

1 **TITLE III—HYDROELECTRIC**
2 **RELICENSING**

3 **Subtitle A—Alternative Conditions**

4 **SEC. 3001. ALTERNATIVE CONDITIONS AND FISHWAYS.**

5 (a) FEDERAL RESERVATIONS.—Section 4(e) of the
6 Federal Power Act (16 U.S.C. 797(e)) is amended by in-
7 serting after “adequate protection and utilization of such
8 reservation.” at the end of the first proviso the following:
9 “The license applicant shall be entitled to a determination
10 on the record, after opportunity for an agency trial-type
11 hearing of any disputed issues of material fact, with re-
12 spect to such conditions.”.

13 (b) FISHWAYS.—Section 18 of the Federal Power Act
14 (16 U.S.C. 811) is amended by inserting after “and such
15 fishways as may be prescribed by the Secretary of Com-
16 merce.” the following: “The license applicant shall be enti-
17 tled to a determination on the record, after opportunity
18 for an agency trial-type hearing of any disputed issues of
19 material fact, with respect to such fishways.”.

20 (c) ALTERNATIVE CONDITIONS AND PRESCRIP-
21 TIONS.—Part I of the Federal Power Act (16 U.S.C. 791a
22 et seq.) is amended by adding the following new section
23 at the end thereof:

1 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

2 “(a) ALTERNATIVE CONDITIONS.—(1) Whenever any
3 person applies for a license for any project works within
4 any reservation of the United States, and the Secretary
5 of the department under whose supervision such reserva-
6 tion falls (referred to in this subsection as ‘the Secretary’)
7 deems a condition to such license to be necessary under
8 the first proviso of section 4(e), the license applicant may
9 propose an alternative condition.

10 “(2) Notwithstanding the first proviso of section 4(e),
11 the Secretary shall accept the proposed alternative condi-
12 tion referred to in paragraph (1), and the Commission
13 shall include in the license such alternative condition, if
14 the Secretary determines, based on substantial evidence
15 provided by the license applicant or otherwise available to
16 the Secretary, that such alternative condition—

17 “(A) provides for the adequate protection and
18 utilization of the reservation; and

19 “(B) will either—

20 “(i) cost less to implement; or

21 “(ii) result in improved operation of the
22 project works for electricity production,
23 as compared to the condition initially deemed nec-
24 essary by the Secretary.

25 “(3) The Secretary shall submit into the public
26 record of the Commission proceeding with any condition

1 under section 4(e) or alternative condition it accepts under
2 this section, a written statement explaining the basis for
3 such condition, and reason for not accepting any alter-
4 native condition under this section. The written statement
5 must demonstrate that the Secretary gave equal consider-
6 ation to the effects of the condition adopted and alter-
7 natives not accepted on energy supply, distribution, cost,
8 and use; flood control; navigation; water supply; and air
9 quality (in addition to the preservation of other aspects
10 of environmental quality); based on such information as
11 may be available to the Secretary, including information
12 voluntarily provided in a timely manner by the applicant
13 and others. The Secretary shall also submit, together with
14 the aforementioned written statement, all studies, data,
15 and other factual information available to the Secretary
16 and relevant to the Secretary's decision.

17 “(4) Nothing in this section shall prohibit other inter-
18 ested parties from proposing alternative conditions.

19 “(5) If the Secretary does not accept an applicant's
20 alternative condition under this section, and the Commis-
21 sion finds that the Secretary's condition would be incon-
22 sistent with the purposes of this part, or other applicable
23 law, the Commission may refer the dispute to the Commis-
24 sion's Dispute Resolution Service. The Dispute Resolution
25 Service shall consult with the Secretary and the Commis-

1 sion and issue a non-binding advisory within 90 days. The
2 Secretary may accept the Dispute Resolution Service advi-
3 sory unless the Secretary finds that the recommendation
4 will not adequately protect the reservation. The Secretary
5 shall submit the advisory and the Secretary's final written
6 determination into the record of the Commission's pro-
7 ceeding.

8 “(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever
9 the Secretary of the Interior or the Secretary of Commerce
10 prescribes a fishway under section 18, the license appli-
11 cant or licensee may propose an alternative to such pre-
12 scription to construct, maintain, or operate a fishway. The
13 alternative may include a fishway or an alternative to a
14 fishway.

15 “(2) Notwithstanding section 18, the Secretary of the
16 Interior or the Secretary of Commerce, as appropriate,
17 shall accept and prescribe, and the Commission shall re-
18 quire, the proposed alternative referred to in paragraph
19 (1), if the Secretary of the appropriate department deter-
20 mines, based on substantial evidence provided by the li-
21 censee or otherwise available to the Secretary, that such
22 alternative—

23 “(A) will be no less protective of the fish re-
24 sources than the fishway initially prescribed by the
25 Secretary; and

1 “(B) will either—

2 “(i) cost less to implement; or

3 “(ii) result in improved operation of the
4 project works for electricity production,

5 as compared to the fishway initially deemed nec-
6 essary by the Secretary.

