To amend the Federal Power Act to modify certain requirements relating to trial-type hearings with respect to certain license applications before the Federal Energy Regulatory Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Federal Power Act to modify certain requirements relating to trial-type hearings with respect to certain license applications before the Federal Energy Regulatory Commission, 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  
4  SECTION 1. SHORT TITLE.
5  This Act may be cited as the “Hydropower Improve-
6  ment Act of 2015”.
7  SEC. 2. FINDINGS.
8  Congress finds that—
(1) according to the Energy Information Administration, hydropower is the largest renewable energy source for electricity generation in the United States;

(2) as of the date of enactment of this Act—

(A) hydropower accounted for—

(i) 52 percent of electricity generation from renewable resources in the United States;

(ii) approximately 6 percent of total electricity generation in the United States;

and

(B) the use of hydropower results in a reduction of 200,000,000 metric tons of carbon emissions each year;

(3) with approximately 100,000 megawatts of electric capacity, hydropower provides low-cost power to 30,000,000 homes in the United States;

(4) hydropower provides—

(A) baseload power;

(B) ancillary benefits that include grid reliability and energy storage; and

(C) integration and balancing services for variable renewable electricity resources, such as wind and solar;
the Department of Energy estimates that an additional 300 gigawatts of hydropower could be realized in the United States through—

(A) efficiency and capacity upgrades at existing facilities;

(B) powering nonpowered dams;

(C) the development of new small hydropower projects; and

(D) pumped storage hydropower; and

the electric power systems in the United States and Canada form a highly integrated North American grid as—

(A) the systems are connected at over 35 points;

(B) on average, Canada exports 5 to 10 percent of its total electric generation to United States markets, with hydropower resources comprising over 80 percent of the exports; and

(C) hydropower imports into the United States from Canada help stabilize the electric system during—

(i) sudden disturbances, such as the 2003 Northeast blackout; and

(ii) severe weather events, such as the 2014 polar vortex.
SEC. 3. SENSE OF CONGRESS ON THE USE OF HYDROPOWER 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 increase substantially the capacity and generation of clean, renewable hydropower resources that would improve environmental quality in the United States and support over 1,000,000 clean energy jobs.

SEC. 4. MODIFYING THE DEFINITION OF RENEWABLE ENERGY TO INCLUDE HYDROPOWER.

Section 203(b)(2) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)(2)) is amended by striking “new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project” and inserting “hydropower”.

SEC. 5. LICENSES FOR CONSTRUCTION.

The first proviso of section 4(e) of the Federal Power Act (16 U.S.C. 797(e)) is amended—

(1) in the first sentence—

(A) by striking “deem” and insert “determine to be”; and

(B) by striking “utilization of such reservation.” and inserting the following: “utiliza-
tion of such reservation, but only if the conditions pertain to reservation land on which project works are located, have a clear and direct nexus to the presence or operations of the project being licensed, as determined by the Commission, and are submitted in accordance with the schedule established under section 35”;

and

(2) by striking the second, third, and fourth sentences.

SEC. 6. PRELIMINARY PERMITS.

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

(1) in subsection (a), by striking “three” and inserting “4”; and

(2) in subsection (b)—

(A) by striking “Commission may extend the period of a preliminary permit once for not more than 2 additional years beyond the 3 years” and inserting the following:

“Commission may—

“(1) extend the period of a preliminary permit once for not more than 4 additional years beyond the 4 years”;
(B) by striking the period at the end and
inserting "; and"; and
(C) by adding at the end the following:
"(2) after the end of an extension period grant-
ed under paragraph (1), issue an additional permit
to the permittee if the Commission determines that
there are extraordinary circumstances that warrant
the issuance of the additional permit."

