To modernize the hydropower licensing process and to promote next generation hydropower projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. McMorris Rodgers introduced the following bill; which was referred to the Committee on ____________________________

A BILL

To modernize the hydropower licensing process and to promote next generation hydropower projects, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Hydropower Clean En-
ergy Future Act”.

(Original Signature of Member)
SEC. 2. CONFIRMING THAT HYDROPOWER IS AN ESSENTIAL RENEWABLE RESOURCE.

(a) Sense of Congress on the Use of Hydro-power 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 protect existing hydropower resources and increase substantially the capacity and generation of clean, renewable hydropower resources to address a changing climate and improve environmental quality in the United States.

(b) Modifying Definitions of Renewable Energy to Include Hydropower.—


(A) in subsection (a), by amending paragraphs (1) through (3) to read as follows:

“(1) Not less than 20 percent in fiscal years 2021 through 2022.

“(2) Not less than 23 percent in fiscal years 2023 through 2024.

“(3) Not less than 25 percent in fiscal year 2025 and each fiscal year thereafter.”; and
(B) in subsection (b), by striking paragraph (2) and inserting the following:

“(2) RENEWABLE ENERGY.—The term ‘renewable energy’ means energy produced from solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste, or hydropower.”.

(2) OTHER FEDERAL REGULATIONS, ORDERS, AND POLICIES.—Not later than 180 days after the date of enactment of this Act, each Federal department and agency shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report demonstrating that the department or agency has amended any applicable regulation, order, or other policy of the department or agency related to renewable energy to ensure treatment of hydropower by the Federal Government consistent with the amendments made by paragraph (1).

(c) LICENSES FOR CONSTRUCTION.—Section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended, in the first sentence, by inserting “to mitigate the effects of the applicable project on such reservation, so as to provide” after “deem necessary” in the first proviso.
(d) Operation of Navigation Facilities.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by adding before the period at the end of the first sentence “to mitigate effects of the applicable project”.

SEC. 3. PROTECTING AND PROMOTING SMALL AND NEXT-GENERATION HYDROPOWER PROJECTS.

(a) Exemptions from Licensing Requirements for Certain Small Hydroelectric Power Projects.—Section 405 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2705) is amended by striking subsection (d) and inserting the following:

“(d) Exemptions from Licensing in Certain Cases.—

“(1) In general.—Subject to paragraphs (2) and (3), the Commission may in its discretion (by rule or order), upon application and on a case-by-case basis or on the basis of classes or categories of projects, grant an exemption in whole or in part from the requirements (including the licensing requirements) of part I of the Federal Power Act to any small hydroelectric power project—

“(A) having a proposed installed capacity of 10,000 kilowatts or less; or
“(B) for which a license was issued under part I of the Federal Power Act and the licensee applies for an exemption under this subsection, if—

“(i) the license was issued after the date of enactment of the Electric Consumers Protection Act of 1986;

“(ii) the Commission determines, based on information available to the Commission, that continued operation of the project is not likely to jeopardize the continued existence of any species listed as a threatened species or an endangered species under the Endangered Species Act of 1973;

“(iii) the Commission determines, based on information available to the Commission, that continued operation of the project is not likely to result in the destruction or adverse modification of an area designated as critical habitat for any species listed as a threatened species or an endangered species under the Endangered Species Act of 1973; and
“(iv) the project has an installed capacity of 15 megawatts or less.

“(2) REQUIREMENTS.—An exemption granted under paragraph (1) shall be subject to the same limitations (to ensure protection for fish and wildlife as well as other environmental concerns) as those which are set forth in subsections (c) and (d) of section 30 of the Federal Power Act with respect to determinations made and exemptions granted under subsection (b) of such section 30 and subsections (c) and (d) of such section 30 shall apply with respect to actions taken and exemptions granted under this subsection.

“(3) EFFECTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the granting of an exemption to a project under this subsection shall in no case have the effect of waiving or limiting the application (to such project) of the second sentence of subsection (b) of this section.

“(B) ENVIRONMENTAL REVIEW.—An exemption granted under paragraph (1)(B) shall be categorically exempt from review under the National Environmental Policy Act of 1969.
“(4) EXEMPTION PROCESS.—The Commission shall make a determination with respect to any application for an exemption under paragraph (1)(B) not later than 90 days after submission of such application, which period shall include notice and opportunity for public comment. Any exemption granted under paragraph (1)(B) shall become effective upon the expiration of the applicable existing license.”.

