

138 FERC ¶ 62,298
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Haiwee Ridge Pumped Storage Project

Project No. 14286-000

ORDER ISSUING PRELIMINARY PERMIT
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(March 23, 2012)

1. On September 14, 2011, Haiwee Ridge Hydro, LLC (Haiwee Ridge) 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 Haiwee Ridge Pumped Storage Project No. 14286 (Haiwee Ridge Project or project) to be located on the South Haiwee reservoir, near the town of Olancho, Inyo County, California. The project would be located almost entirely on land managed by the Bureau of Land Management.

I. Project Proposal

2. The proposed project Alternatives A and B would utilize the existing South Haiwee dam as the lower reservoir. The dam's operations have been limited due to past seismic activity. The crest of the dam is 3,766 feet above mean sea level (msl). The water level in the reservoir has a maximum elevation of 3,742 feet msl. The proposed project Alternative C would not use the existing South Haiwee dam, but would instead involve constructing a new lower reservoir.

The applicant is studying the following alternatives:

3. **South Haiwee Alternative A:** (1) an upper reservoir formed by a 160-foot-high by 2,270-foot-long, roller-compacted concrete (RCC) dam, two saddle dams (a 35-foot-high by 680-foot-long RCC dam and a 65-foot-high by 680-foot-long RCC dam) having a total storage capacity of 15,100 acre-feet and a water surface area of 175 acres at full pool elevation of 5,050 feet msl; (2) a lower reservoir formed by the 81-foot-high by 1,555-foot-long potentially rebuilt South Haiwee dam having a total storage capacity of 46,600 acre-feet and a water surface area of 660 acres at full pool elevation of 3,756 feet msl; (3) approximately 13,150 feet of conduit connecting the upper to the lower reservoir in three different sections: a 3,000-foot-long by 18.5-foot-diameter, concrete-lined low-pressure tunnel, a 7,850-foot-long by 18.5-foot-diameter concrete-lined pressure shaft,

¹ 16 U.S.C. § 797(f) (2006).

and a 2,300-foot-long by 22.2-foot diameter tailrace; and (4) an underground powerhouse located roughly 1,500 feet east of South Haiwee reservoir at an elevation of 3,600 feet msl.

4. **South Haiwee Alternative B:** (1) an upper reservoir formed by a 210-foot-high by 1,320-foot-long, RCC dam and a 25-foot-high by 800-foot-long RCC saddle dam having a total storage capacity of 14,235 acre-feet and a water surface area of 241 acres at full pool elevation of 5,000 feet msl; (2) a lower reservoir formed by the 91-foot-high by 1,523-foot-long potentially rebuilt South Haiwee dam having a total storage capacity of 46,600 acre-feet and a water surface area of 800 acres at full pool elevation of 3,756 feet msl; (3) approximately 14,700 feet of conduit connecting the upper to the lower reservoir in three different sections: a 5,100-foot-long by 18.9-foot-diameter, concrete-lined low-pressure tunnel, a 5,600-foot-long by 18.9-foot-diameter concrete-lined pressure shaft, and a 4,000-foot-long by 22.7-foot diameter tailrace; and (4) an underground powerhouse located roughly 3,300 feet southeast of South Haiwee reservoir at an elevation of 3,580 feet msl.

5. **New Reservoir Alternative:** (1) an upper reservoir formed by a 210-foot-high by 1,320-foot-long, RCC dam having a total storage capacity of 14,235 acre-feet and a water surface area of 241 acres at full pool elevation of 5,000 feet msl; (2) a lower reservoir formed by a 60-foot-high by 10,600-foot-long RCC dam having a total storage capacity of 46,600 acre-feet and a water surface area of 800 acres at full pool elevation of 3,756 feet above msl; (3) approximately 12,500 feet of conduit connecting the upper to the lower reservoir in three different sections: a 3,750-foot-long by 17.5-foot-diameter, concrete-lined low-pressure tunnel, a 6,300-foot-long by 17.5-foot-diameter concrete-lined pressure shaft, and a 2,500-foot-long by 21-foot diameter tailrace; and (4) an underground powerhouse located roughly 8,500 feet southwest of South Haiwee reservoir at an elevation of 3,400 feet msl.

6. All of the alternatives would consist of four reversible pump-turbines with a total capacity of 500 megawatts (MW) (4 units x 125 MW unit). Annual energy output would be approximately 1,533,000 megawatthours. The project would interconnect with either the Los Angeles Department of Water & Power's 230-kilovolt (kV) Owens George-Rinaldi transmission line via a 0.9-mile-long interconnection, or with Southern California Edison's 115-kV Control-Inyokern transmission line via a new 0.9-to 2.3-mile-long interconnection. A 70-foot-long by 280-foot-wide by 120-foot-high underground power house would be the same for all of the project alternatives.

II. Background

7. The Commission issued public notice of Haiwee Ridge's permit application on September 14, 2011. The notice set January 2, 2012 as the deadline for filing for filing comments, motions to intervene, competing applications (without notices of intent), or

notices of intent to file competing applications. The City of Los Angeles Department of Water and Power (Los Angeles DWP) filed a motion to intervene.² Comments were filed by the U.S. Department of the Interior (Interior).

III. Discussion

A. Issues Related to Project Construction and Operation

8. Los Angeles DWP filed a motion to intervene due to concerns that the proposed project could: (1) impose severe stress on the dam due to daily elevation fluctuations; (2) compromise Los Angeles DWP's current operations; (3) contaminate the City of Los Angeles' water supply; and (4) result in a loss of water by the City.

9. 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.

B. Consultation and Study Requirements Under the Permit

10. Interior expressed concern that construction and operation may affect the Mohave ground squirrel, bald eagles, riparian and other wildlife habitat, and water quality. Further, Interior recommends that Haiwee Ridge Hydro obtain information regarding project effects on fish and terrestrial resources and identify potential protection measures.

11. The Commission has not sought to place all relevant study requirements in preliminary permits.³ 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.⁴ Further, permit

² Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's regulations. 18 C.F.R. § 385.214(c) (2011).

³ See, e.g., *Continental Lands Inc.*, 90 FERC ¶ 61,355 at 62,177 (2000).

⁴ See 18 C.F.R. § 4.38 (2011).

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.⁵

IV. Permit Information

12. 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,⁶ 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.⁷ 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.⁸

13. 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.⁹ 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

⁵ See *City of Richmond, Va.*, 53 FERC ¶ 61,342 at 62,247 (1990).

⁶ 16 U.S.C. § 802 (2006).

⁷ 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.").

⁸ 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).

⁹ 18 C.F.R. §§ 5.5 and 5.6 (2011).

and PAD and set forth specific information justifying the request.¹⁰ 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.

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. A progress report must describe the nature and timing of what the permittee has done under the pre-filing requirements of section 4.38 and Part 5 of the Commission's regulations for the specific reporting period. A permit may be cancelled if a permittee fails to file a timely progress report or if the report does not demonstrate that progress is being made by the permittee. 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. 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.¹¹

The Director orders:

(A) A preliminary permit is issued for the Haiwee Ridge Pumped Storage Project No. 14286 to Haiwee Ridge Hydro, 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.

¹⁰ See 18 C.F.R. § 5.3 (2011).

¹¹ See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

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(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 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2011).

Timothy J. Welch, Chief
West 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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