

135 FERC ¶ 62,039  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

South Run Pumped Storage, LLC

Project No. 13876-000

ORDER ISSUING PRELIMINARY PERMIT  
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(April 14, 2011)

1. On October 26, 2010, South Run Pumped Storage, LLC (South Run) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA),<sup>1</sup> to study the feasibility of the proposed South Run Pumped Storage Project No. 13876 (South Run Project or project) to be located on South Run near the city of Norton in Medina and Summit counties, Ohio.

**I. Project Proposal**

2. The proposed project would consist of: (1) an excavated, diked, and asphalt-lined 255-acre upper reservoir having a maximum water surface area of about 195 acres and a total volume of 7,805 acre-feet; (2) a 7,760-acre-foot capacity underground lower reservoir, 2,200 feet below ground surface, created by previous limestone mining activities; (3) a diversion channel around the west and south sides of the upper reservoir with sufficient capacity to carry a 100-year flood flow of 1,170 cubic feet per second; (4) a 28-foot-diameter, 7,000-foot-long, concrete-lined power tunnel located 300 feet below the ground surface that extends from the upper reservoir to two 17.5-foot-diameter, 2,400-foot-long concrete-lined vertical shafts connecting the power tunnel with the underground powerhouse penstocks; (5) six 75-inch-diameter, 235-foot-long, steel-and concrete-lined penstocks; (6) an underground powerhouse containing six 250-megawatt (MW) reversible pump-turbines; (7) an underground transformer gallery; (8) a 3-mile-long, 345-kilovolt overhead transmission line; and (9) appurtenant facilities. The estimated annual generation of the South Run Project would be between 1,300 and 2,000 gigawatt-hours, depending on certain utilization factors. There are no federal or state lands associated with the project.

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<sup>1</sup> 16 U.S.C. § 797(f) (2006).

## II. Background

3. The Commission issued public notice of South Run's permit application on December 13, 2010. A timely motion to intervene and protest was filed by the FirstEnergy Generation Corporation (FirstEnergy). Comments were filed by the U.S. Department of the Interior (Interior) and the City of Norton, Ohio (Norton).

## III. Discussion

### A. Notice

4. Norton states that it was never advised of South Run's proposed project, and requests that any action on the permit application be suspended until the applicant meets with Norton. As required by section 4.32(a)(2)(ii), South Run listed Norton in its application as an entity that potentially may be interested in the proposed project.<sup>2</sup> Norton was then put on the Commission's mailing list, and received notification of the permit application through the Commission-issued notice. Neither the FPA nor the Commission's regulations require South Run to meet with Norton before a preliminary permit may be issued.

### B. Sufficiency of Application

5. Norton also contends that South Run should not be issued a permit because Exhibit 3 of the permit application fails to identify existing housing developments located at the proposed upper storage reservoir site, and fails to show two 10-acre properties owned by Norton and a park located adjacent to the proposed project boundary.

6. Section 4.81(d) of the Commission's regulations requires that a permit application include a map that shows: (1) the location of the project as a whole, and if possible, to a nearby town or any permanent monuments or objects that can be noted on the maps and recognized in the field; (2) the relative locations and physical interrelationships of the principal project features; (3) a proposed project boundary; (4) rivers within the project boundary which are included in or have been designated for study under the National Wild and Scenic Rivers Act; and (5) areas in the project boundary that would be under the provisions of the Wilderness Act.<sup>3</sup> South Run's Exhibit 3 maps show the project features with reference to South Run, the cities of Norton and Wadsworth, Silver Creek Metro Park, and numerous area roads and bodies of water in sufficient detail to inform interested entities of the specific location of the project. The regulations do not

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<sup>2</sup> 18 C.F.R. § 4.32(a)(2)(ii) (2010).

<sup>3</sup> 18 C.F.R. § 4.81(d) (2010).

specifically require a permit applicant to identify land ownership or houses on the Exhibit 3 maps, and providing this additional detail is not needed to inform the specific location of the proposed project in this instance.

### **C. Access to Site**

7. Norton contends that South Run does not have the necessary access rights with which to conduct all of its proposed studies, and therefore, the permit application should be denied. A permit applicant is not required to have obtained all access rights to a project site as a condition of receiving a preliminary permit, and a preliminary permit does not grant a right of entry onto any lands. A permittee must obtain any necessary authorizations and comply with any applicable laws and regulations to conduct any field studies.

