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SENATE

{ REPORT
104-103

EXTEND THE DEADLINES UNDER THE FEDERAL POWER ACT APPLICABLE TO TWO HYDROELECTRIC PROJECTS IN PENNSYLVANIA

JULY 11 (legislative day, JULY 10), 1995.—Ordered to be printed

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

REPORT

[To accompany S. 283]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 283) to extend the deadlines under the Federal Power Act applicable to two hydroelectric projects in Pennsylvania, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 283 is to extend the deadline contained in the Federal Power Act for the commencement of construction of two FERC-licensed hydroelectric projects located in the State of Pennsylvania.

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. 283 would extend the time required to begin construction of hydroelectric projects numbered 4474 and 7041 to April 15, 2001. Project 4474 is located on the Allegheny River in Pennsylvania. Project 7041 is located on the Ohio River in Pennsylvania.

LEGISLATIVE HISTORY

S. 283 was introduced by Senator Specter (for himself and Senator Santorum) on January 26, 1995. A hearing was held on May 18, 1995.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 28, 1995, by an unanimous vote with a quorum present, recommends that the Senate pass the bill as described herein. The rollcall vote on reporting the measure was 20 yeas, 0 nays, as follows:

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

¹ Indicates vote by proxy.

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 relating to this measure are set forth below:

STATEMENT BY ELIZABETH A. MOLER, CHAIR FEDERAL ENERGY REGULATORY COMMISSION

Mr. Chairman and members of the committee, thank you for the opportunity to be here today to comment on nine bills affecting 14 hydroelectric projects licensed by the Federal Energy Regulatory Commission.

Seven of the bills would extend the statutory deadline for the start of construction of twelve licensed projects. The eighth bill would extend the non-statutory deadline for completion of project construction for one licensed project. The ninth bill would partially waive annual charges assessed for one licensed project's occupancy of federal land. I will address each subject matter in turn. Detailed information about each bill is included in an appendix to my testimony.

S. 283, S. 468, S. 547, S. 549, S. 595, S. 611, AND S. 801: EXTENDING DEADLINES TO COMMENCE PROJECT CONSTRUCTION

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 12 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 seven and one-half years, 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—for a total of 16 years. S. 801 would authorize extensions of up to ten years for two projects, for a total of 14 years.

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 license should be terminated pursuant to Section 13, so that the site is once again available for whatever uses current circumstances may warrant.

I recognize that sometimes project licenses, such as those which are the subject of S. 283, are stayed by the Commission pending judicial review. However, I believe that a ten-year period in which to commence construction is sufficient to accommodate judicial review, and indeed should be sufficient for all but the most extraordinary circumstances. On the other hand, one of the projects which is the subject of S. 801 was stayed within days of its issuance while the Commission completed related proceedings, and was in essence reissued six years later. In those circumstances, I would count the ten years from the reissuance date.

I therefore recommend that S. 283, S. 549, and S. 801 be amended to authorize the Commission to extend the construction deadline until no more than ten years from issuance of the project licenses involved.

I would not support legislation to amend Section 13 of the Federal Power Act to extend the four-year statutory deadline. Holding a license without commencing construction constitutes “site banking,” which in the long-held view of the Commission, as affirmed on judicial review, is contrary to the intent of the Act. Nearly all failures to commence timely project constructions have been due to the lack of a power purchase contract. If the project power cannot find a market within four years, then the site should be made available for other uses.

If there are regulatory delays beyond the licensee’s control, such as a protracted proceeding on the licensee’s application for a required dredge and fill permit from the Corps of Engineers under Section 404 of the Clean Water Act, then the Commission can issue, and has issued, an order staying the license until such matters are resolved.

Except with respect to the ten-year maximum time period to begin construction, I do not have specific objections to the proposed legislation.

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APPENDIX TO TESTIMONY OF ELIZABETH A. MOLER, CHAIR,
FEDERAL ENERGY REGULATORY COMMISSION

S. 283 (Sen. Specter and Sen. Santorum)

S. 283 would authorize the Commission to extend until April 15, 2001 (11 and ½ years after licensing), the deadline for commencement of construction of Project Nos. 4474 and 7041.

Project Nos. 4474 and 7041.

On September 27, 1989, the Commission issued a license to the Borough of Cheswick, Pennsylvania, and the Allegheny Valley North Council of Governments to construct and operate the 12-megawatt Allegheny Lock and Dam No. 3 Project No. 4474 at an existing U.S. Army Corps of Engineers (Corps) dam on the Allegheny River, in Allegheny County, Pennsylvania. The Commission issued a license to Potter Township, Pennsylvania, to construct and operate the 20-megawatt Emsworth Hydro Project No. 7041 at an existing Corps dam on the Ohio River, in Allegheny County. In 1994, the Commission approved the transfer of the project license to the Potter Township Hydroelectric Authority.

The original deadline for commencement of construction of each project was September 26, 1991. The Commission stayed, pending judicial review, most of the requirements of each license (including the construction deadlines) from September 27, 1990, to April 16, 1992, which resulted in a new construction deadline of April 15, 1993, for each project. This deadline was subsequently extended to April 15, 1995, for each project because the licensees needed additional time to consult with the Corps regarding site access and project design and construction, and to obtain power sales contracts. Construction was not timely commenced for either project. Orders terminating the licenses have not yet been issued.

For Project No. 4474, construction entails removing a 135-foot-long section of the existing dam to accommodate a headrace channel, and adding crest gates, a powerhouse, a 142-foot-long side-channel spillway, a one-mile-long transmission line, and related project facilities. For Project No. 7041, construction entails building a 1,800-foot-long dike for the forebay, a 250-foot-long open-channel intake, and a powerhouse.

The legislation should be amended to provide a maximum of ten years from licensing to begin construction. The new deadline would thus be September 26, 1999.

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. 283, as ordered reported.