

129 FERC ¶ 62,198
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Juneau Hydropower, Inc.

Project No. 13563-000

ORDER ISSUING PRELIMINARY PERMIT
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(December 14, 2009)

1. On August 4, 2009, Juneau Hydropower, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA),¹ proposing to study the feasibility of the Sweetheart Lake Hydropower Project No. 13563-000 located on the Lower Sweetheart Lake and Sweetheart Creek southeast of Juneau, Alaska.
2. The proposed project would utilize the existing Lower Sweetheart Lake and would consist of: (1) a 1,635-acre impoundment; (2) a new concrete and rock-faced dam approximately 500-foot-long, 90-foot-high at the outlet of Lower Sweetheart Lake; (3) a new 9-foot-diameter, 1,650-foot-long penstock connecting to the powerhouse; (4) a new powerhouse containing two new generating units having an installed capacity of 30 megawatts; (5) a new tailrace returning flows to Sweetheart Creek; (6) a new 138-kilovolt transmission line that would be either 8.9 miles overhead, or 0.4 miles overhead and 8.0 miles buried; and (7) appurtenant facilities. The proposed Sweetheart Lake Project would have an average annual generation of 136 gigawatt-hours.

I. Background

3. The Commission issued public notice of the application on September 4, 2009. Timely motions to intervene and comments were filed by the U.S. Forest Service (Forest Service), the National Marine Fisheries Service (NMFS), and Alaska Electric Light and Power (Alaska Electric).²

¹ 16 U.S.C. § 797(f) (2006).

² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2009).

II. Discussion

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

5. NMFS expressed concern that project construction may adversely affect fisheries resources. Alaska Electric expressed concern regarding the capacity of the transmission line. A preliminary permit is used to investigate the feasibility of a project and is not necessarily the final proposal for construction. As noted, a preliminary permit does not authorize a permittee to undertake construction or operation of the proposed project. Therefore, comments concerning impacts caused by construction or operation of the project premature at the permit stage, but can properly be addressed in the licensing process.

6. The Forest Service requests that the permittee be required to apply for a special use authorization from the Forest Service for the use and occupancy of National Forest

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).

System lands for investigative studies. The Forest Service also recommended modifications to the proposed study plans, and consultation with other federal agencies. It is the responsibility of the permittee to undertake the appropriate consultations and obtain the necessary authorizations to conduct permit studies in a manner consistent with applicable laws and regulations. The Commission has not sought to place all relevant study requirements in preliminary permits.⁶ Rather, the studies to be undertaken by a permittee are shaped by the Commission's filing requirements for development applications. Potential development applicants are required to consult with appropriate state and federal resource agencies and affected Indian tribes, conduct all reasonable studies requested by the agencies, and solicit comments on the applications before they are filed.⁷

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. The pre-filing process begins with preparation of a Notice of Intent (NOI) and Pre-Application Document (PAD) pursuant to sections 5.5 and 5.6 of the Commission's regulations.⁸ The permittee must use the Integrated Licensing Process unless the Commission grants a request to use an alternative process (Alternative or Traditional Licensing Process). Such a request must accompany the NOI and PAD and set forth specific information justifying the request.⁹ Should the permittee file a development application, notice of the application will be published, and interested persons and agencies will have an opportunity to intervene and to present their views concerning the project and the effects of its construction and operation.

8. 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 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

⁶ See, e.g., *Continental Lands Inc.*, 90 FERC ¶ 61,355 at 62,177 (2000).

⁷ See 18 C.F.R. § 4.38 (2009).

⁸ 18 C.F.R. §§ 5.5 and 5.6 (2008).

⁹ See 18 C.F.R. § 5.3 (2008).

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.¹⁰

The Director orders:

(A) A preliminary permit is issued for the Sweetheart Lake Hydroelectric Project No. 13563-000 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 is issued under authority delegated to the Director and constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days from the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Jennifer Hill, Branch Chief
Hydro West Branch 1
Division of Hydropower Licensing

¹⁰ 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.

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