

Jordan Hydroelectric Limited Partnership

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Representative Morgan Griffith
United States House of Representatives
2202 Rayburn HOB
Washington, DC 20515

Dear Congressman Griffith:

In 2012, the Federal Energy Regulatory Commission (“FERC”) granted Jordan Hydroelectric Limited Partnership (“Jordan”) fifty-year licenses for two hydroelectric projects located in Virginia: Gathright Hydroelectric Project (FERC Project No. 12737) and Flannagan Hydroelectric Project (FERC Project No. 12740) (collectively “Projects”). Section 13 of the Federal Power Act requires licensees to commence construction of hydroelectric projects under license within four years of license issuance. Thus, the deadlines to commence construction for the Gathright and Flannagan Projects expired on March 2016 and January 2016, respectively. Congress, however, frequently authorizes FERC to grant retroactive extensions of this deadline and, if necessary, reinstate licenses when circumstances so warrant. Jordan seeks relief from Congress in order to extend the commencement of construction deadline and to ensure that the benefits of the Projects may be realized.

Summary of the Projects

Both Projects will be located on existing Army Corps of Engineers (“Corps”) dams. Prior to issuing a license to the Projects, FERC examined potential environmental impacts of the Projects under the National Environmental Policy Act (“NEPA”) and concluded that there were no significant impacts. This conclusion was described in the Environmental Assessment prepared by FERC for each project when the license was issued.

The Gathright Hydro Project will be built at the Corps’ Gathright Dam in Alleghany County, Virginia near the Town of Falling Spring, about 5 miles from the West Virginia border. The Gathright Project has a capacity of 3.7 MW. The single generating unit will be placed in a pipe immediately upstream of the existing intake tower that controls the discharge from the lake. The new pipe placed against the tower will convey water from the lake through the turbine and into the river downstream. The annual generation should be about 18,000,000 kilowatt-hours, which is enough to supply about 1,800 homes annually.

The Flannagan Project will be built at the Corps’ Flannagan Dam in Dickenson County, Virginia near the Town of Haysi, about 5 miles from the Kentucky border. The Flannagan Project will have a capacity of 1.8 MW. The two generating units will be placed inside the existing intake tower that controls the discharge from the lake. There are two existing pipes inside the tower that are not used, and they can be cut to insert the hydroelectric turbines. This will convey water from the lake through the turbines and into the river downstream. The annual generation should be about 8,000,000 kilowatt-hours, which is enough to supply about 800 homes annually.

Request for Congressional Action

Since license issuance for the two Projects, Jordan has diligently worked on project development by seeking power purchasers, arranging for interconnection with the local utility, designing the projects and providing that design to the Corps for review, and receiving equipment and construction bids to build the Projects. There is no opposition to the Projects, and with the exception of Corps approval, all regulatory licenses and permits have been obtained at this time. Further, the FERC licensing and NEPA processes concluded that the installation of the two Projects on the Corps facilities would pose no unacceptable environmental impacts. Despite Jordan's diligent efforts to develop these Projects, however, it has not been able to commence construction within the statutory deadline.

Jordan submits this request largely for two reasons. First, extensive post-licensing approvals and inquiries from the Corps require considerable time to address. Although the installation processes for the Projects will not alter Corps equipment or structures significantly, in order to ensure that any hydroelectric project proposed for development on Corps facilities does not conflict with the existing authorized purposes of the site, the Corps must review and approve the proposed development as a part of its Section 408 authorization process. The Corps' Section 408 authorization process is designed to protect the federal investment in the Corps facility as well as to ensure that the hydroelectric project poses minimal to no impact on the existing operations of the facility. Further and most importantly, the Corps is responsible for ensuring dam and life safety. With these important objectives, the Corps must work to obtain conclusive evidence of the safety of any proposed hydroelectric project to be constructed on its facilities, including the Gathright and Flannagan Projects. This type of review and coordination is, by its nature, time-intensive. Unfortunately, the Corps' Section 408 authorization process does not commence until after a FERC license is issued.¹

Jordan has expended a considerable amount of time (1) negotiating with the Corps over access agreements in order to prepare detailed design specifications and (2) discussing technical issues concerning design and operation of the proposed Projects. The consultation and review necessary for the Corps to approve parts of the Project has consumed much of the time allotted to commence construction. Though much of the project development is at a standstill at the present time due to the expiration of the Projects' commencement of construction deadlines, this review is still ongoing. With the additional time and certainty of an extension of the commencement of construction deadline, Jordan will be able to design projects that will meet with Corps approval.

Second, Jordan has been unable to proceed with construction because currently the price for which the power can be sold is not sufficient to support construction. With an abundance of natural gas presently pushing the cost of power downward, Jordan has experienced difficulty in obtaining a power purchase agreement in the present financial environment. The Gathright and Flannagan Projects are no exception. With the growing realization of the importance on obtaining power from renewable resources (both from load-serving utilities and from retail electric consumers), however,

¹ In fact, on July 21, 2016, FERC and the Corps executed a Memorandum of Understanding to facilitate the development of hydropower at Corps facilities by synchronizing each agency's licensing and permitting process. See Press Release, *FERC, U.S. Army Corps of Engineers Sign MOU on Hydropower Development* (July 21, 2016).

