

154 FERC ¶ 62,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Lock+ Hydro Friends Fund XI, LLC
Energy Resources USA Inc.

Project No. 14694-000
Project No. 14711-000

ORDER ISSUING PRELIMINARY PERMIT,
DENYING COMPETING APPLICATION,
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(Issued January 15, 2016)

1. On July 20, 2015, Lock+ Hydro Friends Fund XI, LLC (Hydro Friends) 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 Mississippi River Lock and Dam 25 Hydropower Project No. 14694 to be located at the existing Mississippi River Lock and Dam No. 25 on the Mississippi River, near the City of Winfield in Lincoln County, Missouri, and Calhoun County, Illinois. On September 2, 2015, Energy Resources USA Inc. (Energy Resources) filed an application for a competing preliminary permit for the Lock and Dam No. 25 Hydroelectric Project No. 14711 at the same site. The Mississippi River Lock and Dam No. 25 is owned by the United States government and operated by the United States Army Corps of Engineers. As discussed below, this order issues a preliminary permit to Hydro Friends and denies Energy Resources' competing permit application.

I. Project Proposals

2. Hydro Friends' proposed project would consist of: (1) three new 450-foot-wide by 25-foot-deep modular hydropower systems, each containing 10 new 1-megawatt (MW) turbine-generator units, having a total combined generating capacity of 30 MW; (2) a new 200-foot-long by 450-foot-wide tailrace; (3) a new 7-mile-long, 69-kilovolt (kV) transmission line; (4) a new 25-foot by 50-foot switchyard; and (5) appurtenant facilities. The project would have an estimated annual generation of 170,000 megawatt-hours.

3. Energy Resources' proposed project would consist of: (1) a new 770-foot-long by 300-foot-wide intake area; (2) a new 90-foot by 220-foot reinforced concrete powerhouse; (3) four 3-MW turbine-generators, having a total combined generating capacity of 12 MW; (4) a 1,000-foot-long by 220-foot-wide tailrace area; (5) a new

¹ 16 U.S.C. § 797(f) (2012).

4.16/115-kV three-phase step-up transformer located in a new 60-foot-long by 50-foot-wide substation; (6) a new 7.69-mile-long, 115-kV transmission line; and (7) appurtenant facilities. The project would have an estimated annual generation of 101,900 megawatt-hours.

II. Background

4. The Commission issued a joint public notice of Hydro Friends' and Energy Resources' competing preliminary permit applications on October 7, 2015, establishing a deadline of December 7, 2015, for filing comments, motions to intervene, and competing applications for Project Nos. 14694 and 14711. No motions to intervene or competing applications were filed. The U.S. Department of the Interior filed a letter on November 30, 2015, for Project No. 14694, stating that it has no comments.

III. Discussion

5. 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,² 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.³ 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.⁴

² 16 U.S.C. § 802 (2012).

³ 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.”).

⁴ 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).

6. Staff has reviewed the applications and found no basis for concluding that either applicant's plan is superior to the other. Neither applicant has presented a plan based on detailed studies or the results of agency consultation. Where the plans of the applicants are equally well adapted to develop, conserve, and utilize in the public interest the water resources of the region, the Commission will favor the applicant with the earliest application acceptance date.⁵ Because Hydro Friends has the first-filed application, the preliminary permit is issued to Hydro Friends for the Mississippi River Lock and Dam 25 Hydropower Project No. 14694.

IV. Permit Information

7. 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.⁶ 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.⁷ 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.

8. 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.

9. 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

⁵ 18 C.F.R. § 4.37(b)(2) (2015).

⁶ 18 C.F.R. §§ 5.5 and 5.6 (2015).

⁷ See 18 C.F.R. § 5.3 (2015).

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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.⁸

The Director orders:

(A) A preliminary permit is issued for the Mississippi River Lock and Dam 25 Hydropower Project No. 14694 to Lock+ Hydro Friends Fund XI, 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) The competing preliminary permit application filed by Energy Resources USA Inc. for the Lock and Dam Hydroelectric No. 25 Hydroelectric Project No. 14711 is denied.

(C) 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.

(D) The Permittee shall coordinate the studies and its plans for access to the site during the term of this permit with the United States Army Corps of Engineers' District Engineer to ensure that the feasibility studies will result in a plan of development consistent with the authorized purposes of the federal project.

(E) 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 (2015).

Vince Yearick
Director
Division of Hydropower Licensing

⁸ See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

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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