

UNITED STATES OF AMERICA 130 FERC ¶ 62,130  
FEDERAL ENERGY REGULATORY COMMISSION

KW Sackheim Development  
Bradley D. Reeves

Project No. 13225-000  
Project No. 13440-000

ORDER ISSUING PRELIMINARY PERMIT,  
DENYING COMPETING APPLICATION,  
AND GRANTING PRIORITY TO FILE LICENSE APPLICATION

(Issued: February 5, 2010)

1. On May 12, 2008, KW Sackheim Development (Sackheim) filed an application, pursuant to section 4(f) of the Federal Power Act (FPA),<sup>1</sup> to study the feasibility of the proposed Drum-Spaulding Small Hydro Project consisting of three developments that are currently non-hydroelectric facilities within the boundary of Pacific Gas and Electric Company's (PG&E) Drum-Spaulding Project No. 2310. The three developments would include: (1) the Lake Valley canal drop consisting of an existing diversion from the North Fork of the North Fork American River to the existing Lake Valley canal dropping into the existing Drum canal; (2) the Bear-Halsey drop where water flows from the existing Bear Creek canal into the existing Halsey forebay; and (3) the Wise-Rock drop where water flows from the existing Wise canal into the existing Rock Creek reservoir. All of the proposed developments are located within Placer County, California. None of the proposed developments are located on Federal lands.<sup>2</sup>

2. On April 28, 2009 Bradley D. Reeves (Reeves), filed an application pursuant to section 4(f) of the Federal Power Act (FPA), to study the feasibility of the Parshall Canal Power Project.<sup>3</sup> The Parshall Canal Power Project is in competition with Sackheim's Lake Valley canal development as the Project would be located on the existing diversion from the North Fork of the North Fork American River via the existing Lake Valley canal into the existing Drum canal. The Parshall Canal and the Lake Valley Canal are the same canal within PG&E's Drum-Spaulding Project.

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

<sup>2</sup> Sackheim stated that the Bear-Halsey drop was located on Federal lands but our review indicates otherwise.

<sup>3</sup> 16 U.S.C. § 797(f) (2006).

## I. Project Proposals

3. Sackheim's Lake Valley Canal development, located at the drop between the Lake Valley canal and the Drum canal, would consist of: (1) the 8400-foot-long Lake Valley canal (2) an existing 30-inch-diameter, 2,100-foot-long pipeline serving as a penstock; (3) a new powerhouse containing a single Pelton type turbine generator rated at 1,300 kilowatts; (4) approximately 800 feet of a new three-phase power line that will follow an existing PG&E road, and an upgrade of 1,600 feet of existing transmission line from single-phase to three-phase. Sackheim's proposed development would have an average annual generation of 4 gigawatt-hours, which would be sold to a local utility. The pipeline would cross underneath Interstate Route 80.

4. Sackheim's proposed Bear River-Halsey development would consist of: (1) an existing 30-foot drop at the end of the Bear River canal into the Halsey forebay; (2) a new powerhouse enclosing a propeller or bulb-type turbine generator rated at 800 kilowatts, located at the terminus of the Bear River canal discharge to the Halsey forebay; and (3) approximately 200 feet of new three-phase power line and the upgrade of approximately 1,400 feet of single-phase line to three-phase line. This proposed development would have an annual average generation of about 5 gigawatt-hours.

5. Sackheim's proposed Wise Canal-Rock Creek development would consist of: (1) an existing drop from the Wise canal in the Rock Creek diversion into Rock Creek reservoir; (2) a new powerhouse containing a bulb-type or propeller turbine generator rated at 900 kilowatts; (3) a 12-kilovolt transformer and ancillary equipment; and (4) a new 700-foot-long, 12-kilovolt transmission line. This proposed development would have an annual average generation of about 5 gigawatt-hours.

6. Reeves' proposed Parshall Canal Project, in competition with Sackheim's Lake Valley Canal development, would consist of: (1) the existing 8,400-foot-long Lake Valley (Parshall) canal between the North Fork of the North Fork of the American River and Drum canal;<sup>4</sup> (2) an existing 2,100-foot-long, 30-inch-diameter pipeline serving as a penstock; (3) a proposed new powerhouse with a single Pelton-type generator rated at 1,050 kilowatts; (4) approximately 800 feet of three-phase transmission line following an existing PG&E road along the Drum canal and an upgrade of 1,600 feet of single-phase line to three-phase line. The proposed project would have an average annual generation of 4 gigawatt-hours which would be sold to a local utility.

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<sup>4</sup> Reeves' application refers to the Lake Valley canal as the Parshall canal.

