

UNITED STATES OF AMERICA 125 FERC ¶ 62,020
FEDERAL ENERGY REGULATORY COMMISSION

Kenai Hydro, LLC

Project No. 13211-000

ORDER ISSUING PRELIMINARY PERMIT

(Issued October 07, 2008)

On April 28, 2008, Kenai Hydro, LLC filed an application, pursuant to section 4(f) of the Federal Power Act (FPA),¹ to study the feasibility of the Falls Creek Project. The project would be located on Falls Creek in Kenai Peninsula Borough, Alaska, and would occupy federal lands managed by the Chugach National Forest.

The proposed project would consist of: (1) a concrete diversion dam/intake structure located in Falls Creek; (2) a 2.5-3 mile long steel lined penstock; (3) a powerhouse containing one turbine generator unit with a total installed capacity of about 5 MW; (4) a 2-4 mile 115 kV transmission line and; (5) appurtenant facilities. The annual production would be 17.5 GWh, which would be sold to a local utility.

Background

The Commission issued public notice of the application on July 21, 2008. The U. S. Department of the Interior and the U.S. Department of Agriculture (USDA) filed motions to intervene to be parties in the proceeding.² The USDA also filed comments.

USDA commented on resource issues that need to be evaluated by the permittee during the course of the preliminary permit. These issues include fish and wildlife, recreation, and visual resources. The USDA also states the permittee will need to obtain a Special Use Authorization in order to perform work related to the permit on National Forest lands. Additionally, USDA requests the permittee modify its proposed project boundary to avoid conflicts with a National Forest Service developed campground.

¹ 16 U.S.C. § 797(f) (2000).

² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Regulations. *Id.* § 385.214(a)(3) (2008).

Discussion

The purpose of a preliminary 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, after consultation with the appropriate resource agencies, to determine the feasibility of the proposed project and prepares an acceptable development application. The permit confers no authority on the permittee to undertake construction of the proposed project or any part thereof,³ or to occupy or use lands or other property of the United States or of any other entity or individual.

If, during the course of the permittee's investigation into the feasibility of the proposal, the permittee decides to prepare a development application, it must first prepare a Notice of Intent (NOI) and Pre-Application Document (PAD) pursuant to Sections 5.5 and 5.6 of the Commission's Regulations. Pursuant to Part 5 of the Commission's regulations, 18 C.F.R. Part 5, the permittee must use the Integrated Licensing Process unless the Commission grants a request to use an alternative process (Alternative or Traditional Licensing Process). Pursuant to Section 5.3, such a request must accompany the NOI and PAD and set forth specific information justifying the request.⁴ 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.

A preliminary permit is not transferable. The named permittee is the only party entitled to the priority of 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. See City of Fayetteville, 16 FERC . 61,209 (1981).

³ Issuance of this preliminary permit is thus not a major federal action significantly affecting the quality of the human environment.

⁴ See Commission Order 2002, issued July 23, 2003.

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The Director orders:

(A) A preliminary permit is issued for this project to Kenai 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.

(C) This order is issued under authority delegated to the Director and constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days from the date of issuance of this order, pursuant to 18 C.F.R. 385.713.

William Guey-Lee
Chief, Engineering and Jurisdiction Branch
Division of Hydropower Administration
and Compliance

Form P-1 (Revised February 2007)

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 said 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 time exercise appropriate measures to prevent irreparable damage to the environment of the proposed project. All test sites shall be restored as closely as possible to their original condition and to the satisfaction of the Commission's authorized representative or, where federal lands are affected, to the satisfaction of the agency administering such lands.

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. At the close of each six-month period from the effective date of this permit, the permittee shall file four copies of a progress report with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426; and shall serve a copy on the interveners in this proceeding. The report shall describe, for that report period, the nature and timing of what the permittee has done under the pre-filing requirements of 18 CFR §§ 4.38 and 5 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 therefor.

Document Content(s)

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