

Army Corp of Engineers -> all these permits ask erosion control program  
New Hampshire

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

23 FERC 962,342

- 2 -

Franklin Industrial Complex, Inc. ) Project No. 3760-000 and  
3760-001

ORDER GRANTING EXEMPTION FROM LICENSING OF A  
SMALL HYDROELECTRIC PROJECT OF 5 MEGAWATTS OR LESS

( Issued June 14, 1983 )

On March 20, 1980, Franklin Electric Light and Power Company (FELP) filed a license application for the proposed Franklin Falls Project No. 3093, located on the Winnepesaukee River in Franklin, New Hampshire. On September 10, 1980, FELP filed a preliminary permit application for the proposed Stevens Mill Dam Project No. 3454, located on the Winnepesaukee River in Franklin, New Hampshire.

Franklin Industrial Complex, Inc. (FICI) filed on November 19, 1980, an application for license for the proposed Franklin Mills Project No. 3760, which would compete with Project Nos. 3093 and 3454. While its license application was still pending, FICI filed a competing application for exemption Project No. 3760-001 from Part I of the Federal Power Act, on April 28, 1981, and subsequently revised the exemption application on March 15, 1983, for the proposed Stevens Mill Dam Project. 1/ The application was filed pursuant to the Commission's regulations, 18 C.F.R. §54.101 4.108 (1982), implementing Section 408(b) of the Energy Security Act of 1980 (ESA). 2/ Subsequently, on April 6, 1983, FELP withdrew its applications for Projects Nos. 3093 and 3454,

thereby leaving the exemption application for Project No. 3760-001 as the outstanding application for the proposed site. 3/

FICI's original exemption application proposed, *inter alia*, the construction of a powerhouse on the bank of the Winnepesaukee River and the removal of the lower Memorial Street Dam. Citizens of the City of Franklin, New Hampshire, the Franklin Fire Department, and the Franklin Revitalization Committee expressed opposition to this proposal, asserting that it would seriously impair the City's fire protection system and adversely affect the aesthetics of the City. The revised exemption proposal described below entails the utilization of the existing powerhouse and an existing penstock. The project is located within the Franklin Falls Historic District, a property listed in the National Register of Historic Places. The project would not have an adverse effect on the historic structures in the district if the Exemptee implements certain measures to avoid and mitigate impacts recommended by the New Hampshire State Historic Preservation Officer and the Commission's Staff. The Advisory Council on Historic Preservation has been consulted concerning the effect of the project on the historic district. Article 6 requires implementation of the recommended measures. It appears that these measures, taken in conjunction with the revised plans, address the concerns raised by those commenting on the original exemption application and indicate that the proposed exemption project is in the public interest.

Notice of the exemption application was published in accordance with Section 408 of the ESA and the Commission's regulations and comments were requested from interested Federal and State agencies including the U.S. Fish and Wildlife Service and the State Fish and Wildlife Agency. All comments, protests and petitions to intervene that were filed have been considered. No agency has any objection relevant to issuance of this exemption.

1/ FICI's license and exemption proposals are substantially identical. Because of the action taken on the exemption application, the application for license is dismissed in Ordering paragraph (B) below.

2/ Pub. Law 96-294, 94 Stat. 611. (1980). Section 408 of the ESA amends *inter alia*, Sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §§2705 and 2708).

DC-A-9

3/ Authority to act on this matter is delegated to the Deputy Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 18 C.F.R. §375.308 (1982). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. §385.1902, 47 Fed. Reg. 19047 (1982). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.

ALG-NH02022



- 3 -

Project Description

The proposed project as described in the March 15, 1983, amendment to the exemption application originally filed on April 20, 1981, would be located on the Winnepesaukee River, in Merrimack County, New Hampshire and would consist of: (1) an existing 22-foot-high concrete gravity dam known as the Stevens Dam and designated as No. 27.05 by the New Hampshire Water Resources Board; (2) an existing one-acre reservoir with a normal water surface elevation of 315.24 feet M.S.L.; (3) a proposed 740-foot-long penstock beginning at the Stevens Dam and running along the south bank. At the northwest corner of the South Stevens Mills building the penstock would connect to (4) an existing 420-foot-long penstock to (5) the existing River Bend powerhouse with new units having a total installed capacity of 1,600 kW; (6) an existing 150-foot-long penstock at the Stevens Mill Dam connected to the existing Bow Street powerhouse at the north river bank containing turbine generators with a total rated capacity of 340 kW; (7) two transmission lines; and (8) appurtenant works.

