

D. Copy of FERC Exemption Order

33 FERC 62,112

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

I - MAXMAT Corporation) Project No. 6544-001

ORDER GRANTING EXEMPTION FROM LICENSING OF A
SMALL HYDROELECTRIC PROJECT OF 5 MEGAWATTS OR LESS
(Issued February 9, 1994)

The Applicant 1/ filed an application for exemption from all or part of Part I of the Federal Power Act (Act) pursuant to 18 C.F.R. Part 4 Subpart K (1990) implementing in part Section 408 of the Energy Security Act (ESA) of 1980 for a project as described in the attached public notice. 2/ 1/

Notice of the 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 motions 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.

- 1/ I - MAXMAT Corporation, Project No. 6544, filed on July 13, 1993.
- 2/ 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).

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 (1983). 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, (1983). 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 data specified in this order, except as specifically directed by the Commission.

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.

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) Collins Project No. 6544 as described and designated in I - MAXMAT Corporation's application filed on July 13, 1993, 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 attached hereto as Form K-2, 18 C.F.R. §4.106 45 Fed. Reg. 76115 (November 18, 1990), and the following Special Article.

Article 6. Any exempted small hydroelectric power project that utilizes a dam which is more than 33 feet in height above streambed, as defined in 18 CFR 12.11(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant or high hazard potential, as defined in 33 CFR Part 222, is subject to the following provisions of 18 CFR Part 12:

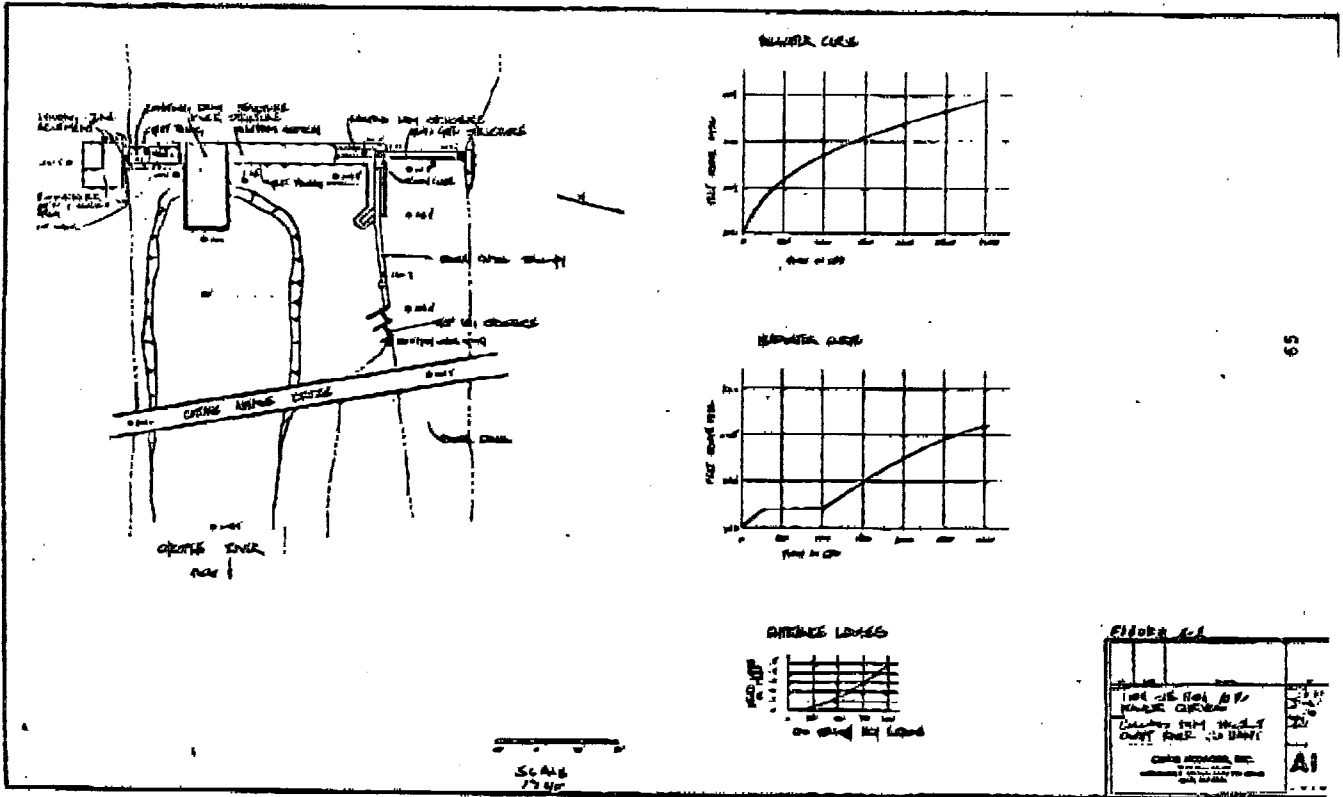
- (i) Section 12.4(b)(1)(i) and (ii), (2)(f), (ii)(A) and (B), (iv), and (v);
- (ii) Section 12.4(c);
- (iii) Section 12.5f;
- (iv) Subpart C; and
- (v) Subpart D.

For the purposes of applying these provisions of 18 CFR Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.



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

FIGURE G-1: Dam Site Plan and Power Curves



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- a. Type of Application: 5 MW Exemption
- b. Project No: 6544-001
- c. Date Filed: July 23, 1983
- d. Applicant: I - MAXMAT Corporation
- e. Name of Project: Collins
- f. Location: Chicopee River, Town of Wilbraham, Hampden County, Massachusetts.
- g. Filed Pursuant to: 16 U.S.C. §§2705 and 2708
- h. Contact Person: Mr. Kevin Shea, Swift River Company, Inc., 148 State Street, Boston, Massachusetts 02109.
- i. Comment Date: DEC 14 1982
- j. Description of Project: The proposed project would consist of: (1) an existing partially breached 300-foot-long, 11-foot-high masonry-capped rock-filled timber crib dam to be rehabilitated and would include new 3-foot-high flashboards; (2) a reservoir, which is to be restored to its original level, with a total storage capacity of 450 acre-feet at elevation of 223.4 feet M.S.L. with flashboards; (3) an existing 1,100-foot-long 90 to 40-foot-wide power canal with a 270-foot-long overflow spillway (not used for power production); (4) a new powerhouse located within the breached section containing two new turbine-generators with a total rated capacity of 1,500 kW; (5) a new 370-foot-long tailrace; (6) a 100-foot-long transmission line; and (7) appurtenant facilities. The project would generate up to 6,500,000 kWh annually. The application was filed pursuant to a preliminary permit issued to I - MAXMAT Corporation, Project No. 6544-000 on November 1, 1982.
- k. Purpose of Project: Energy produced at the project would be sold to either New England Power Company or Northeast Utilities Service Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D1a.

m. Purpose of Project: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

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Attachment
E-2 Form

(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.

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Attachment
E-2 Form

§ 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 XIX 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 purpose 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 four years, from the date on which this exemption was granted. If an exemption is revoked, the Commission will not accept a subsequent application for exemption within two years of the revocation.