

March 03, 2005

Federal Energy Regulatory Commission  
Magalie R. Salas, Secretary  
888 First Street NE  
Washington, D.C. 20426

**Re: Metro Hydroelectric Project P-12484-000  
Notice of Intent to file application**

Dear Commissioners:

Metro Hydroelectric Company, LLC (MHC) is submitting this *Notice of Intent* (NOI) to file an application for an original license for the proposed Metro Hydroelectric Project (the Project) with the Federal Energy Regulatory Commission (FERC). This notice of intent is being submitted in accordance with 18 CFR Part 5.5. In addition, MHC will submit a *Pre-Application Document* in accordance with 18 CFR 5.6.

The proposed project will use an existing dam. The addition of a powerhouse and replacement of the penstock to this dam will provide beneficial generation of electricity with relatively minor impacts that can be effectively mitigated. The licensing process provides for ample input from the public and governmental agencies.

Information required for the *Notice of Intent* by 8 CFR 5.5(b) is provided below.

**1 Applicant's Name and Address**

The applicant is First Metro Hydroelectric. The address is:

Metro Hydroelectric Company, LLC  
150 North Miller Road  
Suite 450 C  
Fairlawn, Ohio 44333  
Phone: (330) 869-8451  
Fax: (330) 869-8453

**2 Project Number**

The FERC Project Number is P-12484-000.

**3 License Expiration Date**

This license is for a new power project. There is no existing license.

**4 Statement of Intent**

MHC intends to file a permit application for an original license for a proposed power plant at the FirstEnergy Corporation (formerly Ohio Edison) dam in Akron, Ohio. . MHC intends to use the Integrated Licensing Process for the application.

## **5 Type of Principal Project Works**

The applicant proposes to construct a new powerhouse downstream of the existing FirstEnergy Corporation dam. Specifically, the project will include:

- One penstock approximately 350 feet long with a diameter of approximately 90 inches.
- A new powerhouse housing one or more turbine/generator units with a combined nominal capacity of up to 2.4 MW.
- New tailrace discharge works consisting of an exhaust apron.
- A new 12.5 kV transmission line. The transmission line will be constructed to an existing substation.

## **6 Location of the Project**

The Project location is as follows:

State: Ohio  
County: Summit  
City: Akron  
River: Cuyahoga River

## **7 Installed Plant Capacity**

The installed plant will have a nominal capacity of up to 2.4 MW. The expected annual average generation of the Project is 10,300 MWH.

## **8 Names and Mailing Addresses of Affected Parties**

The names of potentially affected government entities, including counties; cities and towns; irrigation district, drainage district, or similar purpose political subdivisions; every other affected political subdivision in the general area; and affected Indian tribes are listed below. Addresses are presented in the attached Address List.

### ***8.1 Affected Counties***

The proposed Project is located in Summit County, on property administered by the MetroParks Serving Summit County (MetroParks). The addresses of Summit County and MetroParks are included in the Address List.

### ***8.2 Cities and Towns***

The project is located within fifteen miles of nine cities or towns with populations greater than 5,000 people. These towns and cities are listed below. Addresses of these cities or towns are listed in the attached address list.

Akron  
Cuyahoga Falls  
Kent  
Portage Lakes  
Barberton  
Fairlawn  
Stow  
Aurora  
Canal Fulton

**8.3 *Affected Irrigation Districts, Drainage Districts, Or Similary Special Purpose Political Subdivisions***

According to the U.S. Army Corps of Engineers, there are no irrigation districts, drainage districts or similar special purpose political subdivisions which would be interested in or affected by the Project. ACE WOULD NOT KNOW ABOUT LOCAL DRAINAGE DISTRICTS. WE NEED TO CHECK

**8.4 *Other Affected Political Subdivisions***

Other political subdivisions in the general area of the project include the Northwest Ohio Four County Regional Planning and Development Organization (NEFCO). NEFCO is a Clean Water Act Section 208 Area Wide Planning Agency. The address for NEFCO is listed in the address list.

**8.5 *Indian Tribes***

Earth Tech, on behalf of the Applicant, queried the Native American Consultation Database maintained by the National Park Service for tribes associated with Summit County, Ohio. The five tribes identified are listed below. Contact information is included in the attached address list.

