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SENATE

{ REPORT
113-24

AMERICAN FALLS RESERVOIR

APRIL 22, 2013.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 276]

The Committee in Energy and Natural Resources, to which was referred the bill (S. 276) to reinstate and extend the deadline for commencement of construction of a hydroelectric project involving the American Falls Reservoir, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 276 is to reinstate and extend the deadline for commencement of construction of a hydroelectric project at the American Falls Reservoir in Idaho.

BACKGROUND AND NEED

The Lateral 993 Project was licensed to the American Falls Reservoir District No. 2/Big Wood Canal Company in Idaho as Federal Energy Regulatory Commission (FERC) Project No. 12423 in 2003, and subsequently received the maximum, two-year extension in 2005. After project construction did not commence by the extended deadline (September 26, 2007), the license was terminated by FERC order in 2009. Legislation is required to reinstate the terminated license and extend the construction commencement deadline.

LEGISLATIVE HISTORY

Senator Risch introduced S. 276 on February 11, 2013. The bill is co-sponsored by Senator Crapo. At its business meeting on March 14, 2013, the Committee ordered S. 276 favorably reported.

In the 112th Congress, the Subcommittee on Water and Power held a hearing on similar legislation, S. 334, on May 19, 2011 (S. Hrg. 112–63). The Committee ordered S. 334 favorably reported without amendment at its business meeting on July 14, 2011 (S. Rpt. 112–54). The Senate passed S. 334 by unanimous consent on October 18, 2011.

During the 111th Congress, the Committee considered similar legislation, S. 3099, sponsored by Senator Risch. The Subcommittee on Water and Power held a hearing on S. 3099 on April 27, 2010 (S. Hrg. 111–619) and the Committee ordered S. 3099 favorably reported without amendment on May 6, 2010 (S. Rpt. 111–195).

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on March 14, 2013, by voice vote of a quorum present, recommends that the Senate pass S. 276.

SECTION-BY-SECTION ANALYSIS

Section 1 requires FERC, at the request of the licensee for the project and after reasonable notice and in accordance with FERC procedures, to reinstate the license issued for FERC project number 12423 and to extend the time period during which the licensee is required to commence the construction of project works to September 25, 2013.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 276—A bill to reinstate and extend the deadline for commencement of construction of a hydroelectric project involving the American Falls Reservoir

CBO estimates that implementing S. 276 would have no net effect on the federal budget. The bill would authorize the Federal Energy Regulatory Commission (FERC) to reinstate the license and extend the deadline for beginning construction of a hydroelectric project (number 12423) at the American Falls Reservoir in Idaho. The proposed extension 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 fees that the commission charges. Therefore, the legislation's provisions would have no net budgetary impact.

Because FERC's administrative costs are controlled through annual appropriation acts, enacting S. 276 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 276 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.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Theresa Gullo, 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. 276.

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. 276, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 276, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

Executive Communications were not requested by the Committee in the 113th Congress. The following Administration testimony references similar legislation introduced in the 112th Congress.

The testimony provided by the Federal Energy Regulatory Commission at the May 19, 2011, Subcommittee hearing on S. 334 follows:

FEDERAL ENERGY
REGULATORY COMMISSION,
Washington, DC, May 18, 2011.

Re: S. 334

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

DEAR CHAIRMAN BINGAMAN: This letter is in response to your request for my views on S.334. That bill would require the Federal Energy Regulatory Commission to reinstate the license for the proposed 1.5-megawatt Lateral 993 Hydroelectric Project No. 12423, to be located at the juncture of the 993 Lateral Canal and the North Gooding Main Canal, northwest of the town of Shoshone, in Lincoln County, Idaho. The bill also would require the Commission to extend the commencement of construction deadline for the project to September 25, 2013.

The Commission issued an original license for this project, to American Falls Reservoir District No. 2 and Big Wood Canal, on September 26, 2003. The license provided that the company was required to commence project construction within two years of the date of the license, the maximum period permitted by section 13 of the Federal Power Act. The Commission subsequently granted a two-year extension of the commencement of construction deadline, again the maximum authorized by section 13. Construction had not commenced when that deadline expired, on September 26, 2007.

Section 13 provides that, when construction has not timely commenced, the Commission must terminate the license. The Commission terminated the license by order dated August 3, 2009.

I and the last several Commission Chairmen have taken the position of not opposing legislation that would extend the commencement of construction deadline no further than 10 years from the date that the license in question was issued. Where proposed extensions would run beyond that time, there has been a sense that the public interest is better served by releasing the site for other public uses. Because S. 334 requires the Commission to an extension to September 25, 2013, thus extending the commencement of construction deadline to 10 years from when the license was issued, I do not oppose the bill.

If I can be of further assistance to you on this or any other Commission matter, please let me know.

Sincerely,

JON WELLINGHOFF,
Chairman.

ADDITIONAL VIEWS

Although the Committee has previously reported similar legislation in each of the two previous Congresses, both of those bills would have required the licensee to have commenced construction of the project within 10 years after the issuance of the original license in 2003.

Requiring that the licensee to commence construction under the reinstated license within 10 years after the date the original license was issued was in keeping with the position first adopted by Chairman of the Federal Energy Regulatory Commission with regard to another license in 1995, consistently followed in similar cases by subsequent FERC Chairmen, and generally honored by the Committee ever since.

S. 276 departs from this policy by giving the licensee 3 years from the date of enactment of the bill to commence construction, which will extend the commencement of construction deadline well beyond 10-year benchmark of September 25, 2013.

Although I continue to support adherence to the 10-year policy, I am willing to make an exception to the policy in this case. Legislation to reinstate and extend the license was first introduced in the Senate more than 3 years ago, in March 2010, and it was first reported from the Committee in May 2011. Action on the bill has been diligently pursued ever since, and the Senate has failed to pass it, through no fault of the licensee. Under these circumstances, I am willing to extend the deadline for a period of time commensurate with the time the legislation has been under consideration. I do not regard the Committee's willingness to make an exception to the 10-year policy in this case as setting a precedent for future cases or as diminishing in any way the importance and utility of the 10-year policy.

RON WYDEN.

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. 276, as ordered reported.

