

156 FERC ¶ 62,163
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Loxbridge Partners, LLC

Project No. 14777-000

ORDER DENYING PRELIMINARY PERMIT APPLICATION

(Issued September 2, 2016)

1. On April 25, 2016, Loxbridge Partners, LLC (Loxbridge) 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 McNary Second Powerhouse Project No. 14777. The project would be located at the U.S. Army Corps of Engineers' (Corps) McNary Lock and Dam facility on the Columbia River near the City of Umatilla in Umatilla County, Oregon.

I. Project Proposal

2. The proposed project would utilize McNary Dam and would consist of the following new facilities: (1) a powerhouse built in place of the existing McNary Dam south abutment;² (2) seven 100-megawatt (MW) Kaplan turbine-generators; (3) two or three step-up transformers; (4) two 1,300-yard-long transmission lines interconnecting with the existing McNary Dam substation; and (5) appurtenant facilities. The estimated annual generation of the McNary Second Powerhouse Project would be 3,700 gigawatt-hours. The proposed project would be located entirely on federal land under the jurisdiction of the Corps.

II. Background

3. Under sections 4(e) and 4(f) of the FPA,³ the Commission has the authority to issue preliminary permits and licenses for hydropower projects located at federal dams and facilities.⁴ This jurisdiction is withdrawn if federal development of hydropower

¹ 16 U.S.C. § 797(f) (2012).

² Loxbridge states that the proposed configuration would necessitate the relocation of the juvenile fish facility and bypass system and the southern shore fish ladder, which are all located at the dam's south abutment.

³ 16 U.S.C. §§ 797(e), (f) (2012).

⁴ Commission licenses for projects at federal facilities cannot include the federal facilities as licensed project works. Rather, the Commission licenses only the non-federal
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generation at the site is authorized, or if Congress otherwise unambiguously withdraws the Commission's jurisdiction over the development of such generation.⁵

4. On May 16, 2016, Commission staff sent the Corps a letter requesting its opinion on whether non-federal development is authorized at McNary Dam, and if so, whether Loxbridge's proposal would interfere with existing dam operations or improvement plans.⁶ The Corps responded on August 2, 2016, stating that it believes the Commission does not have jurisdiction to issue a preliminary permit or license for a project at the site.⁷ Furthermore, the Corps opposes Loxbridge's proposed project on the ground that it would interfere with the Corps' operation of McNary Dam, and the agency asks that staff reject the permit application.

5. On August 8, 2016, Loxbridge filed a response to the Corps' letter, arguing that the Commission's jurisdiction over the non-federal development of hydropower at the dam is not withdrawn, that its proposed project would not interfere with the Corps' operation of McNary Dam, and that the Corps' arguments regarding incompatible operation are premature, as they would be addressed as part of the licensing process.

III. Discussion

6. 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 a license. The Commission is not

facilities of a hydroelectric project.

⁵ See, e.g., *Richard D. Ely, III*, 87 FERC ¶ 61,176 (1999) (citing *City of Gillette, Wyoming*, 25 FERC ¶ 61,366 (1983)).

⁶ The McNary Lock and Dam was authorized by the Rivers and Harbors Act of 1945, as recommended in House Document 75-704. Rivers and Harbors Act of 1945, Pub. L. No. 79-14, 59 Stat. 10; H.R. Doc. No. 75-704 (1938). The Corps owns and operates a 980-MW hydroelectric project at the dam.

⁷ The Corps notes that it took this same position in another recent proceeding regarding non-federal development at the dam. See *Advanced Hydropower, Inc.*, 155 FERC ¶ 61,007 (2016).

⁸ 16 U.S.C. § 802 (2012).

required to grant a preliminary permit application, so long as it articulates a rational basis for not doing so.⁹

7. In recent decisions, the Commission has denied preliminary permits for projects at federal facilities after the federal entities indicated that no purpose would be served in issuing a permit because the federal entity would not approve modifications to its federal facilities. In *Owyhee Hydro, LLC*,¹⁰ the Commission denied a preliminary permit because the U.S. Bureau of Reclamation stated that a non-federal entity's proposed use of its federal facility was unacceptable and would not be permitted.¹¹ Similarly, in *Advanced Hydropower, Inc.*,¹² the Commission denied a preliminary permit for a project at McNary Dam because the Corps opposed the project.¹³

8. Here, because the Corps, which owns the McNary Lock and Dam facility and whose permission would be needed for the development of any project at that facility, has stated that it opposes the project, there is no purpose in issuing a preliminary permit.¹⁴ Therefore, Loxbridge's preliminary permit application is denied.

The Director orders:

(A) The preliminary permit application filed by Loxbridge Partners, LLC on April 25, 2016, for the McNary Second Powerhouse Project No. 14777 is denied.

(B) This order is issued under authority delegated to the Director and constitutes final agency action. Any party may file a request for rehearing of this order within 30

⁹ See *Advanced Hydropower, Inc.*, 155 FERC ¶ 61,007, at P 8 (2016); *Owyhee Hydro, LLC*, 154 FERC ¶ 61,210, at P 23 (2016); *Wyco Power and Water, Inc.*, 139 FERC ¶ 61,124 (2012) (citing *Kamargo Corp. v. FERC*, 852 F.2d 1392, 1398 (D.C. Cir. 1988)).

¹⁰ 154 FERC ¶ 61,210 (2016).

¹¹ *Id.* at PP 22-25.

¹² 155 FERC ¶ 61,007 (2016).

¹³ *Id.* at 10.

¹⁴ Given that we are denying the permit application because of the Corps' opposition to the project, we need not address the issue of jurisdiction over non-federal hydropower development at McNary Lock and Dam.

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days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825*l* (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2016).

Vince Yearick
Director
Division of Hydropower Licensing

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