

Britt R. Gilbert, Thomas G. Scully, and John S. Scully III

Project No. 3287-002

FEDERAL ENERGY REGULATORY COMMISSION - Office Director

20 F.E.R.C. P62,512; 1982 FERC LEXIS 841

September 22, 1982

ACTION:

[**1]

Order Granting Exemption from Licensing of a Small Hydroelectric Project of 5 Megawatts or Less

JUDGES:

Robert E. Cackowski, Deputy Director, Office of Electric Power Regulation.

OPINION:

[*63,858]

The Applicant n1 filed an application for exemption from all or part of Part I of the Federal Power Act pursuant to 18 C.F.R. Part 4 Subpart K (1980) implementing in part Section 408 of the Energy Security Act (Act) of 1980 for a project as described in the attached public notice. n2 n3

n1 Britt R. Gilbert, Thomas G. Scully, and John S. Scully III, **Project No. 3287** filed May 4, 1982.

n2 Pub. Law 96-294, 94 Stat. 611. 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).

n3 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 (1981). 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.

[**2]

Notice of the application was published in accordance with Section 408 of the Act 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.

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 to the Applicant in conjunction with this exemption.

Should the Applicant 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.

It is ordered that :

(A) Burnshire Dam **Project No. 3287** as [**3] described and designated in Britt R. Gilbert, Thomas G. Scully, and John S. Scully III's application filed on May 4, 1982, is exempted from all of the requirements of Part I of the Federal Power Act, including licensing, subject to the standard articles in § 4.106, of the Commission's regulations, 18 C.F.R. § 4.106, 45 Fed.Reg. 76115 (November 18, 1980).

APPENDIX:

[*63,859]

Appendix A

Notice of Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

(Issued June 8, 1982)

Take notice that on May 4, 1982, Britt R. Gilbert, Thomas G. Scully, and John S. Scully III (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. §§ 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (**Project No. 3287**) would be located on the North Fork, Shenandoah River

in Shenandoah County, Virginia. Correspondence with the Applicant should be directed to: Thomas F. Nolan IV, 401 C Street, N.E., Washington, [**4] D.C. 20002.

Project Description --The proposed project would consist of: (1) the existing concrete Burnshire Dam, 280 feet long and 14 feet high; (2) an existing reservoir with a 200 acre-foot storage capacity and surface elevation of 670 feet m.s.l.; (3) an existing three-penstock powerhouse with an installed capacity of 232 kW fed by a 150-foot long forebay; (4) a new 200 kW unit to be placed on an existing powerhouse foundation; and (5) other appurtenances. All existing facilities are owned by Thomas G. Scully and John S. Scully III. Applicant estimates an average annual generation of 1,400,000 kWh.

[Note: Remainder of notice omitted in printing.]

Legal Topics:

For related research and practice materials, see the following legal topics:

Energy & Utilities Law Administrative Proceedings Judicial Review Jurisdictional Prerequisites
Energy & Utilities Law Cogeneration & Independent Power Companies Public Utility
Regulatory Policies Act General Overview Energy & Utilities Law Electric Power Industry
Federal Power Act General Overview