

123 FERC ¶ 61,096
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Mt. Hope Waterpower Project LP

Project No. 12784-000

ORDER DENYING PRELIMINARY PERMIT APPLICATION

(Issued April 29, 2008)

1. Mt. Hope Waterpower Project LP (Mt. Hope) filed an application on March 8, 2007, as amended on April 5, 2007, for a three-year preliminary permit under section 4(f) of the Federal Power Act (FPA)¹ to study the proposed 1.0-gigawatt Mount Hope Pumped Storage Hydroelectric Project No. 12784. The project would use water from the Mt. Hope Mine and would be built in the vicinity of Rockaway Township in Morris County, New Jersey. As discussed below, the application will be denied.

Background

2. The proposed project would be constructed in four stages and consist of four pumped-storage developments, each with a powerhouse and an upper and lower reservoir. Some of the reservoirs would be included in more than one development; a lower reservoir for one development would be an upper reservoir for another. The proposed project would also include two parallel 10.6-mile-long, 500-kilovolt transmission lines interconnecting with a proposed substation.

3. Mt. Hope is the former licensee for the 2.0-gigawatt Mt. Hope Pumped Storage Project No. 9401, which was to have been located at the same site involved in its permit

¹ 16 U.S.C. § 797(f) (2000). Three years is the maximum term for a preliminary permit. *See* FPA section 5, 16 U.S.C. § 798 (2000).

application.² Mt. Hope failed to commence construction of that project by the statutory deadline, and consequently, the Commission terminated the license for Project No. 9401³ in accordance with the requirements of section 13 of the FPA.⁴

4. On January 17, 2006, as soon as the termination became effective, Mt. Hope filed an application for preliminary permit (docketed Project No. 12641-000) for the project's site. The Commission dismissed the permit application, based on Mt. Hope having controlled the site under the Project No. 9401 license for years without developing it.⁵ On rehearing of the dismissal, the Commission established a six-month "cooling off" period during which the Commission would not accept a preliminary permit application from Mt. Hope for the site.⁶

² The project was licensed in 1992 in *Halecrest Company*, 60 FERC ¶ 61,121 (1992), and the license was transferred to Mt. Hope in 1994 in *Halecrest Company and Mt. Hope Waterpower Project, LLP*, 68 FERC ¶ 62,008 (1994).

³ *Mt. Hope Waterpower Project LLP*, 113 FERC ¶ 61,258 (2005). Article 301 of the license required the licensee to commence construction within two years of license issuance, i.e., by August 3, 1994. Pursuant to FPA section 13, Commission staff extended the deadline for the commencement of construction two years, until August 3, 1996. In 1996, Congress passed Public Law 104-247, which authorized the Commission to extend, at the licensee's request, the deadline for the commencement of construction to August 3, 1999, which the Commission did. In 1999, Congress authorized another extension of the construction deadline, this time until August 3, 2002. Upon Mt. Hope's request, the deadline was extended to that date.

⁴ 16 U.S.C. § 806 (2000).

⁵ *Mt. Hope Waterpower Project LLP*, 115 FERC ¶ 61,315 (2006), *citing City of Augusta, Kentucky*, 115 FERC ¶ 61,198 (2006). The Commission stated (at P 9) that:

. . . allowing entities to tie up potential hydropower sites for extended periods of time can have a dampening effect on competition in energy development. In addition, we are concerned about whether it makes sense to expend our staff resources where entities are repeatedly seeking authorizations for projects they have previously failed to develop.

⁶ *Mt. Hope Waterpower Project LLP*, 116 FERC ¶ 61,232 (2006). The Commission concluded that it would accept from Mt. Hope a permit application filed after March 7, 2007, but reached no conclusion regarding the merits of any such application. *Id.*, n.10.

5. Meanwhile, on May 2, 2006, the Accounting Officer in the Commission's Office of the Executive Director sent Mt. Hope a Notice of Debt Collection, seeking payment of the deferred annual charges that had accrued under its license for Project No. 9401, which totaled \$5,830,203.54 (principal and interest).

6. On June 1, 2006, Mt. Hope filed an appeal and request for waiver of the annual charges. On June 21, 2007, the Commission dismissed the appeal and denied the requested waiver.⁷ The order noted that the Commission earlier had granted Mt. Hope's request to enter into a payment plan agreement, whereby payment was deferred (as pertinent here) until the beginning of the fiscal year in which the commencement of construction deadline fell. The payment deadline was thereafter adjusted to reflect extensions of the commencement of construction deadline (with the last deadline in 2002). When Mt. Hope's license was terminated in 2005 for failure to commence project construction, Mt. Hope had not, as of that date, paid any of the assessed annual charges.

7. On October 18, 2007, the Commission denied Mt. Hope's request for rehearing of the June 21, 2007 Order.⁸ The Commission found that Mt. Hope had an obligation to pay the deferred annual charges of \$5,830,203.54 (\$4,099,295 principal and \$1,730,908.54 interest) no later than August 2002, and that during the almost four years from August 2002 until May 2, 2006, when Mt. Hope was sent the Notice of Debt Collection for the annual charges arrearages, Mt. Hope had had ample opportunity to pay the overdue charges or attempt to resolve the matter with the Commission, but it did not do so. Despite that lack of response on Mt. Hope's part, and in an attempt to more quickly resolve the matter, the Commission approved a waiver of the interest (more than \$1.7 million) on the unpaid annual charges, conditioned on Mt. Hope's payment of the principal amount of \$4,099,295 within 60 days (i.e., by December 17, 2007). If payment was not made by that date, the entire debt of \$5,830,203.54 would be referred to the Treasury Department for collection.

8. Mt. Hope failed to make the required payment to the Commission as ordered by the October 18, 2007 Order, and on January 2, 2008, the debt was referred to the Treasury Department for collection, where it is pending and unpaid.

⁷ *Mt. Hope Waterpower Project, L.L.P.*, 119 FERC ¶ 61,290 (2007) (June 21, 2007 Order).

⁸ *Mt. Hope Waterpower Project, L.L.P.*, 121 FERC ¶ 61,050 (2007) (October 18, 2007 Order).

Discussion

9. When imposing the “cooling off” period during which Mt. Hope could not file an application, the Commission made it clear that if Mt. Hope chose to file an application at the end of the cooling off period, the Commission was taking no position on how it would subsequently rule on the merits of the application.

10. Mt. Hope’s fitness to receive a preliminary permit or a license is relevant,⁹ and indeed here, it is the determining factor to be considered in deciding whether to grant the requested permit. Mt. Hope’s failure to pay any of the accrued annual charges under its license, despite the Commission’s granting of a deferred payment plan and conditional waiver of the substantial interest on the principal amount of the charges, demonstrates Mt. Hope’s lack of fitness necessary to comply with regulatory requirements. Under circumstances such as these, the issuance of a permit to Mt. Hope for the Mount Hope Pumped Storage Hydroelectric Project No. 12784 is not justified, and its application for a preliminary permit will therefore be denied.

The Commission orders:

(A) The preliminary permit application filed March 8, 2007, by Mt. Hope Waterpower Project LP, for the Mount Hope Pumped Storage Hydroelectric Project No. 12784 is denied.

(B) This order 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 (2007).

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ See *Appalachian Rivers Resource Enhancement, LLC*, 113 FERC ¶ 61,043 (2005), *reh’g denied*, 114 FERC ¶ 61,145 (2006), *affirmed*, *Energie Group, LLC, et al. v. Federal Energy Regulatory Commission*, 511 F.3d 161 (DC Cir. 2007) (denying preliminary permit application based on past actions by the applicant indicating that he lacked the necessary fitness to be awarded a license).