Delaware Nation, Oklahoma  
Forest County Potawatomi Community, Wisconsin  
Hannahville Indian Community, Michigan  
Ottawa Tribe of Oklahoma  
Wyandotte Nation, Oklahoma

In accordance with 18 CFR 5.5 (c), this NOI is being distributed to all appropriate Federal, state, and interstate resource agencies, Indian tribes, local governments, and members of the public likely to be interested in the NOI. Specifically, the NOI is being distributed to all affected governmental units previously identified in this NOI, as well as all parties who commented on the Preliminary Permit Application submitted by the Applicant. Parties who commented on the Preliminary Permit Application include:

Federal Energy Regulatory Commission  
Magalie R. Salas, Secretary  
March 3, 2005  
Page 4

- 1) The Ohio Department of Natural Resources
- 2) The Ohio Environmental Protection Agency
- 3) The Army Corps of Engineers
- 4) Friends of the Crooked River
- 5) Ohio Environmental Council
- 6) American Whitewater
- 7) Department of the Interior
- 8) Northeast Ohio Watershed Council
- 9) American Rivers

In accordance with 18 CFR 5.5 (e), First Metro Hydroelectric requests designation as the FERC's non-Federal representative for purposes of consultation under section 7 of the Endangered Species Act and the joint agency regulations at 50 CFR Part 402, section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the implementing regulations at 50 CFR 600.920. First Metro Hydroelectric also is requesting authorization to initiate consultation under section 106 of the National Historic Preservation Act and the implementing regulations at 36 CFR 800.2 (c)(4).

If there are any questions concerning this Notice of Intent or the attached Pre-Application Document, please contact me at the address or telephone number listed above.

Sincerely,

M. Clifford Phillips  
Metro Hydroelectric Company, LLC

UNITED STATES OF AMERICA 110 FERC ¶62,260  
FEDERAL ENERGY REGULATORY COMMISSION

Metro Hydroelectric Company, LLC

Project No. 12484-000

ORDER ISSUING PRELIMINARY PERMIT

(Issued March 15, 2005)

On December 30, 2003, Metro Hydroelectric Company, LLC (permittee) filed an application for a three-year preliminary permit under Section 4(f) of the Federal Power Act (FPA)<sup>1</sup> to study the proposed 27.75-megawatt (MW) Metro Hydroelectric Project No. 12484. The project is located on the Cuyahoga River in Summit County, Ohio. The dam is owned by the FirstEnergy Corporation. The proposed project would consist of: (1) an existing 429-foot-long, 47-foot-high dam, (2) an existing impoundment having a surface area of 34 acres and a storage capacity of 589 acre-feet, with a normal water surface elevation of 912 feet mean sea level (msl), (3) a proposed 350-foot-long, 7.5-foot diameter penstock, (4) a proposed powerhouse containing a generating unit having an installed capacity of 27.75 MW, (5) a proposed 0.5-mile-long 12.5 kilovolt transmission line, and (6) appurtenant facilities. The project would have an annual generation of 10,300 gigawatt-hours, which would be sold to a local utility.

Public notice of the application was issued. A motion to intervene was jointly filed by the Friends of Crooked Creek, American Rivers, and The Ohio Environmental Council to become parties to the proceeding and opposing the construction of the project. Comments were filed by the U.S. Department of the Interior (Interior), Ohio Environmental Protection Agency, and American Whitewater. Comments opposing the project were filed by Metro Parks Serving Summit County, Friends of Crooked Creek, Northeast Ohio Watershed Council, and The Ohio Environmental Council. All of the comments raised concerns about the environmental impact that this project would cause and pertain to the construction and operation of the project and recommendations for studies for the permittee to conduct during the permit period.

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<sup>1</sup>16 U.S.C. § 797(f). Three years is the maximum term for a preliminary permit. See FPA Section 5, 16 U.S.C. § 798.

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 to determine the feasibility of the proposed project and, if the project is found to be feasible, prepares an acceptable development application. The permit confers no authority on the permittee to undertake construction of the proposed project or any part thereof,<sup>2</sup> or to occupy or use lands or other property of the United States or of any other entity or individual.

A preliminary permit is not transferable. The named permittee is the only entity 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 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 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. See City of Fayetteville, 16 FERC & 61,209 (1981).

Should the permittee file a development application, notice of the application will be published, and all 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.

The Director orders:

(A) A preliminary permit is issued for this project to Metro Hydroelectric Company, LLC, 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.

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<sup>2</sup>Issuance of this preliminary permit is thus not a major federal action significantly affecting the quality of the human environment.

(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 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.

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

**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 said 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. All test sites shall be restored as closely as possible to their original condition and to the satisfaction of the Commission's authorized representative or, where federal lands are affected, to the satisfaction of the agency administering such lands.

**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.** At the close of each six-month period from the effective date of this permit, the permittee shall file four copies of a progress report with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426; and shall serve a copy on the interveners in this proceeding. The report shall describe, for that report period, the nature and timing of what the permittee has done under the pre-filing requirements of 18 CFR 4.38 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 therefor.