



The Secretary of Energy

Washington, DC 20585

October 23, 2025

The Honorable David Rosner, Chairman
The Honorable Laura Swett, Commissioner
The Honorable Lindsay S. See, Commissioner
The Honorable Judy W. Chang, Commissioner
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *Secretary of Energy's Direction that the Federal Energy Regulatory Commission Initiate Rulemaking Procedures and Proposal Regarding Hydroelectric Power Preliminary Permits Pursuant to the Secretary's Authority Under Section 403 of the Department of Energy Organization Act*

Dear Chairman Rosner and Commissioners,

For America to continue dominating global energy markets, we must remove unnecessary burdens to the development of critical infrastructure, including hydropower projects.

Congress authorized and empowered the Federal Energy Regulatory Commission (Commission or FERC) to issue "licenses for the purpose of construction, operating, and maintaining dams, water conduits, reservoirs, power house, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories)"¹

Regarding reservations, "licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such

¹ 16 U.S.C. § 797(e). *See State of Cal. ex rel. State Water Res. Control Bd. v. FERC*, 966 F.2d 1541, 1561 (9th Cir. 1992) (*California v. FERC*) ("The exclusive jurisdiction of FERC over federal hydro-electric development first created in 1920 was reinforced in 1935 and remains unimpaired by the terms or any necessary inference of the Federal Land Policy and Management Act of 1976.").

reservation falls shall deem necessary for the adequate protection and utilization of such reservation[.]”²

Congress also authorized and empowered 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 802 of [the Federal Power Act (FPA).]”³ Before granting an application for a preliminary permit, the Commission “shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application once each week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part hereof or the lands affected thereby are situated.”⁴

The Commission’s longstanding policy has been to grant applications for preliminary permits over the opposition of third parties, such as federal land managers, similarly affected agencies, or Tribes, as applicable.⁵ The reason is simple. The Commission views preliminary permits as “encouraging 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.”⁶ Preliminary permits are “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 rights.”⁷

However, in recent orders, the Commission denied a series of applications for preliminary permits on the basis that third parties responsible for the lands on which the

² 16 U.S.C. § 797(e).

³ 16 U.S.C. § 797(f).

⁴ *Id.*

⁵ See, e.g., *Pumped Hydro Storage LLC*, 171 FERC ¶ 61,137 (2020) (issuing a preliminary permit over Tribal opposition); *Navajo Energy Storage Station LLC*, 174 FERC ¶ 61,106 (2021) (*Navajo Storage*) (issuing a preliminary permit over the Navajo Nation’s opposition).

⁶ *Mt. Hope Waterpower Project LLP*, 116 FERC ¶ 61,232, at P 4 (2006).

⁷ *Navajo Storage*, 174 FERC ¶ 61,106 at P 14. See also *Three Mile Falls Hydro, LLC*, 102 FERC ¶ 61,301, at P 6 (2003) (“the very purpose of the preliminary permit is to give the applicant time to undertake the examinations to determine whether and with what design the project is feasible.”).

projects were to be located opposed the preliminary permit.⁸ The Commission explained that it previously “denied preliminary permits for projects at federal facilities where the agency that operates the facility indicates that it opposes the project or where a federal land managing agency opposes permit issuance.”⁹

In these orders, the Commission has created an untenable regime whereby it has effectively delegated its exclusive statutory authority to issue preliminary permits to third parties. Thus, to be granted a preliminary permit, the sole purpose of which is to provide applicants priority and the ability to conduct feasibility investigations,¹⁰ applicants must now receive approval from the Commission and a third party, ultimately to the detriment of hydroelectric development. An applicant now “must dance to two fiddlers[.]”¹¹ “One, FERC, has a long hydroelectric licensing history, with printed decisions comprising many volumes, with the respective roles of state, federal and Indian parties carefully spelled out in the statute.”¹² The other, a third party, such as a federal land manager, similarly affected agency, or Tribe, as applicable, “has no licensing history . . . [and] no statutory guidance on the participation of the same parties who will appear at FERC. This . . . is an unreasonable result, and not one to be ascribed to Congress”¹³ The FPA authorizes

⁸ See, e.g., *Nature & People First Arizona PHS, LLC*, 186 FERC ¶ 61,117 (2024); *Nature & People First New Mexico PHS, LLC*, 186 FERC ¶ 61,118 (2024); *Nature & People First Arizona PHS, LLC*, 186 FERC ¶ 61,119 (2024); *W. Navajo Pumped Storage 1, LLC* *W. Navajo Pumped Storage 2, LLC*, 186 FERC ¶ 61,120 (2024).

