

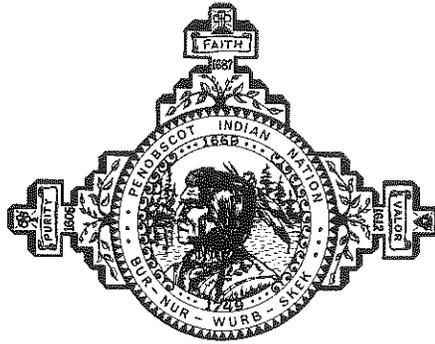
Office of the Chief and Council

Kirk E. Francis
Chief

Bill Thompson
Vice-Chief

Wayne T. Mitchell
Representative

November 25, 2015



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Chairman Fred Upton
House Energy & Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Ranking Member Frank Pallone
House Energy & Commerce Committee
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Ranking Member Pallone:

I write on behalf of the Penobscot Indian Nation (Nation), located on the Penobscot River in Maine, to express our opposition to the "Hydropower Regulatory Modernization" provisions in H.R. 8. The Penobscot Reservation is located on the Penobscot River, including over 200 islands, and the Nation maintains treaty sustenance fishing rights that can be significantly affected by a hydropower project.

Specifically, the Nation is opposed to the Section 1304 and 1305 licensing provisions that would designate the Federal Energy Regulatory Commission (FERC) as the lead agency for hydropower licensing with the authority to set deadlines and propose a scope of review for tribal and federal agencies to exercise their federal authorizations to place mandatory conditions on hydropower projects under the Clean Water Act and other federal laws. Under Section 1305, if a tribe or federal agency is unable to meet a deadline, there is limited ability to extend that review period, and hydropower projects are authorized to proceed. Given that hydropower licenses can be issued for 30-50 years and can have significant impacts on the local ecosystem and lands, it is critical that licenses be thoroughly and objectively reviewed without arbitrary deadlines forcing the process to a decision that does not adequately protect or mitigate the effects of the hydropower project on tribal lands or resources. The effects of hydropower projects on the lands and natural resources both upstream and downstream are often complicated and require significant time to properly analyze and develop conditions to protect those natural resources.

The federal government has a trust responsibility to ensure that tribal lands, natural resources, and treaty rights are protected. This cannot be adequately done if licensing projects are forced into a compressed timeframe. Empowering FERC, who are often unaware of the specifics of our treaty rights nor understand the impacts of hydropower projects on our land, to set deadlines, propose a scope of review, and authorize projects to move forward absent tribal or federal agency input would significantly compromise the ability of the federal government to uphold the trust responsibility.

Further, the Nation is opposed to Section 1309 that seeks to promote the development of hydropower projects on existing non-powered dams by exempting these dams from many of the existing licensing requirements and significantly narrowing the scope of review for licensing. However, the addition of a hydropower project to an existing dam can have a significant impact on the ecosystem that must be thoroughly understood and reviewed. In order to fully protect tribal lands, natural resources, and treaty rights hydropower projects must be thoroughly reviewed and the appropriate conditions placed on those projects.

While the Nation understands the desire to improve the licensing process, we respectfully request that those provisions that may effectively limit the authority of tribes and federal agencies to thoroughly and objectively participate in the licensing process be removed from the bill. The purpose of the Federal Power Act is to accommodate numerous agencies and to develop a sound and objective review of a project. While this should be done in a timely manner, every hydropower project is unique and should not be subject to artificial deadlines. The potential impacts to our lands and natural resources are too great to not have hydropower projects be fully considered. We respectfully request that the hydropower licensing process be consistent with the federal government's trust responsibility to tribes to protect their land, natural resources, and treaty rights.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kirk Francis', with a long horizontal flourish extending to the right.

Kirk Francis

Chief

Penobscot Indian Nation