

107TH CONGRESS
1ST SESSION

S. 71

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

JANUARY 22, 2001

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 2001”.

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;

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

17 (A) does not produce optimal decisions, be-
18 cause the agencies that participate in the proc-
19 ess are not required to consider the full effects
20 of their mandatory and recommended condi-
21 tions on a license;

22 (B) is inefficient, in part because agencies
23 do not always submit their mandatory and rec-
24 ommended conditions by a time certain;

1 (C) is burdened by uncoordinated environ-
2 mental reviews and duplicative permitting au-
3 thority; and

4 (D) is burdensome for all participants and
5 too often results in litigation; and

6 (6) while the alternative licensing procedures
7 available to applicants for hydroelectric project li-
8 censes provide important opportunities for the col-
9 laborative resolution of many of the issues in hydro-
10 electric project licensing, those procedures are not
11 appropriate in every case and cannot substitute for
12 statutory reforms of the hydroelectric licensing proc-
13 ess.

14 **SEC. 3. PURPOSE.**

15 The purpose of this Act is to achieve the objective
16 of relicensing hydroelectric power projects to maintain
17 high environmental standards while preserving low cost
18 power by—

19 (1) requiring agencies to consider the full ef-
20 fects of their mandatory and recommended condi-
21 tions on a hydroelectric power license and to docu-
22 ment the consideration of a broad range of factors;

23 (2) requiring the Federal Energy Regulatory
24 Commission to impose deadlines by which Federal

1 agencies must submit proposed mandatory and rec-
 2 ommended conditions to a license; and
 3 (3) making other improvements in the licensing
 4 process.

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

7 (a) IN GENERAL.—Part I of the Federal Power Act
 8 (16 U.S.C. 791a et seq.) is amended by adding at the end
 9 the following:

10 **“SEC. 32. PROCESS FOR CONSIDERATION BY FEDERAL**
 11 **AGENCIES OF CONDITIONS TO LICENSES.**

12 “(a) DEFINITIONS.—In this section:

13 “(1) CONDITION.—The term ‘condition’
 14 means—

15 “(A) a condition to a license for a project
 16 on a Federal reservation determined by a con-
 17 sulting agency for the purpose of the first pro-
 18 viso of section 4(e); and

19 “(B) a prescription relating to the con-
 20 struction, maintenance, or operation of a
 21 fishway determined by a consulting agency for
 22 the purpose of the first sentence of section 18.

23 “(2) CONSULTING AGENCY.—The term ‘con-
 24 sulting agency’ means—

1 “(A) in relation to a condition described in
 2 paragraph (1)(A), the Federal agency with re-
 3 sponsibility for supervising the reservation; and

4 “(B) in relation to a condition described in
 5 paragraph (1)(B), the Secretary of the Interior
 6 or the Secretary of Commerce, as appropriate.

7 “(b) FACTORS TO BE CONSIDERED.—

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

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

11 “(i) economic and power values;

12 “(ii) electric generation capacity and
 13 system reliability;

14 “(iii) air quality (including consider-
 15 ation of the impacts on greenhouse gas
 16 emissions); and

17 “(iv) drinking, flood control, irriga-
 18 tion, navigation, or recreation water sup-
 19 ply;

20 “(B) compatibility with other conditions to
 21 be included in the license, including mandatory
 22 conditions of other agencies, when available;
 23 and

1 “(C) means to ensure that the condition
 2 addresses only direct project environmental im-
 3 pacts, and does so at the lowest project cost.

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 sub-
 15 mitted 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 at least 90 days before a license applicant is re-
 16 quired to file a license application with the Commis-
 17 sion, a consulting agency shall provide the proposed
 18 condition to the license applicant and offer the li-
 19 cense applicant an opportunity to obtain expedited
 20 review before an administrative law judge or other
 21 independent reviewing body of—

22 “(A) the reasonableness of the proposed
 23 condition in light of the effect that implementa-
 24 tion of the condition will have on the energy
 25 and economic values of a project; and

1 “(B) compliance by the consulting agency
 2 with the requirements of this section, including
 3 the requirement to consider the factors de-
 4 scribed in subsection (b)(1).

5 “(2) COMPLETION OF REVIEW.—

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

10 “(B) FAILURE TO MAKE TIMELY COMPLE-
 11 TION OF REVIEW.—If review of a proposed con-
 12 dition is not completed within the time specified
 13 by subparagraph (A), the Commission may
 14 treat a condition submitted by the consulting
 15 agency as a recommendation is treated under
 16 section 10(j).

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

23 “(A) render a decision that—

24 “(i) explains the reasons for a finding
 25 that the condition is unreasonable and may

1 make recommendations that the adminis-
 2 trative law judge or reviewing body may
 3 have for the formulation of a condition
 4 that would not be found unreasonable; or

5 “(ii) explains the reasons for a finding
 6 that a requirement was not met and may
 7 describe any action that the consulting
 8 agency should take to meet the require-
 9 ment; and

10 “(B) remand the matter to the consulting
 11 agency for further action.

