

Ms. MURKOWSKI. Mr. President, we often hear refrains of the need to make government policies more fair, clear, or simple—especially when these policies involve the collection of fees or taxes. Today I rise to introduce legislation to fix an inherently unfair policy by prohibiting the Federal Energy Regulatory Commission from charging land-use fees for hydropower projects that are no longer located on federal land.

FERC is responsible for licensing private, municipal and state hydropower projects. Pursuant to the Federal Power Act, the Commission is authorized to collect fees from project owners for those hydro projects located on federal lands. The rationale behind these land-use fees is to recompense the United States for the “use, occupancy, or enjoyment” of its federal lands. The Federal Government is, in some sense, a landlord for these types of projects, and can collect just and reasonable rent from its tenants. The current level of these rents is a separate issue—which I encourage all of my colleagues to examine as well since FERC is seeking to change its collection methodology and increase those fees—but today I am focused on how a technicality in federal law allows the government to continue to collect land-use fees even when the land at issue has been transferred out of federal ownership. Under current law, if the Federal Government sold the land underneath a hydropower project to the operator, or transferred it into state ownership, FERC would continue to assess full land use fees against the operator. This untenable situation is like a landlord continuing to collect rent from a tenant even after the tenant buys the house outright!

While the inherent unfairness of such a scenario is clear, the statutory and regulatory web that has created this snare is extremely complex. In addition to allowing for the collection of federal land-use fees, the Federal Power Act also contains a section regarding Power Site Classifications, or PSCs. A PSC attaches to the land when a preliminary hydropower license application is made, and entitles the government, or its designees, to enter the associated land and develop a hydropower project if some other person or operation is occupying it. These classifications are similar to easements, in that they permanently attach to the title of the lands. The purpose of PSCs is to make sure that hydropower can be developed in the limited number of areas on federal land that are suitable, and furthermore that once such an area is identified by a preliminary application, that the site is not then diverted to an alternate use.

However, FERC has interpreted the statutory fee collection provisions to give these PSCs another affect that is not in keeping with this purpose—to charge land-use fees from existing hydropower operators in cases where the Federal Government no longer owns

the land. In such a case, there is no need for a PSC to preserve the hydro-power value of land as it is already being used for power production. Nor is the Federal Government somehow missing out on other beneficial uses of the land, because it no longer owns the land at issue. But FERC’s current interpretation of the FPA is that a PSC qualifies as a significant enough interest in the associated land to justify the collection of full land-use fees.

When I first learned of this issue, I asked FERC for a list of the hydro-power projects for which it was collecting these PSC-based federal land-use fees. Apparently, while FERC has been perfectly capable of collecting these fees, it has been less diligent in keeping track of which projects are located on lands that have since been transferred away from federal ownership. Despite numerous requests from my office, FERC was unable to produce even a possible list of impacted projects. Consequently, my staff attempted to survey the number of affected projects by consulting with both the National Hydropower Association and the Alaska Power Association. This search identified 15 possible projects subject to these PSC land use fee collections—10 of which are located in my home state of Alaska. While some may dismiss these fees as being relatively minor, I can tell you that these annual federal fees for land not even owned by the Federal Government can represent a significant hardship for my constituents.

The bill I am introducing today would put a halt to this kind of fee collection. It simply says that when FERC is making fee determinations, it cannot take PSCs into account. Therefore, the only land that the Federal Government will be able to collect “use, occupancy, and enjoyment” fees is for land that it actually owns. I hope all of my colleagues can agree this treatment is a fair resolution of the issue and I ask for their support.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3265

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REMOVAL OF AUTHORITY TO COLLECT LAND USE FEES FOR CERTAIN LAND.

Section 10(e)(1) of the Federal Power Act (16 U.S.C. 803(e)(1)) is amended in the first sentence by inserting after “enjoyment of its lands or other property” the following: “(which, for purposes of this section, shall not include land that has been sold, exchanged, or otherwise transferred from Federal ownership, but that is subject to a power site reservation under section 24)”.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 477—CALLING FOR THE SAFE AND IMMEDIATE RETURN OF NOOR AND RAMSAY BOWER TO THE UNITED STATES

Mr. KERRY (for himself and Mr. BROWN of Massachusetts) submitted the following resolution; which was considered and agreed to:

S. RES. 477

Whereas Colin Bower’s 2 young sons, Noor and Ramsay Bower, were illegally abducted from the United States by their mother in August 2009 and taken to Egypt;

Whereas Noor William Noble Bower, age 11, and Ramsay Maclean Bower, age 9, are citizens of the United States of America;

Whereas, on December 1, 2008, prior to the abduction of Noor and Ramsay, the Probate and Family Court of the Commonwealth of Massachusetts awarded sole legal custody of Noor and Ramsay to Colin Bower, and joint physical custody with Mirvat el Nady, which ruling stipulated Mirvat el Nady was not to remove Noor and Ramsay from the Commonwealth of Massachusetts;

Whereas, in August of 2009, following a violation of the Probate Court’s ruling, the Massachusetts Trial Court granted sole physical custody of Noor and Ramsay to their father, Colin Bower;

Whereas Colin Bower has been granted only 4 visitations with his sons in the almost 3 years since the abduction;

Whereas the United States has expressed its commitment, through the Hague Convention on the Civil Aspects of International Child Abduction, done at the Hague October 25, 1980, “to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence”; and

Whereas the United States and 69 other countries that are partners to the Hague Convention on the Civil Aspects of international Child Abduction have agreed, and encourage all other countries to concur, that the appropriate court for determining the best interests of children in custody matters is the court in the country of their habitual residence: Now therefore be it

Resolved, That the Senate calls on government officials and competent courts in Egypt to assist in the safe and immediate return of Noor and Ramsay Bower to the United States.

SENATE RESOLUTION 478—COMMEMORATING THE 200TH ANNIVERSARY OF THE CHARTERING OF HAMILTON COLLEGE IN CLINTON, NEW YORK

Mr. SCHUMER (for himself, Mrs. GILLIBRAND, and Mr. SANDERS) submitted the following resolution; which was considered and agreed to:

S. RES. 478

Whereas Hamilton College, located in Clinton, New York, received its charter from the Regents of the University of the State of New York on May 26, 1812, “for the instruction and education of youth, in the learned languages and liberal arts and sciences”;

Whereas Hamilton College was originally founded in 1793 as the Hamilton-Oneida Academy by the Reverend Samuel Kirkland, a missionary to the Oneida Indians;

Whereas all-male Hamilton College joined with all-female Kirkland College in 1978 to