

UNITED STATES OF AMERICA 120 FERC ¶ 62,098  
FEDERAL ENERGY REGULATORY COMMISSION

Gibson Dam Hydroelectric Company, LLC

Project No. 12478-001

ORDER ISSUING PRELIMINARY PERMIT

(Issued August 6, 2007)

On April 3, 2007, Gibson Dam Hydroelectric Company, LLC (permittee), filed an application for a three-year preliminary permit under Section 4(f) of the Federal Power Act (FPA)<sup>1</sup> to study the feasibility of the proposed 15-megawatt Gibson Dam Project No. 12478.<sup>2</sup> The project would be located on North Fork Sun Fork in Teton and Lewis and Clark Counties, Montana. It would use the U.S. Bureau of Reclamation's Gibson Dam.

The proposed project, using the U.S. Bureau of Reclamation's Gibson Dam and operated in a run-of-river mode, would consist of: (1) two proposed 300-foot-long, steel penstocks, (2) a powerhouse containing two generating units having a total installed capacity of 15 megawatts, (3) A proposed 34.5 kilovolt underground transmission line, and (4) appurtenant facilities. The project would have an average annual generation of 50 gigawatt-hours.

Public notice of the application was issued. Motions to intervene were filed by the U.S. Forest Service and the Deep Creek Ranch & Management, LLC to be parties to the proceeding. The U.S. Department of the Interior (Interior) filed comments.

Interior included important information that is intended to be used as a planning aid should the permittee pursue a development application. Interior also requests that the permittee consult with it in preparing the environmental impact analysis. Interior further stated that the project could affect a variety of environmental resources.

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<sup>1</sup>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.

<sup>2</sup> The application was initially docketed as Project No. 12791-000, but was later changed to Project No. 12478-001 to be consistent with the ILP process.

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### Successive Permits

The applicant has previously held a preliminary permit for this site under Project No. 12478-000.

The Commission will grant successive permits if it concludes that the applicant has diligently pursued the requirements of its prior permits in good faith. The permittee has provided information to the Commission 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.

The Commission usually does not prescribe in great detail what a permittee must accomplish under a permit. 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.

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 to determine the feasibility of the proposed project and, if the project is found to be feasible, prepares an acceptable development application. The permit confers no authority on the permittee to undertake construction of the proposed project or any part thereof,<sup>3</sup> 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

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<sup>3</sup>Issuance of this preliminary permit is thus not a major federal action significantly affecting the quality of the human environment.

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the NOI and PAD and set forth specific information justifying the request.<sup>4</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.

A preliminary permit is not transferable. The named permittee is the only entity 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 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 Gibson Dam Hydroelectric Company, LLC for a period effective the first day of the month in which this permit is issued, and ending 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.

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<sup>4</sup> See Commission Order 2002, issued July 23, 2003.

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(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 & Jurisdiction Branch  
Division of Hydropower  
Administration and Compliance

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Form P-1 (Revised February 2007)

**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 time 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 5 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 therefor.