SEC. 7. TIME LIMIT FOR CONSTRUCTION OF PROJECT
WORKS.
Section 13 of the Federal Power Act (16 U.S.C. 806)
is amended in the second sentence by striking "once but
not longer than two additional years" and inserting "for
not more than 8 additional years,"

SEC. 8. LICENSE TERM.
Section 15(e) of the Federal Power Act (16 U.S.C.
808(e)) is amended—
(a) by striking "(e) Except" and inserting the fol-
lowing:
"(e) LICENSE TERM ON RELICENSING.—
"(1) IN GENERAL.—Except"; and
(b) by adding at the end the following:
"(2) CONSIDERATION.—In determining the
term of a license under paragraph (1), the Commis-
sion shall consider project-related investments by the
licensee over the term of the existing license (including any terms under annual licenses) that resulted in new development, construction, capacity, efficiency improvements, or environmental measures, but which did not result in the extension of the term of the license by the Commission.”.

SEC. 9. OPERATION OF NAVIGATION FACILITIES.

Section 18 of the Federal Power Act (16 U.S.C. 811) is amended—

(1) in the first sentence, by inserting after the “Secretary of Commerce” the following: “or the Secretary of the Interior, as appropriate, but only if the fishways are necessary to mitigate effects of the project on fish populations, have a clear and direct nexus to the presence or operations of the project being licensed, as determined by the Commission, and are submitted in accordance with the schedule established under section 35”; and

(2) by striking the second, third, and fourth sentences.

SEC. 10. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.

Section 33 of the Federal Power Act (16 U.S.C. 823d) is amended—

(1) in subsection (a)—
(A) in paragraph (1), by striking “deems” and inserting “determines”; 

(B) in paragraph (2)—

(i) in the matter preceding subpara-
graph (A)—

(I) by striking “in paragraph (1), and” and inserting “in paragraph (1), as submitted and without modifica-
tion, and”;

(II) by striking “if the Secretary determines,” and inserting “if the Commission determines,”; and

(III) by striking “otherwise available to the Secretary” and inserting “otherwise available to the Commis-
sion”;

(ii) in subparagraph (A), by striking “provides for the adequate protection and utilization of the reservation” and insert-
ing “adequately protects the reservation from adverse effects of the project”; and

(iii) in subparagraph (B), in the mat-
ter preceding clause (i), by inserting “de-
termined to be necessary” before “by the Secretary”;
(C) in paragraph (3)—

(i) by striking “Secretary” each place it appears and inserting “Commission”; and

(ii) by striking “evidence provided by the Commission” and inserting “evidence provided by the Secretary”; (D) by striking paragraph (4); and

(E) by striking paragraph (5);

(2) in subsection (b)—

(A) in paragraph (2), in the matter preceding subparagraph (A)—

(i) by striking “referred to in paragraph (1), if the Secretary of the appropriate department” and inserting “referred to in paragraph (1), as submitted and without modification, if the Commission”; and

(ii) by striking “otherwise available to the Secretary” and inserting “otherwise available to the Commission”; (B) in paragraph (3)—

(i) by striking “the Secretary shall consider” and inserting “the Commission shall consider”;
(ii) by striking "otherwise available to the Secretary" and inserting "otherwise available to the Commission"; and

(iii) by striking "evidence provided by the Commission" and inserting "evidence provided by the Secretary concerned";

(C) by striking paragraph (4); and

(D) by striking paragraph (5); and

(3) by adding at the end the following:

"(c) APPLICABILITY.—This section applies to—

"(1) any proceeding under this part in which a Secretary proposes a condition to a license under the first proviso of section 4(e);

"(2) any proceeding under this part in which a Secretary proposes a prescription for a fishway under section 18; and

"(3) any instance in which a Secretary seeks to exercise reserved authority under a license to prescribe, submit, or revise any condition to a license, under the first provision of section 4(e) or a fishway prescribed under section 18, as appropriate."

SEC. 11. LICENSING PROCESS IMPROVEMENTS AND CO-ORDINATION.

Part I of the Federal Power Act (16 U.S.C. 792 et seq.) is amended by adding at the end the following:
"SEC. 34. LICENSING PROCESS IMPROVEMENTS."

