

158 FERC ¶ 62,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Chugach Electric Association, Inc.

Project No. 14810-000

**ORDER ISSUING PRELIMINARY PERMIT
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION**

(Issued March 22, 2017)

1. On December 23, 2016, Chugach Electric Association, Inc. (Chugach Electric Association) 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 Snow River Hydroelectric Project No. 14810 (Snow River Project or project) to be located on the Snow River near the city of Seward in the Kenai Peninsula Borough, Alaska. The project would utilize 15,957 acres of land owned by the U.S. Forest Service.

I. Project Proposal

2. The project consists of two alternatives both using the following new facilities: (1) a 700-foot-long, 300-foot-high concrete-faced rockfill or roller compacted concrete gravity dam with a 400-foot-long spillway built into the crest of the dam; (2) a 300-foot-long, 60-foot-high concrete-faced rockfill or roller compacted concrete gravity auxiliary dam on the right bank; (3) a 500-foot-long, 80-foot-high concrete-faced rockfill or roller compacted concrete gravity auxiliary dam on the left bank; and (4) a 5,321-acre reservoir.

Alternative 1

(1) a 10,040-foot-long, 14 foot-diameter horseshoe intake tunnel; (2) a 1,140-foot long, 173-inch-diameter steel penstock; (3) an 80-foot-long, 100-foot-wide pre-engineered metal powerhouse with three turbine units rated at 25 megawatts (MW) each for 75 MW total; (4) a submerged tailrace discharge; (5) a 2.55-mile-long, 69-kilovolt (kV) transmission line tying into an existing high voltage transmission line located west of the proposed powerhouse; (6) a 1,410-foot-long access road to the intake tunnel and dam; (7) a 6,858-foot-long access road to the powerhouse; and (8) appurtenant facilities.

Alternative 2

¹ 16 U.S.C. § 797(f) (2012).

(1) a 3,310-foot-long, 14 foot-diameter horseshoe intake tunnel; (2) a 2,650-foot long, 173-inch-diameter steel penstock; (3) the same powerhouse, turbine, tailrace and transmission line as described above for Alternative 1; (4) a 12,600-foot-long access road to the intake tunnel and dam; (5) a 8,000-foot-long access road to the powerhouse; and (6) appurtenant facilities.

II. Background

3. The Commission issued public notice of Chugach's permit application on January 18, 2017. Cook Inletkeeper, Michelle Keagle, Moose Pass Sportsmen's Club, National Marine Fisheries Service, and Resurrection Bay Conservation Alliance, filed timely motions to intervene.² A timely motion to intervene and comments were filed by the U.S. Forest Service, U.S. Department of the Interior, Alaska Center (AC), Friends of Cooper Landing (FOCL), Friends of Kenai National Wildlife Refuge (FKNWR), Tim Johnson, Kenai River Sportfishing Association (KRSA), Kenai River Watershed Foundation (KRWF), Kenai Watershed Forum (KWF), Mark Luttrell, Peninsula Rivers Conservancy (PRC), Quartz Creek Homeowner's Association (QCHA), Herrick Sullivan, Susitna River Coalition (SRC), and Trout Unlimited (TU). Comments were filed by Jeff Acree, Michael Adams, John Almanrode, Andrew Bacon, Dagmar Badger, Jacquelynn Bowman, Janette Cadieux, the Chickaloon Village Traditional Council (the Chickaloon or Tribe), Edward Czech, John Eavis, Erick Fish, Ryan Fisher, Donald James Goodman, Mary Griffith, Chung Ha, Nim Ha, William Hauser, Christina Kriedeman, Alec Lamberson, Austin Ledford, Charity Lehman, Matt Lewallen, Bob Linville, David Lisi, Becky Long, Brad Kirr, Fred Kirr, Victoria Kirr, Peter McKay, Stephanie Millane, Nicola Murawsky, Ruth Nelson, Sean O'Rourke, Heather Pearson, Shayne Pond, Denis Ransy, Pamela A. Russell, Lisa Slepetski, Will Silva, Jeanne Swartz, and Wayne [no last name provided]. The Bureau of Land Management filed a letter acknowledging the application for the project.

III. Discussion

A. Access to Site

4. Chugach National Forest states the applicant will need a special use authorization for occupancy and use of the National Forest System lands during both the term of the preliminary permit and, if awarded, the license. It also states that actions taken by the permittee must be consistent with the Revised Chugach National Forest Land and Resource Management Plan (Forest Plan).

