

## Calendar No. 335

114TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
114-190

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### MAHONEY LAKE HYDROELECTRIC PROJECT

DECEMBER 16, 2015.—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. 2046]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2046) to authorize the Federal Energy Regulatory Commission to issue an order continuing a stay of a hydroelectric license for the Mahoney Lake hydroelectric project in the State of Alaska, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 2046 is to direct the Federal Energy Regulatory Commission to issue an order continuing a stay of a hydroelectric license for the Mahoney Lake hydroelectric project in the State of Alaska.

#### BACKGROUND AND NEED

The Mahoney Lake Hydroelectric Project was first proposed in the 1990s as a 9.6 MW lake-tap project. In 2002, Congress directed the Federal Energy Regulatory Commission (Commission) to grant a stay for the project's construction until not later than 6 years after the Commission received written notice that the Swan-Tyee electrical transmission intertie was completed. The Commission received written notice of the completion of the Swan-Tyee electrical transmission intertie on October 4, 2011, thus requiring the Commission to lift the stay no later than October 4, 2017.

Currently, the Southeast Alaska Power Authority (SEAPA) is reviewing potential power sources to meet the City of Ketchikan's projected power needs over the next decade. As part of that study,

SEAPA is considering the merits of a number of projects, including the construction of Mahoney Lake. In order to keep the Mahoney Lake hydropower project viable as a potential renewable energy project, the Cape Fox Native Corporation of Ketchikan, Alaska Power and Telephone Company, and the City of Saxman seek an additional stay of the license for the Mahoney Lake project, along with a potential extension of the construction start deadline.

#### LEGISLATIVE HISTORY

S. 2046 was introduced by Senator Murkowski on September 17, 2015. The Committee on Energy and Natural Resources held a full committee hearing on October 8, 2015 to consider the bill.

At its business meeting on November 19, 2015, the Committee on Energy and Natural Resources, on a voice vote, ordered S. 2046 favorably reported without amendment.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on November 19, 2015, by a majority voice vote of a quorum present, recommends that the Senate pass S. 2046.

#### SECTION-BY-SECTION ANALYSIS

*Section 1. Stay and Reinstatement of FERC License No. 11393 for the Mahoney Lake Hydroelectric Project.*

Section 1(a) defines key terms.

Section 1(b) directs the Commission, at the request of the licensee, to issue a stay of license.

Section 1(c) directs the Commission, at the request of the licensee, to lift the stay of the license and make the effective date of the license the day the stay is lifted. Such request by the licensee must be made within 10 years of the date of enactment of this Act.

Section 1(d) directs the Commission, at the request of the licensee, to extend the time period for project construction commencement for up to six years. Such extension is to be undertaken after reasonable notice and in accordance with the good faith, due diligence, and public interest requirements of section 13 of the Federal Power Act.

Section 1(e) clarifies that S. 2046 does not prioritize or create any advantage or disadvantage for the Mahoney Lake Hydroelectric Project.

#### COST AND BUDGETARY CONSIDERATIONS

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, December 9, 2015.*

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

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2046, a bill to authorize the Federal Energy Regulatory Commission to issue an order continuing a stay of a hydroelectric license for the Mahoney Lake hydroelectric project in the state of Alaska, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll, who can be reached at 226-2860.

Sincerely,

KEITH HALL.

Enclosure.

*S. 2046—A bill to authorize the Federal Energy Regulatory Commission to issue an order continuing a stay of a hydroelectric license for the Mahoney Lake hydroelectric project in the state of Alaska, and for other purposes*

CBO estimates that implementing S. 2046 would have no net effect on the federal budget. The bill would direct the Federal Energy Regulatory Commission (FERC), at the request of the licensee of the Mahoney Lake hydroelectric project in Alaska (number 11393), to issue an order to continue a stay of the license for that project. The bill also would direct FERC, upon the licensee's request, to subsequently lift that stay and extend for up to three consecutive two-year periods the deadline for beginning construction of the hydroelectric project.

Enacting S. 2046 could have a minor impact 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. 2046 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 2046 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

S. 2046 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 S. 2046. The bill is not a regulatory measure in the sense of impos-

ing 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. 2046, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 2046, 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 letter from the Chairman of the Federal Energy Regulatory Commission on S. 2046, follows:

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

The Honorable Lisa Murkowski  
Chairman  
Committee on Energy and Natural Resources  
304 Dirksen Senate Office Building  
Washington, DC 20510

RE: S.1583, S.2083, and S.2046

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.1583, a bill to authorize the expansion of the existing Terror Lake Hydroelectric Project, located at Terror Lake, on Kodiak Island, Alaska; S.2083, a bill to extend the deadline for the commencement of construction of the W. Kerr Scott Hydroelectric Project in North Carolina; and S.2046, a bill to authorize the Federal Energy Regulatory Commission (Commission) to issue an order continuing a stay of a hydroelectric license for the Mahoney Lake Project in the State of Alaska, and for other purposes.

