

105TH CONGRESS
2D SESSION

S. 2533

To amend the Federal Power Act to improve the hydroelectric licensing process by granting the Federal Energy Regulatory Commission statutory authority to better coordinate participation by other agencies and entities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 1998

Mr. CRAIG introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Federal Power Act to improve the hydroelectric licensing process by granting the Federal Energy Regulatory Commission statutory authority to better coordinate participation by other agencies and entities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hydroelectric Licens-
5 ing Process Improvement Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) hydroelectric power is an irreplaceable
2 source of clean, economic, renewable energy with the
3 unique capability of supporting reliable electric serv-
4 ice while maintaining environmental quality;

5 (2) hydroelectric power is the leading renewable
6 energy resource of the United States;

7 (3) hydroelectric power projects provide mul-
8 tiple benefits to the United States, including recre-
9 ation, irrigation, flood control, water supply, and
10 fish and wildlife benefits;

11 (4) in the next 15 years, the bulk of all non-
12 Federal hydroelectric power capacity in the United
13 States is due to be relicensed by the Federal Energy
14 Regulatory Commission; and

15 (5) the process of licensing hydroelectric
16 projects by the Commission—

17 (A) has become inefficient, because Fed-
18 eral agencies that participate in the process are
19 not required to submit their mandatory and
20 recommended conditions to the license by a
21 time certain; and

22 (B) does not produce optimal decisions, be-
23 cause the agencies are not required to consider
24 a broad range of factors in determining those
25 conditions.

1 **SEC. 3. PURPOSE.**

2 The purpose of this Act is to improve the hydro-
3 electric licensing process by—

4 (1) authorizing the Federal Energy Regulatory
5 Commission to impose deadlines by which Federal
6 agencies must submit proposed mandatory and rec-
7 ommended conditions to a license;

8 (2) requiring the agencies to consider a broad
9 range of factors in determining those conditions and
10 to document the consideration of those factors; and

11 (3) making other improvements to the licensing
12 process.

13 **SEC. 4. PROCESS FOR CONSIDERATION BY FEDERAL AGEN-**
14 **CIES OF CONDITIONS TO LICENSES.**

15 (a) IN GENERAL.—Part I of the Federal Power Act
16 (16 U.S.C. 791a et seq.) is amended by adding at the end
17 the following:

18 **“SEC. 32. PROCESS FOR CONSIDERATION BY FEDERAL**
19 **AGENCIES OF CONDITIONS TO LICENSES.**

20 “(a) DEFINITIONS.—In this section:

21 “(1) CONDITION.—The term ‘condition’
22 means—

23 “(A) a condition to a license for a project
24 on a Federal reservation determined by a con-
25 sulting agency for the purpose of the first pro-
26 viso of section 4(e); and

1 “(B) a prescription relating to the con-
 2 struction, maintenance, or operation of a
 3 fishway determined by a consulting agency for
 4 the purpose of the first sentence of section 18.

5 “(2) CONSULTING AGENCY.—The term ‘consult-
 6 ing agency’ means—

7 “(A) in relation to a condition described in
 8 paragraph (1)(A), the Federal agency with ad-
 9 ministrative jurisdiction over the reservation;
 10 and

11 “(B) in relation to a condition described in
 12 paragraph (1)(B), the Secretary of the Interior
 13 or the Secretary of Commerce, as appropriate.

14 “(b) FACTORS TO BE CONSIDERED.—

15 “(1) IN GENERAL.—In determining a condition,
 16 a consulting agency shall take into consideration—

17 “(A) the impacts of the condition on—

18 “(i) economic and power values;

19 “(ii) electric generation capacity and
 20 system reliability;

21 “(iii) air quality; and

22 “(iv) drinking, flood control, irriga-
 23 tion, navigation, or recreation water sup-
 24 ply; and

1 “(B) compatibility with other conditions to
2 be included in the license, including mandatory
3 conditions of other agencies, when available.

4 “(2) DOCUMENTATION.—

5 “(A) IN GENERAL.—In the course of the
6 consideration of factors under paragraph (1)
7 and before any review under subsection (e), a
8 consulting agency shall create written docu-
9 mentation detailing, among other pertinent
10 matters, all proposals made, comments received,
11 facts considered, and analyses made regarding
12 each of those factors sufficient to demonstrate
13 that each of the factors was given full consider-
14 ation in determining the condition to be submit-
15 ted to the Commission.

