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EXTENSION OF TIME FOR THE FEDERAL ENERGY REGULATORY COMMISSION HYDROELECTRIC PROJECT

MARCH 10, 2005.—Ordered to be printed

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

R E P O R T

[To accompany S. 244]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 244) to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 244 is to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.

BACKGROUND AND NEED

Section 13 of the Federal Power Act requires that the construction of a licensed project commence within two years from the date the license is issued. The Federal Energy Regulatory Commission ("FERC" or "Commission") is authorized under the Federal Power Act to extend this deadline once, for a maximum of two additional years, upon a finding that such extension is "not incompatible with the public interest." Consequently, a license is subject to termination if a licensee fails to begin construction within four years after the date the license is issued unless legislation authorizing an additional extension is enacted. S. 244 authorizes FERC to extend the construction deadline for Project No. 1651.

On December 19, 1997, the Commission issued a license to the Swift Creek Power Company to rehabilitate, operate, and maintain the 1.5 megawatt Swift Creek Project No. 1651, located in Lincoln

County, Wyoming. The original deadline for commencing construction of the project was December 18, 1999. The Commission subsequently extended that deadline to December 18, 2001.

Project No. 1651 includes rehabilitation of the upper development of the project by modifying the upper dam to add one-foot stoplogs, replacing a 36-inch-diameter penstock with one 48 inches in diameter, dredging around the intake structure, refurbishing the powerhouse, and installing two generators. The rehabilitation of the project's lower development includes dredging behind the lower dam, installing a 2,000-foot-long buried penstock, building a powerhouse, installing two generating units, and burying a short new transmission line.

LEGISLATIVE HISTORY

S. 244 was introduced by Senator Thomas on February 1, 2005. S. 244 is identical to S. 1577 as passed by the Senate during the 108th Congress.

During the 108th Congress, S. 1577 was introduced by Senator Thomas on September 3, 2003, and referred to the Committee on Energy and Natural Resources. A hearing on S. 1577 was conducted by the Water and Power Subcommittee on October 15, 2003. S. Hrg. 108–271. The Energy and Natural Resources Committee, on February 11, 2004, by unanimous vote of a quorum present, ordered S. 1577 favorably reported. S. Rept. 108–237. S. 1577 was passed by the Senate by unanimous consent on May 19, 2004.

During the 107th Congress, S. 1852, identical legislation to the measure now under consideration, was reported by the Senate Energy and Natural Resources Committee on June 28, 2002. S. Rept. 107–195. The bill passed the Senate on August 1, 2002, by unanimous consent, but the House failed to act in time to enact the measure.

At a business meeting on February 9, 2005, the Committee on Energy and Natural Resources ordered S. 244 favorably reported.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on February 9, 2005, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 244.

SECTION-BY-SECTION ANALYSIS

Section 1 authorizes FERC, at the request of the licensee, to extend the deadline for commencing construction of hydroelectric Project No. 1651. The time period may be extended for three consecutive two-year periods. The extension is to take effect on the date of the expiration of the extension originally issued by the Commission under section 13 of the Federal Power Act.

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, February 14, 2005.

Hon. PETE V. DOMENICI,
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. 244, a bill to extend the deadline for commencement of construction of a hydroelectric project in the state of Wyoming.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

S. 244—A bill to extend the deadline for commencement of construction of a hydroelectric project in the state of Wyoming

CBO estimates that implementing S. 244 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. 244 would authorize the Federal Energy Regulatory Commission (FERC) to extend the deadline for construction of a hydroelectric project (number 1651) in Lincoln County, Wyoming. These provisions could 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 legislation's provisions would have no net budgetary impact.

Because FERC's administrative costs are limited in annual appropriations, the bill would not affect direct spending or revenues.

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 S. 244. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 244.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Commission at the Subcommittee hearing on S. 1577, an identical bill to S. 244 in the 108th Congress, follows:

STATEMENT OF CHAIRMAN PAT WOOD III, FEDERAL ENERGY REGULATORY COMMISSION

Madam Chairman and Members of the Subcommittee: I appreciate the opportunity to comment on S. 1577, a bill to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.

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 Federal Energy Regulatory Commission to extend this deadline once, for a maximum additional two years. If project construction has not commenced by this deadline, the Commission is required to terminate the license. Section 13 also authorizes the Commission to extend the deadline for completion of construction when not incompatible with the public interest.

THE PROJECT

On December 19, 1997, the Commission issued a license to Swift Creek Power Company to rehabilitate, operate, and maintain the 1.5–megawatt Swift Creek Project No. 1651, in Lincoln County, Wyoming. The project occupies 20 acres of federal land within the Bridger-Teton National Forest. The original deadline in the license for the commencement of construction, December 18, 1999, was, at the licensee's request, extended by the Commission to December 18, 2001, four years after license issuance. The request cited the lack of a power purchase contract. The licensee did not ask the Commission for any further extensions of the deadline. On November 29, 2002, Swift Creek Power Company and the Town of Afton, Wyoming, filed a joint application to transfer the project license from the company to the town. In response to notice of the application, the U.S. Forest Service filed on February 28, 2003, a motion to intervene in the transfer proceeding, and commented that it supported the transfer if it facilitated either placing the project back into operation or removing the project works from and restoring National Forest System lands. Action on the application remains pending.

Rehabilitation of the upper development of Project No. 1651 entails modifying the upper dam to add one-foot stoplogs, replacing a 36–inch-diameter penstock with one 48 inches in diameter, dredging around the intake structures, refurbishing the powerhouse, and installing two generators. Rehabilitation of the project's upper development entails dredging behind the lower dam, installing a 2,000-foot-long buried penstock, building a powerhouse, installing two generating units, and burying a short new transmission line.

THE LEGISLATION

S. 1577 would authorize the Commission, at the request of the licensee for the project, and after reasonable notice, in accordance with the good faith, due diligence, and public

interest requirements of that section and the Commission's procedures under that section, to extend the time period during which the licensee is required to commence the construction of the project for three consecutive two-year periods from the date of the expiration of the extension originally issued by the Commission.

The Commission interprets the deadlines in Section 13 as applying only to the initial construction of a project. Project No. 1651 was in existence when the project was issued a new license in 1997, although refurbishment of the damaged project entails significant new construction. But while Section 13 is not an impediment to the Project No. 1651 licensee, the Commission has rarely given a licensee more than ten years to commence new construction at an existing project.

As a general matter, enactment of bills authorizing or requiring commencement-of-construction extensions for individual projects delays utilization in the public interest of an important energy resource and therefore is not recommended. In cases where project-specific extensions are authorized by the Congress, it has been the position of prior Commission chairmen that such extensions should not go beyond ten years from the date the project was licensed. I have no reason to depart from this extension policy.

S. 1577 would permit the licensee for Project No. 1651 to extend the deadline for commencement of construction for three consecutive 2–year periods from the date of the expiration of the extension originally issued by the Commission. Accordingly, construction could commence no later than ten years from the date the license was issued. This time frame is therefore consistent with the Commission's policy, and I have no objection to the bill.

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 the bill S. 244, as ordered reported.

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