

170 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Premium Energy Holdings, LLC

Project No. 14991-001

ORDER ISSUING PRELIMINARY PERMIT AND GRANTING PRIORITY TO FILE
LICENSE APPLICATION

(Issued March 19, 2020)

1. On July 15, 2019, as supplemented on August 22, 2019, and February 12, 2020, Premium Energy Holdings, LLC (Premium Energy) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA),¹ to study the feasibility of the 1,600- to 2,000-megawatt (MW) Haiwee Pumped Storage Project No. 14991 (Haiwee Project) on Haiwee Creek in Inyo County, California. For the reasons discussed below, we issue a preliminary permit to Premium Energy.

I. Background and Proposal

2. On May 3, 2019, Premium Energy filed a permit application for the Haiwee Project in Docket No. P-14991-000. As proposed, one of the three project upper reservoir alternatives would have been located in designated wilderness areas. Because the Wilderness Act prohibits the Commission from licensing projects in designated

¹ 16 U.S.C. § 797(f) (2018).

wilderness areas,² the Commission denied Premium Energy's application on June 13, 2019.³

3. On July 15, 2019, Premium Energy filed a new permit application for the Haiwee Project in Docket No. P-14991-001. As proposed in its July 15, 2019 application, the Haiwee Project would be a pumped storage facility comprising a lower reservoir upstream of the existing North Haiwee Reservoir (North Haiwee 2 Reservoir) and one of three alternative upper reservoirs: the McCloud Reservoir, the Little Cactus Reservoir, or the Haiwee Canyon Reservoir. The proposed project would also include construction of (1) a new 2.5-mile-long, 230- or 500-kilovolt underground transmission line to deliver generated power to the electric grid; and (2) a 585-foot-long, 90-foot-wide, 165-foot-high powerhouse, located in an underground cavern and housing five 400-MW pump-turbine generators. Premium Energy states that the proposed project boundary encompasses both public and private lands and that most of the project area will occupy U.S. Department of the Interior, Bureau of Land Management (BLM) lands and lands belonging to Los Angeles Department of Water and Power (LADWP).⁴ The estimated annual generation of the Haiwee Project under each alternative would be 6,900 gigawatt-hours. Premium Energy requests a permit term of 24 months.

4. The proposed North Haiwee 2 lower reservoir, which is included in all three alternatives, would be located on LADWP lands and BLM lands and would consist of: (1) a 160-foot-high, 7,090-foot-long dam and (2) a 320-acre reservoir with a total storage capacity of 38,350 acre-feet at a normal maximum operating elevation of 3,770 feet mean sea level (msl).

5. The proposed McCloud Reservoir alternative, which would be located on California state lands and BLM lands, would consist of: (1) a 175-foot-high, 3,068-foot-long dam; (2) a 504-acre reservoir, located east of Haiwee Ridge and the existing South Haiwee Reservoir, with a total storage capacity of 44,554 acre-feet at a normal maximum operating

² *Id.* § 1133(c), (d)(4) (prohibiting the Commission from licensing projects within designated wilderness areas, except where authorized by the President); *see also Hudson River-Black River Regulation Dist.*, 33 FERC ¶ 61,122, at 61,261 (1985) (“We deny applications for a preliminary permit where licensing of the project to be studied is clearly statutorily precluded, because no purpose would be served by issuing a permit for a proposed development that could not be licensed.”); *Woods Creek, Inc.*, 19 FERC ¶ 61,181, at 61,348–49 (1982) (denying a permit for a project proposed in a designated wilderness area).

³ *Premium Energy Holdings, LLC*, 167 FERC ¶ 62,162 (2019).

⁴ Premium Energy notes some of the project's features would also be located in the Inyo National Forest and on Department of Defense lands.

elevation of 5,260 feet msl; (3) a 2.41-mile-long, 39-foot-diameter headrace tunnel; (4) a 0.2-mile-long, 35-foot-diameter vertical shaft; (5) a 5.6-mile-long, 35-foot-diameter horizontal tunnel; (6) six 0.78-mile-long, 22-foot-diameter penstocks; and (7) a 0.68-mile-long, 42-foot-diameter tailrace tunnel for discharging into the proposed North Haiwee 2 Reservoir.

