

Testimony of

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**Committee on Energy and Commerce
Subcommittee on Energy and Power
United States House of Representatives**

**Hearing on H.R. 2080, H.R. 2081, H.R. 3447, Bill Regarding Jennings Randolph
Project No. 12715, Bill Regarding Cannonsville Project No. 13287, and H.R. 3021**

February 2, 2016

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee:

My name is Ann Miles and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission (Commission). The Commission is responsible for siting infrastructure projects including: (1) the licensing, administration, and safety of non-federal hydropower projects; (2) the authorization of interstate natural gas pipelines and storage facilities; and (3) the authorization and safety of liquefied natural gas terminals.

I appreciate the opportunity to appear before you to comment on the five hydropower commencement of construction extension bills and the Aerial Infrastructure Route Survey Act of 2015. As a member of the Commission's staff, the views I express in this testimony are my own, and not those of the Commission or of any individual Commissioner.

HYDROPOWER EXTENSION BILLS

I. Background

The Commission regulates over 1,600 hydropower projects at over 2,500 dams pursuant to Part I of the Federal Power Act (FPA). Together, these projects represent 55.5 gigawatts of hydropower capacity, which is more than half of all the hydropower

capacity in the United States. Hydropower is an essential part of the Nation's energy mix and offers the benefits of an emission-free, renewable, domestic energy source. Public and private hydropower capacity together total about nine percent of U.S. electric generation capacity.

Under the FPA, non-federal hydropower projects must be licensed by the Commission if they: (1) are located on a navigable waterway; (2) occupy federal land; (3) use surplus water from a federal dam; or (4) are located on non-navigable waters over which Congress has jurisdiction under the Commerce Clause, involve post-1935 construction, and affect interstate or foreign commerce.

The FPA authorizes the Commission to issue licenses for projects within its jurisdiction, and exemptions (a less rigorous type of license) for projects that would be located at existing dams or natural water features or located within conduits as long as these projects meet specific criteria. Licenses are generally issued for terms of between 30 and 50 years, and are renewable. Exemptions are perpetual, and thus do not need to be renewed.

The FPA provides limits on the time to commence construction of a licensed project. Specifically, section 13 of the FPA requires that licensees commence project construction by the deadline established in the license, which may be no longer than two years from the date of license issuance. The Commission may extend the deadline once,

for no longer than two years. If construction does not timely commence, section 13 requires the Commission to terminate the license by written order.

II. Comments on H.R. 2080, H.R. 2081, H.R. 3447, Bill Regarding Jennings Randolph Project No. 12715, and Bill Regarding Cannonsville Project No. 13287

H.R. 2080

On August 26, 2009, the Commission issued an original license for Clark Canyon Hydro, LLC's proposed 4.7-megawatt Clark Canyon Dam Hydroelectric Project No. 12429, to be located at the U.S. Department of the Interior, Bureau of Reclamation's Clark Canyon Dam on the Beaverhead River in Beaverhead County, Montana. The license required the company to commence project construction within two years of the issuance date of the license, or by August 25, 2011, the longest time period allowed by section 13 of the FPA. At the licensee's request, the Commission granted the one two-year extension of the commencement of construction deadline permitted by section 13, thus making the deadline August 25, 2013. The licensee did not commence construction by that date and, as required by section 13, the Commission terminated the license by order dated March 19, 2015. The Commission explained that the licensee could file a new license application and that Commission staff would work with the licensee to determine whether portions of the Commission's regulations could be waived to make the new license proceeding as expeditious as possible.

H.R. 2080 would require the Commission to reinstate the license for the Clark Canyon Dam Project and extend the commencement of construction deadline for the project for a three-year period beginning on the date of enactment of this Act.

H.R. 2081

On January 12, 2012, the Commission issued an original license for Gibson Dam Hydroelectric Company, LLC's proposed 15-megawatt Gibson Dam Hydroelectric Project No. 12478, to be located at the Bureau of Reclamation's Gibson Dam, on the Sun River, in Lewis and Clark County and Teton County, Montana. The license required the company to commence project construction within two years of the date of the license, or by January 12, 2014. At the licensee's request, the Commission granted the maximum allowable two-year extension of the commencement of construction deadline, thus making the deadline January 12, 2016. It is my understanding that the licensee is encountering difficulty obtaining lands, subject to a U.S. Fish and Wildlife Service conservation easement, which are needed for construction of the project's primary transmission line.

H.R. 2081 would authorize the Commission to extend, for six years, the commencement of construction deadline for the Gibson Dam Project. The extension would begin on the date of expiration of the Commission's latest extension order.