⁹ See, e.g., *Nature & People First Arizona PHS, LLC*, 186 FERC ¶ 61,117 at 12 (citing *See FreedomWorks, LLC*, 167 FERC ¶ 62,026 (2019) (denying a permit application when the U.S. Forest Service stated it was unlikely to grant the applicant a special use permit to access the Monongahela National Forest); *Advanced Hydropower, Inc.*, 160 FERC ¶ 62,213, at P 6 (2017) (denying a permit application because the U.S. Army Corps of Engineers opposed the issuance of a permit); *Owyhee Hydro, LLC*, 153 FERC ¶ 62,133 (2015) (denying a permit application when the U.S. Bureau of Reclamation stated that it would not authorize private development of its Anderson Ranch dam)). See also *Nature & People First Arizona PHS, LLC*, 186 FERC ¶ 61,117 at 15 (“As noted, we have recently revised this policy when permits have been opposed by federal land managers or similarly affected federal agencies. We believe that our trust responsibility to Tribes counsels a similar policy in cases involving Tribal lands”)

¹⁰ 16 U.S.C. § 798(a); 18 C.F.R. § 4.80 (2025).

¹¹ *California v. FERC*, 966 F.2d at 1560.

¹² *Id.* at 1560-1561.

¹³ *Id.* at 1561. There is also the real problem of gamesmanship. The Commission’s new policy provides third parties with unfettered discretion. For example,

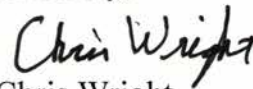
and empowers the Commission to issue preliminary permits; it does not provide veto authority to third parties.

As the President explained, the United States is experiencing an unprecedented surge in electricity demand and the United States' ability to remain at the forefront of technological innovation depends on a reliable supply of energy from non-intermittent dispatchable generation sources.¹⁴

Thus, pursuant to my authority under section 403 of the Department of Energy Organization Act,¹⁵ I attach for the Commission's consideration, the enclosed notice of proposed rulemaking that amends the Commission's regulations to conform to the Commission's statutory authority and to clarify that no third party has veto rights over the issuance of preliminary permits.

On behalf of the American people, I look forward to your immediate and final action (and no later than December 18, 2025) to provide assurance to the hydroelectric industry.¹⁶

Sincerely,



Chris Wright
Secretary of Energy

an objector can support its preferred application over a competing application for reasons completely divorced from the statutory requirements, and can thereby ensure that its preferred application obtains first-to-file status. 18 C.F.R § 4.37 (2025).

¹⁴ Exec. Order No. 14262, 90 Fed Reg. 15521 (Apr. 8, 2025).

¹⁵ “The Secretary . . . [is] authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act.” 42 U.S.C. § 7173(a). “NEPA does not apply to rulemaking actions proposed by the Secretary pursuant to section 403(a) of the DOE Act . . . because such proposals are not final agency action.” DOE NEPA Implementing Procedures, § 2.1(c)(8) (2025).

¹⁶ “The Commission . . . shall consider and take final action on any proposal made by the Secretary . . . in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.” 42 U.S.C. § 7173(b).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Preliminary Permits for Hydroelectric Power Projects Docket No.

NOTICE OF PROPOSED RULEMAKING

(Issued DATE)

I. Introduction

1. Pursuant to section 403 of the Department of Energy Organization Act, the Secretary of Energy (Secretary) proposes revisions to the Federal Energy Regulatory Commission's (Commission) regulations¹ regarding preliminary permits, pursuant to sections 4, 5, and 7 of the Federal Power Act (FPA), as applicable.²

II. Background

A. Statutory Authority

2. Under section 4(f) of the FPA, the Commission is “authorized and empowered” to issue preliminary permits, which “enable[e] applicants for a license to secure the data and perform the acts required by section 802 of the FPA.”³ Section 4(f) of the FPA provides only that the Commission “shall at once give notice of such application in writing to any

¹ 18 C.F.R. pt. 4 (2025).

