall be entitled to a determination on

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

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

"(1) the Secretary determines the condition to be necessary under section 4(e) or prescribes the fishway under section 18; or

"(2) the Secretary exercises reserved authority under the license to prescribe, submit, or revise any condition to a license under the first proviso of section 4(e) or fishway prescribed under section 18, as appropriate.

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

"(e) ADMINISTRATIVE LAW JUDGE.—

"(1) IN GENERAL.—All disputed issues of material fact raised by a party in a request for a trial-

type hearing submitted under subsection (c) shall be determined in a single trial-type hearing to be conducted by an Administrative Law Judge within the Office of Administrative Law Judges and Dispute Resolution of the Commission, in accordance with the Commission rules of practice and procedure under part 385 of title 18, Code of Federal Regulations (or successor regulations), and within the timeframe established by the Commission for each license proceeding (including a proceeding for a license under section 15) under section 34(d).

"(2) REQUIREMENT.—The trial-type hearing shall include the opportunity—

"(A) to undertake discovery; and

"(B) to cross-examine witnesses, as applicable.

"(f) STAY.—The Administrative Law Judge may impose a stay of a trial-type hearing under this section for a period of not more than 120 days to facilitate settlement negotiations relating to resolving the disputed issues of material fact with respect to the covered measure.

"(g) DECISION OF THE ADMINISTRATIVE LAW JUDGE.—

"(1) CONTENTS.—The decision of the Administrative Law Judge shall contain—

"(A) findings of fact on all disputed issues of material fact;

"(B) conclusions of law necessary to make the findings of fact, including rulings on materiality and the admissibility of evidence; and

"(C) reasons for the findings and conclusions.

"(2) LIMITATION.—The decision of the Administrative Law Judge shall not contain conclusions as to whether—

"(A) any condition or prescription should be adopted, modified, or rejected; or

"(B) any alternative condition or prescription should be adopted, modified, or rejected.

"(3) FINALITY.—A decision of an Administrative Law Judge under this section with respect to a disputed issue of material fact shall not be subject to further administrative review.

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

"(h) SECRETARIAL DETERMINATION.—

"(1) IN GENERAL.—Not later than 60 days after the date on which the Administrative Law Judge issues the decision under subsection (g) and in accordance with any applicable schedule established by the Commission under section 34(d), the Secretary proposing a covered measure shall file with the Commission a final determination to adopt, modify, or withdraw any condition or prescription that was the subject of a hearing under this section, based on the decision of the Administrative Law Judge.

"(2) RECORD OF DETERMINATION.—The final determination of the Secretary filed with the Commission shall identify the reasons for the decision and any considerations taken into account that were not part of, or were inconsistent with, the findings of the Administrative Law Judge and shall be included in the consolidated record maintained under section 34(i).

"(i) RESOLUTION OF MATTERS.—Notwithstanding sections 4(e) and 18, if the Commission finds that a final determination under (h)(1) of the Secretary is inconsistent with the purposes of this part or other applicable law, the Commission may enter into a memorandum of understanding with the Secretary to facilitate interagency coordination and resolve the matter.

"(j) JUDICIAL REVIEW.—The decision of the Administrative Law Judge and the record of determination of the Secretary shall be included in the record of the applicable licensing proceeding and subject to judicial review of the final licensing decision of the Commission under section 313(b).

"SEC. 36. LICENSING STUDY IMPROVEMENTS.

"(a) IN GENERAL.—To facilitate the timely and efficient completion of the license proceedings under this part, the Commission shall, in consultation with applicable Federal and State agencies and interested members of the public—

"(1) compile current and accepted best practices in performing studies required in such license proceedings, including methodologies and the design of studies to assess the full range of environmental impacts of a project that reflect the most recent peer-reviewed science;

"(2) compile a comprehensive collection of studies and data accessible to the public that could be used to inform license proceedings under this part; and

"(3) encourage license applicants, agencies, and Indian tribes to develop and use, for the purpose of fostering timely and efficient consideration of license

applications, a limited number of open-source methodologies and tools applicable across a wide array of projects, including water balance models and streamflow analyses.

"(b) USE OF STUDIES.—To the extent practicable, the Commission and other Federal, State, and local government agencies and Indian tribes considering an aspect of an application for Federal authorization (as defined in section 34) shall use studies and data based on current, accepted science in support of their actions. Any participant in a proceeding with respect to such a Federal authorization shall demonstrate that a study requested by the participant is not duplicative of current, existing studies that are applicable to the project.

"(c) INTRA-WATERSHED REVIEW.—The Commission shall establish a program to develop comprehensive plans, at the request of project applicants, on a watershed-wide scale, in consultation with the applicants, appropriate Federal agencies, and affected States, local governments, and Indian tribes, in watersheds with respect to which there are more than one application for a project. Upon such a request, the Commission, in consultation with the applicants, such Federal agencies, and affected States, local governments, and Indian tribes, may conduct or commission watershed-wide environmental studies, with the participation

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

"SEC. 37. LICENSE AMENDMENT IMPROVEMENTS.

