

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Mt. Hope Waterpower Project LLP

Project No. 12641-000

ORDER DISMISSING PRELIMINARY PERMIT APPLICATION

(Issued June 15, 2006)

1. Mt. Hope Waterpower Project LLP (Mt. Hope) has applied for a preliminary permit to study the feasibility of the proposed 2000-megawatt (MW) Mount Hope Pumped Storage Project. Because Mt. Hope has until recently held a license for the project, and failed to commence project construction, we are dismissing the permit application.

Background

2. In 1992, the Commission issued to Halecrest Company, Mt. Hope's predecessor, a license to construct, operate, and maintain the 2000-MW Mt. Hope Pumped Storage Project, to be located in Rockaway Township, Morris County, New Jersey.¹

3. Section 13 of the Federal Power Act (FPA)² states in pertinent part:

...the licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof The periods for the commencement of construction may be extended once but not longer than two additional years In case the licensee shall not commence actual construction of the project works...within the time prescribed in the license . . . , then, after due notice given, the license shall be terminated upon written order of the Commission.

¹ 60 FERC ¶ 61,121 (1992).

² 16 U.S.C § 806 (2000).

4. Article 301 of the Mount Hope Project license required the licensee to commence construction within two years of license issuance, *i.e.*, by August 3, 1994.³ In June 1994, at the licensee's request, Commission staff extended the deadline for the commencement of construction two years, until August 3, 1996.⁴

5. In 1996, Congress passed Public Law 104-247,⁵ 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, 2002.⁶ Upon the licensee's request, the deadline was extended to that date.⁷

6. On February 25, 2003, Commission staff notified the licensee of the probable termination of the license for failure to commence construction by the extended deadline. Staff did not immediately terminate the license because the licensee had stated that Congress was considering legislation to further extend the commencement of construction deadline.⁸ However, no such legislation was enacted.

7. On December 15, 2005, the Commission issued an order terminating the license, concluding that the licensee had failed to commence construction by the deadline

³ 60 FERC at 61,415.

⁴ Unpublished order issued June 8, 1994.

⁵ 110 Stat. 3147 (1996).

⁶ Pub. L. 106-121, 113 Stat. 1637 (1999).

⁷ Unpublished order issued April 7, 2000.

⁸ In response to a 2003 letter requesting comments on H.R. 1391, a draft bill providing another extension for the Mount Hope Project, Commission Chairman Pat Wood III stated that he did not support the proposed legislation, based on the long-held position by Commission Chairmen that once a licensee has been granted extensions spanning ten years from the date of license issuance, licenses should be terminated, thereby freeing up project sites for other uses. Letter from Pat Wood III to Joe Barton, Chairman, Subcommittee on Energy and Air Quality, Committee of Energy and Commerce, U.S. House of Representatives (May 22, 2003).

established by section 13 of the FPA, notwithstanding the grant of an additional six years to do so.⁹

8. On January 17, 2006, Mt. Hope filed an application for a preliminary permit to study the feasibility of the Mount Hope Project.

9. As explained in our recent order in *City of Augusta, Kentucky*,¹⁰ the Commission is concerned 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.

10. Unlike *Augusta*, this is not a situation where there is already competition for the Mt. Hope site, and we have been presented only with a preliminary permit application, not with a notice of intent to file a license application. Like *Augusta*, however, we deal here with the question of whether we should immediately reserve a hydropower development site for an entity that has recently had a license terminated for the failure to commence construction after a period of more than 10 years following license issuance. As was the case in *Augusta*, we do not believe that it would be in the public interest to reserve the Mount Hope site to the same entity which, along with its predecessor, held exclusive rights to develop the site for many years (here, since 1985). We are not prepared to determine now whether we would in the future accept a permit or license application from Mt Hope, but we conclude that, at a minimum, the public interest calls for a “cooling off” period before we consider again reserving the site to Mt. Hope.

⁹ *Mt. Hope Waterpower Project, LLP*, 113 FERC ¶ 61,258.

¹⁰ 115 FERC ¶ 61,198 (2006).

The Commission orders:

The application for preliminary permit filed by Mt. Hope Waterpower Project LLP on January 17, 2006, is dismissed without prejudice.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.