

**FEDERAL ENERGY REGULATORY COMMISSION**

WASHINGTON, DC 20426

February 26, 2018

**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.1142, H.R. 2457 and H.R. 2786

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.1142 and H. R. 2457, two bills to authorize the extension of the time to begin construction of the original licenses for the Red River Lock and Dam No 3. (FERC Project No. 12756), Red River Lock and Dam No. 4 (FERC Project No. 12757), and Red River Lock and Dam No. 5 (FERC Project No. 12758), and H.R. 2786, a bill to amend the Federal Power Act (FPA) with respect to criteria and process for a proposed project to qualify as qualifying conduit hydropower facility.

**S. 1142 and H.R. 2457**

On April 14, 2014, the Commission issued an original license authorizing BOST3 Hydroelectric LLC to construct and operate the Red River Lock and Dam No. 3 Project on the Red River in Catahoula Parish, Louisiana. The Commission issued an original license to BOST4 Hydroelectric LLC on February 17, 2017, to construct and operate the Red River Lock and Dam No. 4 Project also to be located on the Red River in Catahoula Parish, Louisiana. On March 8, 2017, the Commission issued an original license authorizing BOST5 Hydroelectric LLC to construct and operate the Red River Lock and Dam No. 5 Project to be located on the Red River in Bossier Parish, Louisiana.

Pursuant to section 31(a) of the FPA, licensees are required to begin construction of the projects within 2 years of the license issuance date. They may be granted one two-year extension of time. The licensee for the Red River Lock and Dam No. 3 has been granted the one two-year extension.

S.1142 and H.R. 2457 would extend the time period during which the licensees for Project Nos. 12756, 12757, and 12758 are required to commence the construction of their applicable project for up to 3 consecutive 2-year periods from the date of the expiration of any extension issued by the Commission for such project.

The last several Commission Chairmen have taken the position of not opposing

legislation that would extend a project's commencement of construction deadline where the extension does not exceed 10 years past 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 at issue for other public uses. Because S.1142 and H.R.2457 provide for commencement of construction deadlines that do not exceed 10 years from the date on which the project license was issued, I do not have concerns with the suggested approach.

## **H.R. 2786**

Section 30(a) of the FPA exempts certain conduit hydropower facilities from the licensing requirements of the FPA. The provision requires an entity proposing to construct a qualifying conduit hydropower facility to file with the Commission a notice of intent to construct the facility, including sufficient information to demonstrate the facility meets the qualifying criteria. Once the notice of intent is filed with the Commission, section 30(a)(2)(B) requires the Commission to make an initial determination as to whether the facility meets the qualifying criteria within 15 days of receiving the notice of intent. The qualifying criteria, as defined in Hydropower Regulatory Efficiency Act (HREA) of 2013, include:

- i. the facility is constructed, operated, or maintained for generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit;
- ii. the facility has an installed capacity that does not exceed 5 megawatts (MW);
- iii. on or before the date of the enactment of HREA of 2013 (August 9, 2013), the facility is not licensed under, or exempted from the license requirements.

If the Commission makes an initial determination that the facility meets the qualifying criteria, section 30(a)(2)(B) requires the Commission to publish a public notice of the notice of intent to construct a qualifying conduit facility, giving the public the opportunity to comment on whether the facility meets the qualifying criteria. The FPA further states that if, not later than 45 days after the date of the publication of public notice, no entity contests whether the facility meets the qualifying criteria, the facility shall be deemed to meet the criteria. Although an uncontested facility is automatically deemed to qualify at the end of the notice period, as a matter of general practice the Commission issues a letter confirming that the facility qualifies. If an entity contests whether the facility meets the qualifying criteria, section 30(a)(2)(C) requires the Commission to promptly issue a determination as to whether the facility meets the criteria.


H.R. 2786 would modify the qualifying conduit hydropower facility process in two ways. First, the proposed bill would shorten the comment period for the public, including state and federal resource agencies, from 45 to 30 days. For your information, FERC staff, on average, completes review of qualifying conduit facility applications shortly after the 45-day notice period closes. In fiscal year 2017, Staff processed 22 notices of intent to construct qualifying conduits in an average of 58 days, and has processed four such notices, in an average of 56 days, thus far in fiscal year 2018. The shortened public notice period established by H.R. 2786 could slightly reduce the processing time.

The second modification to section 30 of the FPA would eliminate the existing 5-MW limit on qualifying facilities, thus allowing projects of unlimited capacity to meet the criteria for a qualifying conduit facility. This change could potentially establish a larger subset of hydropower projects that would not be required to be licensed or exempted by the Commission. Section 30, giving the Commission the authority to exempt certain small hydroelectric facilities from the requirements of Part I of the FPA, was added to the FPA in 1978, and since that time, the Commission has issued only a handful of conduit exemptions over 5 MW. Accordingly, I am uncertain how many projects will be affected by this revision.

Should Congress choose to remove the 5-MW ceiling on qualifying conduit hydropower facilities, such that these projects could be of any size, it might also consider removing the ceiling for conduit exemptions. Currently the maximum size of projects for which the Commission may issue conduit exemptions under its existing authority is 40 MW. It is not clear why there should be no limit on the size of qualifying conduit hydropower facilities and yet a 40-MW limit on conduit exemptions.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. McIntyre". The signature is fluid and cursive, with the first name "Kevin" being the most prominent part.

Kevin J. McIntyre  
Chairman