5. A permit applicant is not required to have obtained all access rights to a project site as a condition of receiving a preliminary permit, and a preliminary permit does not grant a right of entry onto any lands. A permittee must obtain any necessary

authorizations and comply with any applicable laws and regulations to conduct any field studies.

B. Issues Related to Project Construction and Operation

6. Most of the public's comments raise concerns that the project may adversely affect fish and wildlife resources and some federally threatened and endangered species, recreational and visual resources, and tourism and the local economy of the surrounding areas. Several state that the project is unnecessary to meet regional power needs and may not be compatible with existing state, regional, and federal management plans applicable to the project area.

7. A preliminary permit does not authorize a permittee to undertake construction of the proposed project. The purpose of a preliminary permit is to study the feasibility of the project, including studying potential impacts. The concerns raised in the comments are premature at the preliminary permit stage, in that they address the potential effects of constructing and operating the proposed project. Should the permittee file a license application, these issues will be addressed in the licensing process.

C. Consultation and Study Requirements under the Permit

8. The Forest Service recommends that Chugach Electric Association obtain information and complete field studies needed to assess the effects of project construction and operation on: land ownership; consistency with the established Forest Plan; recreation and aesthetics; the pending application for Wild and Scenic River designation of the Snow River; subsistence use of lands in the project area; cultural and tribal resources; minerals and geology; vegetation and timber resources; wildlife and fisheries; hydrology, water quantity and quality; potential glacial outburst floods and impact to dam safety; and geomorphology and sedimentation regimes. Becky Long requests that the applicant obtain information and complete field studies to address oxygen depletion in reservoir waters; gas super-saturation of project discharge flows; elevated methyl mercury levels in the project reservoir; presence of exotic plant species in the riparian zone following project construction; changes in water temperature; and potential land use conflicts in and adjacent to the project area. USGS recommends the applicant perform a hydrologic analysis that considers scenarios related to the release of a glacially-dammed lake in the vicinity of the project area.

9. The Chickaloon state that potential impacts of project construction may impact the health and safety of tribe members; the Tribe's identity, cultural traditions, and economic self-sufficiency; and the enhancement and restoration of Chickaloon ancestral lands, water and air. The Tribe requests immediate government-to-government consultation regarding the proposed project.

10. The Commission has not sought to place all relevant study requirements in preliminary permits.² Rather, the studies to be undertaken by a permittee are shaped by the Commission's filing requirements for development applications. Potential development applicants are required to consult with appropriate state and federal resource agencies and affected Indian tribes, conduct all reasonable studies requested by the agencies, and solicit comments on the applications before they are filed.³ Further, permit conditions have been framed to ensure that the permittee does not tie up a site without pursuing in good faith a study of the project's feasibility.⁴

11. Because preliminary permits do not authorize construction and operation of the project and the development of a license application is not guaranteed, it is premature to enter into government-to-government consultation with the Chickaloon. As noted above, if and when Chugach Electric Association files its notice of intent to file a license application and preliminary application document the Commission will take steps to consult with tribe.⁵

IV. Permit Information

12. 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,⁶ 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.⁷ Because a permit is issued only to allow the permit holder to investigate the feasibility of a project while the permittee conducts

² See, e.g., *Continental Lands Inc.*, 90 FERC ¶ 61,355 at 62,177 (2000).

³ See 18 C.F.R. § 4.38 (2014).

⁴ See *City of Richmond, Va.*, 53 FERC ¶ 61,342 at 62,247 (1990).

⁵ See Policy Statement on Consultation with Indian Tribes in Commission Proceedings issued July 23, 2003. This statement is available on the Commission's website at www.ferc.gov.

⁶ 16 U.S.C. § 802 (2012).

⁷ 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.").

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.⁸

13. 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.

14. 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.⁹ 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.¹⁰ 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.

15. 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

⁸ 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).

⁹ 18 C.F.R. §§ 5.5 and 5.6 (2014).

¹⁰ *See* 18 C.F.R. § 5.3 (2014).

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.¹¹

The Director orders:

(A) A preliminary permit is issued for the Snow River Hydroelectric Project No. 14810 to Chugach Electric Association, 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 (2014).

David Turner, Chief
Northwest Branch
Division of Hydropower Licensing

¹¹ See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

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. sections 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.