"(a) LICENSE STUDIES.—

"(1) IN GENERAL.—To facilitate the timely and efficient completion of the license proceedings under this part, the Commission shall—

"(A) conduct an investigation of best practices in performing licensing studies, including methodologies and the design of studies to assess the full range of environmental impacts of a project; and

"(B) compile a comprehensive collection of studies and data accessible to the public that could be used to inform license proceedings under this paragraph.

"(2) USE OF EXISTING STUDIES.—To the maximum extent practicable, the Commission shall use existing studies and data in individual licensing proceedings under this part in accordance with paragraph (1).

"(3) NONDUPLICATION REQUIREMENT.—To the maximum extent practicable, the Commission shall ensure that studies and data required for any Federal authorization (as defined in section 35(a)) applicable to a particular project or facility are not duplicated in other licensing proceedings under this part."
“(b) INFORMAL MEETINGS WITH COMMISSION STAFF.—

“(1) IN GENERAL.—On the request of a licensee, applicant, or party to any license proceeding under this part, the Commission may designate staff to hold informal meetings to discuss technical or procedural matters relating to any ongoing license proceeding.

“(2) PUBLIC NOTICE.—The Commission—

“(A) shall not be required to provide public notice in advance of a meeting held under paragraph (1); and

“(B) after a meeting is held under paragraph (1), shall provide, on the record, to the public—

“(i) notice regarding the subject matter of the meeting; and

“(ii) a summary of the meeting.

“SEC. 35. LICENSING PROCESS COORDINATION.

“(a) DEFINITION OF FEDERAL AUTHORIZATION.—In this section, the term ‘Federal authorization’ means any authorization required under Federal law (including any license, permit, special use authorization, certification, opinion, consultation, determination, or other approval) with respect to—
“(1) a project licensed under section 4 or 15;

or

“(2) a facility exempted under—

“(A) section 30; or

“(B) section 405(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2705(d)).

“(b) DESIGNATION AS LEAD AGENCY.—

“(1) IN GENERAL.—The Commission shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations.

“(2) OTHER AGENCIES.—Each Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the Commission.

“(c) SCHEDULE.—

“(1) TIMING FOR ISSUANCE.—It is the sense of Congress that all Federal authorizations required for a project or facility, including a license or exemption order of the Commission, should be issued by the date that is 3 years after the date on which an application is considered to be complete by the Commission.

“(2) COMMISSION SCHEDULE.—
“(A) IN GENERAL.—The Commission shall establish a schedule for the issuance of all Federal authorizations.

“(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.

“(3) RECOMMENDATIONS.—If a Federal authorization is not issued by the applicable deadline established under paragraph (2)—

“(A) the license or exemption order of the Commission shall be considered to satisfy the required Federal authorization; and

“(B) any subsequent submission by the agency responsible for the Federal authorization shall be treated as a recommendation for
potential inclusion in the license under section 10(a).

"(d) CONSOLIDATED RECORD.—

"(1) IN GENERAL.—The Commission shall maintain official consolidated records of all license proceedings under this part.

"(2) SUBMISSION OF RECOMMENDATIONS.—Any Federal or State agency that is providing recommendations with respect to a license proceeding under this part shall submit to the Commission for inclusion in the consolidated record relating to the license proceeding maintained under paragraph (1)—

"(A) the recommendations;

"(B) the rationale for the recommendations; and

"(C) any supporting materials relating to the recommendations.

"(3) WRITTEN STATEMENT.—In a case in which a Federal agency is making a determination with respect to a covered measure (as defined in section 36(a)), the head of the Federal agency shall include in the consolidated record a written statement demonstrating that the Federal agency gave equal consideration to the effects of the covered measure on—
“(A) energy supply, distribution, cost, and use;
“(B) flood control;
“(C) navigation;
“(D) water supply; and
“(E) air quality and the preservation of other aspects of environmental quality.

