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SENATE

{ REPORT
115-311

J. BENNETT JOHNSTON WATERWAY HYDROPOWER EXTENSION ACT OF 2018

JULY 31, 2018.—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. 1142]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1142) to extend the deadline for commencement of construction of certain hydroelectric projects, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “J. Bennett Johnston Waterway Hydropower Extension Act of 2018”.

SEC. 2. EXTENSION.

(a) IN GENERAL.—Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to Federal Energy Regulatory Commission project numbers 12756, 12757, and 12758, the Commission may, at the request of the licensee for the applicable project, and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the procedures of the Commission under that section, extend the time period during which the licensee is required to commence the construction of the applicable project for up to 3 consecutive 2-year periods from the date of the expiration of the extension originally issued by the Commission.

(b) REINSTATEMENT OF LICENSE.—If the time period required for commencement of construction of a project described in subsection (a) has expired prior to the date of enactment of this Act—

- (1) the Commission may reinstate the license for the applicable project effective as of the date of the expiration of the license; and
- (2) the first extension authorized under subsection (a) shall take effect on that expiration.

PURPOSE

The purpose of S. 1142 is to extend the deadline for commencement of construction for three hydroelectric projects in Louisiana.

BACKGROUND AND NEED

The Federal Energy Regulatory Commission (FERC or Commission) issued licenses for Red River Lock and Dam hydroelectric projects No. 3 (FERC Project Number 12756), No. 4 (FERC Project Number 12757), and No. 5 (FERC Project Number 12758) in Louisiana on April 14, 2014, February 17, 2017, and March 28, 2017, respectively. Nelson Energy, LLC, is pursuing development of these three projects, which are located within an 84-mile long reach of the Red River known as the J. Bennett Johnston Waterway, and are all currently owned and operated by the U.S. Army Corps of Engineers. In total, the projects represent approximately 92 megawatts of generation capacity and have an estimated cost of \$479 million.

On February 23, 2016, FERC granted a two-year extension for the construction start time for FERC Project Number 12756, the maximum allowed under section 13 of the Federal Power Act. In order to ensure the continuity of ongoing work, the licensee now seeks a Congressional authorization for FERC to grant up to three additional two-year period extensions of the commencement construction deadlines for all three projects.

LEGISLATIVE HISTORY

Senator Cassidy introduced S. 1142 on May 16, 2017.

Representative Mike Johnson introduced companion legislation, H.R. 2457, in the House of Representatives on May 16, 2017. H.R. 2457 was favorably reported, as amended, by the Energy and Commerce Committee on June 12, 2017, and was passed by the House of Representatives by a vote of 402–1 on the same day. The bill was referred to the Committee on Energy and Natural Resources on June 13, 2017.

On February 28, 2018, the Subcommittee on Water and Power held a legislative hearing on S. 1142 and H.R. 2457. A similar measure was included in Amendment No. 3059, which the Senate agreed to on June 21, 2018, as an amendment to H.R. 5895, the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019, which the Senate passed, as amended, on June 25, 2018.

The Committee on Energy and Natural Resources met in open business session on May 17, 2018, and ordered S. 1142 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on May 17, 2018, by majority voice vote of a quorum present recommends that the Senate pass S. 1142, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1142, the Committee adopted an amendment in the nature of substitute to strike language regarding annual charges and to make technical and conforming changes. This amendment is further described in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 sets forth a short title.

Section 2. Extension

Section 2(a) authorizes the Commission, at the request of the licensee for the applicable project and after reasonable notice, and in accordance with FERC procedures, to extend the time period during which the licensee is required to commence project construction for up to three consecutive two-year periods, beginning on the expiration date of the Commission's license extension.

Subsection (b) authorizes the Commission to reinstate a project license if the license for an applicable project has expired prior to the date of enactment of this Act. If so reinstated, the reinstated license is to be effective as of the date of the expiration of the previous extension.

COST AND BUDGETARY CONSIDERATIONS

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

CBO estimates that implementing S. 1142 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 three hydroelectric projects: numbers 12756 and 12757 (located in Catahoula Parish, Louisiana) and number 12758 (located in Bossier Parish, Louisiana). The proposed extensions could have a minor effect on FERC's workload; however, because FERC recovers 100 percent of its costs through user fees, 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. 1142 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 1142 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 1142 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Megan Carroll. The estimate was reviewed 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 S. 1142. 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. 1142, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1142, 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

The written testimony provided by the Commission at the February 28, 2018, hearing on S. 1142 and H.R. 2457 follows:

FEDERAL ENERGY REGULATORY COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, DC, February 26, 2018

Hon. LISA MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN MURKOWSKI: This letter is in response to a request by the Senate Committee on Energy and Natural Resources for my views on S. 1142 and H.R. 2457, two bills to authorize the extension of the time to begin construction of the original licenses for the Red River Lock and Dam No. 3. (FERC Project No. 12756), Red River Lock and Dam No. 4 (FERC Project No. 12757), and Red River Lock and Dam No. 5 (FERC Project No. 12758), and H.R. 2786, a bill to amend the Federal Power Act (FPA) with respect to criteria and process for a proposed project to qualify as qualifying conduit hydropower facility.

S. 1142 and H.R. 2457

On April 14, 2014, the Commission issued an original license authorizing BOST3 Hydroelectric LLC to construct and operate the Red River Lock and Dam No. 3 Project on the Red River in Catahoula Parish, Louisiana. The Commission issued an original license to BOST4 Hydroelectric LLC on February 17, 2017, to construct and operate the Red River Lock and Dam No. 4 Project also to be located on the Red River in Catahoula Parish, Louisiana. On March 8, 2017, the Commission issued an original license authorizing BOST5 Hydroelectric LLC to construct and operate the Red River Lock and Dam No. 5 Project to be located on the Red River in Bossier Parish, Louisiana.

Pursuant to section 31(a) of the FPA, licensees are required to begin construction of the projects within 2 years of the license issuance date. They may be granted one two-year extension of time. The licensee for the Red River Lock and Dam No. 3 has been granted the one two-year extension.

S. 1142 and H.R. 2457 would extend the time period during which the licensees for Project Nos. 12756, 12757, and 12758 are

required to commence the construction of their applicable project for up to 3 consecutive 2-year periods from the date of the expiration of any extension issued by the Commission for such project.

The last several Commission Chairmen have taken the position of not opposing legislation that would extend a project's commencement of construction deadline where the extension does not exceed 10 years past 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 at issue for other public uses. Because S. 1142 and H.R. 2457 provide for commencement of construction deadlines that do not exceed 10 years from the date on which the project license was issued, I do not have concerns with the suggested approach.

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

Sincerely,

KEVIN J. MCINTYRE,
Chairman.

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 as ordered reported.

