

Calendar No. 71

113TH CONGRESS
1ST SESSION**H. R. 267**

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2013

Received; read twice and referred to the Committee on Energy and Natural
Resources

MAY 13, 2013

Reported by Mr. WYDEN, without amendment

AN ACT

To improve hydropower, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Hydropower Regulatory Efficiency Act of 2013”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Promoting small hydroelectric power projects.
- Sec. 4. Promoting conduit hydropower projects.
- Sec. 5. FERC authority to extend preliminary permit periods.

Sec. 6. Promoting hydropower development at nonpowered dams and closed loop pumped storage projects.

Sec. 7. DOE study of pumped storage and potential hydropower from conduits.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the hydropower industry currently employs
4 approximately 300,000 workers across the United
5 States;

6 (2) hydropower is the largest source of clean,
7 renewable electricity in the United States;

8 (3) as of the date of enactment of this Act, hy-
9 dropower resources, including pumped storage facili-
10 ties, provide—

11 (A) nearly 7 percent of the electricity gen-
12 erated in the United States; and

13 (B) approximately 100,000 megawatts of
14 electric capacity in the United States;

15 (4) only 3 percent of the 80,000 dams in the
16 United States generate electricity, so there is sub-
17 stantial potential for adding hydropower generation
18 to nonpowered dams; and

19 (5) according to one study, by utilizing cur-
20 rently untapped resources, the United States could
21 add approximately 60,000 megawatts of new hydro-
22 power capacity by 2025, which could create 700,000
23 new jobs over the next 13 years.

1 **SEC. 3. PROMOTING SMALL HYDROELECTRIC POWER**
2 **PROJECTS.**

3 Subsection (d) of section 405 of the Public Utility
4 Regulatory Policies Act of 1978 (16 U.S.C. 2705) is
5 amended by striking “5,000” and inserting “10,000”.

6 **SEC. 4. PROMOTING CONDUIT HYDROPOWER PROJECTS.**

7 (a) APPLICABILITY OF, AND EXEMPTION FROM, LI-
8 CENSING REQUIREMENTS.—Section 30 of the Federal
9 Power Act (16 U.S.C. 823a) is amended—

10 (1) by striking subsections (a) and (b) and in-
11 serting the following:

12 “(a)(1) A qualifying conduit hydropower facility shall
13 not be required to be licensed under this part.

14 “(2)(A) Any person, State, or municipality proposing
15 to construct a qualifying conduit hydropower facility shall
16 file with the Commission a notice of intent to construct
17 such facility. The notice shall include sufficient informa-
18 tion to demonstrate that the facility meets the qualifying
19 criteria.

20 “(B) Not later than 15 days after receipt of a notice
21 of intent filed under subparagraph (A), the Commission
22 shall—

23 “(i) make an initial determination as to wheth-
24 er the facility meets the qualifying criteria; and

25 “(ii) if the Commission makes an initial deter-
26 mination, pursuant to clause (i), that the facility

1 meets the qualifying criteria, publish public notice of
2 the notice of intent filed under subparagraph (A).

3 “(C) If, not later than 45 days after the date of publi-
4 cation of the public notice described in subparagraph
5 (B)(ii)—

6 “(i) an entity contests whether the facility
7 meets the qualifying criteria, the Commission shall
8 promptly issue a written determination as to wheth-
9 er the facility meets such criteria; or

10 “(ii) no entity contests whether the facility
11 meets the qualifying criteria, the facility shall be
12 deemed to meet such criteria.

13 “(3) For purposes of this section:

14 “(A) The term ‘conduit’ means any tunnel,
15 canal, pipeline, aqueduct, flume, ditch, or similar
16 manmade water conveyance that is operated for the
17 distribution of water for agricultural, municipal, or
18 industrial consumption and not primarily for the
19 generation of electricity.

20 “(B) The term ‘qualifying conduit hydropower
21 facility’ means a facility (not including any dam or
22 other impoundment) that is determined or deemed
23 under paragraph (2)(C) to meet the qualifying cri-
24 teria.

1 “(C) The term ‘qualifying criteria’ means, with
2 respect to a facility—

3 “(i) the facility is constructed, operated, or
4 maintained for the generation of electric power
5 and uses for such generation only the hydro-
6 electric potential of a non-federally owned con-
7 duit;

8 “(ii) the facility has an installed capacity
9 that does not exceed 5 megawatts; and

10 “(iii) on or before the date of enactment of
11 the Hydropower Regulatory Efficiency Act of
12 2013, the facility is not licensed under, or ex-
13 empted from the license requirements contained
14 in, this part.

15 “(b) Subject to subsection (c), the Commission may
16 grant an exemption in whole or in part from the require-
17 ments of this part, including any license requirements con-
18 tained in this part, to any facility (not including any dam
19 or other impoundment) constructed, operated, or main-
20 tained for the generation of electric power which the Com-
21 mission determines, by rule or order—

22 “(1) utilizes for such generation only the hydro-
23 electric potential of a conduit; and

24 “(2) has an installed capacity that does not ex-
25 ceed 40 megawatts.”;

1 (2) in subsection (c), by striking “subsection
2 (a)” and inserting “subsection (b)”; and

3 (3) in subsection (d), by striking “subsection
4 (a)” and inserting “subsection (b)”.

5 (b) CONFORMING AMENDMENT.—Subsection (d) of
6 section 405 of the Public Utility Regulatory Policies Act
7 of 1978 (16 U.S.C. 2705), as amended, is further amend-
8 ed by striking “subsection (a) of such section 30” and in-
9 serting “subsection (b) of such section 30”.

