

January 10, 2008

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

**Re: *Eagle Crest Energy Company, FERC Project No. 12509;  
Request for Use of Traditional Licensing Process***

Dear Secretary Bose:

On March 7, 2005, the Federal Energy Regulatory Commission (“FERC” or “Commission”) granted Eagle Crest Energy Company (“ECE” or “Applicant”) a preliminary permit application for the proposed Eagle Mountain Pumped Storage Project (“Project”). Since the award of the preliminary permit, ECE has begun the development of its application for an initial license for the Project and has prepared and filed on this same day a pre-application document (PAD) and notice of intent to file a license application. Pursuant to the provisions of Section 5.3 of the Commission’s regulations, 18 C.F.R. §5.3, ECE requests herewith authorization to utilize the Traditional Licensing Process (“TLP”) for the Project.

The Project is a 1,300 MW pumped storage hydroelectric project located in Riverside County, California. The proposed Project is essentially the same hydroelectric pumped storage project for which the Commission previously granted ECE a preliminary permit for Project No. 11862 on June 15, 2001,<sup>1</sup> and for which the Commission previously dismissed without prejudice a license application in Project No. 11080 on July 2, 1999<sup>2</sup> for failure to obtain a water quality certification within the set timeframe.

The Applicant conducted extensive studies in conjunction with the application for license filed in Project No. 11080. After reviewing the available information and the extensive amount of information previously collected and prepared in support of the license application for Project No. 11080, ECE believes that the use of the TLP is the most appropriate and expeditious process for this Project.

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<sup>1</sup> *Eagle Crest Energy Co.*, Application for Preliminary Permit, 110 FERC ¶62,218 (2005).

<sup>2</sup> *Eagle Crest Energy Co.*, Order Dismissing Application for License, 88 FERC ¶62,003 (1999).

Pursuant to 18 C.F.R. §5.3(c)(1), ECE provides the following justification for use of the TLP:

1. Likelihood of timely license issuance

The currently proposed Project is very similar in scope and potential impacts to the project previously proposed in Project No. 11080. Based on the nature of the issues that arose in conjunction with that application, there is no reason to expect that the initial licensing process for the Project should be unreasonably complex or prolonged. Indeed, as reflected in the items discussed below, there is every reason to expect this proceeding to proceed expeditiously to a licensing decision. In addition, ECE is committed to an expedited approach to licensing the Project and, assuming Commission approval of the instant request, is prepared to begin the initial consultation steps under the TLP immediately.

2. Complexity of the resource issues

As reflected in the PAD, the potential resource impacts of the proposed Project are not complex. These issues were largely covered in the previous application for license. The remote off- stream location of the Project, as well as the nature of the Project site, an abandoned mining pit site, do not raise the more complex resource impact issues frequently associated with a more conventional new hydropower project development located on a waterway.

3. Level of Anticipated Controversy

ECE does not anticipate that the Project will cause any significant controversy that could be better accommodated in the Integrated Licensing Process (“ILP”). Potential resource impacts, as mentioned above, should not prove troublesome. Likewise, extensive controversy regarding required studies is unlikely due to the large body of existing information already available. The fact that ECE is constrained by lack of access to the Project site, and therefore will need to defer some surveys and studies to the post-license pre-construction phase, further determines the scope of studies that can be reasonably conducted as part of the licensing process. A large part of the ILP is focused on developing plans for studies and such an effort would not measurably assist in this Project proceeding.

To the extent there may be opposition to the Project, three motions to intervene were filed with respect to ECE’s application for preliminary permit. Two of these motions are probably the best indicators of the nature of any potential opposition or controversy that may attend a licensing proceeding for the Project. Metropolitan Water District of Southern California, which imports substantial water through the Colorado River Aqueduct and states that it holds property interests in some of the sections of land managed by the Bureau of Land Management on which the Project will be partially located, sought intervention but took no position regarding the Project application. The other two motions to intervene were filed by (1) Kaiser Eagle Mountain (Kaiser) and

Mine Reclamation LLC (MRC); and (2) the County Sanitation District No. 2 of Los Angeles County (District). These intervenors opposed the application for permit because they contend that the construction of the Project is incompatible with development of the landfill project to be located at the Eagle Mountain site and in which all three have an interest (either through property ownership or development rights).<sup>3</sup> The ILP is not fashioned to provide a more productive forum or process to deal with the kinds of arguments or issues that may be expected from Kaiser/MRC and the District. Indeed, the more formal structure provided by the TLP would probably provide a more workable, less disruptive process for accommodating and adjudicating these competing commercial interests. (For the record, ECE does not agree with these assertions that the development of the Project and the landfill project are mutually exclusive).

