

115TH CONGRESS
2D SESSION

S. 2655

To amend the Federal Power Act to promote hydropower development at existing nonpowered dams, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2018

Mr. PORTMAN (for himself and Mrs. McCASKILL) 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 promote hydropower development at existing nonpowered dams, 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 “Promoting Hydro-
5 power Development and Jobs Act”.

6 **SEC. 2. PROMOTING HYDROPOWER DEVELOPMENT AT EX-**
7 **ISTING NONPOWERED DAMS.**

8 Part I of the Federal Power Act (16 U.S.C. 792 et
9 seq.) is amended by adding at the end the following:

1 **“SEC. 34. PROMOTING HYDROPOWER DEVELOPMENT AT**
 2 **EXISTING NONPOWERED DAMS.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) QUALIFYING FACILITY.—The term ‘quali-
 5 fying facility’ means a facility that the Commission
 6 determines is a qualifying facility under subsection
 7 (b)(1).

8 “(2) QUALIFYING NONPOWERED DAM.—The
 9 term ‘qualifying nonpowered dam’ means any dam,
 10 dike, embankment, or other barrier—

11 “(A) the construction of which was com-
 12 pleted on or before the date of enactment of
 13 this section;

14 “(B) that is or was operated for the con-
 15 trol, release, or distribution of water for agri-
 16 cultural, municipal, navigational, industrial,
 17 commercial, environmental, recreational, aes-
 18 thetic, drinking water, or flood control pur-
 19 poses; and

20 “(C) that, as of the date of enactment of
 21 this section, is not generating electricity with
 22 hydropower generating works that are licensed
 23 under, or exempted from the license require-
 24 ments of, this part.

1 “(b) EXPEDITED LICENSING PROCESS FOR NON-
 2 FEDERAL HYDROPOWER PROJECTS AT EXISTING NON-
 3 POWERED DAMS.—

4 “(1) AUTHORITY TO ISSUE AND AMEND LI-
 5 CENSES AND PRELIMINARY PERMITS.—

6 “(A) IN GENERAL.—The Commission may
 7 issue and amend licenses and preliminary per-
 8 mits, as appropriate, for any facility that the
 9 Commission determines meets the qualifying
 10 criteria under subparagraph (B).

11 “(B) QUALIFYING CRITERIA.—To be con-
 12 sidered a qualifying facility under subparagraph
 13 (A), the Commission shall determine that, with
 14 respect to the facility—

15 “(i) as of the date of enactment of
 16 this section, the facility is not licensed
 17 under, or exempted from the license re-
 18 quirements of, this part;

19 “(ii) the facility will be associated
 20 with a qualifying nonpowered dam;

21 “(iii) the facility will be constructed,
 22 operated, and maintained for the genera-
 23 tion of electric power;

24 “(iv) the facility will use for the gen-
 25 eration described in clause (iii) with-

drawals, diversions, releases, or flows from the associated qualifying nonpowered dam, including the impoundment or other infrastructure associated with the associated qualifying nonpowered dam; and

“(v) the operation of the facility will not result in any material change to the storage, release, or flow operations of the associated qualifying nonpowered dam.

“(2) RULE.—Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule establishing an expedited process for issuing and amending licenses and preliminary permits for qualifying facilities under this section.

“(3) INTERAGENCY TASK FORCE.—

“(A) IN GENERAL.—In establishing the expedited process under paragraph (2), the Commission shall convene an interagency task force to coordinate the regulatory processes associated with the authorizations required to construct and operate a qualifying facility.

“(B) REPRESENTATION.—The interagency task force convened under subparagraph (A) shall include representatives from appropriate Federal and State agencies and Indian Tribes.

1 “(4) LENGTH OF PROCESS.—The Commission
2 shall ensure that the expedited process under para-
3 graph (2) results in a final decision on an applica-
4 tion for a license for a qualifying facility by not later
5 than 2 years after the date on which the Commis-
6 sion receives the completed application for the li-
7 cense.

8 “(c) DAM SAFETY.—

9 “(1) ASSESSMENT.—Before issuing any license
10 for a qualifying facility under this section, the Com-
11 mission shall assess the safety of existing non-Fed-
12 eral dams and other non-Federal structures associ-
13 ated with the qualifying facility, including possible
14 consequences associated with the failure of such a
15 structure.

16 “(2) REQUIREMENTS.—In issuing any license
17 for a qualifying facility, the Commission shall ensure
18 that the dam safety requirements of the Commission
19 apply to the qualifying facility and the associated
20 qualifying nonpowered dam over the term of the li-
21 cense.

22 “(d) INTERAGENCY COMMUNICATIONS.—Interagency
23 cooperation in the preparation of an environmental impact
24 statement or similar analysis required under the National
25 Environmental Policy Act of 1969 (42 U.S.C. 4321 et

1 seq.) with respect to an application for a license for a
 2 qualifying facility under this section, and interagency com-
 3 munications relating to licensing process coordination
 4 under this section, shall not—

5 “(1) be considered to be ex parte communica-
 6 tions under Commission rules; or

7 “(2) preclude an agency from participating in a
 8 licensing proceeding under this part.

9 “(e) IDENTIFICATION OF NONPOWERED DAMS FOR
 10 HYDROPOWER DEVELOPMENT.—

11 “(1) IN GENERAL.—Not later than 1 year after
 12 the date of enactment of this section, the Commis-
 13 sion, acting jointly with the Secretary of the Army,
 14 the Secretary of the Interior, and the Secretary of
 15 Agriculture (referred to in this subsection as the
 16 ‘Secretaries’), shall develop a list of existing nonpow-
 17 ered Federal dams that the Commission and the
 18 Secretaries agree have the greatest potential for
 19 non-Federal hydropower development.

20 “(2) CONSIDERATIONS.—In developing the list
 21 under paragraph (1), the Commission and the Secre-
 22 taries may consider—

23 “(A) the compatibility of hydropower gen-
 24 eration with existing purposes of the dam;

1 “(B) the proximity of the dam to existing
2 transmission resources;

3 “(C) the existence of studies to charac-
4 terize environmental, cultural, and historic re-
5 sources relating to the dam; and

6 “(D) the effects of hydropower develop-
7 ment on release or flow operations of the dam.

8 “(3) AVAILABILITY.—The Commission shall—

9 “(A) provide the list developed under para-
10 graph (1) to—

11 “(i) the Committee on Environment
12 and Public Works and the Committee on
13 Energy and Natural Resources of the Sen-
14 ate; and

15 “(ii) the Committee on Energy and
16 Commerce, the Committee on Transpor-
17 tation and Infrastructure, and the Com-
18 mittee on Natural Resources of the House
19 of Representatives; and

20 “(B) make the list available to the pub-
21 lic.”.

22 **SEC. 3. OBLIGATION FOR PAYMENT OF ANNUAL CHARGES.**

23 Section 10(e) of the Federal Power Act (16 U.S.C.
24 803(e)) is amended by adding at the end the following:

1 “(5) Any obligation of a licensee for payment of an-
2 nual charges under this subsection shall commence when
3 the construction of the applicable facility commences.”.

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