### **D. Public Interest**

8. FirstEnergy states that the proposed project conflicts with its proposed compressed air energy storage facility at the project site, and therefore, issuing the permit would not be in the public interest. The FPA does not condition issuance of a preliminary permit upon a finding that it is in the public interest because to make such a finding would require the information and conclusions that are to be developed during the permit phase.<sup>4</sup>

### **E. Issues Related to Project Construction and Operation**

9. Interior expressed concern that fish and wildlife resources and some federally threatened and endangered species could be adversely affected by the project construction and operation. Interior also stated that the project site may be prone to subsidence (i.e., sinking and settling) due to past underground mining activity. Norton contends that the proposed project may have “significant impacts to the community,” the project would conflict with a proposed compressed air energy storage facility, and the application does not identify the source of initial fill water for the project reservoir and how frequently the project reservoir would need to be refilled.

10. A preliminary permit does not authorize a permittee to undertake construction of the proposed project. The purpose of a preliminary permit is to study the feasibility of the project, including studying potential impacts. The concerns raised in the comments are premature at the preliminary permit stage, in that they address the potential effects of constructing and operating the proposed project. Should the permittee file license application, these issues will be addressed in the licensing process.

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<sup>4</sup> See, e.g., *Wind River Hydro, LLC*, 115 FERC ¶ 61,009, at P 10 (2006).

## F. Consultation and Study Requirements Under the Permit

11. Interior recommends that South Run obtain information regarding project effects on fish and terrestrial resources and identify potential protection measures. Interior also recommends that South Run review past mining records as part of the project planning process. Norton contends that South Run should be denied a permit because its proposed studies would not provide sufficient information for a license application. FirstEnergy contends that South Run does not have sufficient funds to conduct its proposed studies and that this is evidence that South Run is attempting to tie up the project site from being developed by FirstEnergy.

12. The Commission has not sought to place all relevant study requirements in preliminary permits.<sup>5</sup> 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.<sup>6</sup> Further, permit conditions have been framed to ensure that the permittee does not tie up a site without pursuing in good faith a study of the project's feasibility.<sup>7</sup>

## IV. Permit Information

13. 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,<sup>8</sup> 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 permit holder to have the first priority in applying for a license for the project that is being studied.<sup>9</sup> Because a permit is issued only to allow the permit holder to investigate the feasibility of a project while the permittee conducts

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<sup>5</sup> See, e.g., *Continental Lands Inc.*, 90 FERC ¶ 61,355 at 62,177 (2000).

<sup>6</sup> See 18 C.F.R. § 4.38 (2010).

<sup>7</sup> See *City of Richmond, Va.*, 53 FERC ¶ 61,342 at 62,247 (1990).

<sup>8</sup> 16 U.S.C. § 802 (2006).

<sup>9</sup> 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.”).

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.<sup>10</sup>

14. 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.<sup>11</sup> 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.<sup>12</sup> 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.

15. 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 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.<sup>13</sup>

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<sup>10</sup> Issuance of this preliminary permit is thus not a major federal action significantly affecting the quality of the human environment. A permit holder 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).

<sup>11</sup> 18 C.F.R. §§ 5.5 and 5.6 (2010).

<sup>12</sup> *See* 18 C.F.R. § 5.3 (2010).

<sup>13</sup> *See City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

The Director orders:

(A) A preliminary permit is issued for the South Run Pumped Storage Project No. 13876 to South Run Pumped Storage, LLC, for a period effective the first day of the month in which this permit is issued, and ending either 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 (2010).

Nicholas Jayjack, Chief  
Midwest Branch  
Division of Hydropower Licensing

**Form P-1 (Revised April 2011)****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.** No later than the last day of each six-month period from the effective date of this permit, the permittee shall file a progress report. Each progress report must describe, for that reporting 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. Progress reports may be filed electronically via the Internet, and the Commission strongly encourages e-filing. Instructions for e-filing are on the Commission's website at <http://www.ferc.gov/docs-filing/efiling/efiling.asp>. 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.

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