

145 FERC ¶ 62,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Archon Energy 1, Inc.

Project No. 14495-000

ORDER DISMISSING PRELIMINARY PERMIT APPLICATION

(December 4, 2013)

1. This order finds that the Commission lacks jurisdiction to issue a license or permit to Archon Energy 1, Inc. (Archon) for a hydropower project at the Laguna dam and accordingly dismisses Archon's application for a preliminary permit to study the feasibility of such a hydropower project.

BACKGROUND

2. On February 11, 2013, Archon Energy 1, Inc. (Archon) filed an application for a preliminary permit pursuant to section 4(f) of the Federal Power Act (FPA),¹ to study the feasibility of the proposed 2.2 - megawatt (MW) Laguna Dam Hydroelectric Project No. 14495 (project). Archon proposes to install hydroelectric generation facilities on the existing Laguna dam, a key feature of the Department of the Interior's (Interior) Bureau of Reclamation's (Reclamation) Yuma Project and All-American canal system, located on the Colorado River near the City of Yuma, Arizona. The Laguna dam is operated by the Imperial Irrigation District.

3. On April 2, 2013, Commission staff issued public notice accepting Archon's application, soliciting comments, motions to intervene, and competing applications. On May 15, 2013, Commission staff asked Reclamation whether or not it believed the Commission had jurisdiction to authorize a non-federal hydropower project at the Laguna dam. On May 30, 2013, on behalf of Reclamation, Interior responded that the Boulder Canyon Project Act² included Laguna dam as a "possible diversion point for the proposed All-American Canal, thereby folding the dam into the Boulder Canyon Project." Therefore, Reclamation concluded that federal hydropower development is reserved at the site.

4. On June 3, 2013, the Imperial Irrigation District filed a motion to intervene and comments, arguing that the Commission lacks jurisdiction over hydropower development at the Laguna dam and supporting Interior's jurisdictional determination.

¹ 16 U.S.C. § 797(f) (2012).

² Boulder Canyon Project Act, 45 Stat. 1057 (1928).

DISCUSSION

5. Sections 4(e) and 4(f) of the FPA authorize the Commission to issue preliminary permits and licenses for non-federal hydropower projects to be located at federal dams and facilities.³ This jurisdiction is withdrawn if federal development of hydropower generation at the site is authorized, or if Congress otherwise unambiguously withdraws the Commission's jurisdiction over the development of such generation.⁴

6. On November 27, 2013, Commission staff accepted Reclamation's determination, as stated in Reclamation's May 30, 2013 letter, that hydropower at Laguna dam is reserved for federal development.⁵ As such, the Commission is precluded from issuing an exemption or license for this project.⁶ Since the sole purpose of a preliminary permit is to maintain priority of application to file an exemption or license,⁷ which the Commission can no longer issue for this project site, no purpose would be served by issuing a preliminary permit for the proposed project. Therefore, the permit application is dismissed.

The Director orders:

(A) Archon Energy 1, Inc.'s preliminary permit application for the Laguna Dam Hydroelectric Project No. 14495 is dismissed.

³ 16 U.S.C. §§ 797(e) and (f) (2012).

⁴ See *City of Gillette, Wyoming*, 25 FERC ¶ 61,366 (1983). The Commission and Reclamation entered into a Memorandum of Understanding (MOU) to guide determinations of whether the Commission or Reclamation has authority to license proposed non-federal hydropower development at Reclamation projects. 58 Fed. Reg. 3269 (January 8, 1993).

⁵ This determination was limited to hydropower development at Laguna dam and did not address hydropower development at other locations at the Yuma Project.

⁶ See, e.g., *Arizona Power Authority and Colorado River Commission*, 39 FERC ¶ 61,115 (1988), *reh'g denied*, 42 FERC ¶ 61,282 (1988) (finding Commission lacks authority over hydropower development at Hoover dam); and *Imperial Hydro, LLC*, 123 FERC ¶ 62,088 (2008) (finding Commission lacks authority over hydropower development on the All-American canal and its Imperial diversion dam).

⁷ 16 U.S.C. §§ 798 (2012).

(B) 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 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2013).

Vince Yearick
Director
Division of Hydropower Licensing