10 **SEC. 5. FERC AUTHORITY TO EXTEND PRELIMINARY PER-**
11 **MIT PERIODS.**

12 Section 5 of the Federal Power Act (16 U.S.C. 798)
13 is amended—

14 (1) by designating the first, second, and third
15 sentences as subsections (a), (c), and (d), respec-
16 tively; and

17 (2) by inserting after subsection (a) (as so des-
18 igned) the following:

19 “(b) The Commission may extend the period of a pre-
20 liminary permit once for not more than 2 additional years
21 beyond the 3 years permitted by subsection (a) if the Com-
22 mission finds that the permittee has carried out activities
23 under such permit in good faith and with reasonable dili-
24 gence.”.

1 **SEC. 6. PROMOTING HYDROPOWER DEVELOPMENT AT**
2 **NONPOWERED DAMS AND CLOSED LOOP**
3 **PUMPED STORAGE PROJECTS.**

4 (a) IN GENERAL.—To improve the regulatory process
5 and reduce delays and costs for hydropower development
6 at nonpowered dams and closed loop pumped storage
7 projects, the Federal Energy Regulatory Commission (re-
8 ferred to in this section as the “Commission”) shall inves-
9 tigate the feasibility of the issuance of a license for hydro-
10 power development at nonpowered dams and closed loop
11 pumped storage projects in a 2-year period (referred to
12 in this section as a “2-year process”). Such a 2-year pro-
13 cess shall include any prefilings licensing process of the
14 Commission.

15 (b) WORKSHOPS AND PILOTS.—The Commission
16 shall—

17 (1) not later than 60 days after the date of en-
18 actment of this Act, hold an initial workshop to so-
19 licit public comment and recommendations on how
20 to implement a 2-year process;

21 (2) develop criteria for identifying projects fea-
22 turing hydropower development at nonpowered dams
23 and closed loop pumped storage projects that may be
24 appropriate for licensing within a 2-year process;

1 (3) not later than 180 days after the date of
2 enactment of this Act, develop and implement pilot
3 projects to test a 2-year process, if practicable; and

4 (4) not later than 3 years after the date of im-
5 plementation of the final pilot project testing a 2-
6 year process, hold a final workshop to solicit public
7 comment on the effectiveness of each tested 2-year
8 process.

9 (c) MEMORANDUM OF UNDERSTANDING.—The Com-
10 mission shall, to the extent practicable, enter into a memo-
11 randum of understanding with any applicable Federal or
12 State agency to implement a pilot project described in sub-
13 section (b).

14 (d) REPORTS.—

15 (1) PILOT PROJECTS NOT IMPLEMENTED.—If
16 the Commission determines that no pilot project de-
17 scribed in subsection (b) is practicable because no 2-
18 year process is practicable, not later than 240 days
19 after the date of enactment of this Act, the Commis-
20 sion shall submit to the Committee on Energy and
21 Commerce of the House of Representatives and the
22 Committee on Energy and Natural Resources of the
23 Senate a report that—

1 (A) describes the public comments received
2 as part of the initial workshop held under sub-
3 section (b)(1); and

4 (B) identifies the process, legal, environ-
5 mental, economic, and other issues that justify
6 the determination of the Commission that no 2-
7 year process is practicable, with recommenda-
8 tions on how Congress may address or remedy
9 the identified issues.

10 (2) PILOT PROJECTS IMPLEMENTED.—If the
11 Commission develops and implements pilot projects
12 involving a 2-year process, not later than 60 days
13 after the date of completion of the final workshop
14 held under subsection (b)(4), the Commission shall
15 submit to the Committee on Energy and Commerce
16 of the House of Representatives and the Committee
17 on Energy and Natural Resources of the Senate a
18 report that—

19 (A) describes the outcomes of the pilot
20 projects;

21 (B) describes the public comments from
22 the final workshop on the effectiveness of each
23 tested 2-year process; and

24 (C)(i) outlines how the Commission will
25 adopt policies under existing law (including reg-

1 ulations) that result in a 2-year process for ap-
2 propriate projects;

3 (ii) outlines how the Commission will issue
4 new regulations to adopt a 2-year process for
5 appropriate projects; or

6 (iii) identifies the process, legal, environ-
7 mental, economic, and other issues that justify
8 a determination of the Commission that no 2-
9 year process is practicable, with recommenda-
10 tions on how Congress may address or remedy
11 the identified issues.

12 **SEC. 7. DOE STUDY OF PUMPED STORAGE AND POTENTIAL**
13 **HYDROPOWER FROM CONDUITS.**

14 (a) IN GENERAL.—The Secretary of Energy shall
15 conduct a study—

16 (1)(A) of the technical flexibility that existing
17 pumped storage facilities can provide to support
18 intermittent renewable electric energy generation, in-
19 cluding the potential for such existing facilities to be
20 upgraded or retrofitted with advanced commercially
21 available technology; and

22 (B) of the technical potential of existing
23 pumped storage facilities and new advanced pumped
24 storage facilities, to provide grid reliability benefits;
25 and

1 (2)(A) to identify the range of opportunities for
2 hydropower that may be obtained from conduits (as
3 defined by the Secretary) in the United States; and

4 (B) through case studies, to assess amounts of
5 potential energy generation from such conduit hy-
6 dropower projects.

7 (b) REPORT.—Not later than 1 year after the date
8 of enactment of this Act, the Secretary of Energy shall
9 submit to the Committee on Energy and Commerce of the
10 House of Representatives and the Committee on Energy
11 and Natural Resources of the Senate a report that de-
12 scribes the results of the study conducted under subsection
13 (a), including any recommendations.

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