

125 FERC ¶ 62,279
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

North Eden Hydro, LLC.

Project No. 13249-000

ORDER ISSUING PRELIMINARY PERMIT

(Issued December 24, 2008)

On July 1, 2008, North Eden Hydro, LLC. (permittee) filed an application for a three-year preliminary permit under section 4(f) of the Federal Power Act (FPA) to study the proposed 100 megawatt North Eden Pumped Storage Hydroelectric Project No. 13249.¹ The proposed North Eden Pumped Storage Hydroelectric Project is to be located in Rich County, Utah with the point of interconnection in Bear Lake County, Idaho.

The proposed project would consist of: (1) two proposed earth embankment dams, 100-foot-high and 4,000-foot-long and 130-foot-high and 1,300-foot-long, respectively, for the upper and lower reservoirs which would have water surface elevations of 6,988 and 6,245 feet, MSL, respectively, (2) a proposed powerhouse containing five generating units having a total installed capacity of 100 megawatts, (3) a proposed 2,200-foot-long steel penstock, (4) a proposed 5.0-mile-long, 500-kV transmission line, interconnected with a proposed upgrade to an existing PacifiCorp 240-kV line, and (5) appurtenant facilities. The project would have an annual generation of 1,300,000 megawatt-hours that would be sold to local utilities and providers in the Western Electrical Coordinating Council system.

Public notice of the application was issued on October 7, 2008. Motions to intervene were filed by PacifiCorp Energy (PacifiCorp) on December 5, 2008, and Bear Lake Watch, Inc. (Bear Lake Watch) on December 8, 2008, to be parties to the proceeding.² PacifiCorp had concerns of the proposed project's impacts, if constructed, on PacifiCorp's licensed Bear River Project No. 20 and the Bear River Hydropower Settlement Agreement, contractual water rights from Bear Lake, its transmission system, and financial interests. Bear Lake Watch had concerns with the proposed project's

¹ 16 U.S.C. § 797(f) (2006). The maximum term for a preliminary permit is three years. 16 U.S.C. § 798 (2006).

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

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impacts on the Bear Lake Settlement Agreement and on Bear Lake's water rights and environmental resources.

The U.S. Department of the Interior reviewed the application and had no comments.

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 to prepare an acceptable development application. The permit confers no authority on the permittee to undertake construction of the proposed project or any part thereof, or to occupy or use lands or other property of the United States or of any other entity or individual. Therefore, issuance of the preliminary permit is not a major federal action.

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.³ 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.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 any of these proprietary rights necessary for project purposes during the term of an issued license, they must be included as joint applicants in any application for a license. In such

³ 18 C.F.R. §§ 5.5 and 5.6 (2008).

⁴ 18 C.F.R. § 5.3 (2008).

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an instance, where parties other than the permittee are added as joint applicants for a license, the joint application will not be eligible for any permit-based priority.⁵

The Director orders:

(A) A preliminary permit is issued for the North Eden Pumped Storage Hydroelectric Project No. 13249 to North Eden 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 (2008).

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

⁵ See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

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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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