6. The proposed Little Cactus Reservoir alternative, which would be located on BLM lands, would consist of: (1) a 235-foot-high, 2,836-foot-long dam; (2) a 499-acre reservoir, located east of Haiwee Ridge and the existing South Haiwee Reservoir, with a total storage capacity of 47,021 acre-feet at a normal maximum operating elevation of 4,980 feet msl; (3) a 1.06-mile-long, 39-foot-diameter headrace tunnel; (4) a 0.16-mile-long, 35-foot-diameter vertical shaft; (5) a 4-mile-long, 35-foot-diameter horizontal tunnel; (6) six 0.7-mile-long, 22-foot-diameter penstocks; and (7) a 0.78-mile-long, 42-foot-diameter tailrace tunnel for discharging into the proposed North Haiwee 2 Reservoir.

7. The proposed Haiwee Canyon Reservoir alternative, which would be located in part of the Inyo National Forest, would consist of: (1) a 595-foot-high, 2,256-foot-long dam; (2) a 138-acre reservoir, located in the Haiwee Canyon west of the South Haiwee Reservoir, with a total storage capacity of 28,620 acre-feet at a normal maximum operating elevation of 6,160 feet msl; (3) a 1.64-mile-long, 31-foot-diameter headrace tunnel; (4) a 0.32-mile-long, 28-foot-diameter vertical shaft; (5) a 5.2-mile-long, 28-foot-diameter horizontal tunnel; (6) six 0.54-mile-long, 18-foot-diameter penstocks; and (7) a 0.8-mile-long, 33-foot-diameter tailrace tunnel for discharging into the proposed North Haiwee 2 Reservoir.

8. In all three configurations, during power generation water would flow from the upper reservoir, through the headrace tunnel, into the vertical shaft and horizontal tunnel, into the penstocks and powerhouse, and finally discharged through the tailrace tunnel into the lower reservoir.

II. Procedural Issues

A. Notice, Interventions, and Comments

9. On September 25, 2019, the Commission issued public notice of Premium Energy's permit application for the Haiwee Project, establishing a deadline of November 25, 2019, for filing comments, interventions, and competing applications. Notice of the application was published in the *Federal Register* on October 1, 2019.⁵

⁵ 84 Fed. Reg. 52,084.

10. BLM and the U.S. Department of Agriculture, U.S. Forest Service (Forest Service) filed timely notices of intervention and comments.⁶ The Center for Biological Diversity; Friends of the Inyo, Defenders of Wildlife, the California Wilderness Coalition, and the Mojave Desert Land Trust (collectively Friends of Inyo); and LADWP⁷ filed timely motions to intervene and comments.⁸ The Inyo County Board of Supervisors (Inyo County) and the Big Pine Paiute Tribe of Owens Valley (Paiute Tribe) filed timely comments. No competing applications were filed. On November 22, 2019, Premium Energy filed a response to Inyo County's comments. On November 26, 2019, William Helmer filed untimely comments.⁹

11. Generally, the interveners and commenters argue that the permit should not be issued because: (1) the Commission failed to provide sufficient notice or a public meeting; (2) project construction and operation will have negative impacts on the environment, cultural resources, recreation, and development; (3) ground-disturbing studies will have negative impacts on the environment and cultural resources; (4) the project is proposed in a recommended wilderness area; (5) the Commission did not initiate tribal and National Historic Preservation Act (NHPA) consultation; and (7) the application is insufficient. The interventions, comments, and responses to comments on the application have been fully considered in determining whether to issue a permit for the Haiwee Project and are discussed below.

⁶ Timely notices of intervention filed by BLM and Forest Service are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a)(2).

⁷ In its motion to intervene, LADWP notes that the application erroneously suggests that LADWP is partnering with Premium Energy to develop the Haiwee Project. LADWP clarifies that it is not coordinating with Premium Energy and has had no role in Premium Energy's pursuit of the project. LADWP November 25, 2019 Motion to Intervene at 4.

⁸ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c)(1).

⁹ Because these comments were filed in time for us to consider them in this order, we do so.

B. Insufficient Notice

12. The Center for Biological Diversity and Friends of Inyo argue that the Commission's notice of Premium Energy's application was inadequate.¹⁰ They note that the notice was issued in the wrong subdocket number and wrongly referred to Premium Energy's May 3, 2019 application in Docket No. P-14991-000 that was denied by the Commission. Friends of Inyo requests that the Commission issue a new notice for the project.¹¹

13. We agree that the notice inadvertently referred to Premium Energy's May 3, 2019 application in Docket No. P-14991-000. However, in all other respects, the notice correctly provided the details concerning the July 15, 2019 application, including the three proposed alternative upper reservoirs. Accordingly, the public was provided accurate notice of Premium Energy's application, and, as indicated above, members of the public, stakeholders, and local, state, and federal agencies intervened and provided comments in this proceeding, demonstrating that they received actual notice of the application. Therefore, a new notice is unnecessary.

