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AMENDING THE FEDERAL POWER ACT TO MODERNIZE AUTHORIZATIONS FOR NECESSARY HYDROPOWER AP- PROVALS

MAY 24, 2017.—Ordered to be printed

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

R E P O R T

[To accompany S. 724]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources to which was referred the bill (S. 724) to amend the Federal Power Act to modernize authorizations for necessary hydropower approvals, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 724 is to amend the Federal Power Act (FPA) to modernize authorizations for necessary hydropower approvals.

BACKGROUND AND NEED

Pursuant to section 5 of the FPA (16 U.S.C. 798), the Federal Energy Regulatory Commission (Commission) is authorized to issue preliminary permits for hydropower projects for up to three years and may extend the time period of a preliminary permit once, for up to two additional years, if the Commission finds that the permittee has proceeded in good faith and with reasonable diligence. Preliminary permits guarantee that a license application filed by a permittee will be considered first by the Commission before any other application to construct a project at a particular site. Because permittees are sometimes unable to complete a license application within the necessary time frame due to a variety of extenuating circumstances, Congress has occasionally enacted legislation, on a

case-by-case basis, to extend the time period for preliminary permits. These extensions have remained limited in time in order to prevent permittees from holding an exclusive development right to a particular site indefinitely.

When a hydropower license is issued by the Commission, section 13 of the FPA (16 U.S.C. 806) requires the licensee to commence project construction within two years of the issuance date and authorizes the Commission to grant a single two-year extension of the construction commencement deadline. However, because licensees are often unable to begin construction within these time limits due to a variety of extenuating circumstances, Congress has enacted legislation, on a case-by-case basis, to extend the construction commencement deadline for individual hydropower projects and to reinstate the license if it has expired in the interim. 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.

LEGISLATIVE HISTORY

Senator Murkowski introduced S. 724 on March 27, 2017.

In the 114th Congress, Senator Murkowski introduced S. 1236, which included similar provisions to those in S. 724. The Senate Committee on Energy and Natural Resources held a hearing on S. 1236 on May 19, 2015.

These provisions were also included in S. 2012, the Energy Policy Modernization Act of 2016, an original bill that was reported by the Committee on Energy and Natural Resources on July 30, 2015 and passed by the Senate, as amended, on April 26, 2016.

The Committee on Energy and Natural Resources met in open business session on March 30, 2017, and ordered S. 724 favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in an open business session on March 30, 2017, by a majority voice vote of a quorum present, recommended that the Senate pass S. 724.

SECTION-BY-SECTION ANALYSIS

Section 1. Modernizing authorizations for necessary hydropower approvals

Section 1(a) amends section 5 of the FPA to increase the duration for which the Commission can issue preliminary permits from three to four years. It further authorizes the Commission to extend a preliminary permit from two additional years to up to four additional years.

Subsection (b) amends section 13 of the FPA to authorize the Commission to extend the commencement of construction time limit for a hydropower project for up to eight years.

COST AND BUDGETARY CONSIDERATIONS

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

The Federal Energy Regulatory Commission (FERC) regulates nonfederal hydropower projects. Prior to constructing such a project, a sponsor must obtain a license from FERC; once issued, licensees must commence construction within a specific period of time. Before applying for a license to commence construction, a potential licensee has the option to seek a preliminary permit for a particular site, which guarantees that a license application subsequently filed by the permittee will be considered before any other applications for licenses to construct projects on that site.

S. 724 would extend, from 4 to 10 years, the maximum length of time by which licensees would have to commence construction of a hydropower project under a FERC license. The bill also would extend, from five to eight years, the maximum length of time covered by a preliminary permit.

CBO estimates that enacting S. 724 would have no significant effect on the federal budget. Lengthening the timeframes of licenses and permits could affect FERC's annual costs to review and approve applications related to hydropower projects. Because FERC recovers 100 percent of its costs through user fees, however, any change in that agency's costs (which are controlled through annual appropriation acts) would be offset by an equal change in fees that the commission charges, resulting in no net change in federal spending.

Enacting S. 724 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 724 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 724 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 H. Samuel Papenfuss, 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 the bill.

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 the bill, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

The bill, as 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 on Energy and Natural Resources in the 115th Congress.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the original bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL POWER ACT

Act of June 10, 1920, Chapter 285, as amended

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PART I

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SEC. 5. (a) Each preliminary permit issued under this Part shall be for the sole purpose of maintaining priority of application for a license under the terms of this Act for such period or periods, not exceeding a total of **【three】** *4 years*, as in the discretion of the Commission may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements.

(b) The **【Commission may extend the period of a preliminary permit once for not more than 2 additional years beyond the 3 years】** *Commission may—*

(1) extend the period of a preliminary permit once for not more than 4 additional years beyond the 4 years permitted by subsection (a) if the Commission finds that the permittee has carried out activities under such permit in good faith and with reasonable diligence【.】; and

(2) after the end of an extension period granted under paragraph (1), issue an additional permit to the permittee if the Commission determines that there are extraordinary circumstances that warrant the issuance of the additional permit.

(c) Each such permit shall set forth the conditions under which priority shall be maintained.

(d) Such permits shall not be transferable, and may be canceled by order of the Commission upon failure of permittees to comply with the conditions thereof or for other good cause shown after notice and opportunity for hearing.

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SEC. 13. That the licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due diligence prosecute such construction, and shall within the time fixed in the license complete and put into operation such part of the ultimate development as the Commission shall deem necessary to supply the reasonable needs of the then

available market, and shall from time to time thereafter construct such portion of the balance of such development as the Commission may direct, so as to supply adequately the reasonable market demands until such development shall have been completed. The periods for the commencement of construction may be extended [once but not longer than two additional years] *for not more than 8 additional years*, and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the Commission when not incompatible with the public interests. In case the licensee shall not commence actual construction of the project works, or of any specified part thereof, within the time prescribed in the license or as extended may demand, as provided for in section 26 hereof.

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