

## Calendar No. 96

115TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
115-77

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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

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MAY 24, 2017.—Ordered to be printed

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

### R E P O R T

[To accompany S. 215]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 215) 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. 215 is to direct the Federal Energy Regulatory Commission (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 megawatt lake-tap project. In 2002, Congress directed the Commission to grant a stay for the project's construction until not later than six 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, the 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

Senators Murkowski and Sullivan introduced S. 215 on January 24, 2017.

In the 114th Congress, S. 2046 was introduced by Senator Murkowski on September 17, 2015. The Committee on Energy and Natural Resources held a hearing on October 8, 2015 to consider the bill and ordered S. 2046 favorably reported, as amended, at its business meeting on November 19, 2015 (S. Rept. 114–190). Representative Don Young introduced companion legislation, H.R. 5302, in the House of Representatives on May 19, 2016.

The measure was included in Amendment No. 3234, which the Senate agreed to on April 19, 2016, as an amendment to S. 2012, the Energy Policy Modernization Act of 2016, which the Senate passed, as amended, on April 20, 2016.

The Committee on Energy and Natural Resources met in open business session on March 30, 2017, and ordered S. 215 favorably reported.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on March 30, 2017, by a majority voice vote of a quorum present, recommends that the Senate pass S. 215.

#### 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.

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

Subsection (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.

Subsection (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.

Subsection (e) clarifies that S. 215 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:

CBO estimates that implementing S. 215 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. Implementing S. 215 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. 215 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 215 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 215 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. 215. 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. 215, as ordered reported.

## CONGRESSIONALLY DIRECTED SPENDING

S. 215, 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

Because S. 215 is similar to legislation considered by the Committee in the 114th Congress, the Committee did not request Executive Agency views. The relevant portion of the written testimony provided by the Chairman of the Federal Energy Regulatory Commission for the hearing before the Energy and Natural Resources Committee on October 8, 2015, follows:

FEDERAL ENERGY REGULATORY COMMISSION,  
OFFICE OF THE CHAIRMAN,  
*Washington, DC.*

Re S. 1583, S. 2083, and S. 2046.

Hon. LISA MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources,*  
*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. 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. 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,

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.