14. The Paiute Tribe and Mr. Helmer argue that the deadline for filing comments and motions to intervene was unclear and that the Commission should provide a specific date in its notice.¹² The Commission's September 25, 2019 notice of the application provided that comments were due "60 days from the issuance of this notice." We disagree that this deadline, in lieu of a specific date, is vague, particularly since all but one commenter made timely filings. Nonetheless, all comments have been fully considered, including Mr. Helmer's late-filed comment.

C. Request for Public Meetings

15. Mr. Helmer contends that the Commission should have held public meetings on the proposed permit application.¹³ The Commission conducts scoping, which may include public meetings, as part of its review under the National Environmental Policy Act (NEPA) in order to identify areas of concern and potential environmental impacts associated with a project that will be addressed in the Commission's environmental assessment or environmental impact statement. However, issuance of a preliminary

¹⁰ Center for Biological Diversity November 22, 2019 Motion to Intervene at n.1; Friends of Inyo November 22, 2019 Motion to Intervene at 2.

¹¹ Friends of Inyo November 22, 2019 Motion to Intervene at 2.

¹² Paiute Tribe November 22, 2019 Comment at 2; William Helmer November 26, 2019 Comment.

¹³ William Helmer November 26, 2019 Comment.

permit is an action categorically excluded from the need to prepare a NEPA document.¹⁴ Further, neither the Commission's regulations nor any other authority requires that a public meeting be held prior to the issuance of a permit, and it is not our practice to do so. In any event, the Commission issued a notice for the project and the public was afforded the opportunity to provide written comments.

III. Discussion

A. Effects of Project Construction and Operation

16. Several interveners and commenters raise concerns about the effects of project construction and operation, including effects on LADWP's existing North Haiwee Dam, protected lands, wildlife and endangered species, water resources, cultural resources, recreation, geothermal development, the electric grid, and climate change.¹⁵

17. Because a preliminary permit does not authorize a permittee to undertake construction, these concerns are premature at the preliminary permit stage in that they address the potential effects of constructing and operating the proposed project.¹⁶ The purpose of a preliminary permit is to secure the permit holders priority for hydropower development while they study the feasibility of the project, including studying potential impacts. Should the permittee file a license application, the issues raised can be addressed in the licensing process.

¹⁴ 18 C.F.R. § 380.4(a)(9) (2019) (issuance of preliminary permits under Part I of the Federal Power Act and Part 4 of the Commission's regulations qualify for categorical exclusions).

¹⁵ See, e.g., BLM November 22, 2019 Comment at 2–3; Center for Biological Diversity November 22, 2019 Motion to Intervene at 2–3, 5; Friends of Inyo November 22, 2019 Comment; Paiute Tribe November 22, 2019 Comment at 2–3; William Helmer November 26, 2019 Comment; Inyo County November 13, 2019 Comment.

¹⁶ See, e.g., *Tomlin Energy LLC*, 169 FERC ¶ 61,037, at P 8 (2019) (dismissing concerns about project operation as premature at the preliminary permit stage).

B. Agency Consultation and Study Requirements Under the Permit

18. Several interveners note that Premium Energy would need to obtain certain agency authorizations before conducting studies on federal land.¹⁷ The Forest Service states that entry onto National Forest System lands for any studies pursuant to a preliminary permit will require a special use authorization issued by the Forest Service-authorized officer for the Inyo National Forest.¹⁸ Similarly, BLM states that any ground-disturbing activities on lands administered by BLM will require BLM authorization.¹⁹

19. A permit applicant is not required to have obtained access rights to a project site as a condition of receiving a preliminary permit, and a preliminary permit does not grant a right of entry onto any lands. Further, a permittee must obtain any necessary authorizations and comply with any applicable laws and regulations to conduct any field studies. We note, however, that when a permittee initiates the pre-filing consultation process in order to prepare a license application, lack of access to the project site for studies could preclude the preparation of an adequate application.

