

144 FERC ¶ 62,159
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

GB Energy Park, LLC

Project No. 13642-002

ORDER ISSUING PRELIMINARY PERMIT
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(August 26, 2013)

1. On May 1, 2013, GB Energy Park, LLC (GB Energy) 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 Gordon Butte Pumped Storage Project No. 13642 (Gordon Butte Project or project) to be located near Martinsdale in Meagher County, Montana.

I. Project Proposal

2. The proposed project would consist of the following:

Upper Reservoir

(1) a new 50-foot-high, 9,000-foot-long earthen and roller compacted concrete embankment; (2) a new 3,000-foot-long, 1,000-foot-wide, 50- to 75-foot-deep upper reservoir, with a surface area of 50 acres and a storage capacity of 4,050 acre-feet at a normal maximum surface elevation of 6,020 feet; (3) a new 25-foot-diameter, 4,000-foot-long concrete- and steel-lined horizontal penstock conveying flows to the powerhouse; and (4) a new powerhouse adjacent to the lower reservoir containing four 100-megawatt (MW) turbine generator units having a total installed capacity of 400 MW.

Lower Reservoir

(1) a new 50-foot-high, 10,000-foot-long earthen and roller compacted concrete embankment; (2) a new 5,000-foot-long, 1,000-foot-wide, 50- to 75-foot-deep lower reservoir with a surface area of 80 acres and a storage capacity of 4,050 acre-feet at a normal maximum surface elevation of 4,990 feet; (3) a new substation; (4) option of two transmission lines: (a) a new 5.7-mile-long, 500-kilovolt (kV) transmission line interconnecting with an existing 500-kV line, or (b) a new 1.1-mile-long, 100-kV transmission line interconnecting to an existing 100-kV line; (5) 7.4 miles of 20-foot-wide gravel access roads along the outside and top of both reservoirs' embankments; and (6) appurtenant facilities.

¹ 16 U.S.C. § 797(f) (2006).

3. For the initial fill of the lower reservoir, GB Energy proposes three options: (a) a 2-mile-long existing canal carrying flows from Cottonwood Creek ; (b) a new pipeline from Martinsdale reservoir about four miles away from the project; or (c) an existing private reservoir about 3 miles away from the project.

4. The proposed project would have an average annual generation of 1,300 gigawatt-hours.

II. Background

5. The Commission issued public notice of GB Energy's permit application on June 5, 2013. Comments were filed by the U.S. Department of the Interior (Interior).

III. Discussion

6. Interior expressed concern that BLM-managed riparian and other resources depending on flows from Cottonwood Creek and the South Fork and mainstem of the Musselshell River, downstream from the project, could be negatively affected by project-related flow reductions.

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.

IV. Permit Information

8. 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,² 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.³ Because a permit is issued only to allow the permit holder to investigate the feasibility of a project while the permittee conducts

² 16 U.S.C. § 802 (2006).

³ 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.”).

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.⁴

9. The applicant has previously held a preliminary permit for this site under Project No. 13642-000. The Commission will grant successive permits if it concludes that the applicant has diligently pursued the requirements of its prior permits in good faith. GB Energy 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 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.

10. 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.

11. 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. The pre-filing process begins with preparation of a Notice of Intent (NOI) and Pre-Application Document (PAD) pursuant to sections 5.5 and 5.6 of the Commission's regulations.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 (TLP)). Such a request must accompany the NOI and PAD and set forth specific information justifying the request.⁶ GB Energy filed a NOI, PAD, and request to use the TLP on April 30, 2013. The request to use the TLP was granted on July 3, 2013.

⁴ 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).

⁵ 18 C.F.R. §§ 5.5 and 5.6 (2013).

⁶ *See* 18 C.F.R. § 5.3 (2013).

12. 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.

13. 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.

14. 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.⁷

The Director orders:

(A) A preliminary permit is issued for the Gordon Butte Pumped Storage Project No. 13642 to GB Energy Park, 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.

⁷ See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

(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 (2013).

Jennifer Hill, Chief
Northwest Branch
Division of Hydropower Licensing

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.