## II. Background

7. The Commission issued a joint public notice for Project Nos. 13225 and 13440 on August 20, 2009. Timely motions to intervene were filed by Foothills Water Network; Sierra Club – Mother Lode Chapter; American Whitewater; Trout Unlimited; California Sportfishing Protection Alliance; American Rivers; Sierra Salmon Alliance; Northern California Federation of Fly Fishers; and PG&E on October 19, 2009.<sup>5</sup> The PG &E intervention included a protest. Comments were filed by Sackheim on October 9, 2009. A no-comment letter was filed by the Department of the Interior on October 16, 2009.

## III. Discussion

8. The comments from Sackheim and Reeves each underscored why each applicant thought that they were the most qualified party to develop the Lake Valley (Parshall) Canal site. Because neither of the applicants presented a plan based on detailed studies, there is no basis for concluding that any one applicant's plan would be superior to the other. Because Sackheim is the first filed application, the preliminary permit is issued to Sackheim to study the three developments that would make up the Drum Spaulding Small Hydro Project.

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,<sup>6</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 permit holder to have the first priority in applying for a license for the project that is being studied.<sup>7</sup> 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.<sup>8</sup>

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<sup>5</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214 (2009).

<sup>6</sup> 16 U.S.C. § 802 (2006).

<sup>7</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>8</sup> Issuance of this preliminary permit is thus not a major federal action significantly  
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10. PG&E is currently in the process of relicensing the multi-dam Drum Spaulding Project (Project No. 2310), and its license application is due to be filed by April 30, 2011. PG&E's motion to intervene requests that the Commission not issue a preliminary permit to Sackheim for the three proposed sites because PG&E has proposed in its pre-application document to develop hydropower at the same three sites.<sup>9</sup> PG&E argues that it is appropriate to defer consideration of the Sackheim permit application until after PG&E determines whether or not it will ultimately propose to develop the three sites in its comprehensive license application at relicensing. PG&E states that if it proposes to develop the sites, then Sackheim cannot receive a permit because a development application would take precedence over a permit application. Likewise, PG&E states that if it does not propose to develop the three sites in its license application, then the Commission could consider at this later time whether the Sackheim proposal is consistent with FPA section 6.<sup>10</sup>

11. In the Commission's policy statement *Preferences at Relicensing Units of Development* (Policy Statement), the Commission declined to impose a blanket moratorium on the issuance of preliminary permits for the study of unused capacity at licensed projects that are subject to the relicensing process.<sup>11</sup> The Policy Statement clearly explained the limited preference that would attach to a permit sought contemporaneously with an incumbent licensee's relicensing proceeding. The permit will provide tie-breaker preference over other third-party applicants for the filing of a development application for incremental capacity during the permit term, but not against comprehensive development applications filed by the licensee or a third party on relicensing.<sup>12</sup> Thus, issuing the requested permit does not block PG&E from proposing

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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).

<sup>9</sup> PG&E Drum Spaulding Project, FERC Project No. 2310, Relicensing Pre-Application Document (PAD), (April 2008)

<sup>10</sup> 16 U.S.C. § 799 (2006) (FPA section 6 bars substantial alteration of a licensed project without the consent of the licensee).

<sup>11</sup> 57 FERC ¶ 61,349 (1991).

<sup>12</sup> *Preferences at Relicensing of Units of Development*, 57 FERC at 62,141-13. There, the Commission also stated: "If permit applicants are willing to incur the risks

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in its relicensing application the development of the same incremental capacity that the permittee seeks to study. Moreover, if within a reasonably contemporaneous time period the Commission has (or reasonably expects to have) before it for consideration an application for incremental capacity and an application for relicense of existing facilities (without the additional incremental capacity), then the Commission will consider the applications in a comparative proceeding.<sup>13</sup>

12. 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.<sup>14</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>15</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.

13. 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>16</sup>

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inherent in this framework, it does not appear necessary to preclude them from obtaining a permit and developing an application for a license.”

<sup>13</sup> *Id.* at 62,141-10.

<sup>14</sup> 18 C.F.R. §§ 5.5 and 5.6 (2009).

<sup>15</sup> *See* 18 C.F.R. § 5.3 (2009).

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

The Director orders:

(A) A preliminary permit is issued to KW Sackheim Development for Project No. 13225, as discussed in this order, 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) The competing application for preliminary permit for Project No. 13291, filed by Bradley D. Reeves, is denied.

(C) 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 form P-1.

(D) This preliminary permit provides KW Sackheim Development with preference over third-party applicants for the filing of a development application during the permit term, but does not provide preference against comprehensive development applications filed by the licensee or a third party on relicensing.

(E) 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.

Timothy J. Welch, Chief  
West Branch West 2  
Division of Hydropower Licensing

**Form P-1 (Revised December 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, or if Pacific Gas and Electric Company during the course of relicensing the Drum - Spaulding Project No. P- 2310 files a comprehensive proposal to develop all of the capacity at the site.

**Article 4.** At the close of each six-month period from the effective date of this permit, the permittee shall file a progress report electronically via the Internet; and shall serve a copy on the intervenors in this proceeding. 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. 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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