20. Intervenors also request that any permit issued to Premium Energy include specific study requirements.²⁰ In its application, Premium Energy outlines certain studies that it intends to complete during the permit term.²¹ Premium Energy also states that it plans to work closely with stakeholders in developing the Haiwee Project, including Inyo County, the Forest Service, and local tribes, agencies, and organizations.²² The Commission,

¹⁷ See, e.g., Center for Biological Diversity November 22, 2019 Motion to Intervene at 2 (raising concerns regarding lands and resources managed by Forest Service and BLM); Friends of Inyo November 22, 2019 Comment at 2–3 (same).

¹⁸ Forest Service November 22, 2019 Notice of Intervention at 2.

¹⁹ BLM November 22, 2019 Comment at 2; see also Friends of Inyo November 22, 2019 Comment at 2–3 (stating that BLM’s Area of Critical Environmental Concern for the Mojave Ground Squirrel prohibits renewable energy development within its boundaries).

²⁰ Center for Biological Diversity November 22, 2019 Motion to Intervene at 9–16; Friends of Inyo November 22, 2019 Comment at 1, 3, 5 (requesting Premium Energy study water loss, transmission, seismicity, flooding, wildlife, soils, air and water quality, greenhouse gas emissions, growth impacts, and economic viability as well as obtain water rights and allow for stakeholder participation in such studies).

²¹ Premium Energy July 15, 2019 Application at 21.

²² Premium Energy November 22, 2019 Response.

however, has not sought to place study requirements in preliminary permits.²³ Nonetheless, potential license 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 to solicit comments on license applications before they are filed.²⁴

C. Impacts of Proposed Studies

21. The Center for Biological Diversity and Friends of Inyo argue that a permit will enable ground-disturbing activities that would impair the cultural and environmental resources.²⁵ This is incorrect. As noted below, a permit authorizes no ground-disturbing activities. Prior to conducting studies, such as soil surveys, test pits, core holes, and topographical surveying,²⁶ Premium Energy must obtain all necessary authorizations and comply with all applicable laws and regulations related to protecting the environment.

D. Recommended Wilderness Area

22. Inyo County, the Center for Biological Diversity, Friends of Inyo, and the Forest Service assert that the proposed upper Haiwee Canyon Reservoir alternative would be located on lands administered by the Forest Service and recommended for inclusion in the South Sierra Wilderness.²⁷ The Forest Service does not oppose issuance of a preliminary permit, but states that the Inyo National Forest Land Management Plan prohibits new energy development in the recommended South Sierra Wilderness.

23. The Commission has previously determined that it would be ineffectual to issue preliminary permits for projects on lands managed by federal agencies if the land

²³ See, e.g., *Continental Lands Inc.*, 90 FERC ¶ 61,355, at 62,177 (2000).

²⁴ 18 C.F.R. § 4.38 (2019).

²⁵ Center for Biological Diversity November 22, 2019 Motion to Intervene at 11; Friends of Inyo November 22, 2019 Motion to Intervene at 2.

²⁶ Premium Energy anticipates conducting these studies in determining the feasibility of the project. Premium Energy July 15, 2019 Application at 21–23.

²⁷ Inyo County November 13, 2019 Comment; Center for Biological Diversity November 22, 2019 Motion to Intervene at 2; Friends of Inyo November 22, 2019 Comment at 2; Forest Service November 22, 2019 Notice of Intervention at 1–2.

managing agencies oppose the proposed projects.²⁸ There would be no purpose in authorizing Premium Energy to study the Haiwee Canyon Reservoir alternative when the Forest Service has indicated the Inyo National Forest Land Management Plan prohibits new energy development at the proposed location for the reservoir. Accordingly, we will not issue a permit that includes the Haiwee Canyon Reservoir alternative.

E. Tribal and NHPA Consultation

24. The Paiute Tribe, Friends of Inyo, and Mr. Helmer argue that the Commission should have initiated consultation with affected tribes as part of its consideration of Premium Energy's permit application.²⁹ Because preliminary permits do not authorize construction and operation of the project and development of a license application is not guaranteed, it is premature to initiate government-to-government consultation with affected tribes at this time.³⁰ Should Premium Energy begin the process of developing a license application, the Commission will offer to consult with affected tribes.³¹

25. Mr. Helmer contends that Premium Energy's studies will result in impacts that implicate the NHPA.³² However, because a permit does not authorize a permittee to undertake any ground disturbance or to enter onto any lands, its issuance does not have the potential to impact historic properties and, therefore, does not give rise to a requirement to consult under section 106 of the NHPA.³³ Should Premium Energy file a

²⁸ See, e.g., *Advanced Hydropower, Inc.*, 155 FERC ¶ 61,007, at P 9-10 (2016) (preliminary permit application denied for a project located at U.S. Army Corps of Engineers' (Corps) Dam based on Corps' stated opposition to the project).

