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SENATE

{ REPORT
{ 115-310

TO REQUIRE THE FEDERAL ENERGY REGULATORY COMMISSION TO SUBMIT TO CONGRESS A REPORT ON CERTAIN HYDROPOWER PROJECTS

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. 1030]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1030) to require the Federal Energy Regulatory Commission to submit to Congress a report on certain hydropower 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. FERC REPORT ON CERTAIN HYDROPOWER PROJECTS.

Not later than 180 days after the date of enactment of this Act, the Federal Energy Regulatory Commission (referred to in this section as the “FERC”) shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that—

(1) identifies each hydropower project licensed by the FERC (referred to in this section as an “identified project”) that is—

(A) located at a nonpowered site that serves as storage to support downstream power generation; and

(B) not part of a generation project licensed by FERC;

(2) analyzes the financial value of electric power generation associated with each identified project, relative to the best available estimates of the financial value of nonpower generation functions associated with the identified project, including recreation and environmental functions;

(3) describes the range of options available under existing law with respect to the surrender or transfer of a FERC license for an identified project, includ-

ing a representative range of actual measures required by the FERC of identified project owners that have surrendered or transferred a FERC license;

(4) identifies any general or readily identifiable project-specific barriers to the surrender or transfer of a FERC license for an identified project; and

(5) to the extent the information is available, identifies the financial costs incurred by identified project owners resulting from the requirements imposed by a FERC license or other FERC requirements, including applicable costs broken down by categories relating to—

- (A) the environment, including fish and wildlife measures;
- (B) human safety;
- (C) electric reliability;
- (D) recreation;
- (E) cultural resources;
- (F) flood control; and
- (G) any other relevant category, as determined by the FERC.

PURPOSE

The purpose of S. 1030 is to require the Federal Energy Regulatory Commission (FERC or Commission) to submit to Congress a report on certain hydropower projects.

BACKGROUND AND NEED

In unique instances, the Commission has required non-power producing dams to obtain a FERC license because the dams contribute a small percentage of water that generates power downstream. In a number of cases, license conditions have led to operating costs that may be higher than the value of power produced by the downstream facilities. In a specific case in Maine, several non-powered dams that provide some local ecological and recreational value have uncertain futures because their owner prefers to surrender a license rather than implement new fish and wildlife conditions. Further identification and analysis of similar non-powered dams will help understand the scope and impact of this situation nationally.

LEGISLATIVE HISTORY

S. 1030 was introduced by Senator King on May 3, 2017. The Subcommittee on Water and Power held a legislative hearing on S. 1030 on June 14, 2017.

The Committee on Energy and Natural Resources met in open business session on May 17, 2018, and ordered S. 1030 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. 1030, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1030, the Committee adopted an amendment in the nature of a substitute to specify, for purposes of FERC's report, that an identified hydropower project shall not be part of a generation project licensed by the Commission. The amendment also makes technical changes and is further described in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1. FERC report on certain hydropower projects

Section 1 directs FERC to submit a report to the Congressional authorizing committees identifying each hydropower project licensed by the Commission that is located at a non-powered site and is not part of a licensed generation project within 180 days of the Act's enactment. This section further specifies the additional information required for the report, including analyzing the financial value of the electric power generation associated with each project compared to the estimated financial value of the project's nonpower generation functions; describing the range of legal options available for the surrender or transfer of FERC licenses; identifying any project-specific barriers to the surrender of FERC licenses; and, to the extent possible, identifying the financial costs incurred by project owners in compliance with FERC license requirements, including costs relating to the environment, safety, electric reliability, recreation, cultural resources, flood control, and any other relevant category identified by the Commission.

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. 1030 would have no significant net effect on the federal budget. The bill would require the Federal Energy Regulatory Commission (FERC) to report to the Congress on various aspects of hydropower projects at nonpowered sites that are not part of FERC-licensed projects that generate power. The bill would require FERC to identify all such projects and analyze their potential financial value with regard to both power and nonpower functions.

Completing the proposed report would increase FERC's administrative costs by less than \$500,000. 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 a negligible net change in federal spending.

Enacting S. 1030 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 1030 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 1030 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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. 1030. 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. 1030, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1030, 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 FERC at the June 14, 2017, hearing on S. 1030 follows:

FEDERAL ENERGY REGULATORY COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, DC, May 9, 2017

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

DEAR CHAIRMAN MURKOWSKI: Thank you for the opportunity to comment on S. 1029, a bill to amend the Public Utilities Regulatory Policies Act of 1978 (PURPA) to exempt certain small hydroelectric projects, and S. 1030, a bill to require the Federal Energy Regulatory Commission to submit to Congress a report on certain hydroelectric projects.

S. 1030

While most of the hydropower projects licensed by the Commission include generating facilities, there are some reservoirs included in licensed projects, and some stand-alone projects, that do not include such facilities, but rather serve the purpose of storing and releasing flows to facilitate downstream generation.

S. 1030 would require the Commission to submit to Congress, not later than 180 days from the date of enactment of the bill, a report that: identifies non-powered storage projects; analyzes the value of generation and non-generation aspects of those projects; describes the ranges of options with respect to surrender or transfer of licenses; identifies barriers to surrender or transfer; and identifies the cost of license requirements relating to environmental protection, human safety, electric reliability, recreation, cultural resources, flood control, navigation, irrigation, and other matters.

The Commission will be pleased to submit to Congress any information it requires. It would be helpful to obtain clarification regarding some of the items to be covered by the report prior to the Commission gathering the information from our licensees. For example, is Congress seeking information about projects consisting solely of storage reservoirs, or also about storage reservoirs that are part of licensed generation projects? With respect to the analysis of non-power values, is Congress seeking the cost of environmental and recreational measures or their financial value? The latter may not be easy to establish, given the difficulty in placing an absolute value on environmental or other matters. For example, the value of a fish or of a recreational opportunity is generally considered to be highly subjective. In identifying barriers to license surrender or transfer, is Congress looking for general or project-

specific information? Project specific information may be difficult to obtain, since it will depend, in large part, on financial and other considerations faced by each licensee, which will vary from case-to-case and be best understood by licensees.

As to costs incurred by licensees, the Commission does include in licenses the estimated costs of environmental measures, recreation, cultural resource protection, and Commission-imposed flood control measures. The Commission does not impose electric reliability measures in licenses and so could have difficulty determining the costs of such measures. Likewise, the Commission does not typically require irrigation measures, which are usually governed by state water rights, and so we would not have information on this topic. Finally, as to measures to protect human safety, the Commission requires licensees to undertake whatever measures are required to ensure public safety at the time these issues are identified through the Commission's ongoing, thorough dam safety inspection program. These measures are required whenever they are necessary and are imposed separately, rather than being determined during the licensing process and included in a license.

I hope that these comments have been helpful. Please do not hesitate to contact me if I can be of further assistance on this or any other Commission matter.

Sincerely,

CHERYL A. LAFLEUR,
Acting 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.

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