

178 FERC ¶ 62,132
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Lewis Ridge Pumped Storage, LLC

Project No. 15249-000

ORDER ISSUING PRELIMINARY PERMIT
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(March 3, 2022)

1. On November 22, 2021, Lewis Ridge Pumped Storage, LLC, (Lewis Ridge) 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 Lewis Ridge Pumped Storage Hydroelectric Project (project). The project would be located in Bell County, Kentucky.

I. Project Proposal

2. As proposed, Lewis Ridge's project would consist of the following: (1) a 5,700-foot-long, 77-foot-high zoned rockfill embankment ring dike; (2) an upper reservoir with a surface area of 30 acres and a storage capacity of 2,300 acre-feet; (3) a 4,987-foot-long, 20-foot-diameter power tunnel; (4) a 120-foot-high, 30-foot-diameter steel surge tower; (5) a 420-foot-long, 80-foot-wide powerhouse containing four 54-megawatt (MW) reversible pump-turbines with a total capacity of 216 MW; (6) a 1,700-foot-long, 3.5-foot-diameter pipeline from a concrete pump station on the Cumberland River for fill/refill water; (7) a 1,400-foot-long, 100-foot-high zoned rockfill dam with a 5,900-foot-long, 10-foot-high zoned rockfill embankment ring dike surrounding (8) a 23 acre lower reservoir with a storage capacity of 2,300 acre-feet; and (9) a 1.3-mile-long, 161 kilovolt overhead transmission line. The proposed project would have an estimated annual generation of 605,000 megawatt-hours. In its application, Lewis Ridge requests a permit term of 48 months.²

II. Notice, Interventions, and Comments

3. On December 16, 2021, the Commission issued a public notice of the permit application. On December 22, 2021, the notice of the application was published in the

¹ 16 U.S.C. § 797(f).

² The Commission may issue a permit for a term of up to 48 months. 18 C.F.R. § 4.81(a)(5) (2021).

Federal Register.³ On February 9, 2022, the U.S. Department of the Interior (Interior), on behalf of the U.S. Fish and Wildlife Service filed comments.

III. Discussion

4. Interior expressed concerns that project construction and operation could affect threatened and endangered species potentially inhabiting the project area, and other fish and wildlife resources.

5. Because a preliminary permit does not authorize construction or operation, addressing these concerns at the permit stage is premature in that they concern the potential effects of constructing and operating the proposed project.⁴ The purpose of a preliminary permit is to secure the permit holder's priority for hydropower development while it studies the feasibility of the project, including studying potential impacts. Should the permittee file a license application, these issues would be addressed during the licensing process.

IV. Permit Information

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,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

³ 86 FR 53,956 (September 29, 2021).

⁴ See, e.g., *Tomlin Energy LLC*, 169 FERC ¶ 61,037, at P 8 (2019) (explaining that concerns about impacts of project operation are premature at the permit stage); *Alaska Power Co., Inc.*, 138 FERC ¶ 62,130, at P 7 (2012) (stating that concerns over the project's impact on fish and wildlife resources and the cumulative impacts of basin development are premature at the permit stage).

⁵ 16 U.S.C. § 802.

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.").

project and to prepare a license application, it grants no land-disturbing or other property rights.⁷

7. Article 4 of this permit requires the permittee to submit a progress report no later than the last day of each 12-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.

8. 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 the 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 If the permittee files a development application, notice of the application will be published, and interested persons and agencies may intervene and comment on the project and effects of its construction and operation.

9. 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 a 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

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).

⁸ 18 C.F.R. §§ 5.5 and 5.6.

⁹ 18 C.F.R. § 5.3.

applicants for license, the joint application will not be eligible for any permit-based priority.¹⁰

The Director orders:

(A) A preliminary permit is issued for the Lewis Ridge Pumped Storage Hydroelectric Project No. 15249 to the Lewis Ridge Pumped Storage, LLC, for a period effective the first day of the month in which this permit is issued, and ending either 48 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, and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713.

Stephen Bowler, Chief
South Branch
Division of Hydropower Licensing

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

Form P-1 (Revised May 2021)

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 12-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.

The Commission strongly encourages that progress reports be filed electronically via its eFiling system. Instructions for e-filing can be found on the Commission's website at <https://www.ferc.gov/ferc-online/overview>. For assistance, please contact FERC Online Support at ferconlinesupport@ferc.gov; (866) 208-3676 (toll free); or (202) 502-8659 (for TTY). If eFiling is not an option, you may submit one paper copy. Submissions sent via the U.S. Postal Service (USPS) must be addressed to: the

Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, D.C. 20426. Submissions sent via any other carrier must be addressed to: the Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.