(b) EXPEDITED LICENSING OF NEXT-GENERATION HYDROPOWER.—Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:

“SEC. 37. EXPEDITED LICENSING OF NEXT-GENERATION HYDROPOWER PROJECTS.

“(a) IN GENERAL.—The Commission shall issue licenses for all next-generation hydropower projects in accordance with this section.

“(b) DEFINITIONS.—In this section:

“(1) EMERGING HYDROPOWER TECHNOLOGY PROJECT.—The term ‘emerging hydropower technology project’ means a project that the Commission determines—
“(A) will produce electricity from a generator driven by a turbine that converts the potential energy of falling or flowing water;

“(B) will utilize turbine or generating technology, an energy storage method, or a measure to protect, mitigate, or enhance environmental resources, that is not in widespread, utility-scale use in the United States as of the date of enactment of this section;

“(C) will not be, based on information available to the Commission, likely to jeopardize the continued existence of any species listed as a threatened species or an endangered species under the Endangered Species Act of 1973; and

“(D) will not be, based on information available to the Commission, likely to result in the destruction or adverse modification of an area designated as critical habitat for any species listed as a threatened species or an endangered species under the Endangered Species Act of 1973.

“(2) Next-generation hydropower project.—The term ‘next-generation hydropower project’ means a project that—
“(A) is required to be licensed under this Act;

“(B) is not—

“(i) a qualifying conduit hydropower facility under section 30; or

“(ii) exempted from licensing under—

“(I) section 30; or

“(II) section 405 of the Public Utility Regulatory Policies Act of 1978; and

“(C) is—

“(i) an emerging hydropower technology project;

“(ii) a qualifying facility, as defined in section 34;

“(iii) a closed-loop pumped storage project under section 35;

“(iv) a marine or hydrokinetic project, including a project that utilizes a wave technology, tidal technology, or in-river technology; or

“(v) a hydropower facility within an irrigation, water supply, industrial, agricultural, or other open or closed water conduit system.
“(c) Expedited Licensing Process.—

“(1) Notification of Intent.—

“(A) Filing of Notification.—An applicant for any next-generation hydropower project shall commence the licensing process by filing a notification of intent with the Commission.

“(B) Deadline for Filing.—Notwithstanding section 15(b)(1), an applicant for a next-generation hydropower project shall file a notification of intent at least 3 years before the expiration of the existing license, if applicable.

“(2) Filing of Application.—

“(A) General Deadline.—An applicant for a next-generation hydropower project shall submit to the Commission an application not later than 2 years after filing the notification of intent under paragraph (1).

“(B) Existing Licensee Deadline.—Notwithstanding section 15(c)(1), an application for any next-generation hydropower project shall be filed with the Commission at least 12 months before the expiration of the term of the existing license, if applicable.

“(3) Deadline for Issuance.—The Commission shall take final action on a license for a next-
generation hydropower project under this section not later than 3 years after the applicant notifies the Commission of its intent to file an application for a license, as provided under paragraph (1).

“(d) REQUIREMENTS.—In issuing a license under this section the Commission and all resource agencies with regulatory responsibilities in the licensing process shall—

“(1) maximize reliance on existing studies and information and require any person or agency requesting a new study or information to demonstrate that collection of any new data or preparation of any new study will not jeopardize the Commission’s ability to meet the licensing deadline under subsection (c)(3);

“(2) consider whether obligations under the National Environmental Protection Act of 1969 may be met through preparation of an environmental assessment or supplementing a previously prepared environmental assessment or environmental impact statement;

“(3) eliminate any nonessential meetings, reports, and paperwork, including interim study reports and a draft license application or similar document, without compromising effective consultation
with, and participation of, Federal and State resource agencies, Indian tribe, and the public; and

“(4) consider existing project works and other infrastructure to be included in the environmental baseline.

“(e) Rule.—Not later than 90 days after the date of enactment of this section, and after consultation with the task force described in subsection (f), which 90 days shall include public notice and opportunity for comment, the Commission shall issue a rule implementing this section. Such rule shall include a process, not to exceed 60 days, for the Commission to determine on a case-by-case basis whether a proposed or existing project qualifies as a next-generation hydropower project prior to the initiation of the licensing or relicensing process.

“(f) Task Force.—The Commission shall convene a task force, with appropriate Federal and State agencies, Indian tribes, and licensees under this part represented, to coordinate the regulatory processes associated with the authorizations required to license next-generation hydropower projects pursuant to this section.

