

149 FERC ¶ 62,063
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Green Energy Storage Corp

Project No. 14613-000

ORDER ISSUING PRELIMINARY PERMIT AND GRANTING PRIORITY TO FILE
LICENSE APPLICATION

(Issued October 29, 2014)

1. On April 3, 2014, Green Energy Storage Corp (Green Energy) filed and revised on May 14 and June 18, 2014, 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 Weed Heights Pumped Storage Project No. 14613 to be located off-stream near the town of Yerington in Lyon County, Nevada.

I. Project Proposal

2. The proposed 150-megawatt (MW) closed loop pumped storage project would use the 775 feet of available head between a new upper reservoir and the former Anaconda open pit copper mine. The project would consist of: (1) a new 35-foot-high upper dam with a total crest length of 8,000 feet, impounding an upper reservoir with a maximum storage of 2,600 acre-feet; (2) a tunnel connecting the two reservoirs consisting of an 800-foot-long, 16-foot-diameter shaft; (4) two 75-MW pump/turbines; (5) a 2,700-foot-long, 16-foot-diameter draft tube, extending from the turbines to the lower reservoir; (6) a new 120-kilovolt (kV) transmission line extending about 7 miles from the project's substation to an existing 120-kV transmission line owned by Sierra Pacific Power; and (7) appurtenant facilities. The proposed transmission lines would be located on Federal lands, including lands managed by the Bureau of Land Management (BLM). The estimated annual average energy production of the project would be 400 gigawatt hours.

II. Background

3. The Commission issued public notice of Green Energy's permit application on June 9, 2014, establishing a deadline of August 8, 2014, to file comments, motions to intervene, notices of intent to file competing applications, and competing applications. On August 8, 2014, the Department of the Interior's Bureau of Indian Affairs (BIA)

¹ 16 U.S.C. § 797(f) (2012).

submitted comments on the proposed project and Singatse Peak Services (SPS) filed a timely motion to intervene.²

III. Discussion

4. BIA commented that the mine's open pit lake, the site of Green Energy's proposed lower reservoir, is contaminated and currently part of a U.S. Environmental Protection Agency (EPA) Superfund cleanup site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).³ As a result, BIA states that the site is likely to eventually become subject to an EPA-approved cleanup plan that may not accommodate Green Energy's proposed project. BIA also expressed concern that the contaminated lower reservoir may have negative impacts on the water quality of the proposed upper reservoir, area wildlife and migratory birds, and the flow and quality of Walker River, to which the lower reservoir is hydraulically connected.

5. The issues raised by BIA are premature at the permit stage because they relate to impacts resulting from or associated with the construction and operation of the proposed project. A preliminary permit does not authorize a permittee to undertake construction of the proposed project. Rather, the purpose of a preliminary permit is to study the feasibility of the project, including studying the potential impacts identified by BIA. Should Green Energy file a license application, these issues will be addressed in the licensing process.

6. SPS, which states that it owns the Anaconda copper mine, the site of Green Energy's proposed project, purchased the site, along with appurtenant ground water rights, in 2011.⁴ SPS expressed concern that development of the proposed project would preclude the resumption of mining activities, which it claims may be valuable. SPS also states that it will not grant Green Energy access to the site to perform studies needed to determine the feasibility of the proposed project. SPS maintains that, because the ground water in the Yerington area is fully allocated and SPS will not make its own ground water rights available for project uses, Green Energy will not be able to acquire the necessary ground water rights for project operation.

7. SPS's concerns about a preliminary permit's impact on its potential future mining activities at the site are premature. We have previously explained that concerns about the

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).

³ 42 U.S.C. §§ 9601-9675 (2012).

⁴ No mining has occurred at the site since 1999.

development of the project on existing or future land use at the mine is an issue to be examined at the licensing, not the permit, stage. To conclude otherwise would in effect make our permit process subject to veto by parties with economic interests in the vicinity of the project site. The issue of obtaining access to the site for the performance of studies is one for the permittee to address.

8. Similarly, the issue of securing water rights is not relevant at the preliminary permit stage of a proposal. The Commission does not require an applicant for a preliminary permit to acquire, as a prerequisite to receiving a permit, all rights, such as water rights, that may be necessary for the operation of the proposed project. The question of whether there is enough water physically available to make the proposed project feasible is a matter for study during the term of the permit.

9. SPS also contends that, because the source of water for the initial fill of the proposed project is ground water from the Anaconda mine pit, and because ground water is not considered a Commerce Clause stream for purposes of the Commission's mandatory licensing jurisdiction, we should deny the proposed permit.

10. One of Green Energy's proposed work items during the preliminary permit term is to study initial and ongoing water acquisition, as well as possible make up water requirements for the proposed project. Because these studies have yet to be completed, SPS's statements about the source of initial fill and water are speculative at this stage. Regardless of the source of water, because some of the project facilities (i.e., transmission line) would occupy federal lands, the project, if developed, is required to be licensed under section 23(b)(1) of the FPA.⁵

IV. Conclusion

11. For the reasons discussed above, we will issue a preliminary permit and grant priority to file a license application to Green Energy Storage Corp for the proposed Weed Heights Pumped Storage Project.

V. 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

⁵ 16 U.S.C. § 817 (2012). In addition, because groundwater is, in fact, a Commerce Clause water for purposes of section 4(e) of the FPA, the project would be eligible for a voluntary license under that section. *See Swanton Village, Vermont*, 70 FERC ¶ 61,325 (1995).

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. 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.

14. 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 and PAD and set forth specific information justifying the request.¹⁰ Should the permittee

⁶ 16 U.S.C. § 802 (2012).

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 (2014).

¹⁰ See 18 C.F.R. § 5.3 (2014).

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.

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 Weed Heights Pumped Storage Project No. 14613 to Green Energy Storage Corp 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).

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