AMENDMENT TO
RULES COMMITTEE PRINT 116–63
OFFERED BY MRS. MCMORRIS RODGERS OF
WASHINGTON

At the end of title II, add the following:

Subtitle G—Small and Next-Generation Hydropower Projects

SEC. 2701. 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 re-
quirements) 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 Licencsee 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 (e)(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 sub-
section (b)(2)(C) may elect to apply under this section or under section 34 or 35, as applicable.”.