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SENATE

{ REPORT
104-74

LIMITED EXEMPTION TO HYDROELECTRIC LICENSING PROVISIONS FOR TRANSMISSION FACILITIES ASSOCI- ATED WITH THE EL VADO HYDROELECTRIC PROJECT

APRIL 27 (legislative day, APRIL 24), 1995.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 522]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 522) to provide for a limited exemption to the hydroelectric licensing provisions of part I of the Federal Power Act for certain transmission facilities associated with the El Vado Hydroelectric Project in New Mexico, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 522 is to provide an exemption from the Federal Power Act's requirement to license primary transmission facilities associated with the FERC-licensed El Vado hydroelectric project located in New Mexico.

BACKGROUND AND NEED

S. 522 would amend the hydroelectric licensing provisions of Part I of the Federal Power Act to permit a limited exemption for a 12-mile transmission line in Rio Arriba County, New Mexico.

In 1985, the FERC granted the County of Los Alamos, New Mexico (Los Alamos) a major license under the FPA. The license authorized the construction, operation and maintenance of the El Vado Hydroelectric Power Project (El Vado Project) on the Rio Chama in Rio Arriba County, New Mexico. The principal project features include a 175-foot-high, 1,325-foot-long gravel fill dam; a

3,310-acre reservoir; outlet works; a powerhouse with one 8-megawatt generating unit; and a 12-mile-long transmission line.

The transmission line is a three phase 12-mile-long, 69-kilovolt (KV) power line supported on single wooden pole structures located in a 50-foot-wide right-of-way. The line begins at the El Vado Project's switchyard and connects to a 69-KV switching station that is owned and operated by the Northern Rio Arriba Electric Cooperative Inc. (NORA). NORA is a Rural Electric Administration (REA) financed rural electric cooperative whose distribution system serves the rural area in which the El Vado Project is located.

During the construction phase of the project, it was determined that the project would be better served if NORA would own and operate the transmission line. In 1984, NORA entered into a two-part agreement with Los Alamos. Los Alamos would contribute the capital for construction of the transmission line and appurtenant facilities. NORA would utilize its system as expanded by the transmission line to assist in the delivery of the project's power output to Los Alamos and provide station services to the project during periods of nongeneration.

Through subsequent audits of the project, the FERC's Office of Hydropower Licensing (OHL) discovered NORA's ownership of the transmission line. In May of 1993, OHL ordered Los Alamos to modify the transmission line ownership structure to be consistent with its license. At the time the transmission line agreement was executed until the OHL order, Los Alamos did not know that allowing NORA to own and operate the transmission line was inconsistent with the provisions of its FERC license.

This title would exempt from the licensing provisions of the FPA only the 12-mile, 69-KV transmission line of the El Vado Project. NORA would continue to own and operate the transmission line; however, it would be made consistent with the project's license. The Committee notes that the United States would not forfeit its FPA jurisdiction over the entire El Vado Project. The exemption applies only to FERC regulatory oversight of the project's transmission line.

The United States would retain a certain amount of control over the transmission line. The line would remain subject to a contract (Contract No. 7-LM-53-01197, dated October 9, 1987) with the Bureau of Reclamation for construction, operation and maintenance of the power line. Also, as the property of NORA, the transmission line would be pledged against NORA's REA loan.

LEGISLATIVE HISTORY

S. 522 was introduced by Senator Domenici (for himself and Mr. Bingaman) on March 9, 1995. Last Congress, these provisions were included in S. 2384 as passed by the Senate on October 5, 1994.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on March 15, 1995, by a majority vote of a quorum present, recommends that the Senate pass the bill as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS

NAYS

Mr. Murkowski
 Mr. Hatfield ¹
 Mr. Domenici
 Mr. Nickles ¹
 Mr. Craig
 Mr. Thomas
 Mr. Kyl ¹
 Mr. Grams
 Mr. Jeffords ¹
 Mr. Burns
 Mr. Campbell
 Mr. Johnston
 Mr. Bumpers
 Mr. Ford
 Mr. Bradley
 Mr. Bingaman ¹
 Mr. Akaka
 Mr. Wellstone