16 “(B) SUBMISSION TO THE COMMISSION.—

17 A consulting agency shall include the docu-
18 mentation under subparagraph (A) in its sub-
19 mission of a condition to the Commission.

20 “(c) SCIENTIFIC REVIEW.—

21 “(1) IN GENERAL.—Each condition determined
22 by a consulting agency shall be subjected to appro-
23 priately substantiated scientific review.

24 “(2) DATA.—For the purpose of paragraph (1),
25 a condition shall be considered to have been sub-

1 jected to appropriately substantiated scientific review
 2 if the review—

3 “(A) was based on current empirical data
 4 or field-tested data; and

5 “(B) was subjected to peer review.

6 “(d) RELATIONSHIP TO IMPACTS ON FEDERAL RES-
 7 ERVATION.—In the case of a condition for the purpose of
 8 the first proviso of section 4(e), each condition determined
 9 by a consulting agency shall be directly and reasonably
 10 related to the impacts of the project within the Federal
 11 reservation.

12 “(e) ADMINISTRATIVE REVIEW.—

13 “(1) OPPORTUNITY FOR REVIEW.—Before sub-
 14 mitting to the Commission a proposed condition, and
 15 before a license applicant files a license application
 16 with the Commission, a consulting agency shall pro-
 17 vide a license applicant an opportunity to obtain ex-
 18 pedited review before an administrative law judge or
 19 other independent reviewing body of—

20 “(A) the reasonableness of the condition in
 21 light of the effect that implementation of the
 22 condition will have on the energy and economic
 23 values of a project; and

24 “(B) compliance by the consulting agency
 25 with the requirements of this section, including

1 the requirement to consider the factors de-
2 scribed in subsection (b)(1).

3 “(2) COMPLETION OF REVIEW.—

4 “(A) IN GENERAL.—A review under para-
5 graph (1) shall be completed not more than 180
6 days after the license applicant notifies the con-
7 sulting agency of the request for review.

8 “(B) FAILURE TO MAKE TIMELY COMPLE-
9 TION OF REVIEW.—If a consulting agency does
10 not provide a license applicant a timely oppor-
11 tunity to review a proposed condition, the Com-
12 mission may treat a condition submitted by the
13 consulting agency as a recommendation is treat-
14 ed under section 10(j).

15 “(3) REMAND.—If the administrative law judge
16 or reviewing body finds that a proposed condition is
17 unreasonable or that the consulting agency failed to
18 comply with any of the requirements of this section,
19 the administrative law judge or reviewing body
20 shall—

21 “(A) render a decision that—

22 “(i) explains the reasons for a finding
23 that the condition is unreasonable and may
24 make recommendations that the adminis-
25 trative law judge or reviewing body may

1 have for the formulation of a condition
2 that would not be found unreasonable; or
3 “(ii) explains the reasons for a finding
4 that a requirement was not met and may
5 describe any action that the consulting
6 agency should take to meet the require-
7 ment; and

8 “(B) remand the matter to the consulting
9 agency for further action.

10 “(4) SUBMISSION TO THE COMMISSION.—Fol-
11 lowing administrative review under this subsection, a
12 consulting agency shall—

13 “(A) take such action as the consulting
14 agency determines to be appropriate to formu-
15 late a condition that is not unreasonable or to
16 comply with the requirements of this section;
17 and

18 “(B) include with its submission to the
19 Commission of a proposed condition—

20 “(i) the record on administrative re-
21 view; and

22 “(ii) documentation of any action
23 taken following administrative review.

24 “(f) DEADLINE FOR SUBMISSION OF CONDITIONS.—

1 “(1) IN GENERAL.—After an applicant files
 2 with the Commission an application for a license, the
 3 Commission may set a date by which a consulting
 4 agency shall file with the Commission a rec-
 5 ommended or established condition.

6 “(2) LIMITATION.—Except as provided in para-
 7 graph (3), the date for submission shall be not
 8 greater than 1 year after the date on which the
 9 Commission gives the consulting agency notice that
 10 a license application is ready for environmental re-
 11 view.