“(g) Choice of Process.—An applicant for a licence for a project described in clause (ii) or (iii) of subsection (b)(2)(C) may elect to apply under this section or under section 34 or 35, as applicable.”.
SEC. 4. IDENTIFYING AND REMOVING MARKET BARRIERS

TO HYDROPOWER.

(a) REPORT ON HYDROPOWER BARRIERS.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report—

(A) describing any barriers to the development and proper compensation of conventional, storage, conduit, and emerging hydropower technologies caused by—

(i) rules of Transmission Organizations (as defined in section 3 of the Federal Power Act (16 U.S.C. 796));

(ii) regulations or policies—

(I) of the Commission; or

(II) under the Federal Power Act (16 U.S.C. 791a et seq.); or

(iii) other Federal and State laws and policies unique to hydropower development, operation, and regulation, as compared to other sources of electricity;
(B) containing recommendations of the Commission for reducing barriers described in subparagraph (A) across regulatory and market sectors;

(C) identifying and determining any regulatory, market, procurement, or cost recovery mechanisms that would—

(i) encourage development of conventional, storage, conduit, and emerging hydropower technologies; and

(ii) properly compensate conventional, storage, conduit, and emerging hydropower technologies for the full range of services provided to the electric grid, including—

(I) balancing electricity supply and demand;

(II) ensuring grid reliability;

(III) providing ancillary services;

(IV) contributing to the decarbonization of the electric grid; and

(V) integrating intermittent power sources into the grid in a cost-effective manner; and
(D) identifying ownership and development
models that could reduce barriers to the devel-
opment of conventional, storage, conduit, and
emerging hydropower technologies, including—

(i) opportunities for risk-sharing
mechanisms and partnerships, including
co-ownership models; and

(ii) opportunities to foster lease-sale
and lease-back arrangements with publicly
owned electric utilities.

(2) Commission proceedings.—The Commis-
sion shall base the report under paragraph (1) on
the findings of the Commission in—

(A) Docket No. AD16–20;

(B) Docket No. RM16–23; and

(C) any other relevant proceedings.

(3) Technical conference and public
comment.—In preparing the report under para-
graph (1), the Commission shall solicit public input,
including by convening a technical conference and
providing an opportunity for public submission of
written comments on a draft report.

(b) Definitions.—In this section:

(1) Ancillary services.—The term “ancil-
lar services” means the specialty services and func-
tions provided by the electric grid that facilitate and support the continuous flow of electricity so that supply will continually meet demand, including—

(A) autonomous dynamic voltage support;
(B) balancing;
(C) black start capabilities;
(D) frequency control;
(E) load following;
(F) operating, flexibility, contingency, and other reserves;
(G) reactive power; and
(H) synchronized regulation.

(2) CONVENTIONAL, STORAGE, CONDUIT, AND EMERGING HYDROPOWER TECHNOLOGIES.—The term “conventional, storage, conduit, and emerging hydropower technologies” means hydropower in all its forms and modes of operation, including—

(A) the use of dams or similar infrastructure to store water in a reservoir or divert flows from a waterway, and to release stored or diverted water through a turbine to generate electricity according to any mode of operation, such as run-of-river, peaking, reregulating, storage, or load following;
(B) a configuration of two water reservoirs
at different elevations that can generate power
as water moves down through a turbine, and
pump water back to the upper reservoir when
the turbine operations are reversed, including
both closed- and open-loop systems;

(C) marine and hydrokinetic technologies,
including wave, tidal, and in-river systems;

(D) mini- and micro-hydropower facilities
within irrigation, water supply, industrial, agri-
cultural, or other open or closed water conduit
systems; and

(E) other facilities that produce electricity
from generators driven by turbines that convert
the potential energy of falling or flowing water.

SEC. 5. MODERNIZING HYDROPOWER LICENSING.

Part I of the Federal Power Act (16 U.S.C. 792 et
seq.) is further amended by adding at the end the fol-
lowing:

“SEC. 38. LICENSING PROCESS COORDINATION AND IM-
PROVEMENT.

“(a) DEFINITION OF FEDERAL AUTHORIZATION.—In
this section, the term ‘Federal authorization’ means any
authorization required under Federal law (including any
license, condition of any license by a Secretary under sec-
tion 4(e), prescription submitted by a Secretary under section 18, permit, special use authorization, certification, opinion, consultation, determination, or other approval) with respect to an application for a license under this part.

“(b) Designation as Lead Agency.—

“(1) In General.—The Commission shall act at the lead agency for purposes of all applicable Federal authorizations (including for purposes of complying with the National Environmental Policy Act of 1969), and for purposes of complying with any required State or local environmental reviews.

