

150 FERC ¶ 62,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Yedatene Na, LLC

Project No. 14646-000

ORDER ISSUING PRELIMINARY PERMIT
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(Issued February 4, 2015)

1. On November 6, 2014, Yedatene Na, LLC (Yedatene Na) 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 Jack River Dam Hydroelectric Project No. 14646 (Jack River Project or project) to be located on the Jack River near the city of Cantwell in the Matanuska-Susitna Borough, Alaska. The project is located on approximately 710 acres of lands administered by the U.S. Bureau of Land Management (BLM).

I. Project Proposal

2. The proposed project would consist of the following new facilities: (1) a 750-foot-long, 250-foot-high dam on the Jack River with a 250-foot-high spillway built into the crest of the dam; (2) an 865-acre reservoir with a storage capacity of 50,700-acre-feet; (3) two 300-foot-long, 4-foot-diameter steel penstocks; (4) a 75-foot-long, 125-foot-wide powerhouse with two 2.1-megawatts (MW) Francis turbine units; (5) a 20-foot-wide, 20-foot-deep, 25-foot-long concrete tailrace discharging flows into the Jack River; (6) an 8,000-foot-long, 15-kilovolt transmission line tying into the existing substation northwest of the project; and (7) appurtenant facilities. The estimated annual generation of the Jack River Project would be 23.4 gigawatt-hours.

II. Background

3. The Commission issued public notice of Yedatene Na's permit application on December 2, 2014. A timely motion to intervene and comments were filed by the U.S. Department of the Interior (Interior).² Comments were filed by Sara Bier, Denali Citizens Council (DCC), Michael Raffaeli, and Cathy Teich.

¹ 16 U.S.C. § 797(f) (2012).

² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2014).

III. Discussion

A. Access to Site

4. Interior states that the land status of the project is incorrectly presented in the preliminary permit application, as the land utilized by the project is both state-selected and dual-selected BLM-administered land. It also states that the permittee will be required to contact the BLM Glennallen Field office prior to coordination of any field or study activities.

5. 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.

B. Public Interest and Involvement

6. Sara Bier states that the electricity generated by the proposed project would not benefit the surrounding community and that flood control benefits offered by the dam have not been proven necessary, 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.³

7. DCC and Michael Raffaeli request that the FERC schedule public scoping and information meetings prior to approval of a preliminary permit. Interior states that future actions of the project may require consultation with federally-recognized tribes in the area. Neither the FPA nor the Commission's regulations require Yedatene Na to meet with stakeholders before a preliminary permit may be issued.

8. Section 4.32(d)(2)(i) of the Commission's regulations⁴ and section 4(f) of the FPA do require that the Commission publish a notice of the application in a local newspaper where the project is located in order to solicit public comment. The Commission published the notice in the Wasilla Frontiersman on December 23 and 30, 2014 and January 6 and 13, 2015.

³ See, e.g., *Wind River Hydro, LLC*, 115 FERC ¶ 61,009, at P 10 (2012).

⁴ 18 C.F.R. § 4.32(d)(2)(i) (2014).

C. Issues Related to Project Construction and Operation

9. Cathy Teich and Interior express 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 states that the project may have adverse effects on recreational and visual resources within the vicinity of the project boundary. Sara Bier and Michael Raffaelli state that the project site may be prone to seismic activity due to its proximity to the Denali Fault.

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 a license application, these issues will be addressed in the licensing process.

D. Consultation and Study Requirements under the Permit

11. DCC and Interior recommend that Yedatene Na obtain information and complete field studies regarding project effects on fish and terrestrial resources and habitat, and identify potential protection measures. DCC, Interior, and Michael Raffaelli request that field studies also include a component to investigate the socio-economic, cultural, water quality, morphological, and recreational impacts of the project. Interior also asks that the applicant assess the likelihood of existence of scientifically important fossils within the project boundary and the extent of the effects of the project on forest, subsistence hunting, and visual resources.

12. The Commission has not sought to place all relevant study requirements in preliminary permits.⁵ 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.⁶ 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.⁷

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

⁶ See 18 C.F.R. § 4.38 (2014).

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

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,⁸ 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.⁹ Because a permit is issued only to allow the permit holder 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.¹⁰

14. Article 4 of this permit requires the permittee to submit a progress report no later than the last day of each six-month period from the effective date of this permit. The late filing of a report or the supplementation of an earlier report in response to a notice of probable cancellation will not necessarily excuse the failure to comply with the requirements of this article.

15. 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.¹¹ The permittee must use the Integrated Licensing Process unless the Commission grants a request to use an alternative process

⁸ 16 U.S.C. § 802 (2012).

⁹ 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.”).

¹⁰ 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).

¹¹ 18 C.F.R. §§ 5.5 and 5.6 (2014).

(Alternative or Traditional Licensing Process). Such a request must accompany the NOI and PAD and set forth specific information justifying the request.¹² 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.

16. 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.¹³

¹² See 18 C.F.R. § 5.3 (2014).

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

The Director orders:

(A) A preliminary permit is issued for the Jack River Dam Hydroelectric Project No. 14646 to Yedatene Na, 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 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2014).

Jennifer Hill, Chief
Northwest 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.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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