



southern  
utah  
wilderness  
alliance

May 22, 2012

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

Letter submitted electronically at: <http://www.ferc.gov/docs-filing/ecomment.asp>

Re: Long Canyon Pumped Storage Project, Project No. 14354-000

Dear Ms. Bose,

Please accept the following comments submitted by the Southern Utah Wilderness Alliance (SUWA) regarding the preliminary permit application for the Long Canyon Pumped Storage Project (“Long Canyon Project”), Project No. 14354-000.

SUWA has a long-standing interest in the management of public lands in Utah and regularly participates in the decision-making process for projects affecting public lands around the state. SUWA members and staff enjoy a myriad of activities on Utah’s public lands, including hiking, biking, nature viewing, photography and quiet contemplation in the solitude offered by wild places.

SUWA reviewed the application for a preliminary permit submitted by Utah Independent Power, Inc. on January 12, 2012 and has a number of concerns with the proposed Long Canyon Project. We urge the Federal Energy Regulatory Commission (FERC) to deny the preliminary permit application at the outset on the grounds that the proposed project is not within the public interest. Specifically, the project undermines the public interest because it is legally barred from moving forward, it will not result in a subsequent license and the project is proposed by an unfit applicant.

#### I. FERC Should Deny the Preliminary Permit as it Undermines the Public Interest

A preliminary permit issued by FERC “secure[s] priority of application for a license for a water power project . . . 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.” 18 C.F.R. §

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4.80. If FERC grants a preliminary permit application, the applicant has three years from the time the permit is granted to conduct the necessary feasibility studies and to file a license application with FERC.

Although FERC's general policy grants preliminary permits when there's no legal bar, FERC has the discretion to deny a permit when it finds that the project is not in the public interest. *Energie Group, LLC v. F.E.R.C.*, 511 F.3d 161, 164 (citing *Symbiotics L.L.C. v. FERC*, 110 Fed.Appx. 76, 81 (10<sup>th</sup> Cir. 2004)). Historically, FERC has found the public interest undermined – and therefore denied preliminary permit applications – when it is clear that no license will result from the preliminary permit, when there is a legal bar to the project or when the applicant is deemed unfit. Here, FERC should deny the preliminary permit application for the proposed Long Canyon Project as the project is proposed by an unfit applicant as evidenced by a previously granted 2008 preliminary permit; the existing Bureau of Land Management (BLM) resource management plan (RMP) governing the project area legally bars the project; and the existing RMP ensures that no license will result due to the applicant's inability to obtain BLM authorization to conduct feasibility studies.

#### A. The Proposed Project Will Not Result in a License

Although it is FERC's general policy to grant a preliminary permit application “whenever there is no legal bar, FERC has deviated from this policy when information already available indicates no license will result.” *Energie Group*, 511 F.3d at 164. Here, the proposed Long Canyon Project will not result in a license as it directly conflicts the existing RMP for the BLM's Moab field office. The current RMP, developed in 2008, designated the land included in the proposed project area as an area of critical environmental concern (ACEC), a special recreation management area (SRMA), a recreation focus area and a visual resource management (VRM) Class II area. *See* Moab Field Office Resource Management Plan, [http://www.blm.gov/ut/st/en/fo/moab/planning/rod\\_approved\\_rmp.html](http://www.blm.gov/ut/st/en/fo/moab/planning/rod_approved_rmp.html) (last visited May 22, 2012). In addition, with the exception of the proposed upper reservoir site, the Long Canyon project area falls within an area that is closed to all surface occupying activities [*i.e.*, a no surface occupancy (NSO) area]. *Id.*

Due to these irreconcilable management conflicts, the Moab BLM cannot authorize any ground-disturbing activity in or near the proposed project area. Given that the project area is located entirely on lands managed by the Moab BLM, it will be impossible for the project applicant to engage in any meaningful feasibility studies for the project. As stated by the BLM in its comments on the preliminary permit application:

[t]he U.S. BLM has concluded that the pumped storage project proposed for Long Canyon would not be in conformance with the BLM's current Moab Resource Management Plan (RMP) of 2008. The current RMP is expected to function as the operational plan for approximately the next 20 years.

