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HYDROELECTRIC PROJECTS IN WEST VIRGINIA

SEPTEMBER 28 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[To accompany S. 2942]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2942) to extend the deadline for commencement of construction of certain hydroelectric projects in the State of West Virginia, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purposes of S. 2942 is to authorize the FERC, upon the request of the licensee for projects Nos. 6901, 6902, and 7307 to extend for 3 consecutive 2-year periods the time period for the commencement of construction. It also provides for the reinstatement of the license for such project if it has expired.

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.

New Cumberland, FERC Project No. 6901. On September 27, 1989, the Commission issued an original license to the city of New Martinsville, West Virginia, to construct and operate the 37-megawatt New Cumberland Project No. 6901, to be located at an existing U.S. Corps of Engineers dam on the Ohio River in Hancock County, West Virginia.

The original deadline for commencement of project construction was September 26, 1991. The Commission rescinded the license for lack of a grant or waiver of State water quality certification for the project, and subsequently reissued the license once that certification was issued. This resulted in a new deadline of October 3, 1993, for commencing construction. This deadline was subsequently extended by the Commission to October 3, 1995, in order to give the licensee additional time to secure project financing. In 1996, Congress passed Public Law 104–173, which authorized the Commission to extend the deadline for the commencement of Project No. 6901 construction to October 3, 1999, which the Commission did. On June 28, 2000 (91 FERC ¶61,309), the Commission issued an order finding that construction did not timely commence and terminating the license. The licensee’s request for rehearing of the termination order is currently pending before the Commission.

Willow Island Lock and Dam, FERC Project No. 6902. On September 27, 1989, the Commission issued an original license to the city of New Martinsville, West Virginia, to construct and operate the 35-megawatt Willow Island Lock and Dam Project No. 6902, to be located at an existing U.S. Corps of Engineers dam on the Ohio River in Pleasant County, West Virginia, and Washington County, Ohio.

The Commission stayed, pending judicial review, most of the requirements of the license for Project No. 6902 (including the construction deadline) from March 28, 1991, to April 16, 1992, which resulted in a new construction deadline of October 15, 1992. This deadline was subsequently extended to October 15, 1994, in order to give the licensee additional time to secure project financing. In 1996, Congress passed Public Law 104–173, which authorizing the Commission to extend the deadline for the commencement of Project No. 6902 construction to October 3, 1999, which the Commission did. On June 28, 2000 (91 FERC ¶61,309), the Commission issued an order finding that construction had not timely commence and terminating the license. The licensee’s request for rehearing of the termination order is currently pending before the Commission.

Tygart Dam, FERC Project No. 7307. On September 27, 1989, the Commission issued an original license to the city of Grafton, West Virginia, to construct and operate the Tygart Dam Project No. 7307, to be located at an existing U.S. Corps of Engineers dam on the Tygart River in Taylor County, West Virginia.

The original deadline for commencement of project construction was September 26, 1991. The Commission stayed, pending judicial review, most of the license (including the construction deadlines) from September 27, 1990, to April 16, 1992 (nearly 19 months), which resulted in a new deadline of April 15, 1993, to commence construction. This deadline was subsequently extended April 15, 1995, because the licensee needed additional time to consult with the Corp regarding access to the site and project design and construction, and to obtain a power sales contract. Pursuant to Public Law 104–246, the Commission granted extensions until September 26, 1999.

On February 9, 2000, the Commission Secretary dismissed as moot the licensee’s request for a stay of the licensee’s requirement to submit plans prior to beginning construction. Construction did not timely commence. An order terminating the license was issued

on March 27, 2000. No rehearing request was filed, and the termination became final on April 26, 2000.

On May 8, 2000, Universal Electric Power Corp. filed a preliminary permit application (docketed as Project No. 11840) for the site. No action has been taken on the permit application.

LEGISLATIVE HISTORY

S. 2942 was introduced on July 27, 2000. A hearing was held by the Subcommittee on Water and Power on September 19, 2000.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 20, 2000, by a voice vote with a quorum present, recommends that the Senate pass the bill without amendment.

COST AND BUDGET 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, thank you for the opportunity to comment on S. 2942, a bill to extend the construction deadlines applicable to three hydroelectric projects 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.

S. 2942 would authorize the Commission, at the request of the licensee and in accordance with the good faith, due diligence, and public interest requirements of Section 13 of the FPA, to extend, by up to 3 additional 2-year periods, the period during which the licensee is required to commence construction of the three licensed projects described below.

New Cumberland, FERC Project No. 6901. On September 27, 1989, the Commission issued an original license to the City of New Martinsville, West Virginia, to construct and operate the 37-megawatt New Cumberland Project No. 6901, to be located at an existing U.S. Corps of Engineers dam on the Ohio River in Hancock County, West Virginia. Construction entails the addition of a 600-foot-long intake channel, a powerhouse, a 649-foot-long tailrace, a primary transmission line, and related facilities.

