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SENATE

{ REPORT
{ 106-381

HYDROELECTRIC PROJECT IN PENNSYLVANIA

AUGUST 25, 2000.—Ordered to be printed

Filed under authority of the order of the Senate of July 26, 2000

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

REPORT

[To accompany S. 2499]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2499) to extend the deadline for commencement of construction of a hydroelectric project in the State of Pennsylvania, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 2499 is to require the Federal Energy Regulatory Commission, upon the request of the licensee, to extend until December 31, 2001, the deadline for the licensee to commence construction of hydroelectric project No. 7041. S. 2449 also provides for the reinstatement of the license for the project if it has expired before the enactment of the Act.

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 September 27, 1989, the FERC issued a license to Potter Township, Pennsylvania to construct and operate the 20-megawatt Emsworth Project, FERC license No. 7041, to be located at an ex-

isting U.S. Army Corps of Engineers dam on the Ohio River in Allegheny County, Pennsylvania. The deadline for commencement of construction of the Emsworth Project was originally September 26, 1991. Pending judicial review of the license, the Commission stayed most of the license requirements, including the construction deadline, from September 27, 1990, to April 16, 1992, which resulted in a new construction commencement deadline of April 15, 1993. At the licensee's request, this deadline was subsequently extended to April 15, 1995, to give the licensee additional time to consult with the Corps regarding site access and project design and construction, and to obtain a power sales contract. Pursuant to Pub. L. No. 104-254, the Commission further extended the deadline to September 26, 1999. On March 29, 2000, the Commission denied, for lack of authority, the licensee's request for an extension to September 26, 2001, denied its alternative request for a stay of the deadline, and terminated the license, effective April 28, 2000.

LEGISLATIVE HISTORY

S. 2499 was introduced on May 3, 2000. A hearing was held by the Subcommittee on Water and Power on June 21, 2000.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 13, 2000, by a voice vote with a quorum present, recommends that the Senate pass the bill without amendment.

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, July 17, 2000.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2499, a bill to extend the deadline for commencement of construction of a hydroelectric project in the state of Pennsylvania.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 2499—A bill to extend the deadline for commencement of construction of a hydroelectric project in the State of Pennsylvania

CBO estimates that enacting S. 2499 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 and would impose no costs on state, local, or tribal governments.

S. 2499 would extend the deadline, until December 31, 2001, for construction of a hydroelectric project currently subject to licensing by the Federal Energy Regulatory Commission (FERC). The proposed extension is for project number 7041. S. 2499 also would direct FERC to reinstate the license for the project should it expire prior to enactment of this bill. 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 S. 2499.

The CBO staff contact for this estimate is Lisa Cash Driskill. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

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: Thank you for the opportunity to comment on S. 2499, 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 a maximum of two additional years. If project construction has not commenced by this deadline, Section 13 requires the Commission to terminate the license.

On September 27, 1989, the Commission issued a license to Potter Township, Pennsylvania, to construct and operate the 20-megawatt Emsworth Project No. 7041 at an existing Army Corps of Engineers dam on the Ohio River in Allegheny County, Pennsylvania. Construction of the project entails building a 1,800-foot-long dike for the forebay, a 250-foot-long open-channel intake, and a powerhouse. In 1994, the Commission approved the transfer of the project license to Potter Township Hydroelectric Authority.

The deadline for commencement of construction of the Emsworth Project was originally September 26, 1991. Pending judicial review of the license, the Commission stayed most of the license requirements, including the construction deadline, from September 27, 1990, to April 16, 1992 (nearly 19 months), which resulted in a new construction commencement deadline of April 15, 1993. At the licensee's request, this deadline was subsequently extended to April 15, 1995, to give the licensee additional time to consult with the Corps regarding site access and project design and construction, and to obtain a power sales contract. Pursuant to Pub. L. No. 104-254, the Commission further extended the deadline to September 26, 1999. On March 29, 2000, the Commission denied, for lack of authority, the licensee's request for an extension to September 26, 2001, denied its alternative request for a stay of the deadline, and terminated the license, effective April 28, 2000.

S. 2499 would require the Commission, upon the request of the licensee, to extend the deadline for commencement of construction until December 31, 2001, which is nearly 27 months after the date the license was issued.

As a general matter, enactment of bills authorizing or requiring construction extensions for individual projects delays utilization in the public interest of an important energy resource and therefore is inappropriate. In cases where project-specific extensions are authorized by the Congress, however, they should be of relatively short duration and respond only to the practical but unforeseeable needs of the licensee. Absent a showing of extraordinary circumstances, granting a licensee more than ten unstayed years from the issuance date of the license to commence construction does not meet these criteria. (Where the Commission has stayed the construction deadlines, or the entire license, for example, pending judicial appeal of the license, which was the case here, the period of the stay should not be counted in applying this 10-year policy.) I believe ten years is a more than reasonable period for a licensee to determine whether a project is economically viable and to sign a power purchase agreement. If a licensee cannot meet such a deadline, then I believe as a general matter the license should be terminated pursuant to the requirements of Section 13, so that the site is once again available for whatever uses current circumstances may

warrant, based on up-to-date information on economic and environmental considerations.

S. 2499 would extend the construction commencement date for the Emsworth Project ten years and eight months beyond the issuance of the Project No. 7041 license, excluding the period of the stay. During the intervening time, substantial changes in economic factors, such as the cost of project power, and in relevant public interest considerations, such as the project's environmental impacts, could affect the viability of the project. Because S. 2499 would extend the deadline beyond ten years from license issuance, I do not support 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. 2499, as ordered reported.