Jordan is convinced that, with additional time, we will be able to find a power buyer that will make the project economical.

Jordan seeks a statutory solution that would authorize FERC to extend the commencement of construction deadline retroactively for the Gathright Project beyond March 2016 and for the Flannagan Project beyond January 2016. The solution that Jordan seeks is not unique. Congress has passed numerous other laws that accomplish the same objective. In fact, there are currently several other bills before the House, for other FERC-licensed hydroelectric projects, that seek precisely the same statutory relief. Jordan and its related companies have received three similar extensions to begin construction in the past; of those three projects one is generating and the other two will be generating within 2 years. These three projects total 159 MW in capacity. These projects probably would not have been built without the extensions received.

Importantly, the statutory language commonly used for this relief does not automatically extend the commencement of construction deadline but authorizes FERC to do so as long as additional extensions are within the public interest and the project developer continues to demonstrate that it is diligently working toward construction. Therefore, FERC will continue to exert oversight authority over development of the two Projects. In addition, FERC itself does not oppose this statutory relief. FERC Chairs have adopted a long-standing policy of not opposing legislation that authorizes FERC to extend the commencement of construction deadline so long as that legislation does not extend the deadline beyond ten years from the issuance date.² This commonly used statutory language is consistent with that policy because it would authorize FERC to grant three two-year extensions for a total of ten years, two under Section 13 of the Federal Power Act and an additional six under these three two-year extensions.

Further, Jordan's request is consistent with recent congressional action intended to spur hydropower development at Corps facilities. In the Water Resources Reform and Development Act of 2014, Congress declared it a national policy that "the development of non-Federal hydroelectric power at Corps of Engineers civil works projects, including locks and dams, shall be given priority."³ Moreover, in unanimously passing the Hydropower Regulatory Efficiency Act the prior year, Congress found that "only 3 percent of the 80,000 dams in the United States generate electricity, so there is substantial potential for adding hydropower generation to nonpowered dams."⁴ In that legislation, Congress also cited a study in finding that, "by utilizing currently untapped resources, the United States could add approximately 60,000 megawatts of new hydropower capacity by 2025, which could create 700,000 new jobs over the next 13 years."

² See *S. Amdt. 579 and H.R. 316, the Collinsville Renewable Energy Promotion Act Before the Subcomm. on Water and Power of the S. Comm. on Energy and Natural Res.*, 113th Cong. (2013) (testimony of John Katz, Deputy Assoc. Gen. Counsel, FERC); *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 Before the Subcomm. On Energy and Power of the H. Comm. On Energy and Commerce*, 114th Cong. (2016) (testimony of Ann Miles, Dir. of Energy Projects, FERC).

³ Water Resources Reform and Development Act, Pub. L. No. 113-121, 128 Stat. 1193, 1215 (2014).

⁴ Hydropower Regulatory Efficiency Act, Pub. L. No. 113-23, 127 Stat. 493, 493 (2013).

Conclusion

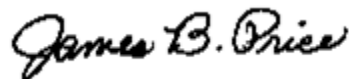
In the 115th Congress, you introduced HR4411 and HR4412—legislation that precisely mirrors HR446 and HR447 that you have introduced in this Congress—that would have granted FERC the authority to extend the commencement of construction deadlines for the Projects. Those two bills passed the House Energy and Commerce Committee and the House itself and were included in the comprehensive energy bills (S.2012 and the House Amendment to S.2012) that went to conference in the 115th Congress. Though Jordan understands that these bills (or the larger comprehensive energy bills to which they were attached) were not able to clear the procedural hurdles to be passed into law in 2016, Jordan appreciates your prior support of its efforts to develop these Projects and sincerely hopes that project-specific legislation can be advanced through this Congress.

The construction of these Projects will provide jobs to an area that is in need of additional opportunities. Construction at the site of the Gathright Project should take about 2 years and employ 20 to 35 workers. The total cost of the Gathright Project will be \$8 to \$11 million. At a total cost of approximately \$2 million, construction at the Flannagan Project site take about 18 months and employ 15 to 25 workers.

In addition to realizing economic and reliability benefits, completion of the Project would provide Virginians a renewable energy resource. This clean energy will directly displace electricity that is now provided by fossil fuels. Moreover, because the Projects will operate in “run-of-river” mode, the Projects will not affect existing flows that the Corps will release from its own facilities. In short, the Projects will convert the Corps’ current flow releases, which currently constitute wasted energy, into clean electricity that is capable of supplying clean, renewable energy to approximately 2,600 homes annually. Further, the environmental impact of these Projects has been closely examined by FERC in its NEPA process.

Jordan appreciates the leadership you have demonstrated in championing an “all of the above” energy policy that includes renewable energy development, including by private interests such as Jordan, as well as your introduction of HR446 and HR447 in support of these Projects. Jordan looks forward to working with you and your staff to secure the time and certainty that would be afforded by a statutory solution to the project development hurdle that Jordan now encounters. With your assistance, we can clear this hurdle to ensure that the benefits of the Gathright and Flannagan Projects are realized for the people of the 9th District of Virginia.

Sincerely,



James Price
President
Jordan Hydroelectric Limited Partnership