²⁹ Paiute Tribe November 22, 2019 Comment at 1–2; William Helmer November 26, 2019 Comment.

³⁰ See, e.g., *W. Minn. Mun. Power Agency*, 164 FERC ¶ 62,133, at PP 6–8 (2018).

³¹ See 18 C.F.R. § 2.1c (2019) (policy statement on consultation with Indian tribes in Commission proceedings).

³² Center for Biological Diversity November 22, 2019 Motion to Intervene at 11; Friends of Inyo November 22, 2019 Motion to Intervene at 2; William Helmer November 26, 2019 Comment.

³³ 36 C.F.R. § 800.3 (2019) (providing an agency has no further obligation under section 106 if an undertaking, as defined in section 800.16(y), does not have the potential to cause effects on historic properties); *id.* § 800.16(y) (2019) (defining undertaking to include a project requiring a federal permit, license, or approval); see, e.g., *Badger*

license application for the Haiwee Project, the Commission will comply with the requirements of the NHPA.

F. Issues with Premium Energy's Application

26. The Center for Biological Diversity argues that Premium Energy's application for the Haiwee Project is misleading because the application states that the project is needed to support renewable energy generation even though it would be a net user of electricity, including electricity generated from fossil fuels.³⁴ We disagree. Premium Energy states that the project is designed to store excess renewable energy to help integrate renewables into the grid and that electric utilities may be interested in the project as a resource for storing renewable energy.³⁵ By doing so, Premium Energy is merely stating its objective for the project. Given the uncertainty of the grid's future generation mix, the applicant has no way of knowing, at this stage, whether the project would use electricity generated from renewable resources or fossil fuels or facilitate the future development of renewable energy. In any case, the extent of project generation is an issue to be considered during licensing, not at the permit stage.

27. The Center for Biological Diversity also asserts that Premium Energy wrongly identifies the project as a closed-loop pumped storage project, but that the proposed project does not meet the definition for closed-loop pumped storage under Part 7 of the Commission's regulations.³⁶ Part 7 implements sections of the 2018 America's Water Infrastructure Act to expedite licensing for certain qualifying hydropower projects.³⁷ The definition for closed-loop pump storage cited by the Center for Biological Diversity relates only to the qualifying criteria for the expedited licensing process.³⁸ Whether a

Mountain Hydro, LLC, 167 FERC ¶ 62,056, at PP 13–14 (2019) (finding that issuance of a permit is not a specific undertaking subject to NHPA); *RAMM Power Grp., LLC*, 164 FERC ¶ 62,037, at PP 4–5 (2018) (same).

³⁴ Center for Biological Diversity November 22, 2019 Motion to Intervene at 4, 7–9.

³⁵ Premium Energy July 15, 2019 Application at 7, 11.

³⁶ See 18 C.F.R. § 7.1(c)(3) (2019).

³⁷ See America's Water Infrastructure Act of 2018, Pub. L. No. 115-270, 132 Stat. 3765 (2018).

³⁸ 18 C.F.R. § 7.1(a) (“This part applies to the processing of applications for original licenses for qualifying non-federal hydropower projects at existing nonpowered dams and for closed-loop pumped storage projects pursuant to sections 34 and 35 of the Federal Power Act.”); see also *Hydroelectric Licensing Regulations Under the America's Water Infrastructure Act of 2018*, Order No. 858, 167 FERC ¶ 61,050 (2019)

proposed project can be appropriately characterized as closed-loop is not relevant to the issuance of a preliminary permit. Again, this is an issue that may be relevant only during licensing.

