

## Calendar No. 140

104TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
104-107

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### HYDROELECTRIC FACILITY IN MONTANA

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

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

### REPORT

[To accompany S. 552]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 552) to allow the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act, 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. 552 is to allow the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid under the Federal Power Act.

#### BACKGROUND AND NEED

The Flint Creek Project, FERC project number 1473, was completed in 1900. It consists of a dam 55 feet high and 525 feet long, a reservoir with a surface area of 2,850 acres (Georgetown Lake), a 7,775 foot long wooden flowline, and a 1,100 kilowatt powerhouse. The project was licensed to the Montana Power Company in 1940. The project is now operated primarily to accommodate recreation, irrigation and natural resources.

In 1988, Montana Power allowed its original license to expire. In November 1989, project operations ceased. On May 8, 1992, FERC accepted surrender of Montana Power's license (effective upon transfer) and issued a new license to Granite County, Montana.

Granite County is a political subdivision of the State of Montana. Granite County has refused to accept the FERC-issued license because without a reduction of the Federal annual charges the project is uneconomic given the needed repair work. Major repair work is needed because of the age of the project. For example, the wooden flowline needs to be substantially upgraded. The cost of the work is expected to exceed \$2 million.

The Flint Creek project occupies 2,143 acres of Forrest Service lands within the Deerlodge National Forest. Pursuant to the Federal Power Act, the Federal Energy Regulatory Commission imposes annual charges on hydroelectric projects for the use of Federal lands. According to the FERC, since 1977 the annual charges for the Federal lands occupied by the Flint Creek project have increased from \$5,138 to \$73,784—a 1,436 percent increase. In the last full year of project operation, 1988, annual rents constituted 45 percent of project revenue.

The Committee on Energy and Natural Resources does not consider this legislation to be precedent setting because of the unique nature of the Flint Creek Hydroelectric project. The project is unique because without the reduction in rents, Granite County, Montana, will not accept the license. No other entity has expressed an interest in accepting the license, and the current license holder is seeking to surrender its license. Without a license, there is no revenue to the Treasury of the United States whatsoever from this facility.

#### LEGISLATIVE HISTORY

S. 552 was introduced by Senator Burns (for himself and Mr. Baucus) on March 14, 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 14, 1995, by a unanimous voice vote with a quorum present, recommends that the Senate pass the bill as described herein.

#### 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, June 23, 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. 552, a bill to allow the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on June 14, 1995. We estimate that enacting this bill would

result in a small additional cost to the federal government and to state and local governments. Because enactment of S. 552 would increase direct spending by resulting in a small loss of offsetting receipts, pay-as-you-go procedures would apply. We estimate that the increase in direct spending would be about \$50,000 per year.

S. 552 provides that if a political subdivision of the state of Montana accepts the license for Federal Energy Regulatory Commission project number 1473 in Granite and Deer Lodge Counties, Montana (the Flint Creek Hydroelectric Facility), it would not, for the first five years after such acceptance, be required to pay annual charges under section 10(e) of the Federal Power Act for the project's occupancy of federal lands. Thereafter, the political subdivision would pay no more than \$20,000 a year in federal land-use charges. The license for the facility is currently held by, and annual charges are paid by, Montana Power Company.

Land-use charges for this project were \$73,784 in fiscal year 1995. Annual payments are adjusted each year to reflect changes in land values and we estimate that, under current law, gross receipts to the U.S. Treasury from 1996 to 2000 would average about \$80,000 per year. The state of Montana would receive about \$30,000 of these funds annually without appropriation. CBO therefore estimates that the annual, net cost to the U.S. Treasury from enacting S. 552 would be about \$50,000 to the U.S. Treasury and \$30,000 to the state of Montana.

We will be pleased to provide further details regarding this estimate on request. The CBO staff contact is Gary Brown.

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:

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.

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S. 552: SPECIAL EXEMPTION FROM ANNUAL CHARGES

Section 10(e)(1) of the Federal Power Act requires all licensees to pay annual charges for the use, occupancy, and enjoyment of United States lands. The Commission bases these charges on the Forest Service's periodic determination of land values for each county. Section 17 of the Act provides that the land use charges collected by the Commission are paid to the U.S. Treasury, for disbursement to miscellaneous receipts (12.5 percent), a reclamation fund (50 percent), and the State in which such public land is situated (37.5 percent).

In May 1992, the Commission issued a new license to Granite County for the Flint Creek Project No. 1473. The project reservoir is located in part on 2,143 acres of federal lands within the Deerlodge National Forest. The prior licensee, Montana Power Company, surrendered its license for the project, which ceased generating in 1988 due to deterioration of the project works. If Granite County accepts the new license, it will refurbish the project and increase the installed capacity to 2,500 kilowatts. Because Granite County is a political subdivision of the State of Montana, the Commission's regulations exempt it from annual land use (and other) charges until it completes the reconstruction, begins generating power at the project, and earns a profit.

Granite County has so far refused to accept the new license for the Flint Creek Project, arguing that the annual charges for the project's occupancy of federal lands are too high for the size of the project, and that amount of energy the project can generate is low in relation to the size of the reservoir for which the licensee must pay land use charges. In a series of orders, the Commission has responded by noting that it is not unusual for a substantial percentage of federal lands occupied by a project to be inundated by the project reservoir, and that the Flint Creek Project is not particularly small in the context of licensed projects, 44 percent of which are 2,500 kilowatts or smaller.

S. 552 would give Granite County a special exemption from the federal land use annual charge if the County accepts the new license. For the first five years of the li-

cense, the County would not be required to pay annual charges for the project's occupancy of United States lands. Thereafter, the County would not pay more than \$20,000 a year for such occupancy. By comparison, the project's annual land use charges have in recent years been about \$66,000.

I am certain that all licensees would prefer not to pay for the use of United States lands. In my view, the Flint Creek Project does not involve extraordinary circumstances distinguishing it from many other licensed projects. However, aside from that fact, I have no particular opposition to the bill.

This concludes my prepared remarks. I would be pleased to answer any questions you may have.

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. 552, as ordered reported.