151 FERC ¶ 62,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

San Diego County Water Authority Project No. 14642-000
City of San Diego

ORDER ISSUING PRELIMINARY PERMIT AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(Issued May 14, 2015)

1. On October 16, 2014, the San Diego County Water Authority (Water Authority) 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 San Vicente Pumped Storage Project No. 14642 (San Vicente Project) to be located at San Vicente reservoir, in Lakeside, California. On April 7, 2015, the Water Authority filed an amendment to its permit application in order to add the City of San Diego (City) as a co-applicant for the Project.

I. Project Proposal

2. The lower reservoir portion of the proposed project would consist of: (1) the existing San Vicente reservoir with a storage capacity of 246,000 acre-feet and a surface area of 1,600 acres at a normal maximum operating elevation of 766 feet above mean sea level (msl); (2) the existing 1,430-foot-long, 337-foot-high San Vicente roller compacted concrete (RCC) gravity dam; (3) a lower reservoir inlet/outlet structure equipped with trash racks and one or two slide gates; (4) a 230-kilovolt (kV) substation containing step-up transformers, circuit breakers, and disconnect switches; (5) a switchyard constructed at the point of interconnection; (6) an approximately 5-mile-long, 230-kV overhead or underground transmission line that would extend from the northern end of San Vicente reservoir to the 230-kV Sycamore substation and interconnect with San Diego Gas and Electric's 500-kV Sunrise Powerlink transmission line; and (7) appurtenant facilities. Depending on the site chosen for the upper reservoir, the project would generate between 715 and 1,022 gigawatt-hours (GWh) annually.

3. The Water Authority identified four potential sites for the upper reservoir. Site A would be located near Iron Mountain, approximately 3 miles northwest of the San Vicente reservoir, and would consist of: (1) a reservoir with a storage capacity of 6,100

[1] 16 U.S.C. § 797(f) (2012).

acre-feet and a surface area of 93 acres at a full pond elevation of 2,110 feet msl; (2) three RCC saddle dams measuring (i) 1,425 feet long and 35 feet high, (ii) 1,340 feet long and 75 feet high, and (iii) 838 feet long and 15 feet high, respectively; (3) a 235-foot-long, 85-foot wide, 131-foot-tall subsurface powerhouse containing two 250-MW vertical Francis variable speed reversible pump/turbine/generator units; (4) a 1,358-foot-long, 12-foot-diameter concrete-lined tailrace tunnel; (5) an upper reservoir inlet/outlet structure; (6) two 171-foot-long, 16-foot-diameter steel-lined penstocks; (7) a 1,350-foot-long, 230-kV, underground transmission line extending from the upper reservoir to the northern end of San Vicente reservoir; and (8) appurtenant facilities. This alternative would generate approximately 1,022 GWh annually.

4. Site B would be located near Foster Canyon, approximately 0.5 mile northwest of the San Vicente reservoir, and would consist of: (1) a reservoir with a storage capacity of 7,800 acre-feet and a surface area of 100 acres at a full pond elevation of 1,490 feet msl; (2) five RCC saddle dams measuring (i) 1,760 feet long and 160 feet high, (ii) 838 feet long and 80 feet high, (iii) 838 feet long and 80 feet high, (iv) 1,006 feet long and 240 feet high, and (v) 3,100 feet long and 30 feet high, respectively; (3) a 235-foot-long, 88-foot-wide, 147-foot-tall subsurface powerhouse containing two 250-MW vertical Francis variable speed reversible pump/turbine/generator units; (4) a 2,244-foot-long, 18-foot-diameter concrete-lined tailrace tunnel; (5) an upper reservoir inlet/outlet structure; (6) two 326-foot-long, 22-foot-diameter steel-lined penstocks; (7) a 2,200-foot-long, 230-kV, underground transmission line extending from the upper reservoir to the northern end of San Vicente reservoir; and (8) appurtenant facilities. This alternative would generate approximately 1,022 GWh annually.

