

125 FERC ¶ 62,085  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Wellesley Rosewood Maynard Mills LP

Project No. 13228-000

ORDER ISSUING PRELIMINARY PERMIT

(Issued October 24, 2008)

On May 19, 2008, Wellesley Rosewood Maynard Mills LP (permittee) filed an application for a three-year preliminary permit under section 4(f) of the Federal Power Act (FPA) to study the proposed 290 kilowatt (KW) Clock Tower Place Hydroelectric Project No. 13228.<sup>1</sup> The proposed Clock Tower Place Hydroelectric Project is to be located on the Assabet River in Middlesex County, Massachusetts.

The proposed project would consist of: (1) two existing dams, the larger constructed of dry-laid, cut granite blocks, 9.5-foot-high and 170-foot-long and the smaller a masonry-faced embankment structure, respectively, for the upper and lower reservoirs which would have water surface elevations of 177 and 176 feet, MSL, (2) a proposed 49-foot-long penstock and twin 300-foot-long tailrace tunnels, (3) a 1,600-foot-long power canal leading to the gatehouse, (4) a proposed powerhouse containing one generating unit having a total installed capacity of 290 kilowatts, (5) incorporation of an existing transformer to interconnect equipment with Clock Tower Place at 208y/120 volts, and (6) appurtenant facilities. The project would have an annual energy generation of 1,241,000 kWh per year.

Public notice of the application was issued on July 9, 2008. No motions to intervene were filed.

The U.S. Department of the Interior (Interior) filed comments, stating that the Interior does not object to the issuance of a preliminary permit for this project. Interior commented on the effects of the one-mile-long bypassed reach on local habitats, fish passage, water quality, and on the risk of impingement and/or entrainment of aquatic species at and associated with the proposed project. Interior further stated that a portion of the Assabet River downstream of the dam site is federally-designated as a Wild and

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<sup>1</sup> 16 U.S.C. § 797(f) (2006). The maximum term for a preliminary permit is three years. 16 U.S.C. § 798 (2006).

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Scenic River. Interior also stated that any aspect of the proposed project that affects the outstanding resource values of the wild and scenic segment will be a concern.

The Organization for the Assabet River filed comments regarding the ecological impact of the river diversion, flow monitoring and management, and environmental impact of the dam of the proposed project.

The comments, including those of Interior concerning project impacts on fish passage and management objectives for the Assabet River, relate to the construction and operation of the proposed project should it be authorized.<sup>2</sup> Because a preliminary permit neither authorizes construction or operation nor gives the permit holder any property rights, the issuance of a permit in this proceeding will not have any environmental impacts.

The purpose of a preliminary 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, after consultation with the appropriate resource agencies, to determine the feasibility of the proposed project, and to prepare an acceptable development application. The permit confers no authority on the permittee to undertake construction of the proposed project or any part thereof, or to occupy or use lands or other property of the United States or of any other entity or individual. Therefore, issuance of the preliminary permit is not a major federal action.

If, during the course of the permittee's investigation into the feasibility of the proposal, the permittee decides to prepare a development application, it must first prepare a Notice of Intent (NOI) and Pre-Application Document (PAD) pursuant to sections 5.5 and 5.6 of the Commission's Regulations.<sup>3</sup> 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

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<sup>2</sup> The issuance of a preliminary permit does not violate the Wild and Scenic Rivers Act (WSRA). 16 U.S.C. § 1278(b) (2006). Section 7(b) of WSRA prohibits the Commission from issuing a license for construction of a project on or directly affecting any river designated for study for potential addition to the National Wild and Scenic River System. However, the WSRA contains no prohibition against issuing a preliminary permit for a project that would be located on or would directly affect a study river, much less one that has not yet been designated a study river. *See, e.g., Little Horn Energy Wyoming, Inc.*, 58 FERC ¶ 61,132 (1992); *Sheep Falls Associates*, 34 FERC ¶ 61,196 (1986).

<sup>3</sup> 18 C.F.R. §§ 5.5 and 5.6 (2008).

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and PAD and set forth specific information justifying the request.<sup>4</sup> Should the permittee file a development application, notice of the application will be published, and interested persons and agencies will have an opportunity to intervene and to present their views concerning the project and the effects of its construction and operation.

A preliminary permit is not transferable. The named permittee is the only party entitled to the priority of 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 any of these proprietary rights necessary for project purposes during the term of an issued license, they must be included as joint applicants in any application for a license. In such an instance, where parties other than the permittee are added as joint applicants for a license, the joint application will not be eligible for any permit-based priority.<sup>5</sup>

The Director orders:

(A) A preliminary permit is issued for the Clock Tower Place Hydroelectric Project No. 13228 to Wellesley Rosewood Maynard Mills LP, for a period effective the first day of the month in which this permit is issued, and ending either 36 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.

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<sup>4</sup> 18 C.F.R. § 5.3 (2008).

<sup>5</sup> See *City of Fayetteville*, 16 FERC ¶ 61,209 (1981).

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(C) This order is issued under authority delegated to the Director and constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days from the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2008).

William Guey-Lee  
Chief, Engineering and Jurisdiction Branch  
Division of Hydropower Administration  
and Compliance