"(a) QUALIFYING PROJECT UPGRADES.—

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

"(2) APPLICATION.—A licensee filing an application for an amendment to a project license, for which the licensee is seeking approval as a qualified project upgrade under this section, shall include in such application information sufficient to demonstrate that the proposed change to the project described in the application is a qualifying project upgrade.

"(3) NOTICE AND INITIAL DETERMINATION ON QUALIFICATION.—Not later than 30 days after receipt of an application under paragraph (2), the Commission, in consultation with other Federal agencies, States, and Indian tribes the Commission determines appropriate, shall publish in the Federal Register a notice containing—

"(A) notice of the application filed under paragraph (2);

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

"(C) a request for public comment on the application and the initial determination.

"(4) PUBLIC COMMENT AND CONSULTATION.—The Commission shall, for a period of 45 days beginning on the date of publication of a notice under paragraph (3)—

"(A) accept public comment regarding the application and whether the proposed license amendment is for a qualifying project upgrade; and

"(B) consult with each Federal, State, and local government agency and Indian tribe considering an aspect of an application for any authorization required under Federal law with respect to the proposed license amendment, as well as other interested agencies and Indian tribes.

"(5) FINAL DETERMINATION ON QUALIFICATION.—Not later than 15 days after the end of the public comment and consultation period under paragraph (4), the Commission shall publish in the Federal Register a final determination as to whether the

proposed license amendment is for a qualifying project upgrade.

"(6) FEDERAL AUTHORIZATIONS.—In establishing the schedule for a proposed license amendment for a qualifying project upgrade, the Commission shall require final disposition of all authorizations required under Federal law with respect to an application for such license amendment, other than final action by the Commission, by not later than 120 days after the date on which the Commission publishes a final determination under paragraph (5) that the proposed license amendment is for a qualifying project upgrade.

"(7) COMMISSION ACTION.—Not later than 150 days after the date on which the Commission publishes a final determination under paragraph (5) that a proposed license amendment is for a qualifying project upgrade, the Commission shall take final action on the license amendment application.

"(8) LICENSE AMENDMENT CONDITIONS.—Any condition or prescription included in or applicable to a license amendment for a qualifying project upgrade approved under this subsection, including any condition, prescription, or other requirement of a Federal authorization, shall be limited to those that are—

"(A) necessary to protect public safety; or

"(B) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources, water supply, and water quality that are directly caused by the construction and operation of the qualifying project upgrade, as compared to the environmental baseline existing at the time the Commission approves the application for the license amendment.

"(9) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall, after notice and opportunity for public comment, issue a rule to implement this subsection.

"(10) DEFINITIONS.—For purposes of this subsection:

"(A) QUALIFYING PROJECT UPGRADE.—The term 'qualifying project upgrade' means a change to a project licensed under this part that meets the qualifying criteria, as determined by the Commission.

"(B) QUALIFYING CRITERIA.—The term 'qualifying criteria' means, with respect to a project licensed under this part, a change to the project that—

"(i) if carried out, would be unlikely to adversely affect any species listed as threatened or endangered under the Endangered Species Act of 1973 or result in the destruction or adverse modification of critical habitat, as determined in consultation with the Secretary of the Interior or Secretary of Commerce, as appropriate, in accordance with section 7 of the Endangered Species Act of 1973;

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

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

"(iv) would be unlikely to adversely affect water quality or water supply; and

"(v) proposes to implement—

"(I) capacity increases, efficiency improvements, or other enhancements to hydropower generation at the licensed project;

"(II) environmental protection, mitigation, or enhancement measures to benefit fish and wildlife resources or other natural and cultural resources; or

"(III) improvements to public recreation at the licensed project.

"(b) AMENDMENT APPROVAL PROCESSES.—

"(1) RULE.—Not later than 1 year after the date of enactment of this section, the Commission shall, after notice and opportunity for public comment, issue a rule establishing new standards and procedures for license amendment applications under this part. In issuing such rule, the Commission shall seek to develop the most efficient and expedient process, consultation, and review requirements, commensurate with the scope of different categories of proposed license amendments. Such rule shall account for differences in environmental effects across a wide range of categories of license amendment applications.

"(2) CAPACITY.—In issuing a rule under this subsection, the Commission shall take into consideration that a change in generating or hydraulic capacity may indicate the potential environmental effects

of a proposed license amendment but is not determinative of such effects.

"(3) PROCESS OPTIONS.—In issuing a rule under this subsection, the Commission shall take into consideration the range of process options available under the Commission's regulations for license applications and adapt such options to amendment applications, where appropriate.".

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

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

(1) by striking "adequate protection and utilization of such reservation" and all that follows through "That no license affecting the navigable capacity" and inserting "adequate protection and utilization of such reservation: Provided further, That no license affecting the navigable capacity"; and

(2) by striking "deem" and inserting "determine".

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

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115TH CONGRESS
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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

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