

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Alabama Municipal Electric Authority
Robertson Energy Group, LLC

Project No. 13719-000
Project No. 13081-000

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

(December 21, 2010)

1. On April 29, 2010 and November 19, 2007, Alabama Municipal Electric Authority (AMEA) and Robertson Energy Group, LLC (Robertson Energy) filed competing applications, pursuant to section 4(f) of the Federal Power Act (FPA),¹ to study the feasibility of the proposed George W. Andrews Lock and Dam Hydroelectric Project located at the existing George W. Andrews Lock and Dam on the Chattahoochee River in Houston County, near the town of Columbia, Alabama. The proposed project would occupy federal lands under the jurisdiction of the U. S. Army Corps of Engineers (Corps), Mobile District.

2. The proposed George W. Andrews Lock and Dam Hydroelectric Project No. 13719 by AMEA would consist of: (1) a new powerhouse containing four turbine-generators with a total combined plant capacity of 25 megawatts (MW); (2) an intake channel and a tailrace channel; (3) an approximately 10-mile-long, 115-kilovolt (kV) transmission line connecting the powerhouse to an existing substation; and (4) appurtenant facilities. The proposed project would have an average annual generation of 82 gigawatt-hours.

3. The proposed George W. Andrews Hydroelectric Project No. 13081 by Robertson Energy would consist of: (1) a new powerhouse containing four new turbine-generators with a total combined plant capacity of 16 MW; (2) an intake channel and a tailrace channel; (3) an approximately 10-mile-long, 115-kV transmission line connecting the powerhouse to an existing substation; and (4) appurtenant facilities. The proposed project would have an average annual generation of 75 gigawatt-hours.

¹ 16 U.S.C. § 797(f) (2006).



I. Background

4. The Commission issued public notices for Project Numbers 13719 and 13081 on August 2, 2010, and January 29, 2010, respectively. On March 30, 2010 and April 29, 2010, AMEA filed a *timely notice of intent* and a *competing permit application*, respectively. AMEA claims municipal preference pursuant to FPA section 7(a).² Except for the project descriptions, identical comments were filed in both proceedings by the Department of Interior (Interior).

II. Discussion

5. Since none of the applicants have presented a plan based on detailed studies, there is no basis for concluding that any one applicant's plan would be superior to the others. Where at least one of the competing applicants is a municipality and the other is not, and the plans of the municipality are at least as well adapted to develop, conserve, and utilize in the public interest the same water resources, the Commission favors the municipality.³ Because AMEA is a municipality claiming preference under section 7(a) of the FPA, the preliminary permit is issued to the Alabama Municipal Electric Authority Project No. 13719.

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,⁴ 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.⁵ Because a permit is issued only to allow the permit holder to investigate the feasibility of a project while the permittee conducts

² 16 U.S.C. § 800(a) (2006).

³ *See id.* (b)(3); *see also* 16 U.S.C. § 800(a) (2006) (the FPA requires the Commission to give preference to applications by states and municipalities "provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region").

⁴ 16 U.S.C. § 802 (2006).

⁵ *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.").

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.⁶

7. Interior expressed concern that proposed project operations could change the flow regime downstream, potentially to the detriment of water quality and fishery resources. Interior requests that if a preliminary permit is issued, the applicant conduct pre-project water quality monitoring, design the project to optimize downstream water quality, develop water quality success criteria and contingency plans if success criteria are not met, and conduct post-construction water quality monitoring studies. Interior also requests that it be consulted on the presence of bald eagles in the project area should the permit applicant pursue a license for the project.

8. It is the responsibility of the permittee to undertake the appropriate consultations and obtain the necessary authorizations to conduct permit studies in a manner consistent with applicable laws and regulations. The Commission has not sought to place all relevant study requirements in preliminary permits.⁷ Rather, the studies to be undertaken by a permittee are shaped by the Commission's filing requirements for development applications. Potential development applicants are required to consult with appropriate state and federal resource agencies and affected Indian tribes, conduct all reasonable studies requested by the agencies, and solicit comments on the applications before they are filed.⁸ Further, permit conditions have been framed to ensure that the permittee does not tie up a site without pursuing in good faith a study of the project's feasibility.⁹

9. 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

⁶ 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).

⁷ *See, e.g., Continental Lands Inc.*, 90 FERC ¶ 61,355 at 62,177 (2000).

⁸ *See* 18 C.F.R. § 4.38 (2010).

⁹ *See City of Richmond, Va.*, 53 FERC ¶ 61,342 at 62,247 (1990).

and 5.6 of the Commission's regulations.¹⁰ 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.¹¹ 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.

10. 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.¹²

The Director orders:

(A) A preliminary permit is issued for the George W. Andrews Lock and Dam Hydroelectric Project No. 13719 to Alabama Municipal Electric Authority, 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. 13081, filed by Robertson Energy Group, LLC, 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 standard form P-1.

¹⁰ 18 C.F.R. §§ 5.5 and 5.6 (2010).

¹¹ See 18 C.F.R. § 5.3 (2010).

¹² See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

(D) The Permittee shall coordinate the studies and its plans for access to the site during the term of this permit with the Corps District Engineer to ensure that the feasibility studies will result in a plan of development consistent with the authorized purposes of the federal project.

(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.



Nicholas Jayjack, Chief
Midwest Branch
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.

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.