“(2) Other Agencies.—Each Federal, State, and local government agency considering an aspect of an application for a Federal 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 under subsection (d)(2)(C).

“(c) Use of Existing Studies.—

“(1) In General.—To the maximum extent practicable and in accordance with the best available science, the Commission and other Federal and State agencies with a responsibility for a Federal authorization shall—
“(A) use relevant existing studies and data; and

“(B) avoid duplicating current, existing studies that are applicable to the relevant project.

“(2) DEMONSTRATION.—When requiring any new study or collection of information, the Commission or other Federal or State agency with a responsibility for a Federal authorization shall—

“(A) explain how the new study or other information is necessary to support the agency’s decisionmaking with respect to the Federal authorization;

“(B) identify how existing information reasonably available to the agency is inadequate to support the agency’s decisionmaking with substantial evidence; and

“(C) include an analysis of how the value of the required new study or other information outweighs the cost of producing it.

“(d) SCHEDULE.—

“(1) TIMING FOR ISSUANCE.—It is the sense of Congress that, except as otherwise provided in this part, all Federal authorizations required for a project should be issued within a reasonable time, so
as to facilitate a final Commission licensing decision within 2 years after the date on which the license application for the project under this part is considered to be complete by the Commission.

“(2) COMMISSION SCHEDULE.—

“(A) IN GENERAL.—The Commission, in accordance with the rule issued under subparagraph (C), shall—

“(i) establish a schedule for—

“(I) all filings and issuances necessary and appropriate for its issuance of a license issued under this part; and

“(II) the issuance of all Federal authorizations for the applicable project; and

“(ii) issue such schedule when the Commission determines that the license application for the project is ready for environmental analysis.

“(B) REQUIREMENTS.—In establishing the schedule under subparagraph (A), the Commission shall—
“(i) consult and cooperate with the Federal and State agencies responsible for a Federal authorization;

“(ii) ensure the expeditious completion of all proceedings relating to a Federal authorization; and

“(iii) comply with applicable schedules established by Federal law with respect to a Federal authorization.

“(C) RULEMAKING.—

“(i) COMMISSION RULEMAKING TO ESTABLISH PROCESS TO SET SCHEDULE.— Not later than 180 days after the date of enactment of this section, the Commission, in consultation with appropriate Federal and State agencies and after providing notice and opportunity for public comment, shall issue a final rule establishing a process for setting a schedule under subparagraph (A).

“(ii) CONSIDERATIONS.—In issuing a rule under this subparagraph, the Commission shall ensure that the schedule for each Federal authorization—
“(I) includes deadlines for actions by—

“(aa) any Federal or State agency with responsibilities for a Federal authorization;

“(bb) the applicant;

“(ce) the Commission; and

“(dd) other agencies and participants in a proceeding;

“(II) is developed in consultation with the applicant and any Federal or State agency with responsibility for the applicable Federal authorization;

“(III) provides an opportunity for any Federal or State agency with responsibility for a Federal authorization to identify and resolve issues of concern, consistent with subsections (e) and (f);

“(IV) complies with applicable schedules established under Federal law;

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

“(VI) facilitates completion of Federal and State agency studies, reviews, and any other procedures required prior to, or concurrent with, the preparation of the environmental document of the Commission required under the National Environmental Policy Act of 1969, to the maximum extent practicable.

“(3) ADHERENCE TO SCHEDULE.—

“(A) IN GENERAL.—The Commission, Federal, and State agencies with responsibility for a Federal authorization, the license applicant, and all other agencies and other participants in proceedings for Federal authorizations for the project shall meet the deadlines established by the schedule developed under paragraph (2).

“(B) EXTENSION OF SCHEDULE DEADLINES.—

“(i) FEDERAL AUTHORIZATIONS.—A Federal or State agency that is unable to complete its disposition of a Federal au-
thorization by the deadline set forth in the schedule established by the Commission under paragraph (2) shall, not later than 30 days prior to such deadline, file for an extension with the Commission. The Commission shall issue a one-time extension of up to 90 days to any such Federal or State agency upon a demonstration of good cause.

“(ii) OTHER EXTENSIONS.—The Commission may grant extensions requested by the license applicant or other licensing participants to facilitate settlement, address unforeseen circumstances, or accommodate other showings of good cause if the Commission determines that any such extension would reduce the overall time period for decisionmaking on required Federal authorizations for the project, increase the administrative efficiency of the processes for Federal authorizations, or improve the quality of information available to Federal and State agencies with a responsibility for a Federal authorization.
“(iii) REISSUANCE OF SCHEDULE.—If the Commission grants an extension under this paragraph, the Commission shall reissue the schedule and applicable deadlines to reflect the extension of time granted.

