

122 FERC ¶ 62,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cascade Creek, LLC

Project No. 12495-002

ORDER ISSUING PRELIMINARY PERMIT

(Issued February 14, 2008)

On October 2, 2007, the Cascade Creek, LLC (Permittee) filed an application for a three-year preliminary permit under section 4(f) of the Federal Power Act (FPA)¹ to study the feasibility of the proposed 80-megawatt (MW) Cascade Creek Project No. 12495. The project would be located on Swan Lake, Falls Lake, and Cascade Creek, Wrangell-Petersburg Borough, Alaska. The proposed would be located within the Tongass National Forest on lands owned by the U.S. Forest Service.

The proposed project would consist of: (1) the existing natural reservoir, having a surface area of 579 acres with a storage capacity of 25,000 acre-feet and normal water surface elevation of 1,520 feet mean sea level, (2) a proposed lake tap intake structure, (3) a proposed 4,000-foot long upper tunnel, (4) a proposed 2,500-foot-long, 8-foot-diameter buried steel upper penstock, (5) a proposed 2,000-foot-long, 12-foot-diameter unlined lower tunnel, (6) a proposed 6,800-foot-long, 8-foot diameter buried steel lower penstock, (7) a proposed powerhouse containing four generating units having a total installed capacity of 80 megawatts, (8) a proposed 20-mile-long, 138 kilovolt transmission line, and (9) appurtenant facilities. The project would have an annual generation of 200 gigawatt-hours that would be sold to a local utility.

Public notice of the application was issued. Motions to intervene were filed by Petersburg Municipal Power & Light, Ketchikan Public Utilities, and The Four Dam Pool Power Agency. Comments were filed by the U.S. Department of the Interior (Interior), the U.S. Forest Service, the U.S. Army Corps of Engineers, the Southeast Alaska Conservation Council, the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, the City of Petersburg, Alaska, the Alaska Sea Adventures, and Cruise West. Comments protesting the project were filed by Julie Hursey, Martha Smith, Mona Christion, Dave Kensinger, Sharon M. Hunter, Colyn Steven Lyons, Dennis K. Rogers, Charles E. Wood, Craig Olsen, Scott Hursey, Deborah Hurley, Christ Slaven, Suzanne West, Beverly Richardson, Anthony Taiber, Brian Paust, Polly Lee, Scott

¹16 U.S.C. § 797(f). Three years is the maximum term for a preliminary permit. See FPA section 5, 16 U.S.C. § 798.

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Newman, Karen L. Dillman, Kevin McCullough, Bob White, Wayne Parks, Mary Harrop, Tamara Evens, Marjorie File, Bob Dolan, Mark Kaelke, Rebecca Knight, Carolyn Pritchett, Cynthia Wallesz, Jay Pritchett, David Beebe, Brad L. Hunter, Sharon E. Junge, Michael N Stainbrook, Pauline S. Lee, Anna Holmes, Marlene Cushing, and the Petersburg Indian Association.

The agency commenters noted that the comments provided were intended to serve as a planning aid in the event an application for a license is pursued. The agency commenters listed issues to be addressed during the studies that pertain to the construction of the project and provided a list of information to be obtained during the studies to address potential impacts. Interior also requested that the permittee be required to consult with the U.S. Fish and Wildlife Service (FWS) and other relevant agencies. The comments of the protesters pertained to the construction of the project, which are not dealt with in a preliminary permit proceeding.

Successive Permits

The applicant has previously held a preliminary permit for this site under Project No. 12495-000. The Commission will grant successive permits if it concludes that the applicant has diligently pursued the requirements of its prior permits in good faith. The permittee has provided information to the Commission showing that it is currently making progress with the analysis of the project's feasibility, and towards the development of this project. It is expected that during this permit term, agency consultation will be conducted and a license application will be prepared pursuant to sections 4.38 and 4.41 of the Commission's regulations.

The Commission usually does not prescribe in great detail what a permittee must accomplish under a permit. A successive permit can warrant a greater standard 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 license application, the permit may be subject to cancellation.

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 to determine the feasibility of the proposed project and, if the project is found to be feasible, prepares an acceptable development application. The permit confers no authority on the permittee to undertake construction of the proposed

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project or any part thereof,² 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. 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 entity 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).

The Director orders:

(A) In Project No. 12495-002, a preliminary permit is issued to the Cascade Creek, LLC for a period effective the first day of the month in which this permit is issued, and ending 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.

²Issuance of this preliminary permit is thus not a major federal action significantly affecting the quality of the human environment.

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(B) This preliminary permit in Project No. 12495-002 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 & Jurisdiction Branch
Division of Hydropower
Administration and Compliance

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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.