

**Testimony of**  
**J. Mark Robinson**  
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**Federal Energy Regulatory Commission**  
**Before the**  
**Subcommittee on Energy and Air Quality**  
**Committee on Energy and Commerce**  
**U.S. House of Representatives**  
**September 13, 2006**

Mr. Chairman and Members of the Subcommittee:

My name is J. Mark Robinson, and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission. Our Office is responsible for non-federal hydroelectric licensing, administration, and safety; certification of interstate natural gas pipelines and storage facilities; and, authorization and oversight over the construction, operation, and safety of Liquefied Natural Gas (LNG) terminals.

I appear today as a Commission staff witness speaking with the approval of the Chairman of the Commission. The views I express at this hearing are my own and not necessarily those of the Commission or of any individual Commissioner.

Under Part 1 of the Federal Power Act (FPA), the Commission issues licenses to non-Federal interests authorizing the construction, operation and maintenance of water power projects on federal lands, on navigable waters of the United States, which utilize

the surplus water or water power from a federal dam, and on streams over which the Congress has jurisdiction. Licenses may be issued under the FPA only if, in the judgment of the Commission, the proposed project is best adapted to a comprehensive plan for the development and utilization of the water resources of the river basin involved for all public purposes. The licenses are issued for terms of up to 50 years and contain terms and conditions that are designed to ensure that the comprehensive development standard is met.

The FPA requires that the licensee will proceed expeditiously with the development and construction of the proposed project once a license has been issued. Section 13 of the FPA requires that construction of a licensed project be commenced within two years of issuance of the license and authorizes the Commission to extend this deadline once, for a maximum of two additional years. If project construction has not commenced by the deadline, the Commission is required to terminate the license.

I appreciate the opportunity to comment on H.R. 4417, H.R. 4377, H.R. 971, S. 176, and S. 244.

H.R. 4417 would (upon the licensee's request and subject to the good faith, due diligence, and public interest requirements of section 13, and the Commission's procedures) require the Commission to extend until December 31, 2007, the deadline for the commencement of construction of the proposed Tygart Dam Hydroelectric Project No. 7307 and, if necessary, to reinstate the project license.

H.R. 4377 would require the Commission to extend for a three-year period beginning on the date of enactment of the bill, the deadline for commencing construction

of the proposed Arrowrock Hydroelectric Project No. 4656, and, if necessary, to reinstate the project license.

H.R. 971 concerns three hydroelectric projects. First, H.R. 971 would require the Commission to extend until May 30, 2007, the deadline for commencing construction of the proposed Hale Hydroelectric Project No. 11547 and (upon the licensee's request and subject to the good faith, due diligence, and public interest requirements of section 13, and the Commission's procedures thereunder) to issue two additional two-year extensions of the construction deadline. The bill would also require the Commission to reinstate the project license. H.R. 971 would also require the Commission to extend until May 30, 2007, and (upon the licensee's request and subject to the good faith, due diligence, and public interest requirements of section 13, and the Commission's procedures thereunder) to issue two additional two-year extensions for the commencement of construction deadlines for the Collinsville Upper Hydroelectric Project No. 10822 and the Collinsville Lower Hydroelectric Project No. 10823 on the Farmington River, in Hartford County, Connecticut.

S. 176 would authorize the Commission to extend the commencement of construction deadline for the Reynolds Creek Hydroelectric Project No. 11480 for three two-year periods beyond the date that is four years after the date of issuance of the project license.

S. 244 would authorize the Commission to extend the commencement of construction deadline for the Swift Creek Hydroelectric Project No. 1651 for three two-year periods beyond the date that is four years after the date of issuance of the project

license.

As a general matter, enactment of bills authorizing or requiring commencement of construction extensions for individual projects leaves the development of an important energy resource in the hands of an entity that has shown an inability to develop a project, and therefore has not been recommended. The last several Chairmen of the Commission have had a policy of opposing legislation extending commencement of construction deadlines that would allow an entity more than 10 years to develop a project, based on the notion that allowing one entity that is not showing progress in developing a project to control a hydropower site for a greater length of time is not consistent with the public interest in developing clean, renewable hydroelectric energy.

In addition, the record on which projects were originally licensed, including the examination of environmental and developmental issues, may be out of date in various respects. To ensure that the public interest is served would require not simply reinstating the license and/or extending the license timeframes for commencement of construction, but reexamining and, as necessary, updating the record.

In view of these considerations, I will comment on each of the bills in more detail below.

**H.R.4417**

H.R. 4417 would authorize the Commission to reinstate the license and extend the deadline for the commencement of project construction for the Tygart Dam Project No. 7307, located in West Virginia, until December 31, 2007.

The Tygart Dam Project was licensed on September 27, 1989, to the City of Grafton, West Virginia (Grafton). The license gave Grafton two years from the issuance date, as permitted by Section 13, to start construction – that is, until September 27, 1991. On December 17, 1990, the Commission issued partial stays of the licenses for the Tygart Project and 11 other projects in the Ohio River Basin, pending resolution of judicial appeals of the Commission’s licensing orders. On April 16, 1992, after the orders were affirmed, the Commission issued an order lifting the stays.

