

117 FERC ¶ 62, 155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

TDX Power, Inc.

Project No. 12660-000

ORDER ISSUING PRELIMINARY PERMIT

(Issued November 14, 2006)

TDX Power, Inc. (permittee) filed an application on March 13, 2006, for a three-year preliminary permit¹ under Section 4(f) of the Federal Power Act (FPA) to study the proposed 330-megawatt (MW) Chakachamna Hydroelectric Project No. 12660. The proposed Chakachamna Hydroelectric Project would be located at the existing Chakachamna Lake on the Chakachamna River in Kenai Peninsula Borough, Alaska.

The proposed project would operate in run-of-river mode using the existing Chakachamna Lake, having a surface area of 17,842 acres at the historic maximum normal water surface elevation of 1,155 feet. The proposed project would raise the lake from its present 1,142-foot elevation level to its historic maximum normal water surface elevation of 1,155 feet and would consist of the following new facilities: (1) a proposed 49-foot-high, 600-foot-long rock-fill dam at the Chakachamna Lake outlet, (2) spillway with a crest elevation of 1,155 feet, (3) a 10-mile-long, 24-foot-diameter concrete power tunnel, (4) four 10-foot-diameter steel-lined penstocks with upstream gates located in a gate chamber adjacent to the powerhouse, (5) a powerhouse containing four generating units with a total installed capacity of 330 megawatts, (6) two 230-kilovolt transmission lines, each approximately 42 miles long each, connecting to an existing power line, and (7) appurtenant facilities.

Public notice of the application was issued on May 3, 2006, establishing July 3, 2006, as the deadline for filing comments and motions to intervene. The U.S. Department of the Interior (Interior) filed a motion to intervene and comments, recommending that studies undertaken by the permittee during the permitting process include information regarding potential impacts (both direct and indirect) on natural resources in the headwaters area for the project. Interior also recommends agency consultation, including with the National Park Service. Construction and operational concerns are not affected

¹ 16 U.S.C. § 797(f). Three years is the maximum term for a preliminary permit. See FPA Section 5, 16 U.S.C. § 798.

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by issuance of a preliminary permit and would be properly addressed in a licensing proceeding.

A motion to intervene was also timely filed by Cook Inletkeeper stating that, while it has not taken a position on the preliminary permit application, it is filing the motion to intervene to remain informed on the proceeding.

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, after consultation with the appropriate resource agencies, 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,² or to occupy or use lands or other property of the United States or of any other entity or individual.

If, during the course of the permittee's investigation into the feasibility of the proposal, the permittee decides to prepare a development application, it must first prepare a Notice of Intent (NOI) and Pre-Application Document (PAD) pursuant to Sections 5.5 and 5.6 of the Commission's Regulations. Pursuant to Part 5 of the Commission's regulations, 18 C.F.R. Part 5, the permittee must use the Integrated Licensing Process unless the Commission grants a request to use an alternative process (Alternative or Traditional Licensing Process). Pursuant to Section 5.3, such a request must accompany the NOI and PAD and set forth specific information justifying the request.³ 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.

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

² Issuance of this preliminary permit is thus not a major federal action significantly affecting the quality of the human environment.

³ See Commission Order 2002, issued July 23, 2003.

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license, the joint application will not be eligible for any permit-based priority. See City of Fayetteville, 16 FERC ¶ 61,209 (1981).

The Director orders:

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

William Guey-Lee
Chief, Engineering and Jurisdiction Branch
Division of Hydropower Administration
and Compliance

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.