12 “(3) DEFAULT.—If a consulting agency does
 13 not file a recommended or established condition to
 14 a license by the date set under paragraph (1)—

15 “(A) the consulting agency shall not there-
 16 after have authority to recommend or establish
 17 a condition to the license; and

18 “(B) the Commission may, but shall not be
 19 required to, recommend or establish an appro-
 20 priate condition to the license that—

21 “(i) furthers the interest sought to be
 22 protected by the provision of law that au-
 23 thorizes the consulting agency to propose
 24 or establish a condition to the license; and

1 “(ii) conforms to the requirements of
2 this Act.

3 “(4) EXTENSION.—The Commission may make
4 1 extension, of not more than 30 days, of a deadline
5 set under paragraph (1).

6 “(g) ECONOMIC ANALYSIS BY THE COMMISSION.—
7 The Commission shall conduct an economic analysis of
8 each condition submitted by a consulting agency to deter-
9 mine whether the condition would render the project un-
10 economic.

11 “(h) COMMISSION DETERMINATION ON EFFECT OF
12 CONDITIONS.—When requested by a license applicant in
13 a request for rehearing, the Commission shall make a writ-
14 ten determination on whether a condition submitted by a
15 consulting agency is—

16 “(1) in the public interest, as measured by the
17 impact of the condition on the factors described in
18 subsection (b)(1);

19 “(2) reasonable;

20 “(3) supported by substantial evidence; and

21 “(4) consistent with this Act and other terms
22 and conditions to be included in the license.”.

23 (b) CONFORMING AND TECHNICAL AMENDMENTS.—

24 (1) SECTION 4.—Section 4(e) of the Federal
25 Power Act (16 U.S.C. 797(e)) is amended in the

1 first proviso of the first sentence by inserting after
 2 “conditions” the following: “, determined in accord-
 3 ance with section 32,”.

4 (2) SECTION 18.—Section 18 of the Federal
 5 Power Act (16 U.S.C. 811) is amended in the first
 6 sentence by striking “prescribed by the Secretary of
 7 Commerce” and inserting “prescribed, in accordance
 8 with section 32, by the Secretary of the Interior or
 9 the Secretary of Commerce, as appropriate”.

10 **SEC. 5. COORDINATED ENVIRONMENTAL REVIEW PROCESS.**

11 Part I of the Federal Power Act (16 U.S.C. 791a
 12 et seq.) (as amended by section 3) is amended by adding
 13 at the end the following:

14 **“SEC. 33. COORDINATED ENVIRONMENTAL REVIEW PROC-**
 15 **ESS.**

16 “(a) LEAD AGENCY RESPONSIBILITY.—The Commis-
 17 sion, as the lead agency for environmental reviews under
 18 the National Environmental Policy Act of 1969 (42 U.S.C.
 19 4321 et seq.) for projects licensed under this part, shall
 20 conduct a single consolidated environmental review for
 21 each such project.

22 “(b) DEADLINES.—

23 “(1) IN GENERAL.—The Commission shall set a
 24 deadline for the submission of comments by Federal,
 25 State, and local government agencies in connection

1 with the preparation of any environmental impact
2 statement or environmental assessment required for
3 a project.

4 “(2) CONSIDERATIONS.—In setting a deadline
5 under paragraph (1), the Commission shall take into
6 consideration—

7 “(A) the need of the license applicant for
8 a prompt and reasonable decision;

9 “(B) the resources of interested Federal,
10 State, and local government agencies; and

11 “(C) applicable statutory requirements.”.

12 **SEC. 6. STUDY OF SMALL HYDROELECTRIC PROJECTS.**

13 (a) IN GENERAL.—Not later than 18 months after
14 the date of enactment of this Act, the Federal Energy
15 Regulatory Commission shall submit to the Committee on
16 Energy and Natural Resources of the Senate and the
17 Committee on Commerce of the House of Representatives
18 a study of the feasibility of establishing a separate licens-
19 ing procedure for small hydroelectric projects.

20 (b) DEFINITION OF SMALL HYDROELECTRIC
21 PROJECT.—The Commission may by regulation define the
22 term “small hydroelectric project” for the purpose of sub-
23 section (a), except that the term shall include at a mini-

1. minimum a hydroelectric project that has a generating capac-
2. ity of 5 megawatts or less.