7 “(3) The Secretary concerned shall submit into the
8 public record of the Commission proceeding with any pre-
9 scription under section 18 or alternative prescription it ac-
10 cepts under this section, a written statement explaining
11 the basis for such prescription, and reason for not accept-
12 ing any alternative prescription under this section. The
13 written statement must demonstrate that the Secretary
14 gave equal consideration to the effects of the condition
15 adopted and alternatives not accepted on energy supply,
16 distribution, cost, and use; flood control; navigation; water
17 supply; and air quality (in addition to the preservation of
18 other aspects of environmental quality); based on such in-
19 formation as may be available to the Secretary, including
20 information voluntarily provided in a timely manner by the
21 applicant and others. The Secretary shall also submit, to-
22 gether with the aforementioned written statement, all
23 studies, data, and other factual information available to
24 the Secretary and relevant to the Secretary’s decision.

1 “(4) Nothing in this section shall prohibit other inter-
2 ested parties from proposing alternative prescriptions.

3 “(5) If the Secretary concerned does not accept an
4 applicant’s alternative prescription under this section, and
5 the Commission finds that the Secretary’s prescription
6 would be inconsistent with the purposes of this part, or
7 other applicable law, the Commission may refer the dis-
8 pute to the Commission’s Dispute Resolution Service. The
9 Dispute Resolution Service shall consult with the Sec-
10 retary and the Commission and issue a non-binding advi-
11 sory within 90 days. The Secretary may accept the Dis-
12 pute Resolution Service advisory unless the Secretary
13 finds that the recommendation will not adequately protect
14 the fish resources. The Secretary shall submit the advisory
15 and the Secretary’s final written determination into the
16 record of the Commission’s proceeding.”.

17 **Subtitle B—Additional Hydropower**

18 **SEC. 3201. HYDROELECTRIC PRODUCTION INCENTIVES.**

19 (a) INCENTIVE PAYMENTS.—For electric energy gen-
20 erated and sold by a qualified hydroelectric facility during
21 the incentive period, the Secretary of Energy (referred to
22 in this section as the “Secretary”) shall make, subject to
23 the availability of appropriations, incentive payments to
24 the owner or operator of such facility. The amount of such
25 payment made to any such owner or operator shall be as

1 determined under subsection (e) of this section. Payments
2 under this section may only be made upon receipt by the
3 Secretary of an incentive payment application which estab-
4 lishes that the applicant is eligible to receive such payment
5 and which satisfies such other requirements as the Sec-
6 retary deems necessary. Such application shall be in such
7 form, and shall be submitted at such time, as the Sec-
8 retary shall establish.

9 (b) DEFINITIONS.—For purposes of this section:

10 (1) QUALIFIED HYDROELECTRIC FACILITY.—

11 The term “qualified hydroelectric facility” means a
12 turbine or other generating device owned or solely
13 operated by a non-Federal entity which generates
14 hydroelectric energy for sale and which is added to
15 an existing dam or conduit.

16 (2) EXISTING DAM OR CONDUIT.—The term

17 “existing dam or conduit” means any dam or con-
18 duct the construction of which was completed before
19 the date of the enactment of this section and which
20 does not require any construction or enlargement of
21 impoundment or diversion structures (other than re-
22 pair or reconstruction) in connection with the instal-
23 lation of a turbine or other generating device.

1 (3) CONDUIT.—The term “conduit” has the
2 same meaning as when used in section 30(a)(2) of
3 the Federal Power Act.

4 The terms defined in this subsection shall apply without
5 regard to the hydroelectric kilowatt capacity of the facility
6 concerned, without regard to whether the facility uses a
7 dam owned by a governmental or nongovernmental entity,
8 and without regard to whether the facility begins oper-
9 ation on or after the date of the enactment of this section.

10 (c) ELIGIBILITY WINDOW.—Payments may be made
11 under this section only for electric energy generated from
12 a qualified hydroelectric facility which begins operation
13 during the period of 10 fiscal years beginning with the
14 first full fiscal year occurring after the date of enactment
15 of this subtitle.

16 (d) INCENTIVE PERIOD.—A qualified hydroelectric
17 facility may receive payments under this section for a pe-
18 riod of 10 fiscal years (referred to in this section as the
19 “incentive period”). Such period shall begin with the fiscal
20 year in which electric energy generated from the facility
21 is first eligible for such payments.