28. Next, Friends of Inyo maintain that Premium Energy failed to include the California State Lands Commission, area tribes (i.e., the Bishop Paiute Tribe and the Timbisha Shoshone Tribe), and Butterworth Ranch as affected parties in its application.³⁹ Inyo County also generally stated that Premium Energy's application does not have a complete list of interested parties.⁴⁰

29. In accordance with section 4.32(a)(2) of the Commission's regulations,⁴¹ Premium Energy identified parties in the general area of the project that would likely be interested in, or affected by, the application. Premium Energy also published notice of its application in *The Inyo Register* on July 18 and 19, 2019.⁴² None of the entities cited by Friends of Inyo requested to be added to the mailing list. Should any individual or entity wish to be added to the Commission's mailing list, they may file a letter with the Secretary of the Commission.⁴³ Additionally, individuals can be kept apprised of the filings in the docket by registering for the Commission's eSubscription service.⁴⁴ Accordingly, this issue does not affect our consideration of the permit application.⁴⁵

promulgating rules to establish an expedited process to license eligible projects at existing nonpowered dams and closed-loop pumped storage projects).

³⁹ Friends of Inyo November 22, 2019 Comment at 5.

⁴⁰ Inyo County November 13, 2019 Comment.

⁴¹ 18 C.F.R. § 4.32(a)(2) (2019).

⁴² Premium Energy August 7, 2019 Proof of Publication.

⁴³ *Resources, How To Guides, Be Added to the Commission's Mailing List*, FERC, <https://www.ferc.gov/resources/guides/how-to/mailling-list.asp> (accessed February 13, 2020).

⁴⁴ *See eSubscription*, FERC, <https://www.ferc.gov/docs-filing/esubscription.asp> (accessed February 21, 2020).

⁴⁵ It is also not clear that Friends of the Inyo has standing to raise issues regarding third parties.

30. Finally, commenters contend that Premium Energy's application is vague and the Commission's public docket is unclear regarding which documents are relevant to the current application. Commenters have not shown that the application here does not comply with our regulations. In fact, the regulations acknowledge that full, detailed project information may not be available when a permit application is filed.⁴⁶ To ensure that we have adequate information to determine project effects and benefits, we require that detailed information regarding the proposed project be provided at such time as a license application is filed.⁴⁷ As to the correct docket for this proceeding, all of Premium Energy's filings related to this matter have been filed in Project No. 14991-001.

IV. Permit Information

31. 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,⁴⁸ 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.⁴⁹ 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

⁴⁶ *Cat Creek Energy, LLC*, 167 FERC ¶ 61,046, at P 11 (2019); *Symbiotics, LLC*, 99 FERC ¶ 61,101, at 61,419 (2002).

⁴⁷ *Cat Creek Energy, LLC*, 167 FERC ¶ 61,046 at P 11; *FFP Mass 1, LLC*, 133 FERC ¶ 62,230, at P 7 (2010).

⁴⁸ 16 U.S.C. § 802 (2018).

⁴⁹ *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.”).

rights.⁵⁰ 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.⁵¹

32. Article 4 of this permit requires the permittee to submit a progress report no later than the last day of each twelve-month period from the effective date of this permit. The late filing of a report or the supplementation of an earlier report in response to a notice of probable cancellation will not necessarily excuse the failure to comply with the requirements of this article.

33. 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.⁵² 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.⁵³ As stated above, if the permittee files a development application, notice of the application will be published, and those interested may intervene and comment on the project and the effects of its construction and operation.

34. 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

⁵⁰ 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).

⁵¹ *See City of Richmond, Va.*, 53 FERC ¶ 61,342, at 62,247 (1990).

⁵² 18 C.F.R. §§ 5.5–5.6 (2019).

⁵³ *See id.* § 5.3.

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.⁵⁴

The Commission orders:

(A) A preliminary permit is issued for the Haiwee Pumped Storage Project No. 14991, including the North Haiwee 2 Reservoir, the McCloud Reservoir, and the Little Cactus Reservoir, to Premium Energy Holdings, LLC, for a period effective the first day of the month in which this permit is issued, and ending either 24 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 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 Federal Power Act, 16 U.S.C. § 8251 (2018), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2019).

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵⁴ See *City of Fayetteville Pub. Works Comm.*, 16 FERC ¶ 61,209 (1981).

Form P-1 (Revised October 2018)**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. No later than the last day of each 12-month period from the effective date of this permit, the permittee shall file a progress report. Each progress report must describe, for that reporting 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. Progress reports may be filed electronically via the Internet, and the Commission strongly encourages e-filing. Instructions for e-filing are on the Commission's website at <http://www.ferc.gov/docs-filing/efiling.asp>. 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.