H.R. 3447

On July 17, 2012, the Commission issued an original license for Wilkesboro Hydroelectric Company, LLC's proposed 4-megawatt W. Kerr Scott Hydroelectric Project No. 12642, to be located at the U.S. Army Corps of Engineers' (Corps) W. Kerr Scott Dam and Reservoir, 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, or by July 17, 2014. At the licensee's request, the Commission granted the maximum allowable two-year extension of the commencement of construction deadline, 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. My staff is currently processing the application.

H.R. 3447 would authorize the Commission to extend, for up to three consecutive two-year periods, the commencement of construction deadline for the W. Kerr Scott Project. The extension would begin on the date of expiration of the Commission's latest extension order.

Bill Regarding Jennings Randolph Project No. 12715

On April 30, 2012, the Commission issued an original license for Fairlawn Hydroelectric Company, LLC's proposed 14-megawatt Jennings Randolph Hydroelectric Project No. 12715, to be located on the Corp's Jennings Randolph Dam and Lake, on the North Branch Potomac River in Garrett County, Maryland, and Mineral County, West

Virginia. The license required the company to commence project construction within two years of the issuance date of the license, or by April 30, 2014. At the licensee's request, the Commission granted the maximum allowable two-year extension of the commencement of construction deadline, thus making the deadline April 30, 2016. I understand that the licensee is working with the Corps to obtain construction authorization under section 14 the Rivers and Harbors Act of 1899.

This bill would authorize the Commission to extend, for up to three consecutive two-year periods, the commencement of construction deadline for the Jennings Randolph Project. The extension would begin on the date of expiration of the Commission's latest extension order.

Bill Regarding Cannonsville Project No. 13287

On May 13, 2014, the Commission issued an original license for the City of New York's proposed 14.08-megawatt Cannonsville Hydroelectric Project No. 13287, to be located on the city's existing Cannonsville Reservoir, on the West Branch of the Delaware River in Delaware County, New York.. The license required the company to commence project construction within two years of the issuance date of the license, or by May 13, 2016. There have been dam safety issues at the project site and I understand that the licensee seeks additional time to conduct engineering dam safety studies and develop a new design to safely construct the project.

This bill would authorize the Commission to extend, for up to four consecutive two-year periods, the commencement of construction deadline for the Cannonsville Project. The extension would begin on the date of expiration of the time period required for commencement of construction as prescribed in the license

Conclusion

The last several Commission Chairmen, as well as the current Chairman, 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 served by releasing the site for other purposes. Because each of these bills provides for commencement of construction deadlines that do not exceed 10 years from the dates the respective licenses were issued, I do not oppose these bills. I note that all bills except for H.R. 2081 contain a reinstatement provision should the period required for commencement of construction expire prior to enactment of the Act. Congress may want to consider including a reinstatement provision in H.R. 2081.

AERIAL INFRASTRUCTURE ROUTE SURVEY ACT OF 2015 (H.R. 3021)

I. Background

The Commission is responsible under section 7 of the Natural Gas Act (NGA) for authorizing the construction and operation of interstate natural gas pipeline and storage projects, and under section 3 of the NGA for the construction and operation of facilities necessary to permit either the import or export of natural gas by pipeline, or by sea as liquefied natural gas (LNG). As part of those responsibilities, the Commission conducts both a non-environmental and an environmental review of the proposed facilities. The non-environmental review focuses on the engineering design, and rate and tariff considerations. The environmental review, pursuant to the National Environmental Policy Act, is carried out with the cooperation of numerous federal, state, and local agencies; Indian tribes; and with the input of other interested parties. Since 2005, the Commission has authorized nearly 10,700 miles of interstate natural gas transmission pipeline, more than one trillion cubic feet of interstate storage capacity, and 28 LNG facility sites.

II. Comments

H.R. 3021 would amend section 7 of the Natural Gas Act to provide that data collected by aerial survey will be accepted in lieu of, and given equal weight to, ground survey data for the purpose of completing the Commission's natural gas project pre-filing process and for completing applications associated with federal authorizations related to such projects. The bill provides that an agency may require that aerial survey data be verified through the use of ground survey data before project construction.

Aerial surveys can be a useful tool for developing project routes and making initial determinations of resources that may be affected by a proposed project. Currently, Commission staff accepts aerial survey data, especially where ground access is not available during the pre-filing or application review processes. However, most project applications include ground surveys for a significant portion of the right-of-way. I do have some concern that waiting to verify large amounts of aerial data until late in the project development process, or after issuance of a certificate, could in some cases pose difficulties. For example, if it was not discovered until the pre-construction stage that a project might affect historic properties or endangered species (matters that can be difficult to determine with certainty in the absence of on-the-ground surveys), a project proponent might be required at a late stage to amend its approved route or to conduct additional mitigation, which could cause delay and additional expense.

This concludes my remarks. I would be pleased to answer any questions you may have.