

HYDROELECTRIC PROJECT EXTENSION

MAY 6, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

REPORT

[To accompany H.R. 2841]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 2841) to extend the time required for the construction of a hydroelectric project, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

| | Page |
|---|------|
| Purpose and Summary | 1 |
| Background and Need for Legislation | 2 |
| Hearings | 2 |
| Committee Consideration | 3 |
| Rollcall Votes | 3 |
| Committee Oversight Findings | 3 |
| Committee on Government Reform and Oversight | 3 |
| New Budget Authority, Entitlement Authority, and Tax Expenditures | 3 |
| Committee Cost Estimate | 3 |
| Congressional Budget Office Estimate | 3 |
| Federal Mandates Statement | 4 |
| Advisory Committee Statement | 4 |
| Constitutional Authority Statement | 4 |
| Applicability to Legislative Branch | 5 |
| Section-by-Section Analysis of the Legislation | 5 |
| Changes in Existing Law Made by the Bill, as Reported | 5 |

PURPOSE AND SUMMARY

The purpose of H.R. 2841 is to extend the deadline for the commencement of construction of a hydroelectric project in the State of Kentucky licensed by the Federal Energy Regulatory Commission (FERC).

BACKGROUND AND NEED FOR LEGISLATION

Section 13 of the Federal Power Act (16 U.S.C. §806 (1988)) establishes time limits for commencement of construction of a hydroelectric project once FERC has issued a license. The licensee must begin construction not more than two years from the date the license is issued, unless FERC extends the initial deadline. However, section 13 permits FERC to grant only one extension of that deadline for "not longer than two additional years * * * when not incompatible with the public interests." Accordingly, FERC lacks authority to extend the deadline beyond a maximum of two years from the original deadline for commencement of construction. Therefore, a license is subject to termination if a licensee fails to begin construction within four years of the date the license is issued.

Lack of a power sales contract can delay the commencement of construction of licensed hydroelectric projects. It is very difficult for a hydroelectric project sponsor to secure financing until it has a power sales contract, and generally a licensee cannot secure a contract until it has been granted a license. However, the construction deadline begins to toll once the license is granted. There are other obstacles to commencement of construction, such as protracted proceedings on a licensee's application for a dredge and fill permit from the Army Corps of Engineers under section 404 of the Clean Water Act. FERC has testified that in such cases it has issued orders staying the license until matters are resolved, suggesting extension legislation is not needed in order to address delays beyond the control of the licensee.

H.R. 2841 would extend the deadline for the commencement of construction for a 35 megawatt hydroelectric project (Project No. 10395) in Bracken County, Kentucky, for up to three additional two-year periods. This would extend the deadline to up to ten years after the date the license was issued. According to the project sponsor, construction has not commenced for lack of a power purchase agreement. The deadline for the commencement of construction of this project expires on July 31, 1999. H.R. 2841 does not ease the requirements of a hydroelectric license, but merely extends the period for commencement of project construction.

The legislation provides for up to three consecutive two-year extensions, instead of a six-year extension, to assure that the licensee must continue to meet the section 13 requirement that it prosecute construction "in good faith and with due diligence" before obtaining each two-year extension. If FERC determines the licensee is not prosecuting construction in good faith and with due diligence, the Committee expects the agency will refuse to grant a request for an additional two-year extension, terminate the license, and make the site available for other uses.

HEARINGS

The Committee on Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On April 22, 1998, the Subcommittee on Energy and Power met in open markup session and approved H.R. 2841 for Full Committee consideration, without amendment, by a voice vote. The Full Committee met in open markup session on April 29, 1998, and ordered H.R. 2841 reported to the House, without amendment, by a voice vote.

ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 2841 reported. A motion by Mr. Bliley to order H.R. 2841 reported to the House, without amendment, was agreed to by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee did not hold oversight or legislative hearings on this legislation.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 2(1)(3)(B) of Rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 2841 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 30, 1998.

Hon. TOM BLILEY,
*Chairman, Committee on Commerce,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2841, a bill to extend the time required for construction of a hydroelectric project.

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.*

Enclosure.

H.R. 2841—A bill to extend the time required for the construction of a hydroelectric project

CBO estimates that enacting H.R. 2841 would have no net effect on the federal budget. The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

H.R. 2841 would extend for up to six years the deadline for construction of a hydroelectric project currently subject to licensing by the Federal Energy Regulatory Commission (FERC). The proposed extension is for FERC project number 10395. This provision 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.

The CBO staff contact for this estimate is Kim Cawley. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause

3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Extension of period to commence construction

Subsection (a) directs the Federal Energy Regulatory Commission (FERC), upon the request of the licensee for Project No. 10395, and in accordance with the good faith, due diligence, and public interest requirements of section 13 of the Federal Power Act and FERC's procedures under such section, to extend the time required for the commencement of construction for such project for up to three additional two-year periods. Subsection (b) provides that such extension will take effect upon the expiration of the extension previously granted by FERC.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2841 does not amend any existing Federal statute.