“SEC. 36. TRIAL-TYPE HEARINGS.
“(a) DEFINITIONS.—In this section:
“(1) ALTERNATIVE CONDITION.—The term ‘alternative condition’ means an alternative condition proposed under section 33(a)(1).
“(2) ALTERNATIVE PRESCRIPTION.—The term ‘alternative prescription’ means an alternative prescription proposed under section 33(b)(1).
“(3) COVERED MEASURE.—The term ‘covered measure’ means—
“(A) an original condition;
“(B) an original prescription;
“(C) an alternative condition; and
“(D) an alternative prescription.
“(4) ORIGINAL CONDITION.—The term ‘original condition’ means a condition to a license proposed under the first proviso of section 4(e).
“(5) ORIGINAL PRESCRIPTION.—The term ‘original prescription’ means a prescription for a fishway proposed under section 18.

“(b) AUTHORIZATION OF TRIAL-TYPE HEARING.—The license applicant (including an applicant for a license under section 15) and any party to the proceeding shall be entitled to a determination on the record, after opportunity for a trial-type hearing of not more than 120 days, on any disputed issues of material fact with respect to an applicable covered measure.

“(e) EFFECT OF REVISION OR SUPPLEMENTATION.—The fact that an existing license is revised or supplemented under the reserved authority of a resource agency shall not affect the eligibility of the license applicant for a trial-type hearing under this section.

“(d) DEADLINE FOR REQUEST.—A request for a trial-type hearing under this section shall be submitted not later than 60 days after the date on which the Secretary—

“(1) submits an original condition or original prescription; or

“(2) exercises reserved authority under the license to prescribe, submit, or revise any condition to a license under the first proviso of section 4(e) or fishway prescribed under section 18, as appropriate.
“(e) NO REQUIREMENT TO EXHAUST.—By electing not to request a trial-type hearing under subsection, a licensee applicant and any other party to a license proceeding shall not be considered to have waived the right of the applicant or other party to raise any issue of fact or law on rehearing or judicial review of the license decision of the Commission.

“(f) ADMINISTRATIVE LAW JUDGE.—All disputed issues of material fact raised by a party in a request for a trial-type hearing submitted under subsection (d) shall be determined in a single trial-type hearing to be conducted by an Administrative Law Judge within the Office of Administrative Law Judges and Dispute Resolution of the Commission, in accordance with the Commission rules of practice and procedure under part 385 of title 18, Code of Federal Regulations (or successor regulations), and within the timeframe established by the Commission for each license proceeding (including a proceeding for a license under section 15).

“(g) STAY.—The Administrative Law Judge may impose a stay of a trial-type hearing under this section for a period of not more than 120 days to facilitate settlement negotiations relating to resolving the disputed issues of material fact with respect to the covered measure.
“(h) **BURDEN OF PROOF.**—In any trial-type hearing under this section, the party advocating for the adoption of the covered measure shall have the burden of proof to support the facts at issue in the covered measure, by a preponderance of evidence.

“(i) **ISSUANCE OF DECISION RELATING TO COVERED MEASURES.**—On conclusion of a trial-type hearing under this section, the Administrative Law Judge shall issue findings of fact, which shall be binding on all participants in the trial-type hearing.

“(j) **SECRETARIAL DETERMINATION.**—The Secretary that issued the original condition or original prescription shall not later than 60 days after the date on which the Administrative Law Judge issues the decision and, in accordance with the schedule established by the Commission, propose a modified condition or modified prescription applicable to the license, based on the decision issued by the Administrative Law Judge.

“(k) **ALTERNATIVE.**—A party to the trial-type hearing may propose to the Commission an alternative to a modified condition or modified prescription proposed by the Secretary under subsection (j), in accordance with the schedule established by the Commission.