22 (e) AMOUNT OF PAYMENT.—

23 (1) IN GENERAL.—Payments made by the Sec-
24 retary under this section to the owner or operator of
25 a qualified hydroelectric facility shall be based on

1 the number of kilowatt hours of hydroelectric energy
2 generated by the facility during the incentive period.
3 For any such facility, the amount of such payment
4 shall be 1.8 cents per kilowatt hour (adjusted as
5 provided in paragraph (2)), subject to the avail-
6 ability of appropriations under subsection (g), except
7 that no facility may receive more than \$750,000 in
8 one calendar year.

9 (2) ADJUSTMENTS.—The amount of the pay-
10 ment made to any person under this section as pro-
11 vided in paragraph (1) shall be adjusted for inflation
12 for each fiscal year beginning after calendar year
13 2003 in the same manner as provided in the provi-
14 sions of section 29(d)(2)(B) of the Internal Revenue
15 Code of 1986, except that in applying such provi-
16 sions the calendar year 2003 shall be substituted for
17 calendar year 1979.

18 (f) SUNSET.—No payment may be made under this
19 section to any qualified hydroelectric facility after the ex-
20 piration of the period of 20 fiscal years beginning with
21 the first full fiscal year occurring after the date of enact-
22 ment of this subtitle, and no payment may be made under
23 this section to any such facility after a payment has been
24 made with respect to such facility for a period of 10 fiscal
25 years.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary to carry
3 out the purposes of this section \$10,000,000 for each of
4 the fiscal years 2004 through 2013.

5 **SEC. 3202. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

6 (a) INCENTIVE PAYMENTS.—The Secretary of En-
7 ergy shall make incentive payments to the owners or oper-
8 ators of hydroelectric facilities at existing dams to be used
9 to make capital improvements in the facilities that are di-
10 rectly related to improving the efficiency of such facilities
11 by at least 3 percent.

12 (b) LIMITATIONS.—Incentive payments under this
13 section shall not exceed 10 percent of the costs of the cap-
14 ital improvement concerned and not more than one pay-
15 ment may be made with respect to improvements at a sin-
16 gle facility. No payment in excess of \$750,000 may be
17 made with respect to improvements at a single facility.

18 (c) AUTHORIZATION.—There is authorized to be ap-
19 propriated to carry out this section not more than
20 \$10,000,000 for each of the fiscal years 2004 through
21 2013.

22 **SEC. 3203. SMALL HYDROELECTRIC POWER PROJECTS.**

23 Section 408(a)(6) of the Public Utility Regulatory
24 Policies Act of 1978 is amended by striking “April 20,
25 1977” and inserting “March 4, 2003”.

1 **SEC. 3204. INCREASED HYDROELECTRIC GENERATION AT**
2 **EXISTING FEDERAL FACILITIES.**

3 (a) IN GENERAL.—The Secretary of Energy, in con-
4 sultation with the Secretary of the Interior and Secretary
5 of the Army, shall conduct studies of the cost-effective op-
6 portunities to increase hydropower generation at existing
7 federally-owned or operated water regulation, storage, and
8 conveyance facilities. Such studies shall be completed with-
9 in two years after the date of enactment of this subtitle
10 and transmitted to the Committee on Commerce of the
11 House of Representatives and the Committee on Energy
12 and Natural Resources of the Senate. An individual study
13 shall be prepared for each of the Nation's principal river
14 basins. Each such study shall identify and describe with
15 specificity the following matters:

16 (1) Opportunities to improve the efficiency of
17 hydropower generation at such facilities through, but
18 not limited to, mechanical, structural, or operational
19 changes.

20 (2) Opportunities to improve the efficiency of
21 the use of water supplied or regulated by Federal
22 projects where such improvement could, in the ab-
23 sence of legal or administrative constraints, make
24 additional water supplies available for hydropower
25 generation or reduce project energy use.

1 (3) Opportunities to create additional hydro-
2 power generating capacity at existing facilities
3 through, but not limited to, the construction of addi-
4 tional generating facilities, the uprating of genera-
5 tors and turbines, and the construction of pumped
6 storage facilities.

7 (4) Preliminary assessment of the costs and the
8 economic and environmental consequences of such
9 measures.

10 (b) PREVIOUS STUDIES.—If studies of the type re-
11 quired by subsection (a) have been prepared by any agency
12 of the United States and published within the five years
13 prior to the date of enactment of this subtitle, the Sec-
14 retary of Energy may choose not to perform new studies
15 and incorporate the information in such studies into the
16 studies required by subsection (a).

17 (c) AUTHORIZATION.—There is authorized to be ap-
18 propriated such sums as may be necessary to carry out
19 the purposes of this section.