“(C) LIMITATION.—Notwithstanding the Commission’s authority to extend the schedule as provided in subparagraph (B), the Commission shall not grant any extension that would increase by 1 year or longer the time period in the original schedule issued under paragraph (2) for obtaining all Federal authorizations for the applicable project.

“(4) FAILURE TO MEET SCHEDULE DEADLINES.—

“(A) IN GENERAL.—Subject to subparagraph (C), if a Federal or State agency fails to complete its disposition of a Federal authorization in accordance with the schedule deadline established under paragraph (2) (as may be extended under paragraph (3))—

“(i) in the case of a Federal agency, $5,000 of unobligated funds shall be rescinded; or
“(ii) in the case of a State agency, $5,000 of unobligated funds shall be rescinded from Federal fish and wildlife or water resources funding programs to the State.

“(B) SUBSEQUENT RESCISSION.—Subject to subparagraph (C), for each additional week after any deadline established by the Commission under paragraph (2) (as may be extended under paragraph (3) remains uncompleted by a Federal or State agency with a responsibility for a Federal authorization, an additional rescission of $5,000 shall occur as provided in subparagraph (A).

“(C) MAXIMUM ANNUAL RESCISSION.—For each individual Federal authorization for a project, the total amounts rescinded under subparagraphs (A) and (B) shall not exceed, in any fiscal year, $100,000.

“(D) LIMITATION.—No head of a Federal or State department or agency shall reprogram funds from another Federal account or program for the loss of the funds under this paragraph. No head of a Federal or State agency shall report or include any rescinded funds as an ad-
ministrative cost for purposes of annual charges under section 10(e).

“(e) INCONSISTENT OR CONFLICTING LICENSE TERMS.—

“(1) CONSULTATION TO RESOLVE INCONSISTENCY OR CONFLICT.—

“(A) IN GENERAL.—If a term or condition of a Federal authorization submitted for inclusion in a license under this part conflicts or is otherwise inconsistent with another such term or condition, the Commission shall initiate and facilitate consultation between the Federal or State resource agencies submitting conflicting or inconsistent terms or conditions, to attempt to resolve the inconsistency or conflict, including with any such conditions recommended for inclusion in the license by the Commission.

“(B) MEETINGS.—The consultation period under this subsection shall extend up to 90 days and shall include at least one technical conference or similar meeting. The Commission shall issue notice of any such conference or other consultation meeting, which shall be open to participation by the license applicant, other agencies, and other licensing participants.
“(C) Amendment and Reissuance.—If the agencies submitting the terms or conditions resolve the inconsistency or conflict, the Commission and other consulting agencies shall set a reasonable schedule and deadline, that is not later than 90 days after the conclusion of the consultation, for the agencies to amend and reissue their Federal authorizations to reflect the resolution, as appropriate.

“(2) Resolution of Inconsistency or Conflict.—

“(A) Statements.—If agencies are unable to resolve an inconsistency or conflict under paragraph (1), not later than 30 days after the conclusion of the consultation process under such paragraph, the agencies shall submit to the public record maintained by the Commission a statement that identifies the inconsistency or conflict, explains the position taken by each agency causing the inconsistency or conflict, and provides an analysis, supported by information in the public record, of the factual basis for the inconsistent or conflicting position taken by each agency.
“(B) REFERRAL.—Following such submission, the Commission shall refer the matter for resolution as provided in subsection (f).

“(f) RESOLUTION OF INTERAGENCY DISPUTES.—

“(1) REFERRAL TO OMB.—For any dispute under subsections (c), (d), or (e) among Federal and State agencies with responsibility for a Federal authorization, as well as any dispute between any such agency and the license applicant, the Commission may, upon its own motion or the request of the head of any such agency or the license applicant, refer the matter to the Director of the Office of Management and Budget.

“(2) ACTION BY OMB.—With respect to any dispute referred to the Director under paragraph (1), the Director, in consultation with the Chair of the Council on Environmental Quality, shall act as appropriate—

“(A) to ensure a timely participation;

“(B) to ensure a timely decision;

“(C) to mediate the dispute; or

“(D) to refer the matter to the President.

“(3) PARTICIPATION.—The license applicant and other interested participants shall be provided
the opportunity to participate in the resolution of any issues under this subsection.”