

129 FERC ¶ 62,062  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Riverbank USA Holdings Corporation

Project No. 13358-000

ORDER ISSUING PRELIMINARY PERMIT  
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(October 23, 2009)

1. On January 27, 2009, Riverbank USA Holdings Corporation (Riverbank) filed an application pursuant to section 4(f) of the Federal Power Act (FPA),<sup>1</sup> proposing to study the feasibility of the Verplanck Pumped Storage Project No. 13358-000 (Verplanck Project), to be located in the vicinity of the Verplanck Quarry within the town of Cortland in West Chester County, New York. The project would not occupy any federal land.

**Project Description**

2. The proposed Verplanck Pumped Storage Project would consist of: (1) the existing Verplanck Quarry (upper reservoir); (2) four new 13-foot-diameter vertical penstocks leading to a new underground powerhouse containing four 250-megawatt (MW) generating units with a total installed capacity of 1,000 MW; (3) six new underground storage galleries (lower reservoir); and (4) a new double circuit 345-kilovolt, 1.0-mile-long transmission line. The project's estimated annual generation is 2,190 gigawatt-hours.

**Background**

3. Public notice of the Verplanck Project application was issued on June 15, 2009, establishing August 14, 2009, as the deadline for filing comments, motions to intervene, and competing applications. No competing applications or notices of intent to file a competing application were filed.

4. Timely motions to intervene were filed by the Town of Cortland, New York (Cortland); Riverkeeper Inc.; and Scenic Hudson, Inc.<sup>2</sup> Comments were filed by Cortland; Riverkeeper Inc.; Scenic Hudson, Inc.; the U.S. Department of the Interior (Interior); James and Arlene Bell;

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<sup>1</sup> 16 U.S.C. § 797(f) (2006).

<sup>2</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214(c)(1) (2009).

Thomas Carey; Michelle E. Carter; Laurie B. DeCiceo; Andrew Fischer; Rosemary and Dennis Lasher; Rosemarie Muscolo; Lois Rinzivillo; Stephanie Vaughey; and Melissa Wassil.

## Discussion

5. 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,<sup>3</sup> 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 permittee to have the first priority in applying for a license for the project that is being studied.<sup>4</sup> Because a permit is issued only to allow the permittee 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.<sup>5</sup>

6. Mr. Fischer questioned whether the Commission has jurisdiction over a project that is not located on navigable waters. The Commission has jurisdiction over hydroelectric projects located on both navigable waters and the broader category of commerce clause waters.<sup>6</sup>

7. Mrs. Muscolo contends that the issuance of a permit will negatively impact property values in the area. Allegations of potential adverse effects on the local real estate market does not warrant denial of a permit.<sup>7</sup> To conclude otherwise would in effect make our permit process subject to a veto right by parties with economic or other interests in the vicinity of the project

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<sup>3</sup> 16 U.S.C. § 802 (2006).

<sup>4</sup> *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.”).

<sup>5</sup> Issuance of this preliminary permit is thus not a major federal action significantly affecting the quality of the human environment. A permittee 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).

<sup>6</sup> 16 U.S.C. § 817 (2006).

<sup>7</sup> *Mid-Atlantic Engineers, Ltd.*, 53 FERC ¶ 61,155 (1990).

site.<sup>8</sup> In any event, since an applicant does not need to obtain a permit in order to do the necessary studies and apply for a license, the denial of a permit does not guarantee that the site would remain free of hydropower development.

8. Mr. Cary submitted comments in support of this hydroelectric project because it seems to be environmentally friendly. All other commenters oppose the project and expressed concerns about safety during testing, construction, and operation of the project; impacts on groundwater; impacts on water quality; the effect of drilling in the area; impacts on local streams, lakes, aquatic life, and wildlife; noise from construction; alterations to the ground water-surface water interaction; health risks from exposure to quarry minerals; the Ramapo Fault System's impact on the project; increased traffic from construction and new employees; and the impacts on neighboring residential properties, the Catholic Church, and a ball field. As noted, a preliminary permit does not authorize a permittee to undertake construction or operation of the proposed project. Therefore, comments concerning impacts caused by construction and operation of the project are premature at the permit stage, but can properly be addressed in the licensing process.

9. Interior indicated that its comments are meant to serve as a planning aid for the permittee in the event that an application for a license is pursued, and indicated that further consultation is needed. Interior recommends that the following language be stipulated in any preliminary permit issued for the Verplanck Project:

“That the permittee shall design and conduct, at project cost, as soon as practicable after issuance of the project's preliminary permit, preparatory studies in cooperation with the New York State Department of Environmental Conservation, the U.S. Fish and Wildlife Service, the Bureau of Indian Affairs, and the National Park Service. These studies shall address, but not be limited to, the effects of project construction and operations on the movements of fish and other aquatic organisms, the reproduction and survival of aquatic or semi-aquatic fish and wildlife resources, recreational fishing and navigation, wetland and riparian wildlife, vegetative species, and historical and archaeological resources. The studies shall also identify and evaluate general measures to avoid, offset, and/or reduce adverse project-caused impacts on fish and wildlife resources.”

10. The purpose of a preliminary permit is to study the feasibility of the project, including studying potential impacts. The Commission's regulations require potential development applicants to consult with appropriate state and federal resource agencies and affected Indian tribes, to conduct all reasonable studies requested by the agencies, and to solicit comments on the

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<sup>8</sup> *Id.*

application before it is filed.<sup>9</sup> The Commission has not sought to place all relevant study requirements in preliminary permits.<sup>10</sup> Rather, the studies to be undertaken by a permittee are shaped by the Commission's filing requirements for development applications. Accordingly, Interior's request for studies would be addressed through the Commission's licensing process.

11. During the course of the permit period, 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.<sup>11</sup> 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.<sup>12</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.

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 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.<sup>13</sup>

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<sup>9</sup> See 18 C.F.R. § 4.38 and Part 5 (2009).

<sup>10</sup> See, e.g., *Continental Lands Inc.*, 90 FERC ¶ 61,355 at 62,177 (2000).

<sup>11</sup> 18 C.F.R. §§ 5.5 and 5.6 (2009).

<sup>12</sup> 18 C.F.R. § 5.3 (2009).

<sup>13</sup> See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

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The Director orders:

(A) A preliminary permit is issued for the Verplanck Pumped Storage Project No. 13358-000 to Riverbank USA Holdings Corporation, 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.

Vince Yearick, Chief  
Hydro East Branch 1  
Division of Hydropower Licensing

**Form P-1 (Revised April 2009)****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.** 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 intervenors 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 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.

Document Content(s)

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