

TO AMEND THE FEDERAL POWER ACT WITH RESPECT TO  
 THE CRITERIA AND PROCESS TO QUALIFY AS A QUALIFYING CONDUIT HYDROPOWER FACILITY

JULY 12, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 2786]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2786) to amend the Federal Power Act with respect to the criteria and process to qualify as a qualifying conduit hydro-power facility, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:  
 Strike all after the enacting clause and insert the following:

**SECTION 1. QUALIFYING CONDUIT HYDROPOWER FACILITIES.**

- Section 30(a) of the Federal Power Act (16 U.S.C. 823a(a)) is amended—
- (1) in paragraph (2)(C), by striking “45 days” and inserting “30 days”; and
  - (2) in paragraph (3)(C)—
    - (A) in clause (i), by adding “and” after the semicolon;
    - (B) by striking clause (ii); and
    - (C) by redesignating clause (iii) as clause (ii).

**PURPOSE AND SUMMARY**

H.R. 2786, a bill to amend the Federal Power Act with respect to the criteria and process to qualify as a qualifying conduit hydro-power facility, was introduced by Rep. Hudson (R–NC) and Rep. DeGette (D–CO) on June 6, 2017. H.R. 2786 would promote the development of conduit hydropower facilities by reducing the regulatory review period and allowing for larger conduit projects to be eligible for exemption from the Federal Energy Regulatory Commission’s jurisdiction.

**BACKGROUND AND NEED FOR LEGISLATION**

Under the Federal Power Act (FPA), the Federal Energy Regulatory Commission (FERC) issues licenses for projects within its jurisdiction, and exemptions for projects that would be located at existing dams or within conduits, as long as these projects meet specific criteria. Exemptions are perpetual, and thus do not need to be renewed.

Congress established qualifying conduit exemptions under the provisions of the Hydropower Regulatory Efficiency Act of 2013. That legislation amended section 30 of the FPA to allow FERC to issue exemptions for generation projects that use the hydroelectric potential of manmade conduits that are operated for the distribution of water for agricultural, municipal, or industrial consumption, and not primarily for generation of electricity.

Under section 30 of the FPA, not later than 15 days from the date of notice of intent for a qualifying conduit, FERC must make an initial determination as to whether the facility meets the qualifying criteria, and, if so, publish a public notice of intent. Following the notice, a period of 45 days is provided for public comment on FERC’s initial determination as to whether a facility meets the qualifying criteria, which includes a five megawatt limitation on the facility’s installed capacity.

The Committee finds the qualifying conduit program to be a success, with the entire process taking about two months, including the required 45-day public notice period during which FERC has very rarely received comments that have bearing on whether the facility qualifies. H.R. 2786 would provide benefits to a greater range conduit hydropower projects by shortening the 45-day notice period to 30 days, and allowing larger conduit projects to be eligible for exemption from FERC’s jurisdiction.

**COMMITTEE ACTION**

On May 3, 2017, the Subcommittee on Energy held a legislative hearing on discussion draft H.R. \_\_\_\_\_, Promoting Small Conduit Hydropower Facilities Act of 2017. The Subcommittee received testimony from:

- Terry Turpin, Director, Office of Energy Projects, Federal Energy Regulatory Commission;
- John Katz, Deputy Associate General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission;
- Jeffrey Leahey, Deputy Executive Director, National Hydropower Association;
- Donald Santa, President and CEO, Interstate Natural Gas Association of America;
- Andy Black, President and CEO, Association of Oil Pipe Lines;
- Jeffrey Soth, Legislative and Political Director, International Union of Operating Engineers;
- Bob Irvin, President and CEO, American Rivers; and,
- Jennifer Danis, Senior Staff Attorney, Eastern Environmental Law Center.

On June 22, 2017, the Subcommittee on Energy met in open markup session and forwarded H.R. 2786, as amended, to the full Committee by a voice vote. On June 28, 2017, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 2786, as amended, favorably reported to the House by a voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 2786 reported.

#### OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 2786 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to promote the development of conduit hydropower facilities.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 2786 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

## COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

## EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, [the Committee finds that H.R. 2786 contains no earmarks, limited tax benefits, or limited tariff benefits.

## DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee finds that H.R. 2786 contains no directed rule makings.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Qualifying conduit hydropower facilities*

This section amends section 30(a) of the Federal Power Act by requiring FERC to determine whether a facility meets qualifying small conduit facility criteria no later than 45 days after receipt of a notice of intent to construct. The legislation also strikes the five megawatt cap on qualifying conduit hydropower facilities.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic,

and existing law in which no change is proposed is shown in roman):

## FEDERAL POWER ACT

### PART I

\* \* \* \* \*

SEC. 30. (a)(1) A qualifying conduit hydropower facility shall not be required to be licensed under this part.

(2)(A) Any person, State, or municipality proposing to construct a qualifying conduit hydropower facility shall file with the Commission a notice of intent to construct such facility. The notice shall include sufficient information to demonstrate that the facility meets the qualifying criteria.

(B) Not later than 15 days after receipt of a notice of intent filed under subparagraph (A), the Commission shall—

(i) make an initial determination as to whether the facility meets the qualifying criteria; and

(ii) if the Commission makes an initial determination, pursuant to clause (i), that the facility meets the qualifying criteria, publish public notice of the notice of intent filed under subparagraph (A).

(C) If, not later than **[45 days]** *30 days* after the date of publication of the public notice described in subparagraph (B)(ii)—

(i) an entity contests whether the facility meets the qualifying criteria, the Commission shall promptly issue a written determination as to whether the facility meets such criteria; or

(ii) no entity contests whether the facility meets the qualifying criteria, the facility shall be deemed to meet such criteria.

(3) For purposes of this section:

(A) The term “conduit” means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(B) The term “qualifying conduit hydropower facility” means a facility (not including any dam or other impoundment) that is determined or deemed under paragraph (2)(C) to meet the qualifying criteria.

(C) The term “qualifying criteria” means, with respect to a facility—

(i) the facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit; *and*

**[(ii) the facility has an installed capacity that does not exceed 5 megawatts; and]**

**[(iii) (i) on or before the date of enactment of the Hydropower Regulatory Efficiency Act of 2013, the facility is not licensed under, or exempted from the license requirements contained in, this part.**

(b) Subject to subsection (c), the Commission may grant an exemption in whole or in part from the requirements of this part, including any license requirements contained in this part, to any fa-

cility (not including any dam or other impoundment) constructed, operated, or maintained for the generation of electric power which the Commission determines, by rule or order—

(1) utilizes for such generation only the hydroelectric potential of a conduit; and

(2) has an installed capacity that does not exceed 40 megawatts.

(c) In making the determination under subsection (b) the Commission shall consult with the United States Fish and Wildlife Service and the State agency exercising administration over the fish and wildlife resources of the State in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.), and shall include in any such exemption—

(1) such terms and conditions as the Fish and Wildlife Service National Marine Fisheries Service and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

(2) such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provisions of this section and terms and conditions included in any such exemption.

(d) Any violation of a term or condition of any exemption granted under subsection (b) shall be treated as a violation of a rule or order of the Commission under this Act.

(e) The Commission, in addition to the requirements of section 10(e), shall establish fees which shall be paid by an applicant for a license or exemption for a project that is required to meet terms and conditions set by fish and wildlife agencies under subsection (c). Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in subsection (c) for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations Acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended.

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