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

15 “(A) take such action as is necessary to—

16 “(i) withdraw the condition;

17 “(ii) formulate a condition that fol-
 18 lows the recommendation of the adminis-
 19 trative law judge or reviewing body; or

20 “(iii) otherwise comply with this sec-
 21 tion; and

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

24 “(i) the record on administrative re-
 25 view; and

1 “(ii) documentation of any action
2 taken following administrative review.

3 “(f) SUBMISSION OF FINAL CONDITION.—

4 “(1) IN GENERAL.—After an applicant files
5 with the Commission an application for a license, the
6 Commission shall set a date by which a consulting
7 agency shall submit to the Commission a final condi-
8 tion.

9 “(2) LIMITATION.—Except as provided in para-
10 graph (3), the date for submission of a final condi-
11 tion shall be not later than 1 year after the date on
12 which the Commission gives the consulting agency
13 notice that a license application is ready for environ-
14 mental review.

15 “(3) DEFAULT.—If a consulting agency does
16 not submit a final condition to a license by the date
17 set under paragraph (1)—

18 “(A) the consulting agency shall not there-
19 after have authority to recommend or establish
20 a condition to the license; and

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

24 “(i) furthers the interest sought to be
25 protected by the provision of law that au-

1 thorizes the consulting agency to propose
2 or establish a condition to the license; and
3 “(ii) conforms to the requirements of
4 this Act.

5 “(4) EXTENSION.—The Commission may make
6 1 extension, of not more than 30 days, of a deadline
7 set under paragraph (1).

8 “(g) ANALYSIS BY THE COMMISSION.—

9 “(1) ECONOMIC ANALYSIS.—The Commission
10 shall conduct an economic analysis of each condition
11 submitted by a consulting agency to determine
12 whether the condition would render the project un-
13 economic.

14 “(2) CONSISTENCY WITH THIS SECTION.—In
15 exercising authority under section 10(j)(2), the Com-
16 mission shall consider whether any recommendation
17 submitted under section 10(j)(1) is consistent with
18 the purposes and requirements of subsections (b)
19 and (c) of this section.

20 “(h) COMMISSION DETERMINATION ON EFFECT OF
21 CONDITIONS.—When requested by a license applicant in
22 a request for rehearing, the Commission shall make a writ-
23 ten determination on whether a condition submitted by a
24 consulting agency—

1 “(1) is in the public interest, as measured by
 2 the impact of the condition on the factors described
 3 in subsection (b)(1);

4 “(2) was subjected to scientific review in ac-
 5 cordance with subsection (c);

6 “(3) relates to direct project impacts within the
 7 reservation, in the case of a condition for the first
 8 proviso of section 4(e);

9 “(4) is reasonable;

10 “(5) is supported by substantial evidence; and

11 “(6) is consistent with this Act and other terms
 12 and conditions to be included in the license.”.

13 (b) CONFORMING AND TECHNICAL AMENDMENTS.—

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

16 (A) in the first proviso of the first sentence
 17 by inserting after “conditions” the following: “,
 18 determined in accordance with section 32,”; and

19 (B) in the last sentence, by striking the pe-
 20 riod and inserting “(including consideration of
 21 the impacts on greenhouse gas emissions)”.

22 (2) SECTION 18.—Section 18 of the Federal
 23 Power Act (16 U.S.C. 811) is amended in the first
 24 sentence by striking “prescribed by the Secretary of
 25 Commerce” and inserting “prescribed, in accordance

1 with section 32, by the Secretary of the Interior or
 2 the Secretary of Commerce, as appropriate”.

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

4 Part I of the Federal Power Act (16 U.S.C. 791a
 5 et seq.) (as amended by section 4) is amended by adding
 6 at the end the following:

7 **“SEC. 33. COORDINATED ENVIRONMENTAL REVIEW**
 8 **PROCESS.**

9 “(a) LEAD AGENCY RESPONSIBILITY.—The Commis-
 10 sion, as the lead agency for environmental reviews under
 11 the National Environmental Policy Act of 1969 (42 U.S.C.
 12 4321 et seq.) for projects licensed under this part, shall
 13 conduct a single consolidated environmental review—

14 “(1) for each such project; or

15 “(2) if appropriate, for multiple projects located
 16 in the same area.

17 “(b) CONSULTING AGENCIES.—In connection with
 18 the formulation of a condition in accordance with section
 19 32, a consulting agency shall not perform any environ-
 20 mental review in addition to any environmental review per-
 21 formed by the Commission in connection with the action
 22 to which the condition relates.

23 “(c) DEADLINES.—

24 “(1) IN GENERAL.—The Commission shall set a
 25 deadline for the submission of comments by Federal,

1 State, and local government agencies in connection
 2 with the preparation of any environmental impact
 3 statement or environmental assessment required for
 4 a project.

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

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

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

12 “(C) applicable statutory requirements.”.

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

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

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

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