² 16 U.S.C. §§ 797(f), 798, 800.

³ *Id.*

State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application once each week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part hereof or the lands affected thereby are situated.”⁴

3. Section 5(a) of the FPA further expands upon the purpose of a preliminary permit, explaining that “the sole purpose” of a preliminary permit is to “maintain[] priority of application for a license under the terms of this Act for such period or periods, not exceeding a total of 4 years, as in the discretion of the Commission may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements.”⁵ Section 5(b) of the FPA provides that the Commission may extend the period of a preliminary permit one time for not more than an additional 4 years, and that the Commission may issue an additional permit after the end of an extension if warranted by extraordinary circumstances.⁶

⁴ *Id.*

⁵ 16 U.S.C. § 798(a).

⁶ 16 U.S.C. § 798(b). Section 5 also provides that each permit shall set forth conditions under which priority shall be maintained, that permits shall not be transferable, and that permits may be canceled by order of the Commission upon failure of permittees to comply with the conditions thereof or for other good cause shown after notice and opportunity for hearing. 16 U.S.C. § 798(c)-(d).

4. Section 7(a) of the FPA requires the Commission to give preference among competing applications.⁷ First, “the Commission shall give preference to applications therefor by States, Indian tribes, 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.”⁸ Second, “as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.”⁹

B. Commission Regulations

5. The Commission’s regulations regarding preliminary permits and licenses are set forth in Part 4 of the Commission’s regulations. Section 4.31(a) provides that “[a]ny citizen, association of citizens, domestic corporation, municipality, or state may submit a filing for an initial application or a competing application for a preliminary permit or a license for a water power project”¹⁰ Section 4.32(a) sets forth the information that

⁷ 16 U.S.C. § 800(a). Section 7(a) of the FPA also applies to original licenses where no preliminary permit has been issued. *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ 18 C.F.R. 4.31(a).

must be included in an application for a preliminary permit and section 4.32(b) sets forth the filing and requirements to serve copies of the application.¹¹ Section 4.32(d) provides that when an application for a preliminary permit is found to conform with the requirements in sections 4.32(a)-(c), the Commission or its delegate will “[n]otify the applicant that the application has been accepted for filing, specifying the project number assigned and the date upon which the application was accepted for filing” and “issue public notice of the application as required in the [FPA.]”¹²

6. Sections 4.80 through 4.83 of the Commission’s regulations also relate to preliminary permits. Section 4.80 provides that “[t]he sole purpose of a preliminary permit is to secure priority of application for a license for a water power project under Part I of the [FPA] while the permittee obtains the data and performs the acts required to determine the feasibility of the project and to support an application for a license.”¹³ Section 4.81 sets forth the required contents of each application for a preliminary permit, including a specified initial statement and numbered exhibits.¹⁴

¹¹ 18 C.F.R. § 4.32(a)-(b). Section 4.32(c) pertains specifically to applicants for a license or exemption for a project with a capacity of 80 MW or less.

¹² 18 C.F.R. § 4.32(d). Section 4.32(f) establishes that any such application will be considered accepted for filing as of the application filing date.

¹³ 18 C.F.R. § 4.80.

¹⁴ 18 C.F.R. § 4.81. Section 4.82 pertains to amendments, section 4.83 pertains to cancellation and loss of priority, and section 4.84 pertains to surrender of permit.

