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SENATE

{ REPORT
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HYDROELECTRIC PROJECT IN NORTH CAROLINA

JUNE 28, 2002.—Ordered to be printed

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

R E P O R T

[To accompany S. 1010]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1010) to extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 1010 is to authorize the Federal Energy Regulatory Commission, at the request of the licensee, to extend for three consecutive two year periods the deadline for the licensee to commence construction of hydroelectric project No. 11437 in the State of North Carolina.

BACKGROUND AND NEED

Section 13 of the Federal Power Act requires a hydroelectric licensee to commence the construction of its project within 2 years of the date of the issuance of the license. That deadline can be extended by the Federal Energy Regulatory Commission one time for a maximum of 2 additional years. If construction has not commenced by the end of the time period the license is terminated by the Commission unless legislation authorizing an additional extension is enacted. This legislation authorizes the Commission to extend the construction deadline for Project No. 11437.

The Federal Energy Regulatory Commission issued an original license to Hydro Matrix Partnership, Ltd., on June 26, 1997, to construct and operate the 8-megawatt Jordan Dam Project No. 11437, to be located at an existing U.S. Army Corps of Engineers dam on the Haw River in Chatham County, North Carolina. The original

deadline for commencement of the project was June 25, 1999. This deadline was extended until June 25, 2001, because the licensee needed additional time to obtain the necessary project financing. Construction did not commence by that date and no action has been taken yet to terminate the license.

Project No. 11437 includes construction of a support structure, a conduit, two power modules with a total of eighty 100-kilowatt turbine-generator units, two overhead cranes, two inflatable bladders in each of the existing intake towers, a 5.1 mile-long primary transmission line, and related project facilities.

LEGISLATIVE HISTORY

S. 1010 was introduced by Senator Helms on June 11, 2001. The views of the Federal Energy Regulatory Commission were sought on December 3, 2001 and provided by the Chairman of the Commission on December 10, 2001.

COMMITTEE RECOMMENDATIONS

The Committee on Energy and Natural Resources, in open business session on June 5, 2002, by a voice vote of a quorum present, recommends that the Senate pass S. 1010, as described herein.

SECTION-BY-SECTION ANALYSIS

Section 1 authorizes the Federal Energy Regulatory Commission, at the request of the licensee, to extend the deadline for commencing construction of hydroelectric project No. 11437. The time period may be extended for three consecutive two-year periods. The extension is to take effect on the date of 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 the cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 14, 2002.

Hon. JEFF BINGAMAN,
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. 1010, a bill to extend the deadline for commencement of construction of a hydroelectric project in the state of North Carolina.

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. 1010—A bill to extend the deadline for commencement of construction of a hydroelectric project in the state of North Carolina

CBO estimates that implementing S. 1010 would have no net effect on the federal budget. The bill 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. 1010 would authorize the Federal Energy Regulatory Commission (FERC) to extend, by six years, the deadline for beginning construction of a hydroelectric project currently subject to licensing by that agency. The proposed extension is for project number 11437 in Chatham County, North Carolina. This provision 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 set in annual appropriations, enactment of this legislation would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to S. 1010.

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. 1010. 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 program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1010.

EXECUTIVE COMMUNICATIONS

On December 3, 2001, the Committee on Energy and Natural Resources requested legislative reports from the Federal Energy Regulatory Commission and the Office of Management and Budget setting forth Executive agency recommendations on S. 1010. The report was received on December 10, 2001. The pertinent communications received by the Committee from the Chairman of the Federal Energy Regulatory Commission setting forth his reviews relating to this measure are set forth below:

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, December 10, 2001.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your two letters of December 3, 2001, requesting comments on S. 639 and S. 1010, bills to extend the construction deadlines applicable to four hydroelectric projects licensed by the Federal Energy Regulatory Commission. Enclosed is a description of the projects addressed by the bills.

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, 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.

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, however, they should be of relatively short duration and respond only to the practical but unforeseeable needs of the licensee. Absent of 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, the period of the stay is not 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 as a general matter that license should be terminated pursuant to the requirement 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.

As is described in more detail in the attachment to this letter, in June 2001 the Commission held that construction had timely commenced on two of the projects addressed by S. 639—Project Nos. 6901 and 6901—thereby removing the need for extension legislation for these two projects.

The third project addressed by S. 639—Project No. 7307—was terminated for failure to commence construction. If the legislation is enacted as currently drafted, it will reinstate the license as of the date of its expiration, mandate as initial two-year extension of the construction deadline, and allow two additional two-year extensions, which would move the deadline to 14½ years after the license was issued. As a consequence, and consistent with the Commission's policy on this matter, I do not support S. 639 with respect to Project No. 7307.

S. 1010 would extend the construction commencement deadline for Project No. 11437 to 10 years after the license was issued. Since

this time period is consistent with the Commission's policy, I have no objection to S. 1010.

Thank you for the opportunity to comment on these bills. If I can be of further assistance in this or any other Commission matter, please let me know.

Best regards,

PAT WOOD III,
Chairman.

Enclosure.

ATTACHMENT TO CHAIRMAN WOOD'S RESPONSE TO DECEMBER 3,
2001 LETTERS FROM THE HONORABLE JEFF BINGAMAN

S. 1010 would authorize the Commission, at the request of the licensee and in accordance with the requirements of Section 13 of the FPA and the Commission's procedures under that section, to extend the period by which the licensee is required to commence construction of Project No. 11437 by three consecutive 2-year periods, *i.e.*, until June 25, 2007. The new deadline would be ten years the date the license was issued.

Project No. 11437. On June 26, 1997, the Commission issued an original license to Hydro Matrix Partnership, Ltd., to construct and operate the 8-megawatt Jordan Dam Project No. 11437, to be located at an existing U.S. Army Corps of Engineers dam on the Haw River in Chatham County, North Carolina. Construction of the project entails a support structure, a conduit, two power modules with a total of eighty 100-kilowatt turbine-generator units, two overhead cranes, two inflatable bladders in each of the existing intake towers, a 5.1-mile-long primary transmission line, and relating project facilities.

The original deadline for the commencement of project construction was June 15, 1999. This deadline was subsequently extended to June 25, 2001, because the licensee needed additional time to obtain project financing. Construction did not commence by that date. No action has as yet been taken to terminate the license.

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. 1010, as ordered reported.