“(l) **DETERMINATION BY COMMISSION.**—After considering the modified condition or modified prescription
proposed under subsection (j) and any alternative to the
modified condition or modified prescription proposed
under subsection (k), the Commission shall include in the
license the modified condition or modified prescription, un-
less the Commission determines that the alternative to the
modified condition or modified prescription—
“(1)(A) in the case of an alternative to the
modified condition, provides for the adequate protec-
tion and utilization of the reservation; or
“(B) in the case of an alternative to the modi-
fied prescription, would be no less protective than
the modified prescription; and
“(2) as compared to the modified condition or
modified prescription, would—
“(A) cost significantly less to implement;
or
“(B) result in improved operation of the
project works for electricity production.
“(m) APPEAL TO COMMISSION.—A decision of an Ad-
ministrative Law Judge issued under this section may be
appealed to the Commission only as part of a request for
rehearing filed within 30 days of a Commission order act-
ing on the application at issue.
“(n) RESOLUTION OF INCONSISTENCIES.—The Com-
mission shall have the final authority to resolve any incon-
sistencies between requirements imposed pursuant to Federal authorizations (as defined in section 35(a)).

"SEC. 37. PUMPED STORAGE PROJECTS.

"In carrying out section 6(a) of the Hydropower Regulatory Efficiency Act of 2013 (16 U.S.C. 797 note; Public Law 113–23), the Commission shall consider a closed loop pumped storage project to include a project—

"(1) in which the upper and lower reservoirs do not impound or directly withdraw water from a navigable stream; and

"(2) that is not continuously connected to a naturally flowing water feature.

"SEC. 38. ANNUAL REPORTS.

"(a) COMMISSION ANNUAL REPORT.—

"(1) IN GENERAL.—The Commission 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 an annual report that—

"(A) describes and quantifies, for each licensed, exempted, or proposed project under this part or section 405(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2705(d)) (referred to in this subsection as the ‘covered project’), the quantity of energy and
capacity authorized for new development and reauthorized for continued operation during the reporting year, including an assessment of the economic, climactic, air quality, and other environmental benefits achieved by the new and reauthorized energy and capacity;

"(B) describes and quantifies the loss of energy, capacity, or ancillary services as a result of any licensing action under this part or other requirement under Federal law during the reporting year;

"(C) identifies any application to license, relicense, or expand a covered project pending as of the date of the annual report, including a quantification of the new energy and capacity with the potential to be gained or lost by action relating to the covered project; and

"(D) lists all proposed covered projects that, as of the date of the annual report, are subject to a preliminary permit issued under section 4(f), including a description of the quantity of new energy and capacity that would be achieved through the development of each proposed covered project.
"(2) AVAILABILITY.—The Commission shall establish and maintain a publicly available website or comparable resource that tracks all information required for the annual report under paragraph (1).

"(b) RESOURCE AGENCY ANNUAL REPORT.—

"(1) IN GENERAL.—Any Federal or State resource agency that is participating in any Commission proceeding under this part or that has responsibilities for any Federal authorization 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 that—

"(A) describes each term, condition, or other requirement prepared by the resource agency during the reporting year with respect to a Commission proceeding under this part, including—

"(i) an assessment of whether implementation of the term, condition, or other requirement would result in the loss of energy, capacity, or ancillary services at the project, including a quantification of the losses;
“(ii) an analysis of economic, air quality, climactic and other environmental effects associated with implementation of the term, condition, or other requirement;

“(iii) a demonstration, based on evidence in the record of the Commission, that the resource agency prepared the term, condition, or other requirement in a manner that meets the policy established by this part while discharging the responsibilities of the resource agency under this part or any other applicable requirement under Federal law; and

“(iv) a statement of whether the head of the applicable Federal agency has rendered final approval of the term, condition, or other requirement, or whether the term, condition, or other requirement remains a preliminary recommendation of staff of the resource agency; and

“(B) identifies all pending, scheduled, and anticipated proceedings under this part that, as of the date of the annual report, the resource agency expects to participate in, or has any ap-
proval or participatory responsibilities for under
Federal law, including—

“(i) an accounting of whether the re-
source agency met all deadlines or other
milestones established by the resource
agency or the Commission during the re-
porting year; and

“(ii) the specific plans of the resource
agency for allocating sufficient resources
for each project during the upcoming year.

“(2) AVAILABILITY.—Any resource agency pre-
paring an annual report to Congress under para-
graph (1) shall establish and maintain a publicly
available website or comparable resource that tracks
all information required for the annual report.”.