

AUTHORIZING EXTENSION OF TIME LIMITATION FOR A
FERC-ISSUED HYDROELECTRIC LICENSE

NOVEMBER 7, 1995.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

REPORT

[To accompany H.R. 1014]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1014) to authorize extension of time limitation for a FERC-issued hydroelectric license, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike out all after the enacting clause and insert in lieu thereof
the following:

That notwithstanding the time limitation of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee for FERC Project No. 3701, is authorized, in accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under such section, to extend the time required for the licensee to commence the construction of such project for up to a maximum of 3 consecutive 2-year periods. This section shall take effect for the project upon the expiration of the extension (issued by the Commission under section 13) of the period required for commencement of construction of such project. If the license for FERC Project 3701 should expire prior to the date of enactment of this Act, the Commission is authorized and directed to reinstate effective June 1, 1995, the license previously issued for such project.

PURPOSE AND SUMMARY

The purpose of H.R. 1014 is to extend the deadline for the commencement of construction of a hydroelectric project in Washington licensed by the Federal Energy Regulatory Commission (FERC) for up to six years.

BACKGROUND AND NEED FOR LEGISLATION

Section 13 of the Federal Power Act (16 U.S.C. § 806 (1988)) establishes time limits for commencement of construction of a hydroelectric project once FERC has issued a license. The licensee must begin construction not more than two years from the date the license is issued, unless FERC extends the initial deadline. However, section 13 permits FERC to grant only one extension of that deadline for "not longer than two additional years * * * when not incompatible with the public interests." Accordingly, FERC lacks authority to extend the deadline beyond a maximum of two years from the original deadline for commencement of construction. Therefore, a license is subject to termination if a licensee fails to begin construction within four years of the date the license is issued.

H.R. 1014 would extend the deadline for the commencement of construction for a 13.6 megawatt hydroelectric project (Project No. 3701) in Washington for up to a maximum of three consecutive two-year periods. This would extend the deadline to up to ten years after the date the license was issued. The deadline for commencement of construction for Project No. 3701 ran out on May 31, 1995. According to the project sponsor, construction has not commenced for lack of a power purchase agreement. H.R. 1014 does not ease the requirements of a hydroelectric license, but merely extends the period for commencement of project construction.

The legislation provides for three consecutive two-year extensions, instead of a six-year extension, to assure that licensees must continue to meet the section 13 requirement that they prosecute construction "in good faith and with due diligence" before obtaining each two-year extension. If FERC determines that the licensee is not prosecuting construction in good faith and with due diligence, the Committee expects the agency will refuse to grant a request for an additional two-year extension, terminate the license, and make the site available for other uses.

Lack of a power sales contract is the main reason construction of licensed hydroelectric projects has not commenced. It is very difficult for a hydroelectric project sponsor to secure financing until it has been granted a license, and once it has been granted a li-

cense the construction deadline begins to run. Without a power sales contract, a project generally cannot be financed. There are other obstacles to commencement of construction, such as protracted proceedings on a licensee's application for a dredge and fill permit from the Army Corps of Engineers under section 404 of the Clean Water Act. FERC has testified that in such cases it has issued orders staying the license until matters are resolved, suggesting that extension legislation is not needed in order to address delays beyond the control of the licensee. However, this does not apply to delays that are subject to the control of the licensee, such as lack of a power sales contract.

One reason it is difficult for project sponsors to obtain power sales contracts is the changing nature of the electric industry in the United States. As the industry has become more exposed to competition, utilities are seeking to lower their costs and increase their flexibility. The term of power sales contracts that finance hydroelectric projects range up to 25 to 30 years, and utilities are trying to avoid purchase agreements with long terms. In addition, the generating cost of these projects may not be as favorable as other alternatives.

HEARINGS

The Subcommittee on Energy and Power held a hearing on H.R. 1014 and various other legislative proposals to extend the deadline for commencement of construction on October 18, 1995. Testimony was received from Ms. Susan Tomasky, General Counsel, Federal Energy Regulatory Commission.

COMMITTEE CONSIDERATION

The Subcommittee on Energy and Power met in open markup session on October 18, 1995, and approved H.R. 1014, as amended, for Full Committee consideration by a voice vote, a quorum being present. The Full Committee met in open markup session on October 25, 1995 and ordered H.R. 1014, as amended, reported to the House by a voice vote, a quorum being present.

ROLLCALL VOTES

Clause 2(l)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and on amendments thereto. There were no recorded votes taken in connection with ordering H.R. 1014, as amended, reported. A motion by Mr. Bliley to order H.R. 1014 reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Energy and Power held legislative hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to

the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 1014 would result in no new or increased budget authority or tax expenditures or revenue.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 27, 1995.

Hon. THOMAS J. BLILEY, Jr.,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1014, a bill to authorize extension of time limitation for a FERC-issued hydroelectric license, as ordered reported by the House Committee on Commerce on October 25, 1995. CBO estimates that enacting the bill would have no net effect on the federal budget.

The bill would extend the deadline for construction of a hydroelectric project currently subject to licensing by the Federal Energy Regulatory Commission (FERC). 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 provision would have no net budgetary impact.

Because FERC's administrative costs are limited in annual appropriations, enactment of this bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill. In addition, CBO estimates that enacting the bill would have no significant impact on the budgets of state or local governments.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 1014 would have no inflationary impact.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

H.R. 1014 authorizes FERC, upon the request of the licensee for Project No. 3701 and in accordance with the good faith, due diligence, and public interest requirements of section 13 of the Federal Power Act and FERC's procedures under such section, to extend the time required for commencement of construction for such project for up to a maximum of three consecutive two-year periods. The bill will take effect upon the expiration of the extension previously granted by FERC. H.R. 1014 authorizes and directs FERC to reinstate the license for Project No. 3701 in the event the license expires before the date of enactment of this bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, the Committee finds that no changes in existing law are made by H.R. 1014.