

AMENDMENT TO
RULES COMMITTEE PRINT 116-63
OFFERED BY MR. HUFFMAN OF CALIFORNIA

At the end of subtitle B of title II, add the following:

1 **SEC. 2208. KLAMATH HYDROELECTRIC SETTLEMENT**
2 **AGREEMENT TRIBAL FAIRNESS.**

3 (a) DEFINITIONS.—In this section:

4 (1) FACILITY.—The term “facility” means 1 or
5 more of the following hydropower facilities (includ-
6 ing appurtenant works licensed to PacifiCorp) within
7 the jurisdictional boundary of the Klamath Hydro-
8 electric Project, FERC Project No. 2082 (as appli-
9 cable):

10 (A) Iron Gate Dam.

11 (B) Copco No. 1 Dam.

12 (C) Copco No. 2 Dam.

13 (D) J.C. Boyle Dam.

14 (2) COMMISSION.—The term “Commission”
15 means the Federal Energy Regulatory Commission.

16 (3) HARMED INDIAN TRIBES.—The term
17 “harmed Indian Tribes” means—

18 (A) the Klamath Tribes; and

1 (B) such other Indian Tribes that are lo-
2 cated downstream of the Klamath Hydroelectric
3 Project.

4 (4) INDIAN TRIBE.—The term “Indian Tribe”
5 has the meaning given the term “Indian tribe” in
6 section 4 of the Indian Self-Determination and Edu-
7 cation Assistance Act (25 U.S.C. 5304).

8 (5) LICENSEE.—The term “licensee” means the
9 owner and licensee of the facility (as of the date of
10 enactment of this Act).

11 (b) IN GENERAL.—In light of the specific facts and
12 circumstances of the Klamath Hydroelectric Settlement
13 Agreement that anticipated dam removal to commence in
14 2020, and to mitigate the historic and ongoing damages
15 caused by the facility to aquatic and Tribal trust re-
16 sources, the Commission shall not issue any annual license
17 for the facility under section 15(a)(1) of the Federal
18 Power Act (16 U.S.C. 808(a)(1)) unless the Commission
19 has provided harmed Indian Tribes and the States of Cali-
20 fornia and Oregon the opportunity to recommend terms
21 and conditions under section 4(e), section 10, and section
22 18 of the Federal Power Act (16 U.S.C. 797(e), 803, and
23 811), including any conditions providing for fishways or
24 fish recovery.

1 (c) STUDIES.—Upon approval of an annual license
2 pursuant to subsection (b), the Commission shall require
3 the licensee to provide to the Commission the following:

4 (1) A study describing the impacts of the facil-
5 ity during the previous year on instream flows, water
6 use, water temperature, and water quality.

7 (2) A study describing the impacts of the facil-
8 ity during the previous year on fish and wildlife re-
9 sources, including river fisheries, reservoir fisheries,
10 anadromous fish, and any marine species listed as a
11 threatened species or endangered species under the
12 Endangered Species Act of 1973 (16 U.S.C. 1531 et
13 seq.) including Southern Resident killer whales
14 (*Orcinus orca*).

15 (3) A study describing the impacts of the facil-
16 ity during the previous year on sediment transport.

17 (4) A study forecasting the impacts of climate
18 change to power generation at the facility.

19 (5) A certification from the California Depart-
20 ment of Water Resources, Division of Safety of
21 Dams, following one or more comprehensive studies
22 of the stability and safety of the facility that are
23 funded by the licensee, that each element of the fa-
24 cility meets all current Federal and State seismic,
25 stability, and safety standards and that there will be

1 no significant risk of dam failure during the term of
2 the license.

3 (6) A report, to be made publicly available by
4 the Commission, on the financial status of the facil-
5 ity, including—

6 (A) an analysis comparing the cost of
7 power generated at the facility to revenue at-
8 tributable to the facility during the preceding
9 year;

10 (B) a projection of the cost of power gen-
11 erated at the facility and the revenue attrib-
12 utable to the facility during the 5-year period
13 beginning on the date of the license;

14 (C) an explanation of whether the financial
15 terms of the Klamath Hydroelectric Settlement
16 Agreement, as amended, have been met; and

17 (D) a detailed description of the annual
18 costs associated with the facility that are passed
19 through to the ratepayers of the licensee.

20 (d) EXCEPTION.—The requirements of this section
21 shall not apply to any entity filing a surrender application
22 as specified in the Commission's order relating to the facil-
23 ity dated July 16, 2020 (172 FERC 61,062).

24 (e) LEGAL CLAIMS.—Nothing in this section shall be
25 construed to adversely affect any legal claims of harmed

1 Indian Tribes, including claims for violations of any Exec-
2 utive Order pertaining to one or more Indian Tribes, any
3 treaty between the United States and one or more Indian
4 Tribes, or for damages caused by the facility under the
5 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
6 or the Marine Mammal Protection Act of 1972 (16 U.S.C.
7 1361 et seq.). Such claims shall not be limited by any stat-
8 ute of limitations.