U.S. Department of the Interior: Comments on Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Application (May 22, 2012). As a result of the inability of the applicant to obtain a BLM-issued permit for

ground-disturbing activities, the project clearly will not result in a license and therefore should be denied by FERC at the outset.

### B. The Project Is Legally Barred from Moving Forward

As discussed above, the existing Moab RMP does not allow for any ground-disturbing activities within the proposed project area. Actions taken in contravention of an existing RMP are de facto illegal activities. Here, the BLM has expressly stated that the proposed Long Canyon Project contravenes the existing RMP and, therefore, it is implicit that no activities will be permitted within the project area. *See id.* As a result, the existing RMP presents a legal bar to the proposed project which will continue indefinitely. FERC should therefore deny the preliminary permit application for the project.

### C. The Proposed Project Applicant is Unfit

“An applicant is not precluded from seeking and obtaining a successive preliminary permit, but it must demonstrate that under the prior permit it pursued the project with due diligence and in good faith.” *Pacific Energy Resources, LLC*, 128 FERC 62154, 64460 (2009). A “failure to comply with the terms and conditions of an existing permit constitutes a lack of due diligence that precludes the issuance of a successive permit.” *Natural Currents Energy Services, LLC*, 132 FERC 62122 (2010). Further, as part of the applicant’s due diligence, the applicant “is required to take certain minimal steps, including early consultation with the appropriate resources agencies [and] timely filing of six-month progress reports . . . .” *Pacific Energy Resources, LLC*, 128 FERC at 64460.

The Long Canyon Project is currently proposed by Frank L. Mazzone, president of Utah Independent Power. Under Mr. Mazzone’s control, Utah Independent Power applied and received a preliminary permit from FERC for a similar project in 2008. After utilizing substantial public resources to obtain a preliminary permit in 2008, Utah Independent Power let the three year permit period expire without taking any meaningful action towards determining the project’s feasibility. According to Mr. Mazzone, the company abandoned the project due to funding interest in a different project in Arizona. Charli Engelhorn, *California company again requests permit for hydroelectric project in Long Canyon*, The Times-Independent (April 12, 2012), [http://www.moabtimes.com/view/full\\_story/18213738/article-Calif--company-again-requests-permit-for-hydroelectric-dam-project-in-Long-Canyon?](http://www.moabtimes.com/view/full_story/18213738/article-Calif--company-again-requests-permit-for-hydroelectric-dam-project-in-Long-Canyon?) (last visited May 22, 2012). Additionally, with regard to the 2008 preliminary permit, it appears that Utah Independent Power never even consulted with the BLM for authorization to conduct ground disturbing activities; the same activities that are necessary to determine whether the project was in fact a feasible proposal. Based on the applicant’s failure to take even the most preliminary steps towards determining the proposed project’s feasibility, it is highly unlikely that the applicant complied with any of the specific terms and conditions inherent in the previously issued preliminary permit.

In summary, the time and money needlessly wasted on the applicant’s 2008 preliminary permit should not be repeated. Regardless of whether the applicant has legitimate interest in moving forward with the proposed project or is merely obtaining preliminary permits in an

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attempt to obtain funding from outside investors, FERC should not waste valuable public resources on the applicant's speculative proposals. This is especially true when the applicant's past actions have already proven the company and its president unfit for a project of this nature.

### **CONCLUSION**

Thank you for your consideration of these comments on the preliminary permit application for the Long Canyon Pumped Storage Project. SUWA intends to remain involved in all stages of the FERC application process. Please send a copy of any decisional documents to [neal@suwa.org](mailto:neal@suwa.org) or to P.O. Box 968, Moab, UT 84532, and feel free to contact me with any questions or concerns.

Sincerely,

/s/Neal Clark

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