On November 4, 1992, pursuant to a request by Grafton, the Commission extended the deadline for commencement of construction to April 15, 1995. This represented the maximum period for the commencement of construction (two years plus one two-year extension) that the Commission could grant under FPA section 13. Subsequent legislation enacted as Public Law No. 104-246 directed the Commission to issue up to three additional two-year orders granting further extensions of time to commence and complete construction. After the Commission did so, September 26, 1999 became the final deadline to commence project construction. On June 23, 1999, Grafton again requested a stay of those license conditions that require pre-construction filings because it was seeking another legislative extension of the commencement of construction deadline. The Commission dismissed this request on February 9, 2000.

Because the licensee did not commence project construction by September 26, 1999, the Commission on November 19, 1999 issued a notice of probable termination of the license for failure to meet the commencement of construction deadline. Grafton did

not respond to the notice. The Commission subsequently terminated the license by order issued on March 27, 2000.

On July 24, 2000, Grafton subsequently filed an application for a preliminary permit for the project, as a predicate for filing a new license application. The Commission issued the requested preliminary permit on March 16, 2001, for the Tygart Dam Project No. 11851 (because the previous license had been terminated, the preliminary permit received a new project number). Grafton made very little progress toward developing the project, and the three-year preliminary permit expired, by its terms, on February 28, 2004. The Commission denied a request for an extension of the preliminary permit term on March 28, 2003.

On March 1, 2004, Grafton filed another application for a preliminary permit for the Tygart Dam Project No. 12490. This application was dismissed on March 28, 2005, for failure to provide additional information related to Grafton's progress toward developing the project. Currently, Grafton has pending before the Commission a third application for a subsequent preliminary permit for the Tygart Dam Project No. 12640. The Commission also has before it a competing application for preliminary permit filed on September 23, 2005, by Tygart LLC for the Tygart Dam Project No. 12613.

The Tygart Project was licensed in 1989, and construction did not commence in the 11 years before the Commission terminated the license. Under these circumstances, I do not support reinstatement of the license or further extension of the commencement of construction deadline.

## **H.R. 4377**

H.R. 4377 would provide for license reinstatement, if necessary, and extend the deadline for the commencement of project construction for the Arrowrock Project No. 4656, located in Idaho, for a three-year period from the date of enactment of the legislation. The Arrowrock Project was licensed on March 27, 1989, to the Boise-Kuna Irrigation District, the Nampa & Meridian Irrigation District, the New York Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District (Districts).

The license gave the Districts the maximum two-year time permitted by Section 13 to start construction -- that is, until March 26, 1991. On January 9, 1991, pursuant to Section 13, the Commission granted the Districts' request for the one additional two-year extension to commence construction permitted by the statute, thereby extending the deadline for commencement of construction to March 26, 1993.

Section 1701(c) of the Energy Policy Act of 1992 subsequently authorized the Commission to extend the deadline for commencement of construction of the project for an additional six years, until March 26, 1999. The Commission granted this extension. On March 23, 1999, three days prior to the expiration of the extended deadline, the Districts requested a stay of the commencement of construction and compliance deadlines, while they sought Congressional legislation permitting further extensions of the construction deadline. The Commission denied that request, and on May 19, 1999, issued an order noticing probable termination of the license for failure to meet the commencement of construction deadline.

In June, 1999 legislation was introduced in the Senate (S. 1236) authorizing a further extension of the Section 13 deadline for the project until March 26, 2005. Former Commission Chairman James Hoecker submitted written testimony to the Senate Energy and Natural Resources Committee on July 28, 1999 stating that because this bill would extend the construction commencement date beyond 10 years from the issuance date of the project license, he did not support its enactment.

This legislation, which was subsequently enacted and signed into law in October, 2000 as Public Law No. 106-343, authorized the Commission, upon the Districts' request, to reinstate the license, if necessary and, to further extend the deadline for commencement of construction for three consecutive two-year periods, to take effect on the date of the expiration of the last extension issued by the Commission (*i.e.*, as of March 26, 1999).

As requested by the Districts, the Commission thereafter granted three extensions, making the new final deadline for starting construction March 26, 2005. On March 25, 2005, the Districts filed a request for a stay of the license, and to backdate the stay for 120 days to allow them time to comply with license articles containing requirements that must be completed before start of construction.

On May 27, 2005, the Commission denied the request for stay of license and, in the same order, issued notice of the probable termination of the project license. The Commission denied rehearing by order issued September 1, 2005.

The Arrowrock Project was licensed in 1989, and construction did not commence in the 16 years before the Commission gave notice of probable license termination.



Under these circumstances, I do not support further extension of the commencement of construction deadline.

### **H.R. 971**

H.R. 971 concerns Projects Nos. 10822, 10823, and 11547. First, H.R. 971 would require the Commission to extend until May 30, 2007, the deadline for commencing construction of the proposed Hale Project No. 11547, and to issue two additional two-year extensions of the construction deadline.