¹ Indicates vote by proxy.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 30, 1995.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 522, a bill to provide for a limited exemption to the hydroelectric licensing provisions of part I of the Federal Power Act for certain transmission facilities associated with the El Vado Hydroelectric Project in New Mexico, as ordered reported by the Senate Committee on Energy and Natural Resources on March 15, 1995. CBO estimates that enacting the bill would have no net effect on the federal budget.

The bill would provide an exemption for certain features of a hydroelectric project currently subject to licensing by the Federal Energy Regulatory Commission (FERC). These provisions may have a minor impact on FERC's workload. Because FERC recovers 100 percent of its costs through user fees, any change in its administrative costs would be offset by an equal change in the fees that the commission charges. Hence, the bill's provisions would have no net budgetary impact.

Because FERC's administrative costs are limited in annual appropriations, enactment of this bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill. In addition, CBO estimates that enacting the bill would have no significant impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

JUNE E. O'NEILL, *Director.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out this measure.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the provisions of the bill. Therefore, there would be no impact on personal privacy.

Little, if any additional paperwork would result from the enactment of this measure.

EXECUTIVE COMMUNICATIONS

The pertinent communications received by the Committee from the Federal Energy Regulatory Commission setting forth Executive agency relating to this measure are set forth below:

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, March 14, 1995.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letters of February 27 and March 2, 1995, and Committee staff's inquiries of March 13 and 14, requesting my comments on a number of bills to allow for the extension of the construction deadlines applicable to nine hydroelectric projects licensed by the Federal Energy Regulatory Commission. Because it is my understanding that the Committee is scheduled to mark all these bills on March 15, I have combined my comments on these bills in one letter.

This letter also responds to your March 2, 1995 request for comments on S. 225, a bill to remove the Commission's jurisdiction to license projects on fresh waters in the State of Hawaii; and to Committee staff's March 13 request for comments on S. 522, a bill to exempt from Part I the Federal Power Act the primary transmission line for a project in New Mexico. The bills fall into four general categories. Each bill is discussed below.

* * * * *

4. El Vado Project transmission line

S. 522 would exempt from regulation under Part I of the Federal Power Act a 12-mile transmission line which is a project work of the licensed El Vado Hydroelectric Project No. 5226.

In 1985, the Commission issued a license to the County of Los Alamos, New Mexico, for the 8-megawatt El Vado Hydroelectric Project, on the Rio Chama, a tributary of the Rio Grande, in Rio

Arriba County, New Mexico. The licensed project includes a 12-mile-long 69-kilovolt primary transmission line, which is necessary to the operation of the project. The transmission line is, however, owned and operated by a separate entity, Arriba Electric Cooperative. The license gave Los Alamos five years to acquire the necessary title or contractual operational control over the transmission line. Alternatively, the Cooperative could have joined Los Alamos as co-licensee, or could have obtained a separate license for the transmission line. The Cooperative did not wish to pursue either course. Ten years after the license was issued, the licensee had still failed to comply with the requirement that it obtain necessary property rights over the line, despite repeated letters and compliance orders from the Commission staff.

The transmission line has been constructed and is in operation, and the Commission is not aware of any problems associated with it. The Commission is also not aware of any aspect of this particular primary transmission line that would distinguish it from other hydroelectric project primary transmission lines. Finally, this licensee's years-long lack of compliance with a fundamental license requirement is a troubling factor.

Thank you for offering me an opportunity to comment on bills affecting the Commission's hydropower program. If I can be of further assistance to you in this or any other Commission matter, please let me know.

With best wishes,
Sincerely,

ELIZABETH A. MOLER, *Chair*.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by S. 522, as ordered reported.

