

TO EXTEND THE DEADLINE UNDER THE FEDERAL POWER
ACT FOR FERC PROJECT NO. 9401, THE MT. HOPE WATER-
POWER PROJECT

APRIL 28, 1999.—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. 459]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 459) to extend the deadline under the Federal Power Act for FERC Project No. 9401, the Mt. Hope Waterpower Project, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 459 is to extend the deadline for the commencement of construction of a hydroelectric project in the State of New Jersey.

BACKGROUND AND NEED FOR LEGISLATION

Section 13 of the Federal Power Act (16 U.S.C. § 806) establishes time limits for commencement of construction of a hydroelectric project once the Federal Energy Regulatory Commission (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.

Lack of a power sales contract can delay the commencement of construction of licensed hydroelectric projects. It is very difficult for a hydroelectric project sponsor to secure financing until it has a power sales contract, and generally a licensee cannot secure a contract until it has been granted a license. However, the construction deadline begins to toll once the license is granted. 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 extension legislation is not needed in order to address delays beyond the control of the licensee.

H.R. 459 authorizes FERC to extend the deadline for the commencement of construction for a 2,000 megawatt hydroelectric project (Project No. 9401) in Morris County, New Jersey, until August 3, 2002. This extends the deadline to ten years after the date the license was issued. According to the project sponsor, construction has not commenced because it lacks a power purchase agreement. The deadline for the commencement of construction of this project expires on August 3, 1999. H.R. 459 does not ease the requirements of a hydroelectric license, but merely extends the period for commencement of project construction. The legislation provides that the licensee must meet the section 13 requirement that it prosecute construction "in good faith and with due diligence."

HEARINGS

The Committee on Commerce has not held hearings on H.R. 459.

COMMITTEE CONSIDERATION

On April 14, 1999, the Subcommittee on Energy and Power met in open markup session and approved H.R. 459 for Full Committee consideration, without amendment, by a voice vote. The Full Committee met in open markup session on April 21, 1999, and ordered

H.R. 459 reported to the House, without amendment, by a voice vote, a quorum being present.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 459 reported. A motion by Mr. Bliley to order H.R. 459 reported to the House, without amendment, was agreed to by a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 459, a bill to extend the deadline under the Federal Power Act for FERC Project No. 9401, the Mt. Hope Waterpower Project, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 26, 1999.

Hon. TOM BLILEY,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 459, a bill to extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 9401, the Mt. Hope Waterpower Project.

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

Sincerely,

BARY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 459.—A bill to extend the deadline under the Federal Power Act for FERC Project Number 9401, the Mt. Hope Waterpower Project

CBO estimates that enacting this bill would have no net effect on the federal budget. The bill does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, and would not impose any costs on state, local, or tribal governments.

The bill would extend the deadline for construction of a hydroelectric project currently subject to licensing by the Federal Energy Regulatory Commission (FERC) until August 3, 2002. The proposed extension is for FERC project number 9401. 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 provisions would have no net budgetary impact.

Because FERC's administrative costs are limited in annual appropriations, enacting this bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

The CBO staff contact for this estimate is Kim Cawley. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

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

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Extension of Time for FERC Project

The section authorizes FERC, upon the request of the licensee for Project No. 9401, 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 until August 3, 2002.

AGENCY VIEWS

On December 1, 1998, the Committee on Commerce, in response to a request for comments, received the following letter from the Chairman of the Federal Energy Regulatory Commission stating the Commission's views on H.R. 4633, an identical bill that was introduced in the 105th Congress to extend the deadline under the Federal Power Act for FERC Project No. 9401, the Mt. Hope Waterpower project.

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, December 1, 1998.

Hon. DAN SCHAEFER,
Chairman, Subcommittee on Energy and Power, Committee on
Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of October 16, 1998, requesting comments on H.R. 4633, an act to extend the construction deadlines applicable to a hydroelectric project licensed by the Federal Energy Regulatory Commission

Section 13 of the Federal Power Act requires that construction of a licensed project be commenced within two years of issuance of the license. Section 13 authorizes the Commission to extend this deadline once, for a maximum additional two years. If project construction has not commenced by this deadline, the Commission is required to terminate the license.

On August 4, 1992, the Commission issued a license to the Halecrest Company to construct and operate the 2,000-megawatt Mt. Hope Pumped Storage Project No. 9401, to be located in Rockaway Township, Morris County, New Jersey. The deadline for the commencement of project construction, originally August 3, 1994, was extended to August 3, 1996, because the licensee had not obtained a power sales contract. The deadline was further extended until August 3, 1999, under the terms of P.L. 104-247. The Commission staff knows of no other interest in the site.

Construction of the project entails excavation of a 57-acre upper reservoir and an underground lower reservoir, both with a 5,500-acre-foot capacity; installation of a 2,800-foot-long shaft between the reservoirs bifurcating into five penstocks; and construction of an underground powerhouse, two parallel 10.6-mile-long transmission lines, and related project facilities.

H.R. 4633 would authorize the Commission, upon the request of the licensee and in accordance with the good faith, due diligence, and public interest requirements of Section 13, to extend the deadline for commencement of construction until August 3, 2002.

The Commission has not objected to bills granting a licensee up to ten years from the issuance date of the license to commence project construction. Since the deadline in H.R. 4633 does not exceed ten years, I do not object to the bill's enactment.

Sincerely,

JAMES J. HOECKER, *Chairman.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 459 does not amend any existing Federal statute.

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