

143 FERC ¶ 62,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Juneau Hydropower, Inc.

Project No. 13563-002

ORDER ISSUING PRELIMINARY PERMIT
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(April 11, 2013)

1. On December 3, 2012, Juneau Hydropower, Inc. (Juneau Hydro) filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA),¹ proposing to study the feasibility of the Sweetheart Lake Hydroelectric Project No. 13563 (Sweetheart Lake Project or project) located on the Lower Sweetheart Lake and Sweetheart Creek southeast of Juneau, Alaska.

I. Project Proposal

2. The proposed project would consist of: (1) the existing Lower Sweetheart Lake, raised to a surface elevation of 628 feet above mean sea level, with a surface area of 1,701.5 acres and an active storage capacity of 94,069 acre-feet at the normal maximum water elevation; (2) a new 275-foot-long, 105-foot-high concrete and rock face dam, including project intake facilities and a 125-foot-wide overflow spillway, constructed at the natural outlet of Lower Sweetheart Lake; (3) a new 500-foot-long, 10-foot-diameter stream diversion tunnel that would be converted to reservoir outlet works after project construction; (4) a new 9,595-foot-long, 12-foot-diameter penstock diverting flow from the project intake to the powerhouse; (5) a new powerhouse containing three new 6.6-megawatt (MW), Francis generating units having a total installed capacity of 19.8 MW; (6) a tailrace consisting of: (a) a new 76-foot-wide to 22-foot-wide, 75-foot-long open afterbay; (b) a new 225-foot-long, 12-foot-diameter tunnel extending from the afterbay to an outlet structure on a tributary to Sweetheart Creek; and (c) an existing tributary stream channel, modified to a 100-foot-long, 35-foot-wide channel that will flow into Sweetheart Creek; (7) new marine access facilities including a dual-height marine ramp, floating docks for seaplane and boat access, and a staging area adjacent to the docks; (8) a new switchyard adjacent to the powerhouse; (9) a new 8.69-mile-long, 138-kilovolt transmission line consisting of buried, submarine, and overhead segments; (10) a new

¹ 16 U.S.C. § 797(f) (2006).

4,400-foot-long access road; and (11) appurtenant facilities. The proposed Sweetheart Lake Project would have an average annual generation of 111 gigawatt-hours.

II. Background

3. The Commission issued public notice of the application on February 14, 2013. A timely motion to intervene was filed by the U.S. Forest Service (Forest Service).²

III. Permit Information

4. Section 4(f) of the FPA authorizes the Commission to issue preliminary permits for the purpose of enabling prospective applicants for a hydropower license to secure the data and perform the acts required by section 9 of the FPA,³ which in turn sets forth the material that must accompany an application for license. The purpose of a preliminary permit is to preserve the right of the permittee to have the first priority in applying for a license for the project that is being studied.⁴ Because a permit is issued only to allow the permittee to investigate the feasibility of a project while the permittee conducts investigations and secures necessary data to determine the feasibility of the proposed project and to prepare a license application, it grants no land-disturbing or other property rights.⁵

² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2012).

³ 16 U.S.C. § 802 (2006).

⁴ *See, e.g., Mt. Hope Waterpower Project LLP*, 116 FERC ¶ 61,232 at P 4 (2006) (“The purpose of a preliminary permit is to encourage hydroelectric development by affording its holder priority of application (i.e., guaranteed first-to-file status) with respect to the filing of development applications for the affected site.”).

⁵ Issuance of this preliminary permit is thus not a major federal action significantly affecting the quality of the human environment. A permittee can only enter lands it does not own with the permission of the landholder, and is required to obtain whatever environmental permits federal, state, and local authorities may require before conducting any studies. *See, e.g., Three Mile Falls Hydro, LLC*, 102 FERC ¶ 61,301 at P 6 (2003); *see also Town of Summersville, W.Va. v. FERC*, 780 F.2d 1034 (D.C. Cir. 1986) (discussing the nature of preliminary permits).

5. The applicant has previously held a preliminary permit for this site under Project No. 13563-000. The Commission will grant successive permits if it concludes that the applicant has diligently pursued the requirements of its prior permits in good faith. Juneau Hydro has provided information to Commission staff demonstrating that it is currently making progress with the analysis of the project's feasibility, and towards the development of its proposed project. It is expected that during this permit term, a development application will be prepared pursuant to sections 4.38 and 4.41 of the Commission's regulations.

