

154 FERC ¶ 61,102  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Western Minnesota Municipal Power Agency  
FFP Qualified Hydro 14, LLC

Project No. 14491-002  
Project No. 13579-004

ORDER ON REMAND, ISSUING PRELIMINARY PERMIT, AND DENYING  
COMPETING PERMIT APPLICATION

(Issued February 18, 2016)

1. On November 20, 2015, the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded Commission orders<sup>1</sup> granting a successive preliminary permit to a private applicant, FFP Qualified Hydro 14, LLC (FFP), over the competing application of a municipal applicant, Western Minnesota Municipal Power Agency (Western Minnesota), to study the feasibility of developing a hydroelectric project at the existing U.S. Army Corps of Engineers' Saylorville Dam and Lake on the Des Moines River, in the City of Johnston in Polk County, Iowa.<sup>2</sup> The court concluded that Western Minnesota was entitled to a municipal preference under section 7(a) of the Federal Power Act (FPA).<sup>3</sup> On remand, we deny FFP's application for a successive permit and issue a preliminary permit to Western Minnesota.

**I. Project Proposal**

2. Western Minnesota's proposed project would consist of: (1) a new 80-foot-long by 35-foot-wide by 95-foot-high concrete intake; (2) three new 14-foot-diameter by 740-foot long conduits; (3) a new 100-foot-long by 50-foot-wide concrete powerhouse

---

<sup>1</sup> *FFP Qualified Hydro 14, LLC*, 145 FERC ¶ 61,255 (2013), *reh'g denied*, 147 FERC ¶ 61,233 (2014).

<sup>2</sup> *Western Minnesota Municipal Power Agency v. FERC*, 806 F.3d 588 (D.C. Cir. 2015).

<sup>3</sup> 16 U.S.C. § 800(a) (2012).

with three 5-megawatt (MW) Kaplan vertical turbines, having a combined generating capacity of 15 MW; (4) three new 7.5-MW generator units; (5) a 100-foot-long by 75-foot-wide substation; (6) a new 3.73-mile-long, 69-kilovolt transmission line; and (7) appurtenant facilities. The project would have an estimated annual generation of 66 gigawatt hours.

## **II. Discussion**

3. 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,<sup>4</sup> which in turn sets forth the material that must accompany an application for a 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.<sup>5</sup> Because a permit is issued only to allow 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.<sup>6</sup>

## **III. Permit Information**

4. 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 canceled if a permittee fails to file a timely progress report or if the report does not demonstrate that progress is being made

---

<sup>4</sup> 16 U.S.C. § 802 (2012).

<sup>5</sup> 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.”).

<sup>6</sup> 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).

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.

5. 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. 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.

6. 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.<sup>7</sup>

The Commission orders:

(A) A preliminary permit is issued to Western Minnesota Municipal Power Agency for the Saylorville Hydroelectric Project No. 14491 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) The competing preliminary permit application filed by FFP Qualified Hydro 14, LLC for the Saylorville Dam Water Power Project No. 13579 is denied.

(C) 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.

---

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

(D) The permittee shall coordinate the studies and its plans for access to the site during the term of this permit with the Corps District Engineer to ensure that the feasibility studies will result in a plan of development consistent with the authorized purposes of the federal project.

(E) 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 (2015).

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**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. §§ 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.