

161 FERC ¶ 62,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Big Chino Valley Pumped Storage LLC

Project No. 14859-000

ORDER ISSUING PRELIMINARY PERMIT
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(Issued December 28, 2017)

1. On September 29, 2017, Big Chino Valley Pumped Storage LLC (Big Chino) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act,¹ proposing to study the feasibility of the Big Chino Valley Pumped Storage Project (project) to be located near Chino Valley in Yavapai, Coconino, and Mohave Counties, Arizona. The project has a potential to develop up to 2,000 megawatts (MW) of generating capacity. The project would not occupy federal lands.

I. Project Proposal

2. The proposed project will be closed-loop. Water to initially fill the reservoirs and required make-up water will be pumped from locally available groundwater sources. The proposed project would consist of an upper and lower reservoir, a water conveyance system connecting the two reservoirs, a powerhouse, and three transmission lines. The project would consist of the following new features: (1) a 2,900-foot-long, 360-foot-high rockfill, concrete-faced dam; (2) a 50-acre upper reservoir with a storage capacity of 19,739-acre-foot at an elevation of 6,560 feet mean sea level (msl); (3) a 2,700-foot-long, 250-foot-high rockfill, concrete-faced dam; (4) a 50-acre lower reservoir with a storage capacity of 19,811-acre-foot at an elevation of 5,294 feet msl; (5) a 10.1-mile-long water conveyance system including: two upper reservoir inlet/outlets, two vertical shafts, two horizontal power tunnels, two penstock manifold tunnels, and eight 12-foot-diameter, steel-lined penstocks; (6) a powerhouse with eight pump-turbine/motor-generator units rated at 250 MW each, for total installed capacity of 2,000 MW; (7) eight, 16-foot diameter draft tubes converging into two, 32-foot-diameter tailrace tunnels; (8) a 30-mile-long, 500-kilovolt (kV) transmission line traversing northerly to interconnect with the existing Arizona Public Service owned- and operated Eldorado-Moenkopi 500-kV line or a planned and sited new Dine Navajo Transmission Project 500-kV line from Moenkopi to Marketplace; a 54-mile long, 500-kV line traversing westerly to interconnect with an existing Western Area Power Administration owned and operated 230-kV line from

¹ 16 U.S.C. § 797(f) (2006).

Prescott to Peacock that would be upgraded to 500 kV; and a 47-mile-long, 500-kV line traversing easterly to interconnect with two Navajo Southern Transmission 500-kV lines owned by participants of the Navajo Generating Plant and operated by Arizona Public Service. The estimated annual generation of the project would be 4,614 gigawatt-hours.

II. Background

3. The Commission issued public notice of Big Chino's permit application on October 13, 2017. Timely motions to intervene were filed by Town of Clarkdale, Arizona; Chino Grande, LLC; Fort McDowell Yavapai Nation; City of Prescott, Arizona; Yavapai-Apache Nation; Salt River Valley Water Users' Association and Salt River Project Agricultural Improvement and Power District (Salt River); Town of Prescott Valley, Arizona; Center for Biological Diversity; Salt River Pima-Maricopa Indian Community (SRPMIC); and Arizona Game and Fish Department (GFD).² Comments were filed by a number of agencies, communities, organizations, and individuals including Peter Flynn and U.S. Department of the Interior (Interior).

III. Discussion

A. Issues Related to Project Construction and Operation

4. Arizona GFD, Interior, SRPMIC, and several others expressed concern that the project could potentially deplete scarce regional water resources through the initial pumping of groundwater, losses due to seepage/leakage, and continual evaporative losses. Additionally, the above-mentioned entities commented that fish, wildlife, and riparian resources, including some federally-threatened and endangered species within the Verde River watershed, could be adversely affected by the project construction and operation. Fort McDowell Yavapai Nation and SRPMIC expressed concerns that the project could impact their water rights on the Verde River, and that the project could adversely effect their culture, economy, tribal environmental values, and religious practices. Salt River commented that the project would adversely impact their electric transmission system.

5. 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.

² Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's regulations. 18 C.F.R. § 385.214 (2017).

B. Consultation and Study Requirements under the Permit

6. Interior, through the Bureau of Indian Affairs, recommends that Big Chino develop a detailed study plan to address ground water, potential impacts, mitigation, habitat changes, water quality, and cultural resources. Interior also recommends that Big Chino secure an agreement with affected parties.

7. The Commission has not sought to place all relevant study requirements in preliminary permits.³ 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.⁴ 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.⁵

C. Other Issues

8. Interior also requests clarification on the status of the Longview Pumped Storage Project preliminary permit (P-14341). Per Commission order extending the permit term issued on March 4, 2015, this permit expired on March 31, 2017.

IV. Permit Information

9. 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

³ See, e.g., *Continental Lands Inc.*, 90 FERC ¶ 61,355 at 62,177 (2000).

⁴ See 18 C.F.R. § 4.38 (2017).

⁵ See *City of Richmond, Va.*, 53 FERC ¶ 61,342 at 62,247 (1990).

⁶ 16 U.S.C. § 802 (2006).

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.”).

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.⁸

10. 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.

11. 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.

12. 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

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 (2017).

¹⁰ *See* 18 C.F.R. § 5.3 (2017).

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.¹¹

The Director orders:

(A) A preliminary permit is issued for the Big Chino Valley Pumped Storage Project No. 14859 to Big Chino Valley Pumped Storage 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 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 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2017).

for 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.