6. The Commission usually does not prescribe in great detail what a permittee must accomplish under a permit. However, a successive permit can warrant a greater degree of Commission oversight. Therefore, we will monitor the progress of the permittee's activities. If the permittee fails to make significant progress toward developing a development application, the permit may be subject to cancellation.

7. During the course of the permit, the Commission expects that the permittee will carry out pre-filing consultation and study development leading to the possible development of a license application. Under the previous permit, Juneau Hydro requested to use the Commission's Alternative Licensing Process, which was granted on September 24, 2010. Juneau Hydro has already conducted pre-filing consultation and field studies. Juneau Hydro filed a Notice of Intent (NOI) and Pre-Application Document (PAD) pursuant to sections 5.5 and 5.6 of the Commission's regulations on September 24, 2010,⁶ and a draft license application on August 31, 2012.

8. Article 4 of this permit requires the permittee to submit a progress report no later than the last day of each six-month period from the effective date of this permit. A progress report must describe the nature and timing of what the permittee has done under the pre-filing requirements of section 4.38 and Part 5 of the Commission's regulations for the specific reporting period. A permit may be cancelled if a permittee fails to file a timely progress report or if the report does not demonstrate that progress is being made by the permittee. The late filing of a report or the supplementation of an earlier report in response to a notice of probable cancellation will not necessarily excuse the failure to comply with the requirements of this article.

9. A preliminary permit is not transferable. The named permittee is the only party entitled to the priority of the application for license afforded by this preliminary permit. In order to invoke permit-based priority in any subsequent licensing competition, the

⁶ 18 C.F.R. §§ 5.5 and 5.6 (2012).

named permittee must file an application for license as the sole applicant, thereby evidencing its intent to be the sole licensee and to hold all proprietary rights necessary to construct, operate, and maintain the proposed project. Should any other parties intend to hold during the term of any license issued any of these proprietary rights necessary for project purposes, they must be included as joint applicants in any application for license filed. In such an instance, where parties other than the permittee are added as joint applicants for license, the joint application will not be eligible for any permit-based priority.⁷

The Director orders:

(A) A preliminary permit is issued for the Sweetheart Lake Hydroelectric Project No. 13563-002 to Juneau Hydropower, Inc., for a period effective the first day of the month in which this permit is issued, and ending 36 months from the effective date or on the date that a development application submitted by the permittee has been accepted for filing, whichever occurs first.

(B) This preliminary permit is subject to the terms and conditions of Part I of the Federal Power Act and related regulations. The permit is also subject to Articles 1 through 4, set forth in the attached standard form P-1.

(C) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days of the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2012).

Jennifer Hill, Chief
Northwest Branch
Division of Hydropower Licensing

⁷ See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

Form P-1 (Revised December 2009)**FEDERAL ENERGY REGULATORY COMMISSION****TERMS AND CONDITIONS OF
PRELIMINARY PERMIT**

Article 1. The purpose of the permit is to maintain priority of application for a license during the term of the permit while the permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project and, if the project is found to be feasible, prepares an acceptable application for license. In the course of whatever field studies the permittee undertakes, the permittee shall at all times exercise appropriate measures to prevent irreparable damage to the environment of the proposed project. This permit does not authorize the permittee to conduct any ground-disturbing activities or grant a right of entry onto any lands. The permittee must obtain any necessary authorizations and comply with any applicable laws and regulations to conduct any field studies.

Article 2. The permit is not transferable and may, after notice and opportunity for hearing, be canceled by order of the Commission upon failure of the permittee to prosecute diligently the activities for which a permit is issued, or for any other good cause shown.

Article 3. The priority granted under the permit shall be lost if the permit is canceled pursuant to Article 2 of this permit, or if the permittee fails, on or before the expiration date of the permit, to file with the Commission an application for license for the proposed project in conformity with the Commission's rules and regulations then in effect.

Article 4. At the close of each six-month period from the effective date of this permit, the permittee shall file a progress report electronically via the Internet; and shall serve a copy on the intervenors in this proceeding. To paper-file instead, mail four copies of the progress report to the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The report shall describe, for that report period, the nature and timing of what the permittee has done under the pre-filing requirements of 18 C.F.R. sections 4.38 and 5.1-5.31 and other applicable regulations; and, where studies require access to and use of land not owned by the permittee, the status of the permittee's efforts to obtain permission to access and use the land.

Document Content(s)

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