4. Relative cost of traditional licensing process compared to the integrated process

Utilization of the TLP for this Project should be more cost-effective for the Applicant, the Commission, and interested agencies or stakeholders. Where the ILP can serve as a useful process where wide-ranging data gathering is required and a multitude of potential issues must be surveyed and, once identified, studied in a manner on which there is a consensus, the TLP is better suited for projects such as the proposed Eagle Mountain Project that have been extensively studied in the past and for which broad array of information is already available. The extensive pre-filing procedure under the ILP requires substantial commitments of manpower and the associated funds to support that effort. Funding such efforts for the proposed Project would be a potentially wasteful and unproductive option. On balance, the TLP would be the least expensive and most productive process for not just the Applicant, but for the Commission, agencies and stakeholders as well.

5. Amount of available information and potential for significant disputes over studies

Extensive geologic investigations have been performed for the Eagle Mountain site. Mineralogical studies were conducted prior to and during operation of the iron ore mining activities at the site. In the early 1990's, comprehensive site investigations were performed during landfill siting studies. The results of those investigations were summarized in the 1994 Eagle Mountain Pumped Storage Project Application for FERC License,<sup>4</sup> which was based largely on the Report of Waste Discharge for the Eagle Mountain Landfill and Recycling Center by GeoSyntec Consultants (GeoSyntec) in 1992. Additional summary site investigations were performed by GeoSyntec in 1996. The

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<sup>3</sup> The creation of the landfill is contingent on, among other things, a land exchange between Kaiser Eagle Mountain (Kaiser) and the Bureau of Land Management, which would transfer the land and issue a right of way to Kaiser. The land exchange has not yet concluded because of pending judicial appeals in the Ninth Circuit Court of Appeals. *See Donna Charpiet et al., v. United States Dept. of Interior et al.*, ED CV99-0454 RT (Mcx) (C.D. Cal. Sept. 20, 2005); *Nat'l Parks and Conservation Ass'n., v. Bureau of Land Mgmt., et al.*, ED CV 00-0041 RT (Mcx) (C.D. Cal. Sept. 20, 2005) *appeal filed*, No. 05-56815 (9th Cir. Dec. 5, 2005).

<sup>4</sup> *Eagle Mountain Energy Co.*, Application for Major License, Project No. 11080 (F.E.R.C. Apr. 29, 1994).

PAD also refers to numerous studies done on the water supply surrounding the Project site and other relevant issues. As discussed above, the ILP is particularly fashioned to handle an elaborate study identification process in the early part of the license application process. This effort is not required for the instant Project in light of the extensive studies conducted before submitting the license application in 1994.

6. Other factors believed by applicant to be pertinent

Under the particular circumstances of this Project and the existing record, adoption of the TLP clearly provides the most expeditious direct path for preparing and reviewing the application for license and ultimately rendering a licensing decision on the merits of the Project. The shorter timeframe for licensing is critical to meet the target window of market opportunity that the Applicant in the exercise of its best business judgment has identified. In addition, under any circumstances, the benefits to system reliability and stability provided by pumped storage generation should always receive priority treatment and consideration under the most expeditious process available. ECE respectfully submits that approval of this request is warranted and in the public interest.

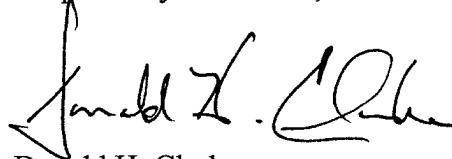
A copy of this document is being transmitted to all parties on the attached consultation list by first class mail. Interested parties may file comments on this request with the Commission within 30 days of the filing date of this request. All comments should clearly refer to "Eagle Mountain Pumped Storage Project Number 12509." Respondents may submit comments either electronically pursuant to 18 C.F.R. § 385.2003(c) or by sending an original and 8 copies to the following address:

Office of the Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

In accordance with 18 C.F.R. § 5.3(d)(2), an appropriate notice of the filing of the notification of intent, PAD and this request to use the traditional licensing process is being published in a newspaper of general circulation in Riverside County where the project is located.

Should the Commission have any questions regarding this request, please do not hesitate to contact the undersigned counsel. ECE appreciates your consideration of and prompt attention to this request.

Respectfully Submitted,



Donald H. Clarke  
Counsel for Eagle Crest Energy Company