

150 FERC ¶ 62,092  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Symphony Hydro LLC

Project No. 14627-000

ORDER DENYING PRELIMINARY PERMIT APPLICATION

(Issued February 5, 2015)

1. On June 26, 2014, Symphony Hydro LLC (Symphony Hydro) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA),<sup>1</sup> to study the feasibility of the proposed Symphony Hydro Project No. 14627 (Symphony Hydro Project or project) to be located at the U.S. Army Corps of Engineers' (Corps) Upper St. Anthony Falls Lock and Dam on the Mississippi River near the city of Minneapolis in Hennepin County, Minnesota.

**I. Project Proposal**

2. The proposed project would utilize the existing Corps Upper St. Anthony Falls Lock and Dam and would consist of: (1) two new 1.5-foot-thick by 56-foot-wide by 60-foot-high reinforced concrete bulkheads containing two variable speed 1,700-kilowatt (kW) turbine and generator units mounted on roller frames for a combined nameplate capacity of 3.4 megawatts located inside the lock chamber at the Upper St. Anthony Falls Lock and Dam; (2) two 6-foot-square pad-mounted metal boxes, one containing plant controls and the other containing a 13.8-kilovolt (kV) step-up distribution transformer; (3) a 13.8-kV transmission line; and (4) appurtenant facilities. The estimated annual generation of the Symphony Hydro Project would be 18,000 megawatt-hours. The proposed project would be located entirely on federal land under the jurisdiction of the Corps.

**II. Background**

3. The Commission issued public notice of Symphony Hydro's permit application on October 22, 2014, establishing a deadline of December 21, 2014, for filing comments, motions to intervene, competing applications, and notices of intent to file a competing application.<sup>2</sup> The Wisconsin Department of Natural Resources filed a timely notice of

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<sup>1</sup> 16 U.S.C. § 797(f) (2012).

<sup>2</sup> Because the deadline fell on a Sunday, a day on which the Commission is closed, the deadline was extended to the close of Commission business on the next day, which (*continued ...*)

intervention on October 30, 2014.<sup>3</sup> Friends of the Riverfront (Friends) and Crown Hydropower, LLC (Crown Hydro) filed timely motions to intervene.<sup>4</sup> Crown Hydro, the existing licensee of the unconstructed Crown Mill Hydroelectric Project No. 11175,<sup>5</sup> does not oppose the Symphony Hydro Project, but is concerned about potential operational conflicts. The Corps, U.S. Department of the Interior (Interior), Minneapolis Park and Recreation Board (Park and Recreation Board), Minnesota Department of Natural Resources (Minnesota DNR), and Douglas L. Verdier of Minneapolis, Minnesota, filed comments concerning the incompatibility of the project with the Upper St. Anthony Falls Lock and Dam, as well as environmental and recreational concerns.

4. Symphony Hydro filed a response to the Corps' comment and Crown Hydro's motion.

### III. Discussion

5. Section 4(f) of the FPA authorizes the Commission to issue preliminary permits for the purpose of enabling prospective applicants for a hydropower license to secure the data and perform the acts required by section 9 of the FPA,<sup>6</sup> which in turn sets forth the material that must accompany an application for license.

6. The Corps states that the installation of hydropower generation equipment in the Upper St. Anthony Falls lock chamber would preclude or seriously interfere with its use of the lock for navigation and would therefore be incompatible with the statutorily authorized purpose of the facility. The Corps states that while section 2010 of the Water Resources Reform and Development Act of 2014 directs the Corps to close the Upper St. Anthony Falls Lock and Dam, it did not de-authorize or decommission the Upper St. Anthony Falls Lock and Dam.<sup>7</sup> Further, the Corps states that it is still directed to

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was Monday, December 22, 2014. *See* 18 C.F.R. § 385.2007(a)(2) (2014).

<sup>3</sup> A timely notice of intervention filed by a state fish and wildlife agency is granted by operation of Rule 214(a)(2), 18 C.F.R. § 285.214(a)(2) (2014).

<sup>4</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214(c)(1) of the Commission's regulations. 18 C.F.R. § 385.214(c)(1) (2014).

<sup>5</sup> *See Crown Hydro Co.*, 86 FERC ¶ 62,209 (1999).

<sup>6</sup> 16 U.S.C. § 802 (2012).

<sup>7</sup> Water Resources Reform and Development Act of 2014, Pub. L. No. 113-121, 128 Stat. 1193 (requiring the Corps to close the Upper St. Anthony Falls Lock and Dam within one year from the date the law is enacted (i.e. by June 10, 2015) but also retaining (*continued ...*)

undertake emergency lock operations to mitigate flood damage, which in practice consists in large part, of passing flood flows, ice, and debris through the lock chamber. The Corps states that this could damage Symphony Hydro's equipment. The Corps concludes that it is highly unlikely that the presence of hydropower generation equipment in the lock chamber would be compatible with the Corps' flood mitigation efforts.

7. Interior, Park and Recreation Board, Friends, and Mr. Verdier filed comments in support of the Corps' comment.

8. In response, Symphony Hydro states its turbine generator units are small, light, and completely submersible, and can easily be removed from their service position or lifted out of the water to facilitate flood control. Moreover, Symphony Hydro states that it would investigate, address, and attempt to resolve the Corps' concerns during the permit stage.

9. Because the Corps, which owns the Upper St. Anthony Falls Lock and Dam and whose permission would be needed for the development of any project at those facilities, explicitly finds the proposed project to be incompatible with the statutorily authorized purpose of the lock and dam, it seems highly unlikely that Symphony Hydro would be able to perform any site-specific studies or take any significant steps toward developing a license application during the term of the preliminary permit. Accordingly, no purpose would be served by issuing a permit here.<sup>8</sup>

The Director orders:

(A) The preliminary permit application filed by Symphony Hydro LLC on June 26, 2014 for the Symphony Hydro Project No. 14627 is denied.

(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days of the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 8251 (2012), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2014).

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the Corps' responsibility to carry out emergency lock operations at the facility to mitigate flood damage).

<sup>8</sup> Because Symphony Hydro's permit application is denied, the environmental and recreational concerns that Friends, Park and Recreation Board, and Minnesota DNR identified if a permit were to be issued are moot. Crown Hydro's concerns about potential operational impacts are moot as well.

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Vince Yearick  
Director,  
Division of Hydropower Licensing

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