**S.1583**

On October 5, 1981, the Commission issued an original license authorizing Kodiak Electric Association, Inc. to construct and operate the Terror Lake Project No. 2743, to be located on the Terror and Kizhuyak Rivers, 25 miles southwest of the City of Kodiak, Alaska. The project was originally authorized to have a capacity of 20 megawatts (MW), but has since expanded to 36 MW.

S.1583 would expand the special-use permit issued for the project by the Secretary of the Interior, in order to allow the construction, operation, and maintenance of a tunnel and associated facilities and activities for the project-related Upper Hidden Basin Diversion. The diversion would provide additional flows to the project, thus allowing increased generation.

The Commission has no jurisdiction over the special-use permit, so I have no comment on S.1583. However, I am aware that Kodiak Electric Association is in the process of preparing an amendment application, scheduled to be filed with the Commission in 2017, seeking authorization to construct the facilities needed for the Upper Hidden Basin Diversion. It is my understanding that the licensee has prepared a draft amendment application and held joint agency and public meetings to discuss it, and

has begun consultation under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, and the National Historic Preservation Act. I also understand that, to the extent that the amendment will result in the project occupying additional lands within a reservation of the United States, S.1583 will preserve the right of the Secretary of the department under whose supervision those lands fall to impose conditions, pursuant to section 4(e) of the Federal Power Act, that the Secretary deems necessary for the adequate protection and utilization of the reservation. Should the amendment application be filed with the Commission, staff will review it as expeditiously as possible.

#### **S.2083**

On July 17, 2012, the Commission issued Wilkesboro Hydroelectric Company, LLC a license to construct and operate the proposed 4-MW W. Kerr Scott Hydroelectric Project, to be located at the U.S. Army Corps of Engineers' (Corps) W. Kerr Scott Dam and Reservoir, located on the Yadkin River, in Wilkes County, North Carolina. The license required the company to commence project construction within two years of the issuance date of the license, the longest time period allowed by section 13 of the Federal Power Act. On May 7, 2014, the Commission, at the licensee's request, granted the one, two-year extension of the commencement of construction deadline permitted by section 13, thus making the deadline July 17, 2016. On June 19, 2015, the licensee filed an application with the Commission, seeking to amend the project license consistent with the results of its design consultation with the Corps.

S.2083 would allow the Commission, at the licensee's request, to extend the time period within which the licensee is required to commence construction for up to three consecutive two-year periods following the expiration of the extension authorized by the May 7, 2014 order.

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.2083 provides for commencement of construction deadlines that do not exceed 10 years from the date on which the project license was issued, I do not oppose this bill.

#### **S.2046**

On January 22, 1998, the Commission issued the City of Saxman, Alaska an original license authorizing the construction and operation of the proposed 9.6-MW Mahoney Lake Hydroelectric Project, to be located on Upper Mahoney Lake and Upper Mahoney Creek, near Ketchikan, Alaska. On August 5, 2004, as required by Public Law

No. 108-7, the Commission issued an order granting stay of the Mahoney Lake Project license. Under section 314(b) of the law, the Commission was required to lift the stay upon request of the City, but not later than six years after the Commission received written notice of the completion of the Swan-Tyee transmission line. By letter filed October 4, 2011, the Southeast Alaska Power Agency, which built the transmission line, reported that the Swan-Tyee transmission line was operational on October 21, 2009. Accordingly, I believe that the Commission is currently required to lift the stay no later than October 4, 2017.

S.2046 would require the Commission to stay the license, upon the licensee's request, for a period of no more than 10 years after the date of enactment of the bill, make the effective date of the license the date on which the stay is lifted, and grant up to three two-year extensions of the construction deadline. Given the policy of the last several Chairmen that I discussed above, and that S.2046 could result in a commencement of construction deadline more than 30 years after the project license was issued, I do not support S.2046.

As you know, I recently spoke at the National Hydropower Association meeting in Anchorage and met with a number of hydropower operators. I understand the importance of hydropower for communities in Alaska and elsewhere, and look forward to working with you on hydropower issues.

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

Sincerely,

Handwritten signature of Norman C. Bay in black ink.

Norman C. Bay  
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.

