

UNITED STATES OF AMERICA 130 FERC ¶ 62,165  
FEDERAL ENERGY REGULATORY COMMISSION

TDX Power Services, LLC

Project No. 12660-002

ORDER ISSUING PRELIMINARY PERMIT AND GRANTING PRIORITY TO FILE  
LICENSE APPLICATION

Issued: February 25, 2010

1. On November 3, 2009, TDX Power Services, LLC (TDX) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act,<sup>1</sup> proposing to study the feasibility of the Chakachamna Hydroelectric Project (Chakachamna Project or project), located on Chakachamna Lake, a natural lake, and the Chakachatna and MacArthur rivers about 40 miles west of the Native Village of Tyonek and 82 miles west of Anchorage in the Kenai Peninsula Borough, Alaska.

**Background**

2. The proposed project would utilize the existing Chakachamna Lake and consist of the following: (1) a proposed 200-foot-long, 9-foot-high concrete flow-control weir at the natural lake outlet for the purpose of helping to control lake storage and downstream flow releases; (2) a proposed 26-foot-diameter submerged intake structure on Chakachamna Lake with a vertical shaft for gate control, located about 0.5 mile west-southwest of the natural lake outlet; (3) a proposed 10.8-mile-long, 21-foot-diameter hard-rock tunnel extending southeast from the intake to the powerhouse; (4) a proposed underground cavern-type powerhouse about 60 feet wide by 200 feet long housing three vertical axis Francis units with a total installed capacity of 300 megawatts; (5) a proposed 1,000-foot-long tailrace tunnel connecting the powerhouse to the MacArthur River; (6) a proposed 21-foot-diameter, 13,800-foot-long tunnel housing separate juvenile and adult fish passage channels and an access road – the tunnel would extend generally east from Chakachamna Lake to the Chakachatna River at a location about 1.5 miles downstream of the flow-control weir; (7) a proposed pool-and-chute fishway at the flow-control weir to facilitate upstream fish passage into Chakachamna Lake; (8) two proposed, 42-mile-long, 230-kilovolt (kV) transmission lines extending from the powerhouse to the Beluga substation; (9) an existing approximately 10-mile-long access road extending west from Cook Inlet to a point near Shirleyville; (10) an existing 20-mile-long access road

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<sup>1</sup> 16 U.S.C. § 797(f) (2006).

extending west-northwest from near Shirleyville to the “Straight Creek Crossing;” (11) a proposed 20-mile-long access road extending from the Straight Creek Crossing to the intake; (12) a proposed 15-mile-long access road extending from the 20-mile-long access road to the powerhouse; (13) a proposed buried, 25-kV power cable extending 22 miles from the powerhouse to the intake and a proposed buried, 25-kV power cable extending from the powerhouse to adjacent camp facilities for workers; and (14) appurtenant facilities. The project would have an estimated average annual generation of 1,330 gigawatt-hours.

3. The Commission issued public notice accepting the application for filing and soliciting comments, motions to intervene, and competing applications on December 17, 2009. Timely motions to intervene were filed by the U.S. Department of the Interior; Alaska Department of Natural Resources, Division of Mining, Land & Water, Water Resources Section; and the National Marine Fisheries Service.<sup>2</sup>

### **Discussion and Successive Permits**

4. The applicant has previously held a preliminary permit for this site under Project No. 12660-000. The Commission will grant successive permits if it concludes that the applicant has diligently pursued the requirements of its prior permits in good faith. TDX has provided information to Commission staff showing that it is currently making progress with the analysis of the project’s feasibility, and towards the development of this project. It is expected that during this permit term, agency consultation will be conducted and a license application will be prepared pursuant to sections 4.38 and 4.41 of the Commission’s regulations.

5. The Commission usually does not prescribe in great detail what a permittee must accomplish under a permit. However, a successive permit can warrant a greater standard of Commission oversight. Therefore, we will monitor the progress of the permittee’s activities. If the permittee fails to make significant progress toward developing a license application, the permit may be subject to cancellation.

6. 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>3</sup> 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

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<sup>2</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission’s regulations. 18 C.F.R. § 385.214 (2009).

<sup>3</sup> 16 U.S.C. § 802 (2006).

a license for the project that is being studied.<sup>4</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>5</sup>

7. 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.<sup>6</sup> 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.<sup>7</sup> 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.

8. 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 entities intend to hold during the term of any license issued any of these proprietary rights necessary for

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<sup>4</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>5</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).

<sup>6</sup> 18 C.F.R. §§ 5.5 and 5.6 (2009).

<sup>7</sup> See 18 C.F.R. § 5.3 (2009).

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>8</sup>

The Director orders:

(A) A preliminary permit is issued for this project to TDX Power Services, 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.

Jennifer Hill, Branch Chief  
Hydro West Branch 1  
Division of Hydropower Licensing

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<sup>8</sup> See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

**Form P-1 (Revised December 2009)****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.** At the close of each six-month period from the effective date of this permit, the permittee shall file a progress report electronically via the Internet; and shall serve a copy on the intervenors in this proceeding. 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. 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 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.