

124 FERC ¶ 62,042
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

KC LLC

Project No. 13089-000

ORDER ISSUING PRELIMINARY PERMIT

(Issued July 16, 2008)

On December 20, 2007, and revised March 21, 2008, KC LLC (KC or permittee), filed an application for a three-year preliminary permit¹ under Section 4(f) of the Federal Power Act (FPA) to study the proposed 500 kilowatt (kW) Conway Ranch Hydropower Project No. 13089. The proposed Conway Ranch Hydropower Project would be located near the town of Mono City on the Virginia Creek at the existing Conway Ranch diversion ditch in Mono County, California, on public lands administered by the U.S. Bureau of Land Management.

The proposed Conway Ranch Hydropower Project would include a proposed notched weir at the existing Conway Ranch diversion ditch. The proposed project would also consist of the following new facilities: (1) a 2-mile-long, 8-inch-wide penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 500 kW, (3) a 360-foot-long transmission line, connecting to an existing power line, and (4) appurtenant facilities. The project would have an annual generation of 2.3 gigawatt-hours, which would be sold to a local utility.

Public notice of the application was issued. The U.S. Forest Service (Forest Service) filed a motion to intervene, stating that the proposed project proposes to use water discharged from Southern California Edison Company's (SCE) Lundy Hydroelectric Project (FERC Project No. 1390) for which the Forest Service is a party to a settlement agreement concerning the allocation of discharge from the Lundy powerhouse to Mill and Wilson Creeks. The Forest Service further states that it wishes to become a party to these proceedings to ensure that its interest and the public's interest in the protection and management of the Inyo National Forest in accordance with statutory authority are adequately represented.²

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

² Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure,

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A motion to intervene was also filed by the Mono Lake Committee, stating its interest in the proposed project and requesting party status.

Comments were filed by the U.S. Bureau of Land Management (BLM) concerning, among other things, the actual and proposed locations of project features and natural features within the proposed project study area and the need for a right-of-way and environmental analyses to address land use decisions and resource management.

The U.S. Department of the Interior stated that it had no comments on the proposed project. Comments were also filed by Mono County concerning the possible impacts of the proposed project. The applicant filed a response stating its interest and qualifications in developing the proposed project.

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.

timely motions to intervene are granted automatically unless an answer in opposition is filed within 15 days after the motion to intervene is filed.

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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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).

The Director orders:

(A) A preliminary permit is issued for the Conway Ranch Hydropower Project No. 13089 to KC 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 March 2000)

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 times 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 Sections 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 therefore.

Document Content(s)

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