

## New legislation streamlines FERC licensing process for pumped storage and non-power dams

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On October 10, 2018, the Senate passed (on a 99-1 vote) S.3021, "America's Water Infrastructure Act of 2018." The bill passed in the House of Representatives in September, and it now awaits President Trump's signature. Of importance to those who have been waiting for hydropower to experience a renaissance, the bill includes provisions significantly streamlining key aspects of the Federal Energy Regulatory Commission (FERC) licensing process for closed-loop pumped storage hydroelectric generating facilities and new hydroelectric generating facilities located at dams that do not currently produce power.

In a [2012 study](#), the Oak Ridge National Laboratory identified non-powered dams that could, with little additional construction, contribute 12,000 megawatts (MW) of renewable energy to the grid. Many thought this report might spur the development of these widely distributed potential sources of clean energy, but that did not happen. The historically glacial pace of obtaining, renewing, and amending hydropower licenses represented a significant economic barrier to action. This newly passed legislation has the potential to turn that around and also make pumped storage a valuable contributor to the recognized need for energy storage that can help to balance out supply and demand for systems that are more and more dependent on renewables.

The bill significantly improves the licensing process for closed-loop pumped storage projects and non-powered dams by requiring FERC to issue a final order within two years of a completed application. Under the current regulatory regime, development of such facilities can take as much as ten years from receipt of an initial permit to completion of construction. Such projects are also capital intensive and depend on offtake arrangements in order to secure financing. As a practical matter, the ten-year time horizon effectively knocked this valuable source of clean energy out of contention in a competitive market. Indeed, despite the rapid growth of renewables in recent years, no new pumped storage facilities have been constructed.

With the regulatory changes required under this bill, new closed-loop pumped storage facilities and new hydroelectric facilities at non-powered dams could complete the licensing process as early as mid-2021.

The specific FERC licensing changes are contained in Title III of the bill, and include the following provisions.

- The initial term for FERC preliminary permits for all hydroelectric projects are extended from three to four years and the term for any extensions thereof are changed from two to four years (a preliminary permit does not authorize construction of a project, but provides an exclusive right to apply for a project license).
- The previously available two-year period for an extension to the initial two-year deadline for commencing construction on any newly licensed hydroelectric project has been increased to a potential eight years.
- The size limit on qualifying conduit hydroelectric generation facilities that do not require licenses was raised from five MW to 40 MW.
- The bill requires that FERC adopt, within 180 days, new rules establishing expedited processes for licensing and amending licenses for: (a) existing dams that are not currently used to generate electricity, and (b) closed-loop pumped storage hydroelectric facilities. The new rules must provide for
  - issuance of a final decision on an application for a license within two years of the receipt of a completed application;
  - a more streamlined interagency review process;
  - with respect to non-powered dams, development by FERC, the Secretary of the Army, and the Secretary of Agriculture of a list of existing non-powered Federal dams that the reviewers agree have the greatest potential for non-Federal hydropower development; and
  - with respect to closed-loop pumped storage projects, authorization for FERC to (1) "grant an exception from any other requirement" under the FERC hydroelectric licensing regime; and (2) add entities as joint permittees following issuance of a preliminary permit to a municipal project and to transfer a license to one or more non-municipal entities as co-licensees (provided the municipality retains majority ownership).
- The bill would also require that FERC hold a workshop within six months to explore potential opportunities for development of closed-loop pumped storage projects at abandoned mine sites and "issue guidance" within one year to assist applicants for licenses or preliminary permits for projects at such sites.
- FERC is also required to consider investments made by any hydroelectric project licensee during the term of an initial license when considering the term of a new license upon expiration of the initial license.

This legislation is an important opening for long underdeveloped resources.

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