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SENATE

{ REPORT
104-76

EXTENSION OF COMMENCEMENT OF CONSTRUCTION DEADLINE FOR CERTAIN HYDROELECTRIC PROJECTS LOCATED IN THE STATE OF ARKANSAS

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. 549]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 549) to extend the deadline under the Federal Power Act applicable to the construction of three hydroelectric projects in the State of Arkansas, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 549 is to extend the deadline contained in the Federal Power Act for the commencement of construction of three FERC-licensed hydroelectric projects located in the State of Arkansas.

BACKGROUND AND NEED

Section 13 of the Federal Power Act requires a licensee to commence the construction of a hydroelectric project within two years of the date of the issuance of the license. That deadline can be extended by the FERC one time for as much as two additional years. If construction has not commenced at the end of the time period, the license is terminated by the FERC. Thus, in the absence of this legislation, the FERC would terminate the license at the end of the time period authorized under the Federal Power Act for commencement of construction.

S. 549 would extend the time required to begin construction for a maximum of three consecutive two-year periods for the White River Hydroelectric Project's Lock and Dam Nos. 1, 2, and 3 (Projects Nos. 4204, 4660, and 4659) on the White River in north central Arkansas.

LEGISLATIVE HISTORY

S. 549 was introduced by Senator Bumpers on March 14, 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. 549, a bill to extend the deadline under the Federal Power Act applicable to the construction of three hydroelectric projects in the State of Arkansas, as ordered reported by the Sen-

ate 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 extensions of deadlines for construction of three hydroelectric projects 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 provision 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, April 5, 1995.

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

DEAR MR. CHAIRMAN: Thank you for your request for comments on eight bills affecting twelve hydroelectric projects licensed by the Federal Energy Regulatory Commission.

My detailed comments are enclosed. 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*.

COMMENTS ON PENDING HYDROELECTRIC LEGISLATION BY
ELIZABETH A. MOLER, CHAIR, FEDERAL ENERGY REGULATORY COMMISSION: S. 283, S. 468, S. 543, S. 547, S. 549, S. 552, S. 595, AND S. 611

Six of the bills would extend the statutory deadline for the start of construction of ten licensed projects. The seventh bill would extend for one licensed project the non-statutory deadline for completion of project construction. The eighth bill would partially waive annual charges assessed for one licensed project's occupancy of federal land. I will address each subject matter in turn.

A. Extending deadlines to commence project construction

Overview

Section 13 of the Federal Power Act requires that construction of a licensed project be commenced within two years of issuance of the license. Section 13 authorizes the Commission to extend this deadline once, for a maximum additional two years. If project construction has not commenced by this deadline, Section 13 requires the Commission to terminate the license.

All ten of the projects in question have received the maximum four years for commencement of construction. S. 611 would authorize the commission to extend one project's construction deadline by an additional three years, for a total of seven years. S. 468, S. 547, and S. 595 would authorize or require the Commission to extend the deadline for four projects by an additional six years, for a total of ten years. S. 283 would authorize the Commission to extend the deadline for two projects by an additional eighteen and one-half months, for a total of a little over eleven and one-half years. S. 549 would authorize an extension of up to six years for three projects which have already been given ten years: four years under Section 13 and six years under special legislation passed in 1989.

As a general principle, I do not support the enactment of bills authorizing or requiring construction extensions for individual projects. However, if such extensions are to be authorized, as a matter of policy I would object to granting a licensee more than ten years from the issuance date of the license to commence construction. In my view, ten years is a more than reasonable period for a licensee to determine definitively whether a project is economically viable and to sign a power purchase agreement. If a licensee cannot meet such a deadline, I believe the site should be made available to potential competitors. Appropriate

amendments to the bills that would provide a construction commencement deadline exceeding ten years are suggested below.

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S. 549 (Senator Bumpers)

S. 549 would authorize the Commission to extend for up to six years (16 years after licensing) the deadline for commencement of construction of Project Nos. 4204, 4659, and 4660.

Project No. 4204

On February 28, 1986, the Commission issued a license to the City of Batesville, Arkansas, to construct and operate the 6,825-kilowatt White River Lock and Dam No. 1 Project No. 4204, to be located at the licensee's existing dam on the White River in Independence County, Arkansas. The deadline for the commencement of project construction, originally February 27, 1988, was extended to February 27, 1990. Under Pub. L. No. 101-155, 103 Stat. 935 (1989), this deadline was extended three more times (each time for two years), to February 27, 1996, because the licensee had not obtained a power sales contract.

Construction of the project entails adding an intake structure, a powerhouse, a 280-foot-long tailrace, a 10,000-foot-long transmission line, and related project facilities.

Project No. 4659

On February 28, 1986, the Commission issued a license to Independence County, Arkansas, to construct and operate the 10.5-megawatt White River Lock and Dam No. 3 Hydroelectric Project No. 4659, to be located at an existing Corps dam on the White River in Stone County, Arkansas. The original deadline for the commencement of project construction was February 27, 1988. By order issued March 16, 1987, this deadline was extended to February 27, 1990. Under Pub. L. No. 101-155, 103 Stat. 935 (1989), this deadline was extended three more times (each time for two years), to February 27, 1996.

Construction of the project entails adding an intake structure, a powerhouse, a tailrace, a 7-mile-long transmission line, and related project facilities.

Project No. 4660

On November 8, 1985, the Commission issued a license to Independence County to construct and operate the 7,080-kilowatt White River Lock and Dam No. 2 Project No. 4660, to be located at an existing privately owned dam on the White River in Independence County, Arkansas. The deadline for the commencement of project construction, originally November 7, 1987, was extended to November 7, 1989. Under Pub. L. No. 101-155, 103 Stat. 935 (1989), this deadline was extended three more times (each

time for two years), to November 7, 1995, because the licensee had not obtained a power sales contract.

Construction of the project entails adding an intake structure, a powerhouse, a 120-foot-long tailrace, a 6.5-mile-long transmission line, and related project facilities.

The legislation should be amended to provide a maximum of ten years to begin construction. The new deadlines would thus be February 27, 1996 for Project No. 4204; February 27, 1996 for Project No. 4659; and November 7, 1995 for Project No. 4660.

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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. 549, as ordered reported.