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DEADLINE EXTENSION OF HYDROELECTRIC PROJECT IN ALABAMA

APRIL 12, 2000.—Ordered to be printed

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

REPORT

[To accompany S.1836]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1836) to extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 1836 is to require the Federal Energy Regulatory Commission, upon the request of the licensee, to extend for three consecutive two year periods the deadline for the licensee to commence construction of hydroelectric project No. 7115.

BACKGROUND AND NEED

Section 13 of the Federal Power Act requires a hydroelectric licensee to commence the construction of its 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. Unless additional legislation is enacted, if construction has not commenced by the end of the time period the license is terminated by the FERC. Thus, in the absence of this legislation, the license will be terminated.

On May 22, 1987, the Commission issued a license to the city of Dothan, Alabama, and the Municipal Electric Authority of Georgia (Authority) to construct and operate the 24-megawatt George W. Andrews Dam Project, FERC No. 7115, to be located at the U.S. Army Corps of Engineers' George W. Andrews Lock and Dam on

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the Chattahoochee River in Houston County, Alabama and Early County, Georgia. In 1989, the city of Dothan withdrew from the license. At the Authority's request, the deadline for the commencement of project construction, originally May 21, 1989, was extended by the Commission to May 1, 1991.

In 1990, the Commission accepted the Authority's surrender of the license for the project, which the Authority had concluded was financially infeasible. However, less than 30 days later, the acceptance was rescinded so that the Commission could consider an application for the Authority to transfer the project license to Consolidated Hydro Southeast, Inc. In order to ensure that the municipal preference the Authority had enjoyed in the licensing proceeding did not improperly inure to the benefit of Consolidated, a non-municipality, the Commission established a competitive transfer proceeding. Two additional entities applied separately for the license: Southeastern Hydro-Power, Inc. (Southeastern), and Synergics, Inc. At the Authority's request, the Commission stayed, effective January 29, 1991, the license's deadline for the commencement of project construction pending the outcome of that proceeding. This meant that, for every day the stay was in effect, the construction deadline was pushed back a day.

For a variety of reasons, including issues concerning the project design, the competitive transfer proceeding was very lengthy. Finally, in 1997, the Commission transferred the project license to Southeastern, but kept the construction-deadline stay in place in order to afford Southeastern time to prepare and file an application to amend the license consistent with its approved transfer proposal. In May 1999, the Commission approved transfer of the project license from Southeastern to Homestead Energy Resources, LLC (Homestead). In June 1999 the Commission approved the amendment to the license, and the following month it lifted the stay of the construction deadline, effective July 15, 1999. At that point 113 days remained before the deadline. In September 1999, the Commission granted Homestead's request for more time to prepare the necessary pre-construction filings, obtain necessary authorizations, and commence construction. Pursuant to that order, the construction deadline is now September 21, 2000.

LEGISLATIVE HISTORY

S. 1836 was introduced on November 1, 1999. A hearing was held by the Subcommittee on Water and Power on March 22, 2000.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on April 5, 2000, by a voice vote with a quorum present, recommends that the Senate pass the bill without amendment.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will

request it to be printed in the Congressional Record for the advice of the Senate.

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 views relating to this measure are set forth below:

STATEMENT OF JAMES J. HOECKER, CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to comment on S. 1836, a bill to extend the construction deadlines applicable to a hydroelectric project licensed by the Federal Energy Regulatory Commission.

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 up to two additional years. If project construction has not commenced by this deadline, the Commission is required to terminate the license.

The project

On May 22, 1987, the Commission issued a license to the City of Dothan, Alabama, and the Municipal Electric Authority of Georgia (Authority) to construct and operate the 24-megawatt George W. Andrew Dam Project, FERC No. 7115, to be located at the U.S. Army Corps of Engineers' George W. Andrews Lock and Dam on the Chattahoochee River in Houston County, Alabama and Early County, Georgia. In 1989, the City of Dothan withdrew from the license. At the Authority's request, the deadline for the commencement of project construction, originally May 21, 1989, was extended by the Commission on May 21, 1991.

In 1990, the Commission accepted the Authority's surrender of the license for the project, which the Authority had concluded was financially infeasible. However, less than 30 days later, the acceptance was rescinded so that

the Commission could consider an application for the Authority to transfer the project license to Consolidated Hydro Southeast, Inc. In order to ensure that the municipal preference the Authority had enjoyed in the licensing proceeding did not improperly inure to the benefit of Consolidated, a non-municipality, the Commission established a competitive transfer proceeding. Two additional entities applied separately for the license: Southeastern Hydro-Power, Inc. (Southeastern), and Synergics, Inc. At the Authority's request, the Commission stayed, effective January 29, 1991, the license's deadline for the commencement of project construction pending the outcome of that proceeding. This meant that, for every day the stay was in effect, the construction deadline was pushed back a day.

For a variety of reasons, including issues concerning the project design, the competitive transfer proceeding was very lengthy. Finally, in 1997, the Commission transferred the project license to Southeastern, but kept the construction-deadline stay in place in order to afford Southeastern time to prepare and file an application to amend the license consistent with its approved transfer proposal. In May 1999, the Commission approved transfer of the project license from Southeastern to Homestead Energy Resources, LLC (Homestead). In June 1999 the Commission approved the amendment to the license, and the following month it lifted the stay of the construction deadline, effective July 15, 1999. At that point 113 days remained before the deadline. In September 1999, the Commission granted Homestead's request for more time to prepare the necessary pre-construction filings, obtain necessary authorizations, and commence construction. Pursuant to that order, the construction deadline is now September 21, 2000. This date is arrived at by adding to the four years after the date of license issuance the nine years and four months that the deadline was stayed.

Construction of the project entails installation of new headworks, a powerhouse, a tailrace, and an 18-mile-long primary transmission line.

S. 1836

S. 1836 would require the Commission, upon the request of the licensee and an accordance with the good faith, due diligence, and public interest requirements of Section 13 of the Federal Power Act, to extend deadline for commencement of construction of Project No. 7115 for up to six additional years after September 21, 2000, the current deadline.

As a general principle, I do not support the enactment of bills authorizing or requiring construction extensions for individuals projects. However, if such extensions are authorized by the Congress, 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 license should be terminated pursuant to Section 13, so that the site is once again available for whatever uses current circumstances may warrant.

Where the Commission has stayed the construction deadlines, or the entire license, for example pending judicial appeal of the license or the completion of pre-construction proceedings, the period of the stay is not counted in applying the 10-year policy.

Because S. 1836 would not extend the construction commencement date beyond ten non-stayed years from the issuance of the Project No. 7115 license, I have no specific objection to its enactment.

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. 1836 as ordered reported.

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