

109 FERC ¶62, 027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cascade Creek, LLC

Project No. 12495-000

ORDER ISSUING PRELIMINARY PERMIT

(Issued October 08, 2004)

On May 3, 2004, 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 proposed 80-megawatt (MW) Cascade Creek Project No. 12495. The project would be located on the Swan Lake and Cascade Creek, near the Town of Petersburg, Alaska. The project would be located within the Tongass National Forest on lands owned by the U.S. Forest Service. The proposed project would consist of; (1) a proposed 267-foot-long, 35-foot-high dam on Swan Lake, (2) the existing natural lake would have a surface area of 600 acres with a storage capacity of 97,500 acre-feet and normal water surface elevation of 1,550 feet mean sea level, (3) a proposed 13,000-foot-long, 10-foot- diameter steel penstock or tunnel, a proposed powerhouse containing four generating units having a total installed capacity of 80 megawatts, (4) a proposed 20-mile-long 138 kilovolt transmission line, and (5) appurtenant facilities. The project would have an annual generation of 300 gigawatt-hours that would be sold to a local utility.

Public notice of the application was issued establishing August 4, 2004, as the deadline for the filing of comments and motions to intervene. Motions to intervene were filed by the United States Department of Agriculture, Forest Service, Thomas Bay Power Authority, The Four Dam Pool Power Agency, and the Southeast Alaska Conservation Council.² The United States Department of the Interior filed comments stating they had no comments at this time. Comments were also filed by the Alaska Passages, Inc., Beverly Richardson, and Namee Zaie opposing the construction of this project. Comments pertaining to the actual construction and operation of the project, as opposed to issuance of a preliminary permit, are not discussed in this proceeding.

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.

²The interventions were timely and unopposed, and therefore were automatically granted pursuant to 18 CFR 385.214(c)(1).

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 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.

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).

Should the permittee file a development application, notice of the application will be published, and all 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.

The Director orders:

(A) A preliminary permit is issued for this project to Cascade Creek, 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.

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

Project No. 12495

3

(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

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 4.38 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.