

153 FERC ¶ 62,238  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Green River Energy BFD, LLC

Project No. 14378-001

ORDER DENYING SUCCESSIVE PRELIMINARY PERMIT

(December 23, 2015)

1. On August 13, 2015, Green River Energy BFD, LLC, (Green River LLC) filed an application for a successive preliminary permit for the proposed Green River Lake Project (Green River Project) to be located at the Green River Lake Dam on the Green River in Taylor County, Kentucky. The Green River Lake Dam is owned by the United States government and operated by the United States Army Corps of Engineers.

**I. Background**

2. On July 13, 2012, Commission staff issued Green River LLC a preliminary permit for the Green River Project.<sup>1</sup> The proposed project would consist of: (1) a bifurcation structure constructed at the end of the dam's outlet conduit; (2) a 30-foot-long, 72 inch-diameter steel penstock; (3) a powerhouse containing two turbine/generating units with a total capacity of 3.1 megawatts;<sup>2</sup> (4) a 570-foot-long, 12.7-kilovolt transmission line. The proposed project would have an estimated annual generation of 18,261 megawatt-hours based on an installed capacity of 4.2 megawatts.

**II. Discussion**

3. Sections 4(f) and 5 of the Federal Power Act (FPA) authorize the Commission to issue preliminary permits to potential license applicants for a period of up to three years.<sup>3</sup> The FPA does not address the issue of how many preliminary permits an applicant may receive on the same site. However, it is Commission policy to grant a successive preliminary permit only if it concludes that the applicant has pursued the requirements of

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<sup>1</sup> 140 FERC ¶ 62,045 (2012).

<sup>2</sup> In the successive permit application, Green River LLC proposes to increase the capacity for each turbine/generator unit to 1.4 MW for a total of 4.2 MW.

<sup>3</sup> 16 U.S.C. § 797f (2012).

its prior preliminary permit in good faith and with due diligence.<sup>4</sup> In general, this requires completion of certain steps towards preparing a development application, including developing study plans, conducting studies in a timely fashion, consulting with resource agencies, and developing the application in accordance with the Commission's regulations. In addition, Commission staff must be able to discern a pattern of progress toward the preparation of a development application from the content of a permittee's filings.<sup>5</sup> Thus, while there is a minimum bar that a permittee must achieve to be diligent, each application for a successive preliminary permit is considered on a case-by-case basis.<sup>6</sup>

4. During the three year term through which Green River LLC held the initial preliminary permit, it did not file a Notice of Intent or Pre-Application Document to initiate the pre-filing consultation and study development needed to prepare a license application. Instead, the five one- to two-page reports covering three preliminary permits were very similar and listed a total of six general activities. The first, fourth, and fifth report referenced analyzing power resources, contracting for services, and conducting fatal flaw analysis, respectively. The majority of the reports referenced requesting and receiving information from the U.S. Army Corps of Engineers. The reports contain little evidence of progress toward development of a license application.

5. The record under the prior permit shows that Green River LLC did not pursue the requirements of its prior preliminary permit with due diligence for purposes of receiving a successive permit because it failed to demonstrate progress toward preparing a development application. Therefore, Green River LLC's application for a successive preliminary permit for the Green River Project is denied.

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<sup>4</sup> *City of Redding, California*, 33 FERC ¶ 61,019 (1985) (stating permittee must take certain steps, including consulting with the appropriate resource agencies early in the permit term, and timely filing six-month progress reports).

<sup>5</sup> Section 4(f) of the FPA, 16 U.S.C. § 797(f) (2012), states that the purpose of a preliminary permit is to enable applicants for a license to secure the data and to perform the acts required by section 9 of the FPA, 16 U.S.C. § 802 (2012). Section 9 requires license applicants to submit to the Commission such maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed project (i.e., an acceptable license application). In order for an applicant to submit an acceptable license application, it must have consulted with relevant resource agencies regarding the information the agencies will need in the environmental document, and therefore, what studies the applicant must conduct to obtain that information prior to the filing of a license application. 18 C.F.R. § 4.38 (2015).

<sup>6</sup> *See Cascade Creek, LLC*, 140 FERC ¶ 61,221, at P 26 (2012).

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The Director orders:

(A) The preliminary permit application filed by Green River Energy BFD, LLC on August 13, 2015, for the Green River Lake Project No. 14378 is denied.

(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825*l* (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2015).

Vince Yearick  
Director  
Division of Hydropower Licensing

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