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:

SEC. 2208. KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT TRIBAL FAIRNESS.

(a) DEFINITIONS.—In this section:

(1) FACILITY.—The term “facility” means 1 or more of the following hydropower facilities (including appurtenant works licensed to PacifiCorp) within the jurisdictional boundary of the Klamath Hydroelectric Project, FERC Project No. 2082 (as applicable):

(A) Iron Gate Dam.

(B) Copco No. 1 Dam.

(C) Copco No. 2 Dam.

(D) J.C. Boyle Dam.

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

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

(A) the Klamath Tribes; and
(B) such other Indian Tribes that are located downstream of the Klamath Hydroelectric Project.

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

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

(b) IN GENERAL.—In light of the specific facts and circumstances of the Klamath Hydroelectric Settlement Agreement that anticipated dam removal to commence in 2020, and to mitigate the historic and ongoing damages caused by the facility to aquatic and Tribal trust resources, the Commission shall not issue any annual license for the facility under section 15(a)(1) of the Federal Power Act (16 U.S.C. 808(a)(1)) unless the Commission has provided harmed Indian Tribes and the States of California and Oregon the opportunity to recommend terms and conditions under section 4(e), section 10, and section 18 of the Federal Power Act (16 U.S.C. 797(e), 803, and 811), including any conditions providing for fishways or fish recovery.
(c) STUDIES.—Upon approval of an annual license pursuant to subsection (b), the Commission shall require the licensee to provide to the Commission the following:

1. A study describing the impacts of the facility during the previous year on instream flows, water use, water temperature, and water quality.

2. A study describing the impacts of the facility during the previous year on fish and wildlife resources, including river fisheries, reservoir fisheries, anadromous fish, and any marine species listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) including Southern Resident killer whales (Orcinus orca).

3. A study describing the impacts of the facility during the previous year on sediment transport.

4. A study forecasting the impacts of climate change to power generation at the facility.

5. A certification from the California Department of Water Resources, Division of Safety of Dams, following one or more comprehensive studies of the stability and safety of the facility that are funded by the licensee, that each element of the facility meets all current Federal and State seismic, stability, and safety standards and that there will be
no significant risk of dam failure during the term of 
the license.

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

(A) an analysis comparing the cost of 
power generated at the facility to revenue attrib-
utable to the facility during the preceding 
year;

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

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

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

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

(e) LEGAL CLAIMS.—Nothing in this section shall be 
construed to adversely affect any legal claims of harmed
Indian Tribes, including claims for violations of any Executive Order pertaining to one or more Indian Tribes, any treaty between the United States and one or more Indian Tribes, or for damages caused by the facility under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.). Such claims shall not be limited by any statute of limitations.