



**Adopted on September 25, 2017**

Resolution sponsored by:

Dr. Mary Beth Tung, Maryland Energy Administration,  
Maryland Governor's Alternate\*

## **12.2017 | Expressing Opposition to the Dilution of States' Rights in the Context of Hydropower Relicensing Under Section 401 of the Clean Water Act**

**WHEREAS**, The Southern States Energy Board (SSEB) represents the economic and environmental interest of the following states and territories: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, U.S. Virgin Islands, Virginia and West Virginia;

**WHEREAS**, Several provisions of the Hydropower Policy Modernization Act of 2017 (H.R. 3043) serve to constrain state agencies use of their independent authorities, making it more difficult to protect water quality;

**WHEREAS**, States serve an essential role in the Federal Energy Regulatory Commission (FERC) hydropower licensing process when they review applications under Section 401 of the Clean Water Act in order to determine whether the construction and/or operation of the facility will meet state water quality standards and requirements;

**WHEREAS**, Such reviews often result in applicants conducting additional scientific studies and states putting in place conditions to ensure that State water quality standards and requirement are met;

**WHEREAS**, Such conditions are essential for ensuring that existing and new hydropower projects are built and operated in a manner that is consistent with state and federal environmental laws and are protective of the environment;

**WHEREAS**, H.R. 3043 designates FERC as the lead agency over federal authorizations related to an application for a license, license amendment, or exemption for a hydropower project;

**WHEREAS**, This bill requires states to meet deadlines established by FERC in a schedule that FERC develops for the licensing action and places limits on FERC's ability to easily grant extensions to the deadlines;

**WHEREAS**, such timelines established by FERC could reduce the amount of time a state would have to get necessary scientific studies completed and to assess whether water quality standards and requirements will be met as required under Section 401 of the Clean Water Act;

**WHEREAS**, Not only does H.R. 3043 place pressure on states to complete their water quality reviews more quickly using existing information, it also provides applicants with an entitlement to a trial-type hearing before a FERC Administrative Law Judge whenever there is a dispute of material fact;



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**WHEREAS**, This legislation declares the decision of the FERC Administrative Law Judge to be final and not subject to further administrative review;

**WHEREAS**, This allowance for a trial-like hearing combined with pressure to use existing science and meet strict deadlines together makes it even more challenging for states to protect water quality;

**WHEREAS**, H.R. 3043 would make FERC the decision maker, not the state, with regard to whether the desired amendment to project operations would affect water quality;

**WHEREAS**, such a change would reverse decades of federal court decisions interpreting Section 401 have established the states' authority to require conditions in FERC licenses necessary to protect water quality;

**WHEREAS**, These decisions recognize and affirm the basic principle of federalism embodied in the Clean Water Act that states have the primary role and responsibility to ensure state water quality standards are met;

**WHEREAS**, In impairing the states' primary roles and responsibilities under Section 401 to fashion conditions in FERC licenses, H.R. 3043 relegates the states – the entities with the greatest interest and expertise in protecting state water quality – to bystander or second-class status; and

**WHEREAS**, The legislation should clearly indicate that state actions associated with Section 401 requirements, including the assessment of water quality standard achievement and resulting conditions, are not eligible for a trial type hearing by a FERC Administrative Law Judge for purposes of resolving disputes of material fact.

**THEREFORE, BE IT RESOLVED**, that the Southern States Energy Board urges that the provisions of H.R. 3043 that would have the effect of curtailing State authority under Section 401 of the Clean Water Act be stricken from the bill;

**BE IT FURTHER RESOLVED**, that the Southern States Energy Board strenuously opposes any provisions in H.R. 3043 that would have the effect of curtailing State authority under Section 401 of the Clean Water Act to establish license conditions to protect water quality;

**BE IT FURTHER RESOLVED**, that H.R.3043 should clearly indicate that state actions associated with Section 401 requirements, including the assessment of water quality standard achievement and resulting conditions;

**BE IT FURTHER RESOLVED**, that the Southern States Energy Board urges that a copy of this Resolution be sent to each Governor in the States that comprise the Southern States Energy Board;



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**BE IT FURTHER RESOLVED**, that the Southern States Energy Board urges that a copy of this Resolution be sent to each Congressional member of each of the states which comprise the Southern States Energy Board;

**BE IT FURTHER RESOLVED**, that the Southern States Energy Board urges its member States to send letters to each Congressional member of their respective states;

**BE IT FURTHER RESOLVED**, that the Southern States Energy Board send a copy of this Resolution to President Donald J. Trump and the Secretaries of the U.S Department of Energy, the Department of the Interior and the Environmental Protection Agency;

**BE IT FURTHER RESOLVED** that the Southern States Energy Board send a copy of this Resolution be sent to the Congressional Leadership in both the US Senate and the US House and to the Chair and Ranking Chair of the US House and US Senate Energy and Natural Resources Committee;

**BE IT FURTHER RESOLVED** that the Southern States Energy Boards send a copy of this Resolution be sent to the Federal Energy Regulatory Commission; and

**BE IT FURTHER RESOLVED** that a copy of this Resolution be sent to the National Governors' Association, the Western Governors' Association, the Conference of New England Governors and Eastern Canadian Premiers; Northeast Governors Association; the Environmental Council of States and the Council of State Governments and their regional affiliates to adopt similar resolutions and send letters to their respective members of Congress to oppose the dilution of states' rights in the context of hydropower relicensing and Section 401 of the Clean Water Act.