III. Discussion

7. Until recently, the Commission's longstanding policy has been to grant applications for preliminary permits over the opposition of third parties, such as federal land managers, similarly affected agencies, or Tribes, as applicable.¹⁵

8. Consistent with the FPA and the Commission's implementing regulations, the Commission has viewed preliminary permits as "encouraging 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."¹⁶ The Commission has explained that preliminary permits are "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 rights."¹⁷

9. Recently, however, the Commission has denied applications for preliminary permits on the basis that third parties responsible for the lands on which the projects were

¹⁵ See, e.g., *Pumped Hydro Storage LLC*, 171 FERC ¶ 61,137 (2020) (issuing a preliminary permit over Tribal opposition); *Navajo Energy Storage Station LLC*, 174 FERC ¶ 61,106 (2021) (*Navajo Storage*) (issuing a preliminary permit over the Navajo Nation's opposition).

¹⁶ *Mt. Hope Waterpower Project LLP*, 116 FERC ¶ 61,232, at P 4 (2006).

¹⁷ *Navajo Storage*, 174 FERC ¶ 61,106 at P 14. See also *Three Mile Falls Hydro, LLC*, 102 FERC ¶ 61,301, at P 6 (2003) ("the very purpose of the preliminary permit is to give the applicant time to undertake the examinations to determine whether and with what design the project is feasible.").

to be located opposed the preliminary permit.¹⁸ In those orders, the Commission explained that it previously “denied preliminary permits for projects at federal facilities where the agency that operates the facility indicates that it opposes the project or where a federal land managing agency opposes permit issuance.”¹⁹

10. These orders cannot be squared with the FPA. Congress authorized and empowered *the Commission* to issue preliminary permits; it did not authorize and empower *third parties* to deny preliminary permits. Indeed, the FPA expresses a clear presumption in favor of issuing preliminary permits.

11. These orders also cannot be squared with the Commission’s regulations, which do not require an applicant to obtain the support of third parties. Nor should they. A preliminary permit grants no land-disturbing or other property rights; it merely allows the holder to investigate the feasibility of a project.

¹⁸ See, e.g., *Nature & People First Arizona PHS, LLC*, 186 FERC ¶ 61,117 (2024); *Nature & People First New Mexico PHS, LLC*, 186 FERC ¶ 61,118 (2024); *Nature & People First Arizona PHS, LLC*, 186 FERC ¶ 61,119 (2024); *W. Navajo Pumped Storage 1, LLC* *W. Navajo Pumped Storage 2, LLC*, 186 FERC ¶ 61,120 (2024).

¹⁹ See, e.g., *Nature & People First Arizona PHS, LLC*, 186 FERC ¶ 61,117 at 12 (citing *See FreedomWorks, LLC*, 167 FERC ¶ 62,026 (2019) (denying a permit application when the U.S. Forest Service stated it was unlikely to grant the applicant a special use permit to access the Monongahela National Forest); *Advanced Hydropower, Inc.*, 160 FERC ¶ 62,213, at P 6 (2017) (denying a permit application because the U.S. Army Corps of Engineers opposed the issuance of a permit); *Owyhee Hydro, LLC*, 153 FERC ¶ 62,133 (2015) (denying a permit application when the U.S. Bureau of Reclamation stated that it would not authorize private development of its Anderson Ranch dam)). See also *Nature & People First Arizona PHS, LLC*, 186 FERC ¶ 61,117 at 15 (“As noted, we have recently revised this policy when permits have been opposed by federal land managers or similarly affected federal agencies. We believe that our trust responsibility to Tribes counsels a similar policy in cases involving Tribal lands . . .”).

12. To provide regulatory certainty to applicants and interested parties, and to remove the potential for gamesmanship,²⁰ a new section 4.85 is proposed to be added to the Commission's regulations to codify and clarify that opposition from third parties is not a basis to deny an application for a preliminary permit.

List of subjects

18 CFR Part 4

Preliminary Permits

²⁰ For example, under the Commission's new policy, a third-party land manager can oppose an application to ensure that its preferred applicant is able to obtain first-to-file status. 18 C.F.R § 4.37.

Regulatory Text

In consideration of the foregoing, the Commission amends Part 4, Chapter I, Title 18, Code of Federal Regulations, as follows:

Part 4 – Licenses, Permits, Exemptions, and Determination of Project Costs

1. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. Add new § 4.85 to read as follows:

§ 4.85 Issuance of preliminary permit.

An application for a preliminary permit will not be denied solely on the basis of opposition from a third party.