

153 FERC ¶ 62,237  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Lock Hydro Friends Fund XVIII

Project No. 14261-001

ORDER DENYING SUCCESSIVE PRELIMINARY PERMIT

(December 23, 2015)

1. On April 1, 2015, Hydro Green Energy LLC, filed, on behalf of their subsidiary, Lock Hydro Friends Fund XVIII (Lock XVIII), an application for a successive preliminary permit the John C. Stennis Lock & Dam Project No. 14261 (Stennis L&D Project), to be located at the existing John C. Stennis Lock & Dam<sup>1</sup> on the Tennessee – Tombigbee Waterway in Lowndes County, Mississippi.

**I. Background**

2. On April 4, 2012, Commission staff issued Lock XVIII a preliminary permit for the proposed Stennis L&D Project.<sup>2</sup> The proposed project would consist of: (1) one lock frame module, to be constructed on the end of the dam opposite the lock, containing 10 hydroelectric generating units, with a total combined capacity of 10.0 megawatts; (2) a new switchyard containing a transformer; and (3) a proposed 1.9-mile-long, 34.5-kilovolt transmission line connecting to an existing distribution line. The proposed project would have an average annual generation of 52.560 gigawatt-hours.

**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 for 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> The John C. Stennis Lock & Dam is owned by the United States government and operated by the United States Army Corps of Engineers.

<sup>2</sup> 140 FERC ¶ 62,007 (2012).

<sup>3</sup> 16 U.S.C. § 797f (2012).

its prior preliminary permit 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 Lock XVIII 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-page reports were very similar and listed a total of four general activities. The first two reports referenced gathering site information and requesting and waiting for information from the U.S. Army Corps of Engineers. The majority of the reports referenced studying power markets and considering lowhead turbine technology. The reports contain little evidence of progress toward development of a license application.

5. The record under the prior permit shows that Lock XVIII 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, Lock XVIII's application for a successive preliminary permit for the Stennis L&D 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 Lock Hydro Friends Fund XVIII on April 1, 2015, for the John C. Stennis Lock & Dam Project No. 14261 is denied.

(B) This order is issued under the authority delegated to the Director and 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. § 8251 (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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