The original deadline for commencement of project construction was September 26, 1991. The Commission rescinded the license for lack of a grant or waiver of state water quality certification for the project, and subsequently reissued the license once that certification was issued. This resulted in a new deadline of October 3, 1993, for commencing construction. This deadline was subsequently extended by the Commission to October 3, 1995, in order to give the licensee additional time to secure project financing. In 1996, Congress passed Pub. L. No. 104-173, which authorized the Commission to extend the deadline for the commencement of Project No. 6901 construction to October 3, 1999, which the Commission did. On June 28, 2000 (91 FERC ¶ 61,309), the Commission issued an order finding that construction did not timely commence and terminating the license. The licensee's request for rehearing of the termination order is currently pending before the Commission.

S. 2942 would authorize the Commission to reinstate the Project No. 6901 license and extend the deadline for commencing construction, in two-year increments, to October 3, 2005. This deadline would be 16 years after the date the license was issued. Even a single 2-year extension under the legislation would extend the construction deadline to 12 years after the license was issued.

Willow Island Lock and Dam, FERC Project No. 6902. On September 27, 1989, the Commission issued an original license to the City of New Martinsville, West Virginia, to construct and operate the 35-megawatt Willow Island Lock and Dam Project No. 6902, to be located at an existing U.S. Corps of Engineers dam on the Ohio River in Pleasant County, West Virginia, and Washington County, Ohio. Construction entails the addition of a 980-foot-long approach channel, a powerhouse, an 865-foot-long exit channel, a 1.5-mile-long transmission line, and related facilities.

The Commission stayed, pending judicial review, most of the requirements of the license for Project No. 6902 (including the construction deadline) from March 28, 1991, to April 16, 1992, which resulted in a new construction deadline of October 15, 1992. This deadline was subsequently extended to October 15, 1994, in order to give the licensee additional time to secure project financing. In 1996, Congress passed Pub. L. No. 104–173, which authorized the Commission to extend the deadline for the commencement of Project No. 6902 construction to October 3, 1999, which the Commission did. On June 28, 2000 (91 FERC ¶61,309), the Commission issued an order finding that construction had not timely commenced and terminating the license. The licensee's request for rehearing of the termination order is currently pending before the Commission.

S. 2942 would authorize the Commission to reinstate the Project No. 6902 license and extend the deadline for commencing construction, in two-year increments, to October 3, 2005. This deadline would be nearly 15 non-stayed years from the date the license was issued. Even a single 2-year extension under the legislation would extend the construction deadline to nearly 11 non-stayed years after the license was issued.

Tygart Dam, FERC Project No. 7307. On September 27, 1989, the Commission issued an original license to the City of Grafton, West Virginia, to construct and operate the Tygart Dam Project No. 7307, to be located at an existing U.S. Army Corps of Engineers dam on the Tygart River in Taylor County, West Virginia. Construction of the project entails the addition of an intake structure, a 350-foot-long penstock, a powerhouse, a 1-mile-long transmission line, and related project facilities.

The original deadline for the commencement of project construction was September 26, 1991. The Commission stayed, pending judicial review, most of the license (including the construction deadlines) from September 27, 1990, to April 16, 1992 (nearly 19 months), which resulted in a new deadline of April 15, 1993, to commence construction. This deadline was subsequently extended to April 15, 1995, because the licensee needed additional time to consult with the Corps regarding access to the site and project design and construction, and to obtain a power sales contract. Pursuant to Public Law No. 104–246, the Commission granted extensions until September 26, 1999.

On February 9, 2000, the Commission Secretary dismissed as moot the licensee's request for a stay of the licensee's requirement to submit plans prior to beginning construction. Construction did not timely commence. An order terminating the license was issued on March 27, 2000. No rehearing request was filed, and the termination became final on April 26, 2000.

On May 8, 2000, Universal Electric Power Corp. filed a preliminary permit application (docketed as Project No.

11840) for the site. No action has been taken on the permit application.

S. 2942 would authorize the Commission to reinstate the Project No. 7303 license and extend the deadline for commencing construction, in two-year increments, to September 26, 2005. This deadline would be nearly 14½ non-stayed years from the date the license was issued. Even a single 2-year extension under the legislation would extend the construction deadline to nearly 10½ non-stayed years after the license was issued.

Comments. 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 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 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, 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, to sign a power purchase agreement, and to begin construction. 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.

H.R. 2942 would provide for the extension of the deadline for the commencement of construction of Project No. 6901 to 16 years after license issuance; Project No. 6902 to 15 non-stayed years after license issuance; and Project No. 7307 to nearly 14½ non-stayed years after license issuance. Because the bill would extend the commencement of construction deadlines to more than 10 years after 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. 2942 as ordered reported.