

UNITED STATES OF AMERICA 138 FERC ¶ 62,036
FEDERAL ENERGY REGULATORY COMMISSION

City and Borough of Sitka, Alaska

Project No. 13234-002

ORDER ISSUING SUCCESSIVE PRELIMINARY PERMIT
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(January 18, 2012)

1. On September 1, 2011, and supplemented on October 17, 2011, the City and Borough of Sitka, Alaska (Sitka) filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA),¹ to study the feasibility of the proposed Takatz Lake Hydroelectric Project No. 13234 (Takatz Lake Project) to be located on Takatz Lake and Takatz Creek, approximately 21 miles east of the city of Sitka, Alaska, on the east side of Baranof Island. The proposed project would be located within the Tongass National Forest on lands managed by the U.S. Department of Agriculture, Forest Service (Forest Service).

I. Project Proposal

2. The proposed project would consist of: (1) a 200-foot-high by 250-foot-long primary concrete dam that would raise the elevation of the existing Takatz Lake; (2) a 63-foot-high by 100-foot-long secondary saddle dam; (3) an impoundment with a 740-acre surface area at a full pool elevation of 1,040 feet above mean sea level, with an active capacity of 82,400 acre-feet; (4) a 2,800-foot-long, 6.5-foot by 7-foot horseshoe-tunnel power conduit fed by a concrete intake structure or lake tap; (5) a 72-inch-diameter 1,000-foot-long steel penstock; (6) a 120-foot-long by 80-foot-wide powerhouse containing two Francis-type generation units having a total installed capacity of 27.7 megawatts; (7) a 100-foot-long by 70-foot-wide switchyard; (8) an estimated 26-mile-long, 138-kilovolt transmission line consisting of underground and overhead segments, with an alternative for a submarine segment; (9) an estimated 3-mile-long access road; and (10) appurtenant facilities. The estimated annual generation output for the project would be 106.9 gigawatt-hours.

¹ 16 U.S.C. § 797(f) (2006).

II. Background

3. The Commission issued public notice of Sitka's permit application on October 21, 2011. The Forest Service filed a notice of intervention on October 25, 2011.² Comments were filed by the U.S. Department of the Interior (Interior) and The Boat Company.

III. Discussion

A. Issues Related to the Licensing Process

4. The Boat Company requests that the Commission reconsider its approval of the use of the Alternative Licensing Process (ALP) for the proposed project and instead consider replacing the ALP with the Integrated Licensing Process. The Boat Company stated that if use of the ALP continues, the Boat Company recommends that the Commission and Sitka seek out a wider range of stakeholders. The Boat Company also recommended additional scoping opportunities due to modifications of the proposed action in the successive preliminary permit application.

5. The Boat Company's concerns on the license application preparation process are not directly relevant to this permit proceeding. However, we note that the Commission approved the use of the ALP on April 28, 2009.³ Sitka filed Scoping Document 1 on August 27, 2009, and Scoping Document 2 on June 16, 2010. After Scoping Document 1 was filed, scoping meetings were held in Juneau, Alaska and Sitka, Alaska on October 7, 2009 and October 8 2009, respectively. We conclude that the use of the ALP has allowed for and will continue to allow for sufficient opportunity for participation by interested stakeholders. Stakeholders wishing to be added to the applicant's mailing list for the proposed project should contact the applicant.

B. Issues Related to Project Construction and Operation

6. Interior expressed concern that fish, wildlife, habitats, and some federally threatened and endangered species could be adversely affected by the project construction and operation. Interior recommended: (1) Sitka maintain stream

² A timely notice of intervention filed by the Department of Agriculture is granted by operation of Rule 214(a)(2).

³ The notice approving the use of the ALP states that Sitka gave public notice of its request to use the ALP on March 20, 2008.

gages in upper and lower reaches of the Takatz River to record continuous stream flow data; (2) fish and aquatic organism passage be maintained at road-stream crossing following guidelines established by the U.S. Army Corps of Engineers (Corps); (3) Sitka conduct new nest surveys as the project nears construction; (4) Sitka develop and implement an avian protection plan; and (5) all wetlands occurring in the vicinity of proposed construction areas, access roads, and transmission line corridors be accurately delineated and mapped according to the Corps' standards.

The Boat Company expressed concern that aesthetic, ecological, and recreational resources could be adversely affected by proposed project construction and operation. The Boat Company recommended: (1) preparation of an Environmental Impact Statement (EIS) instead of an Environmental Assessment (EA); and (2) consideration of project and transmission corridor alternatives that fit within the existing Tongass Land Management Plan and other public land reservations.

7. 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.

C. Consultation and Study Requirements Under the Permit

8. Interior recommended that Sitka's existing study plans for the 2012 field season be revised to include an evaluation of fish and wildlife resources along the Takatz-Blue Lake alternative transmission line route.

9. The Commission has not sought to place all relevant study requirements in preliminary permits.⁴ 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.⁵ Further, permit conditions have been framed to ensure that the

⁴ See, e.g., *Continental Lands Inc.*, 90 FERC ¶ 61,355 at 62,177 (2000).

⁵ See 18 C.F.R. § 4.38 (2011).

permittee does not tie up a site without pursuing in good faith a study of the project's feasibility.⁶

IV. Permit Information

10. 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,⁷ 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.⁸ 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.⁹

11. The permittee has previously held a preliminary permit for this site under Project No. 13234-000. The Commission will grant successive permits if it concludes that the applicant has diligently pursued the requirements of its prior permits in good faith. Sitka has provided information to Commission staff demonstrating that it is currently making progress with the analysis of the project's feasibility, and towards the development of its proposed project. It is expected

⁶ See *City of Richmond, Va.*, 53 FERC ¶ 61,342 at 62,247 (1990).

⁷ 16 U.S.C. § 802 (2006).

⁸ 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.").

⁹ 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).

that during this permit term, agency consultation will be conducted and a development application will be prepared pursuant to sections 4.38 and 4.41 of the Commission's regulations.

12. The Commission usually does not prescribe in great detail what a permittee must accomplish under a permit. However, a successive permit can warrant a greater degree of Commission oversight. Therefore, we will monitor the progress of the permittee's activities. If the permittee fails to make significant progress toward developing a development application, the permit may be subject to cancellation.

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. On March 20, 2009, Sitka filed a Notice of Intent and Pre-Application Document for its proposed project, along with a request to use the ALP to prepare its license application. On April 28, 2009, the Commission approved Sitka's request to use the ALP. 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.¹⁰

The Director orders:

(A) A preliminary permit is issued for the Takatz Lake Hydroelectric Project No. 13234-002 to the City and Borough of Sitka, Alaska, 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 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2011).

Nicholas Jayjack, Chief
Midwest Branch
Division of Hydropower Licensing

¹⁰ 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.

Document Content(s)

P-13234-002Order.doc.DOCX.....1-7