In 1997, the Commission issued Summit Hydropower, Inc., a license for the Hale Project, to be located on the Quinebaug River, in Windham County, Connecticut. The City did not commence construction within the two-year period specified in the license, or within the additional two-year period which it requested and the Commission granted. Consequentially, by letter dated May 2, 2002, the Commission notified Summit of the probable termination of the license. By letter dated August 9, 2002, Commission staff notified the licensee that it would not take further action to terminate the license pending action on legislation to extend the construction deadline.

The license for the Hale Project was issued nine years ago. The required extensions of the commencement of construction deadline could move that deadline to May 30, 2011, almost 14 years after the project license was issued. I therefore do not support the bill in this respect.

H.R. 971 would also require the Commission to extend until May 30, 2007, and to issue two additional two-year extensions for the commencement of construction deadlines for the Collinsville Upper Hydroelectric Project No. 10822 and the Collinsville Lower Hydroelectric Project No. 10823 on the Farmington River, in Hartford County, Connecticut.

The Commission issued licenses to Summit Hydropower for the Collinsville Upper and Lower Projects on February 23, 2001. Summit did not commence construction of the projects during the two-period provided in the license, or during the two-year extension, which expired February 23, 2005, granted by the Commission.

The extensions required by H.R. 971 would extend the commencement of construction deadline for the two projects to May 30, 2011, only a few months more than 10 years after the project licenses were issued. Because the extensions would be so close to 10 years from the date of license issuance, I do not oppose H.R. 971 with respect to the Collinsville Projects.

#### **S. 176**

S. 176 would authorize the Commission to extend the commencement of construction deadline for the Reynolds Creek Hydroelectric Project No. 11480 for three two-year periods beyond the date that is four years after the date of issuance of the project license.

On October 24, 2000, the Commission issued Haida Corporation a license for the proposed Reynolds Creek Project, to be located on Prince of Wales Island, Alaska. Haida did not commence construction during the two-year period provided in the license,

or during the two-year extension, which expired October 24, 2004, granted by the Commission.

The extensions authorized by S. 176 could extend the commencement of construction deadline until precisely 10 years after the project licenses were issued. Moreover, the bill would authorize, but not require, the Commission to grant the extensions. Therefore, I do not oppose S. 176.

#### **S. 244**

S. 244 would authorize the Commission to extend the commencement of construction deadline for the Swift Creek Hydroelectric Project No. 1651 for three two-year periods beyond the date that is four years after the date of issuance of the project license.

On December 19, 1997, the Commission issued Swift Creek Power Company a new license for the existing, non-operating 1.5- megawatt Swift Creek Project, located on Swift Creek, in Lincoln County, Wyoming. Rehabilitation of the upper development consists of adding one-foot stop logs to the upper dam, replacing the penstock, and refurbishing the powerhouse and adding two generators. Rehabilitation of the lower development consists of dredging the lower dam, installing a 2,000-foot-long penstock, building a powerhouse with 2 generators, and a new transmission line. The project occupies 20 acres of federal lands within the Bridger-Teton National Forest.

The original deadline in the license for commencement of construction, December 18, 1999, was, at the licensee's request, extended to December 18, 2001. Swift Creek did not commence construction during the two-year period provided in the license, or during

the two-year extension, which expired December 18, 2001, granted by the Commission. The licensee did not request any further extensions of the deadline.

On November 29, 2002, Swift Creek and the Town of Afton, Wyoming, filed a joint application to transfer the license from Swift Creek to Afton. In response to the notice of the application, the U.S. Forest Service filed on February 28, 2003, a motion to intervene in the transfer proceeding, and commented that it supported the transfer if it facilitated either placing the project back into operation or removing the project works from National Forest lands and restoring the lands. Action on the transfer remains pending.

The Commission interprets the deadlines in section 13 as applying only to an original license, authorizing initial construction of a project. Project No. 1651 was in existence when the project was issued a new (or relicense) license in 1997 so, -- although refurbishment of damaged project works would entail substantial new construction -- by the Commission's interpretation, the licensee has not failed to meet a **statutory** commencement of construction deadline. As a policy, the Commission has included construction deadlines when it authorizes licensees to perform major project renovations or to install additional new capacity because it is in the public interest to have construction proceed expeditiously.

I note that while the Project No. 1651 licensee is not subject to Section 13 of the FPA, the Commission has rarely given a licensee more than 10 years to commence new construction at an existing project.

The extensions authorized by S. 244 could extend the commencement of

construction deadline until precisely 10 years after the project license was issued. Moreover, the bill would authorize, but not require, the Commission to grant the extensions. Therefore, I do not oppose S. 244.

### **Summary**

As I have indicated, I oppose extensions for H.R. 4417 and H.R. 4377, and do not oppose extensions for H.R. 971, S. 176, and S. 244.

I appreciate the opportunity to present my views to the Subcommittee. Thank you, and I will be happy to answer any questions you may have.