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Hydropower Industry Leaders Send Letter to House Leadership Dispelling False Claims About Licensing Modernization Provisions

Industry letter calls allegations from hydropower opponents “troubling”

Washington, D.C. – Leaders of the hydropower industry sent a letter to U.S. House leadership today calling for passage of provisions included in the energy bill approved by the House Energy and Commerce Committee that would bring the hydropower licensing process into the 21st century.

In the letter, the National Hydropower Association (NHA), American Public Power Association, Edison Electric Institute, Large Public Power Council, and National Rural Electric Cooperative Association herald the bipartisan hydropower provisions in the bill as “much needed, but modest steps designed to make this clean energy source a more attractive choice,” and call for the end of the “inaccurate rhetoric surrounding the hydropower provisions” recently instigated by opponents of hydropower and the many public benefits it provides.

As a remedy, the bipartisan hydropower proposals contain commonsense solutions to improve the process by promoting predictability and coordination and requiring timely decisions by regulators—all without narrowing or undermining the authorities of federal and state resources agencies and Indian tribes under federal environmental laws.

Despite the intent of the legislation, opponents of hydropower and its many public benefits continue to mischaracterize the scope and effect of the legislation. Industry leaders’ letter, together with an accompanying analysis, responds to these mischaracterizations, demonstrating that the hydropower provisions do not repeal or weaken the Clean Water Act, Endangered Species Act, or other federal environmental requirements.

To the contrary, the letter explains that precisely because of the many environmental requirements that apply to hydropower, a modernized process is needed to improve collaboration among regulators, to facilitate coordination of environmental studies, and to promote timely decision-making through a master schedule. These improvements not aimed at undercutting environmental requirements, but rather to improve the environmental review and result in a more collaborative and efficient process.

“If we are really serious about securing our nation’s clean energy future, it is time to end this rhetoric and work together to enact this proposal that will go far to address the real challenges of climate change” **said Linda Church Ciocci, NHA Executive Director.** “As an industry, we are proud of our record. Unfortunately, opponents of this bill have lost sight of industry’s long track record of working with regulators in balancing our need for renewable energy while protecting environmental resources.”

Today, it can take 10 years or more to license a clean, non-emitting hydropower facility, while fossil fuel energy options, such as natural gas, can be permitted in a fraction of that time. Investment into new and existing hydropower resources is severely handicapped by an outdated licensing process, in which conflicting priorities, overlapping and competing agency authorities, and deferred decision-making delay both project deployment and real environmental improvements.

A copy of the analysis can be found by clicking [here](#).

Text of the letter is as follows:

November 18, 2015

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
H-2, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

Dear Speaker Ryan and Minority Leader Pelosi:

Hydropower is America’s largest source of renewable energy, providing millions of Americans with reliable electricity without generating greenhouse gas or other emissions. As the demand for low carbon energy grows and concerns over energy security intensify, hydropower can and must play a significant role in meeting these challenges.

However, the many processes by which we authorize hydropower projects are antiquated; they have not been updated to reflect our new energy realities, nor coordinated to meet modern environmental requirements administered by many federal and state regulatory agencies and Indian tribes. These protracted processes and the uncertainties they create have caused power generators to view hydropower as a risky investment. The regulatory requirements alone are causing investors to favor lower-cost resources with emissions instead of renewable, non-emitting hydropower.

The bipartisan hydropower modernization provisions recently included in legislation passed by the House Committee on Energy and Commerce took some much needed, but modest steps designed to make this clean energy source a more attractive choice. However, hydropower opponents have launched a major campaign to oppose this modest proposal. In a recent widely distributed communication, these opponents of change made some startling assertions that would give any lawmaker pause. We would like to address those claims.

Opponents allege that the measures would:

- “[A]llow power companies that operate hydroelectric dams to avoid compliance with the *Endangered Species Act*”; and
- “[A]llow large utilities to ignore state and tribal requirements under the *Clean Water Act* that their dams meet water quality standards.”

These are troubling allegations. A fair reading of the bill text clearly demonstrates what the measures do and do not authorize and will dispel these concerns.

Here is the context: Under the status quo, state and federal resource agencies often fail to complete their important obligations under federal environmental laws to decide on a needed permit, certification, or other approval within a reasonable timeframe. Although in many cases federal law, and the agencies’ own regulations, establish time periods for action, these deadlines are often ignored or evaded. As a result, a proposed project can be rejected simply through an agency’s failure to make a decision on a project—either to grant or deny—according to provisions established by law.

The hydropower provisions in the Committee-passed bill reject the status quo. Under these provisions, it will no longer be acceptable for an agency to delay a decision indefinitely. And, contrary to various inaccurate statements and exaggerated claims, **the hydropower provisions would neither repeal nor undercut the timely exercise of authority by any state or federal resource agency or Indian tribe to administer the Endangered Species Act, Clean Water Act, or any other federal environmental law.**

Here is what the bipartisan hydropower measures actually do:

- These measures designate the Federal Energy Regulatory Commission (FERC) as the lead agency for purposes of coordinating the many reviews and approvals required under federal law, and direct FERC and all other agencies to work together from the beginning of the process to identify needed environmental studies and resolve scheduling issues. This would create a plan for study, consultation and submitting applications. It would not limit, shut out, bias, or otherwise prevent any agency or tribe from doing its job.
- Because agencies often cite a lack of resources as a reason for delay, the measures authorize hydropower applicants to supplement agencies’ limited budgets to pay for needed studies, and provide adequate resources for agencies to do their jobs, without strings attached.
- Once the FERC licensing application is filed and accepted, and the environmental studies are either completed or well advanced, the measures require FERC to work with other agencies in developing a master schedule for all required reviews and authorizations for the project.
- All regulators and participants—FERC, federal and state agencies, Indian tribes, the applicant, and stakeholders—must abide by the master schedule.

- If, after applying all of these new requirements for coordination and consultation in developing a master schedule, an agency still cannot meet that schedule, it has the right to petition the U.S. courts of appeal for additional time. If the court does not agree that further delay is justified, the project can move forward without further delay.

Thus, these measures promote good government by facilitating early coordination, providing additional resources where needed, and then simply requiring decision makers—for the first time—to do their jobs on schedule. And the measures only impose a timing element; they do not dictate *how* federal, state or tribal regulators should exercise their regulatory responsibilities or *what* they must advocate. *Only* if a regulator fails to collaborate, fails to ask for what it needs in terms of time to complete its job, fails to take advantage of additional financial support, and fails to convince a court that it has good reason for needing more time, can the process move forward without further delay. We think this is a far cry from giving clean energy developers a right to “avoid” or “ignore” environmental laws. We attach a white paper that explains the hydropower provisions of the Committee-passed legislation in more detail.

The hydropower language passed out of Committee is indeed a change from the current inefficient processes that can impede and obstruct our nation’s largest and most reliable source of clean, renewable electricity. But it is time to end the inaccurate rhetoric surrounding the hydropower provisions and act responsibly to address the real challenges of climate change and clean air.

Thank you for your leadership.

Sincerely,

Linda Church Ciocci, Executive Director, National Hydropower Association
Susan Kelly, President and CEO, American Public Power Association
Thomas Kuhn, President, Edison Electric Institute
John Di Stasio, President, Large Public Power Council
Jeffrey Connor, Interim CEO, National Rural Electric Cooperative Association

cc:

Rep. Kevin McCarthy, Majority Leader
Rep. Steve Scalise, Majority Whip
Rep. Steny Hoyer, Minority Whip
Rep. Fred Upton, Chairman, Committee on Energy and Commerce
Rep. Frank Pallone, Ranking Member, Committee on Energy and Commerce

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