5. Site C would be located 0.8 mile northeast of the San Vicente reservoir, and would consist of: (1) a reservoir with a storage capacity of 7,700 acre-feet and a surface area of 60 acres at a full pond elevation of 1,600 feet msl; (2) four RCC saddle dams measuring (i) 1,176 feet long and 260 feet high, (ii)1,508 feet long and 20 feet high, (iii) 2,500 feet long and 20 feet high, and (iv) 2,700 feet long and 20 feet high, respectively; (3) a 267-foot-long, 93-foot-wide, 179-foot-high subsurface powerhouse, containing two 250-MW vertical Francis variable speed reversible pump/turbine-motor/generator units; (4) a 1,252-foot-long, 17-foot-diameter, concrete-lined tailrace tunnel connecting the pump/turbine draft tubes with the lower reservoir inlet/outlet structure; (5) an upper reservoir inlet/outlet structure equipped with trash racks and one or two slide gates; (6) two 297-foot-long, 22-foot-diameter steel-lined penstocks; (7) a 1,200-foot-long, 230-kV, underground transmission line from the upper reservoir to the northern end of San Vicente reservoir; and (8) appurtenant facilities. This alternative would generate approximately 1,022 GWh annually.

6. Site D would be located 1.8 miles southeast of the San Vicente reservoir, and would include: (1) a reservoir with a storage capacity of 4,500 acre-feet and a surface area of 80 acres at a full pond elevation of 1,800 feet msl; (2) a 2,263-foot-long, 285-

foot-high RCC dam; (3) a 235-foot-long, 85-foot-wide, 131-foot-tall subsurface powerhouse containing two 250-MW vertical Francis variable speed reversible pump/turbine-motor/generator units; (4) a 1,415-foot-long, 13-foot-diameter concrete-lined tailrace tunnel; (5) an upper reservoir inlet/outlet structure; (6) two 180-foot-long, 17-foot-diameter steel-lined penstocks; (7) a 1,400-foot-long, 230-kV, underground transmission line extending from the upper reservoir to the northern end of San Vicente reservoir; and (8) appurtenant facilities. This alternative would generate approximately 715 GWh annually.

II. Background

7. On October 30, 2014, the Commission issued public notice of the Water Authority's permit application. The City filed a timely motion to intervene, protest and comments on the application.[2] The County of San Diego filed comments on the application without intervening, and the U.S. Department of the Interior filed a letter stating it had no comments on the application.

8. The City stated that it possessed proprietary rights to the dam and reservoir that would form the proposed project's lower reservoir, and requested that the Commission order the Water Authority to amend its application to name the City as a joint applicant for the proposed project.

9. On January 13, 2015, the Water Authority and the City jointly filed a request that the Commission hold the Water Authority's permit application in abeyance for a period of 90 days in order for the parties, which both hold property interests necessary to develop the project, to enter into specific partnership agreements enabling them to proceed as co-permittees for the proposed project.

10. As discussed above, on April 7, 2015 the Water Authority amended its application to add the City as a co-applicant.

III. Discussion

11. Section 4.35 of the Commission's regulations provides that, if an applicant materially amends its filed preliminary permit application, the date of acceptance of the application is the date on which the amendment was filed.[3] However, section 4.35(f)(4) provides that a change in the identity of the applicant that is less than a "total substitution

[2] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2014).

[3] 18 C.F.R. § 4.35(a) (2014).

of all the original applicants in a permit …application" is not a material amendment.[4] Therefore, because the Water Authority's permit application was amended to add the City as a co-applicant, and was not a total substitution of the original applicant, the Commission's regulations do not require the filing date of the application to be changed.

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,[5] 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.[6] 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.[7]

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.

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[4] 18 C.F.R. § 4.35(f)(4) (2014).

[5] 16 U.S.C. § 802 (2014).

[6] *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.").

[7] 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).

14. During the course of the permit, the Commission expects that the permittee will carry out prefiling consultation and study development leading to the possible development of a license application. The prefiling 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.[8] 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.[9] 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. 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 cancelled if a permittee fails to file a timely progress report or if the report does not demonstrate that progress is being made 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.

16. A preliminary permit is not transferable. The named permittees are the only parties 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 permittees 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 permittees are added as joint applicants for license, the joint application will not be eligible for any permit-based priority.[10]

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[8] 18 C.F.R. §§ 5.5 and 5.6 (2014).

[9] *See* 18 C.F.R. § 5.3 (2014).

[10] *See City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

The Director orders:

(A) A preliminary permit is issued for the San Vicente Pumped Storage Project No. 14642 to San Diego County Water Authority and the City of San Diego, 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. § 825*l* (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2014).

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Division of Hydropower Licensing

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