

156 FERC ¶ 62,162
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Rivertec Partners LLC

Project No. 14774-000

ORDER DENYING PRELIMINARY PERMIT APPLICATION

(Issued September 2, 2016)

1. On April 13, 2016, Rivertec Partners LLC (Rivertec) 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 Steelhead Hydroelectric Project No. 14774. The project would be located near the U.S. Army Corps of Engineers' (Corps) McNary Lock and Dam Project (McNary Dam) on the Columbia River near the City of Umatilla in Umatilla County, Oregon.

I. Project Proposal

2. The proposed project would tap into the pipe and use flows supporting the Corps' McNary Dam Juvenile Fish Bypass Facility (fish facility) located on the shore at the left abutment of the McNary Dam. The project would consist of the following new facilities: (a) a new powerhouse located near the entrance to the fish facility with a 4-megawatt Kaplan turbine-generator; (b) a step-up transformer; (c) a 200-yard-long transmission line interconnecting with the existing McNary Dam powerhouse or a 1,300-yard-long transmission line interconnecting with the existing McNary Dam substation; (d) a bypass conduit returning flows to the Columbia River; and (e) appurtenant facilities. The estimated annual generation of the Steelhead Project would be 28 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,² the Commission has the authority to issue preliminary permits and licenses for hydropower projects located at federal dams and facilities.³ This jurisdiction is withdrawn if federal development of hydropower

¹ 16 U.S.C. § 797(f) (2012).

² 16 U.S.C. §§ 797(e), (f) (2012).

³ Commission licenses for projects at federal facilities cannot include the federal facilities as licensed project works. Rather, the Commission licenses only the non-federal facilities of a hydroelectric project.

generation at the site is authorized, or if Congress otherwise unambiguously withdraws the Commission's jurisdiction over the development of such generation.⁴

4. On May 16, 2016, Commission staff sent the Corps a letter requesting its opinion on whether non-federal development is authorized at the fish facility, and if so, whether Rivertec's proposal would interfere with existing dam operations or improvement plans. On August 2, 2016, the Corps responded stating that it believes the Commission retains jurisdiction over non-federal hydropower development at the fish facility,⁵ but that the project is not technically possible because all of the water accessible at the proposed intake location is necessary and used for operation of the fish facility. The Corps asks that staff reject the permit application.

5. On August 8, 2016, Rivertec filed a response to the Corps' letter, arguing 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,⁶ which in turn sets forth the material that must accompany an application for a license. The Commission is not required to grant a preliminary permit application, so long as it articulates a rational basis for not doing so.⁷

⁴ See, e.g., *Richard D. Ely, III*, 87 FERC ¶ 61,176 (1999) (citing *City of Gillette, Wyoming*, 25 FERC ¶ 61,366 (1983)).

⁵ The Corps notes that the fish facility, unlike the McNary Dam, was not authorized for hydropower. However, the Corps maintains that hydropower development at McNary Dam is reserved for federal development.

⁶ 16 U.S.C. § 802 (2012).

⁷ 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)).

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*,⁸ 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.⁹ Similarly, in *Advanced Hydropower, Inc.*,¹⁰ the Commission denied another preliminary permit for a project at McNary Dam because the Corps opposed the project.¹¹

8. Here, because the Corps, which owns the McNary Lock and Dam and the fish 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. Therefore, Rivertec's preliminary permit application is denied.

The Director orders:

(A) The preliminary permit application filed by Rivertec Partners LLC on April 13, 2016, for the Steelhead Hydroelectric Project No. 14774 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 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2016).

Vince Yearick
Director
Division of Hydropower Licensing

⁸ 154 FERC ¶ 61,210 (2016).

⁹ *Id.* at PP 22-25.

¹⁰ 155 FERC ¶ 61,007 (2016).

¹¹ *Id.* at 10.

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