

138 FERC ¶ 62,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Wyco Power and Water, Inc.

Project No. 14263-000

ORDER DISMISSING PRELIMINARY PERMIT APPLICATION

(February 23, 2012)

1. On September 1, 2011, Wyco Power and Water, Inc. (Wyco) filed a preliminary permit application to study the feasibility of the Regional Watershed Supply Project No. 14263. Wyco's proposed project would consist of: (1) a proposed 501-mile-long buried water supply pipeline that would extend from two points of diversion in Wyoming (Flaming Gorge Reservoir and the Green River) to a proposed reservoir near Pueblo, Colorado; and (2) seven hydropower projects, including two pumped storage projects, that use water from the proposed pipeline and five projects that would consist of turbines placed in the water supply pipeline. The proposed project would occupy federal lands managed by the U.S. Department of Agriculture's Forest Service (Forest Service), and the U.S. Department of the Interior's Bureau of Land Management (BLM) and Fish and Wildlife Service (FWS).

2. On October 18, 2011, the Commission issued public notice of Wyco's proposal. Notices of intervention were filed by the Forest Service and the Wyoming Game and Fish Department.¹ Motions to intervene were filed by Coalition of Local Governments; Colorado River Water Conservation District; Colorado Springs Utilities; Sweetwater County, Wyoming; Upper Yampa Water Conservancy District; American Rivers, American Whitewater, and Colorado River Outfitters Association, filing jointly; Colorado Environmental Coalition, National Parks Conservation Association, and Western Resources Advocates, filing jointly; Sierra Club, Center for Biological Diversity, Rocky Mountain Wild, Save the Poudre: Poudre Waterkeeper, Biodiversity Conservation Alliance, Wyoming Outdoor Council, Citizens for Dixie's Future, Glen Canyon Institute, Living Rivers: Colorado Riverkeeper, and Utah Rivers Council, filing jointly; Trout Unlimited; and Wyoming Wildlife Federation, National Wildlife

¹ Timely notices of intervention filed by the Forest Service and state fish and wildlife agencies are granted by operation of Rule 214(a)(2) of the Commission's regulations. 18 C.F.R. § 385.214(a)(2) (2011).

Federation, and Colorado Wildlife Federation, filing jointly.² Approximately 230 comments were filed in response to the public notice.

3. Section 4(f) of the Federal Power Act (FPA)³ authorizes the Commission to issue preliminary permits for the purpose of enabling applicants for a license to secure the data and to perform the acts required by section 9 of the FPA. Section 9 of the FPA⁴ requires license applicants to submit “[s]uch maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed project,” together with satisfactory evidence of compliance with pertinent state laws, and “such additional information as the Commission may require.” Section 5 of the FPA states that issuance of a permit shall be for the sole purpose of maintaining priority of application for a license for up to three years “for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements.”⁵

4. Wyco’s permit application seeks priority of application for a license for a project that would divert the unused part of water allocated to the State of Wyoming and the State of Colorado from the Green River Basin into a 501-mile-long pipeline for delivery to southeastern Wyoming and the Front Range of Colorado for municipal and agricultural use. To develop the hydro potential along the pipeline, the project proposes seven hydropower projects.⁶ As presented in Wyco’s application, these hydropower projects are exclusively dependent on water from the proposed water supply pipeline. However, this pipeline does not currently exist, and Wyco’s application does not provide any information about the timeline for seeking and obtaining the necessary authorizations for the construction and operation of such a pipeline.

5. Wyco’s permit application presents maps with a single line drawn from the water supply pipeline’s two proposed water withdrawal locations to its terminus near Pueblo, Colorado, 501 miles away. Wyco’s maps indicate that the water conveyance pipeline may cross federal lands managed by BLM, FWS, and Forest Service. While Wyco only

² Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission’s regulations. 18 C.F.R. § 385.214(c) (2011).

³ 16 U.S.C. § 797(f) (2006).

⁴ 16 U.S.C. § 802 (2006).

⁵ 16 U.S.C. § 798 (2006).

⁶ In a letter dated October 5, 2011, the Commission staff clarified that its only role associated with the proposed water supply pipeline would be to authorize the construction and operation of any proposed hydropower projects along the pipeline.

identified federal land ownership on its maps, it is presumed that the water conveyance pipeline will also cross state, county, local government, and private lands. Until a water conveyance pipeline is actually built, authorizations have been obtained for a specific route, or the process to identify a specific route has been substantially completed, Wyco will be unable to prepare “[s]uch maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed [hydropower] project,” during a three-year permit term, as required by section 9 of the FPA. The sole purpose of a preliminary permit is to maintain priority of application for license while this information is gathered. Until some certainty regarding the authorization of the pipeline is presented, Wyco will not be able to gather and obtain the information required to prepare a license application for a proposed hydropower project. Therefore, there is no purpose under the FPA for issuing a permit to Wyco for its proposed hydropower project at this time. For this reason, Wyco’s preliminary permit application is dismissed as premature.

The Director orders:

(A) The preliminary permit application filed by Wyco Power and Water, Inc., on September 1, 2011, for Project No. 14263-000 is dismissed.

(B) 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 FPA, 16 U.S.C. § 825*l* (2006), and section 385.713 of the Commission’s regulations, 18 C.F.R. § 385.713 (2011).

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