PUYALLUP TRIBE OF INDIANS

August 9, 2017

BY ELECTRONIC MAIL

The Honorable Greg Walden
Chairman
Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20510

The Honorable Frank Pallone
Ranking Member
Energy and Commerce Committee
2322A Rayburn House Office Building
Washington, D.C. 20510

Re: Hydropower Policy Modernization Act, H.R. 3043

Dear Chairman Walden and Ranking Member Pallone:

I write to express the Puyallup Tribe's strong objections to the amendments to the Federal Power Act that are now being considered as part of the Hydropower Policy Modernization Act, H.R. 3043.

First, the bill would give FERC, an agency with no relevant experience or capacity, the responsibility for determining the scope of environmental review that Interior, Commerce, States and even Tribes should undertake.

Second, H.R. 3043 would upset the careful balance that now exists under federal law and let FERC set the timeline on case-by-case basis for agencies to impose mandatory 4(e) conditions and other requirements, including Section 18 (fishways) and Clean Water Act permits. The consideration of hydropower licenses is a complicated process that must consider the impact of a project on watersheds and numerous species of fish and wildlife before giving operators 50-year licenses to take power from these ecosystems. It takes time to do the necessary studies to determine what types of conditions can best protect these watersheds, including sensitive fisheries habitat, and the resources not only for Treaty-reserved Indian Reservations and resources, but also for the multiple users of these watersheds, including recreation, commercial fishing, and agriculture. If FERC's past actions are any guidance, FERC will impose unrealistic deadlines that the agencies will not meet. This bill will return the Nation back to a time when hydropower projects flooded Indian lands, extirpated entire species of salmon, and destroyed critical cultural resources.

Third, this bill would allow FERC for the first time to make a determination that a mandatory condition is inconsistent with the Federal Power Act. This would undermine

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the Supreme Court's decision in *Escondido Mut. Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765 (1984), which held that the FPA provides no authority to FERC to impose restrictions on the 4(e) conditions submitted by the Secretary of Interior. The current process affords the hydropower industry ample opportunity to consider and respond to potential Sections 4(e), 18, and Clean Water Act conditions. Hydropower licensees can (and in fact do) actively participate in the process by which these conditions are deliberated and set. And while these conditions are not subject to modification by FERC, they are subject to judicial review, and FERC is free to express its disagreement with the conditions, so that FERC's views can also be considered by the courts.

Finally, the bill requires the Agency imposing these conditions to prepare a written statement that the Agency gave equal consideration to power generating interests in issuing its 4(e) conditions. Currently, if a hydroelectric project is located on federal lands, including Indian Reservations, the only consideration the Secretary has is to impose conditions that protect those reservations. There is no consideration of other interests. This has been the law for almost ninety years.

We urge you to continue to work with Tribes and other stakeholders to improve the hydropower licensing process for all interests and not simply for the industry.

Sincerely,

Bill Sterud

Bill Sterud, Chairman
Puyallup Tribal Council