

147 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Green Energy Storage Corp

Project No. 14589-000

ORDER ISSUING PRELIMINARY PERMIT AND GRANTING PRIORITY TO FILE
LICENSE APPLICATION

(Issued June 19, 2014)

1. On February 14, 2014, Green Energy Storage Corp (Green 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 Sacaton Pumped Storage Project No. 14589-000 to be located off stream near the town of Casa Grande in Pinal County, Arizona. For the reasons discussed below, we will issue a preliminary permit and grant priority to file a license application to Green Energy Storage Corp for the proposed Sacaton Pumped Storage Project.

I. Project Proposal

2. The proposed 150-megawatt (MW) closed-loop pumped storage project would use the 1,200 feet of available head between a new upper reservoir and an existing open pit mine. The project would consist of: (1) a new 28-foot-high upper dam with a total crest length of 6,000 feet, impounding an upper reservoir with a maximum storage of 1,300 acre-feet; (2) an existing open pit mine as the lower reservoir, with a maximum storage of 1,500 acre-feet; (3) a penstock connecting the two reservoirs consisting of a 200-foot-long, 12-foot-diameter steel pipe and a 1,250-foot-long, 12-foot-diameter vertical shaft; (4) two 75-MW pump/turbines; (5) a 2,200-foot-long, 14-foot-diameter draft tube, extending from the turbines to the lower reservoir; (6) a new 137-kilovolt (kV) transmission line extending about 2,500 feet from a new substation to the existing 137-kV transmission line owned by Arizona Public Service; and (7) appurtenant

¹ 16 U.S.C. § 797(f) (2012).

facilities. The estimated annual average generating capacity of the project would be 400 gigawatt-hours.

II. Background

3. The Commission issued public notice of Green Energy's permit application on March 13, 2014, establishing a deadline of May 12, 2014, to file comments, motions to intervene, notices of intent to file competing development applications, and competing permit applications. On May 8, 2014, the U.S. Department of the Interior (Interior) filed comments on the proposed project.² On May 12, 2014, the ASARCO Multi-State Environmental Custodial Trust (Trust) filed a timely motion to intervene,³ protest, and comments.

III. Discussion

4. The Trust, which states that it owns the site of Green Energy's proposed lower reservoir, expresses doubt the project can move forward and urges the Commission to deny the preliminary permit. Among the Trust's concerns is that issuing a permit could affect the marketability of the site. The Trust states that it recently executed an Option and Purchase Agreement to convey the site to a third party that wishes to resume mining operations at the site, and is concerned that an outstanding preliminary permit may impact that agreement and discourage other potential buyers. The Trust also states that it will not grant Green Energy access to the site to perform studies needed to develop the project and provide the Commission with meaningful progress reports.

5. The Trust's concerns about a preliminary permit's impact on land values are speculative and unsupported. Even assuming that it could be demonstrated that issuance of a permit would affect the marketability of the proposed project site, such a finding would not warrant denial of a permit. We have previously explained that the impact of a proposed project on other land uses is an issue to be examined at the licensing, not the permit, stage.⁴ To conclude otherwise would in effect make our permit process subject to veto by parties with economic interests in the vicinity of the project site.⁵ The issue of

² Interior expresses concern that the proposed project could adversely affect the Snaketow National Historic Landmark in Pinal County, Arizona, and explains that Interior should be consulted on the project.

³ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2013).

⁴ See, e.g., *Don L. Hansen*, 120 FERC ¶ 61,069, at PP 7-8 (2007).

⁵ *Id.* P 8; see also *Mid-Atlantic Engineers, Ltd.*, 53 FERC ¶ 61,155 (1990).

obtaining access to the site for the performance of studies is one for the permittee to address.⁶

6. Unlike a hydropower license, a preliminary permit does not grant the permittee the right to appropriate or enter lands.⁷ The benefit that the FPA gives potential hydropower developers that are granted a preliminary permit is the right to have the first priority in applying for a license for the project that is being studied. Therefore, the grant of a preliminary permit will not by itself result in a taking of or interference with any rights of ownership or use or enjoyment of property.⁸

7. In any event, since the Applicant need not obtain a preliminary permit in order to apply for a license, the denial of a permit does not guarantee that the site would remain free of hydropower development.⁹

IV. Conclusion

8. For the reasons discussed above, we will issue a preliminary permit and grant priority to file a license application to Green Energy Storage Corp for the proposed Sacaton Pumped Storage Project.

V. Permit Information

9. 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,¹⁰ 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.¹¹ Because a permit is issued only to allow

⁶ *Carex Hydro*, 36 FERC ¶ 61,031, at 61,069 (1986).

⁷ *See Carex Hydro*, 36 FERC at 61,069 (citing *W.B. DeOreo and R.J. McLaughlin*, 27 FERC ¶ 61,048 (1984)).

⁸ *Id.*

⁹ *Alpyn Creek Dev. Corp.*, 49 FERC ¶ 61380 (1989).

¹⁰ 16 U.S.C. § 802 (2012).

¹¹ *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.”).

the permit holder to investigate the feasibility of a project while the permittee conducts 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.¹²

10. 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. 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.

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.¹³ 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.¹⁴ Should the permittee file a development application, notice of the application will be published, and interested persons and agencies, such as the Department of the Interior, will have an opportunity to intervene and to present their views concerning the project and the effects of its construction and operation.

12. 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

¹² 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).

¹³ 18 C.F.R. §§ 5.5 and 5.6 (2013).

¹⁴ *See* 18 C.F.R. § 5.3 (2013).

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.¹⁵

The Commission orders:

(A) A preliminary permit is issued for the Sacaton Pumped Storage Project No. 14589 to Green Energy Storage Corp 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 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 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2013).

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁵ See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).