Standard Article 2, included in this exemption, requires compliance with any terms and conditions that Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources. The terms and conditions referred to in Article 2 are contained in any letters of comment by these agencies which have been forwarded FIC in conjunction with this exemption.

Should FIC contest any terms or conditions that were proposed by Federal or State agencies in their letters of comment as being outside the scope of Article 2, the Commission shall determine whether the disputed terms or conditions are outside the scope of Article 2.

Based on the terms and conditions required by Federal and State fish and wildlife agencies, the environmental information in the application for exemption, other public comments, and staff's independent analysis, issuance of this order is not a major Federal action significantly affecting the quality of the human environment.

It is ordered that:

(A) Stevens Mills Project No. 3760-001 as described and designated in Franklin Industrial Complex's application filed on April 20, 1981, and amended on March 15, 1983, is exempted from all of the requirements of Part 1 of the Federal Power Act, including licensing, subject to the standard articles in 54.106, of the Commission's regulations attached hereto as Form E-2, 18 C.F.R. 54.106 45 Fed. Reg. 76115 (November 10, 1980), and the following Special Article:

River  
= 1600  
= Stevens mill  
→ 250 kW - Today

- 4 -

Article 6. The Exemptee shall, in consultation with the New Hampshire State Historic Preservation Officer (SHPO), and prior to any construction that will impact any structural components of the Franklin Falls Historic District, implement the following measures to avoid or mitigate impacts to the district from the project: (1) project construction shall not include the demolition of any historic building within the district; (2) the new penstock in the Stevens Mill powerhouse will be constructed so as to exit the west wall of the building in a manner similar to that of the existing penstock on the east side; (3) the Secretary of the Interior's Standards for Historic Preservation Projects shall be adhered to in all exterior rehabilitation and restoration work at the River Bend, Stevens Mill, and Bow Street hydroelectric stations, in repairs and any necessary rehabilitation or restoration of Stevens Mill Dam and existing penstock, and in the construction of new penstock; (4) the existing penstock and the internal equipment of the River Bend, Stevens Mill, and Bow Street hydroelectric stations will be assessed to determine their historical significance, and will be documented in a report according to the standards of the Historic American Engineering Record of the U.S. Department of the Interior if it is determined that such equipment or penstock is significant and will be impacted by the project; (5) the number and location of dry hydrants or other fire protection measures that will be necessary in the project vicinity for the historic district will be approved by the Fire Chief of the City of Franklin; (6) Riprap will be placed on the side of the island nearest the River Bend Mill to prevent excessive erosion from the tailwater of the River Bend station. The Exemptee shall make funds available in a reasonable amount for the implementation of these measures as required. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Exemptee shall consult with the SHPO to develop and implement a mitigation plan for the protection of significant archeological or historical resources.

(B) The license application filed on November 9, 1980, by Franklin Industrial Complex, Inc. for Project No. 3760-000 is dismissed.

*Lawrence R. Anderson*  
Lawrence R. Anderson  
Director, Office of Electric  
Power Regulation

§ 4.106 Standard terms and conditions of exemption from licensing.

Any exemption from licensing granted under this subpart for a small hydroelectric power project is subject to the following standard terms and conditions:

(a) Article 1. The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) Article 2. The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that any Federal or state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

(c) Article 3. The Commission may accept a license application by any qualified license applicant and revoke this exemption if actual construction or development of any proposed generating facilities has not begun within 18 months, or been completed within 18 years, from the date on which this exemption was granted. If exemption is revoked, the Commission will not accept a subsequent application for exemption within two years of the revocation.

(d) Article 4. This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

(e) Article 5. This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal land agencies. The Commission may accept a license application by any qualified license applicant and revoke this exemption, if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.