

B-1.4 Regulatory Status

B-1.4.1 FERC Exemption & Amendment

FERC ORDER GRANTING EXEMPTION FROM LICENSING
ISSUED December 28, 1984

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Project No. 6096-001 -2-

29 ERC161-356

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

EXEMPTION

Before Commissioners: Raymond J. O'Connor, Chairman,
Georgiana Sheldon, A. G. Sousa,
Olivier G. Richard III and Charles G. Stalton.

Mini-Watt Electric Company) Project No. 6096-001

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

(Issued December 28, 1984)

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

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 received were 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 of the ESA, fish and wildlife agencies have determined appropriate to protect fish or damage to, fish and wildlife resources. The terms and conditions referred to in Article 2 are contained in any letters of comment from agencies which have been forwarded to the Applicant in conjunction with this exemption. 2/

1/ Mini-Watt Electric Company, Project No. 6096-001, filed on February 29, 1984.

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

3/ An exception from licensing granted by this Commission does not serve as any basis for restricting hunting and fishing access to the waterway involved except to the extent required for public safety purposes.

DC-W-31

Should the Applicant contest any terms or conditions that were proposed by Federal or State agencies in their letters of comment being outside the scope of Article 2, the Commission shall determine the scope of Article 2. 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, and other public comments, and staff's independent analysis issued in the form of a major Federal action analysis significantly affecting the quality of the human environment.

The Commission orders:

(A) The New Home Dam Project No. 6096 as described and designated in Mini-Watt Electric Company's application filed on February 29, 1984, is exempted from all of the requirements of the standard articles in 4.106, including licensing, subject to the attached hereto as Form 8-2, 18 C.F.R. § 4.106-45 Red. 8/10/85 (November 18, 1980), and the following Special Article:

Article 6. Any exempted small hydroelectric power project that utilizes a dam which is not a dam as defined in 18 CFR 12.31(c) of this chapter above streambed, as defined in 18 CFR 12.31(c) of this chapter above impounds more than 2,000 acre-feet of water, or has a significant 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)(i), (iii)(A) and (B), (iv), and (v);

(ii) Section 12.4(c);

(iii) Section 12.5;

(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.

(B) This order is final unless an application for rehearing is filed within 30 days from the date of its issuance as provided in Section 313(a) of the Federal Power Act. The filing of an

application for rehearing does not operate as a stay of the effective date of this order, except as specifically ordered by the Commission. Failure to file an application for rehearing shall constitute acceptance of this order.
By the Commission.
(S E A L)

Kenneth F. Plumb
Kenneth F. Plumb,
Secretary.

P-6096-001

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission
(October 9, 1984)

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

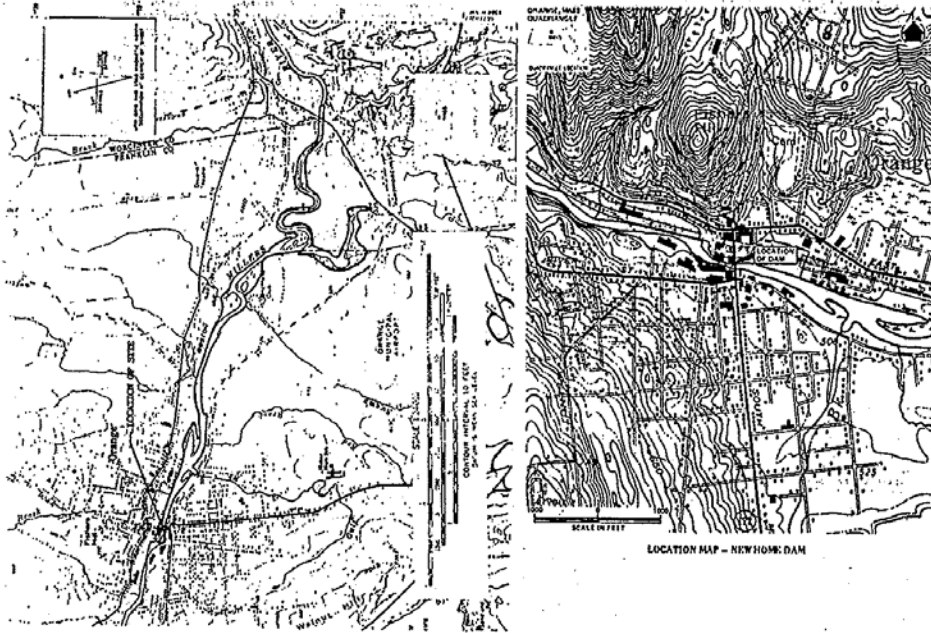
- a. Type of Application: Exemption from Licensing
- b. Project No: 6096-001
- c. Date Filed: February 29, 1984
- d. Applicant: Mini-Walt Electric Company
- e. Name of Project: New Home Dam Project
- f. Location: On the Millers River in Franklin County, Massachusetts.
- g. Filed Pursuant to: Section 409 of the Energy Security Act of 1980, 16 U.S.C. §§2705 and 2708 as amended.
- h. Contact Person: Bruce J. Dexter, Mini-Walt Electric Company P.O. Box 217, 18 Chase Court, Orange, Massachusetts 01364
- i. Comment Date: NOV 14 1984
- j. Description of Project: The proposed project would consist of: (1) an existing 8.8-foot-high, 87-foot-long concrete and masonry dam; (2) a reservoir having a surface area of 108 acres, a storage capacity of 530 acre-feet, and a normal water surface elevation of 302.8 feet m.s.l.; and (3) the North Bank and South Bank Developments.

The North Bank Development would consist of: (1) an existing 10-foot-wide, 100-foot-long intake flume; (2) an existing powerhouse containing 1 new generating unit with a capacity of 187 kW; (3) an existing 16 to 30-foot-wide, 120-foot-long tailrace; (4) an existing 200-foot-long, 24-kV transmission line; and (5) appurtenant facilities.

The South Bank Development would consist of: (1) an existing 40-foot wide, 100-foot-long intake channel; (2) an existing concrete gated intake structure; (3) a new powerhouse with three generating units with a total capacity of 480 kW; (4) a new 40-foot-wide, 200-foot-long tailrace; (5) a new 200-foot-long, 4.16-kV transmission line; and (6) appurtenant facilities. The applicant estimates the annual generation would be 2,840,000 kWh.

Applicant owns all existing facilities.
- k. Purpose of Project: Project energy would be sold to Massachusetts Electric Company
- l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3A

DO-4-18



-1-

Attachment
B-1 Form

§ 4.108. 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 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.

-2-

Attachment
B-1 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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Al. Exemption for Small Hydroelectric Power Project Under 50W Capacity -- Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A9. Notice of Intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene - Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§201.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and three copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Spillner, Director, Division of Project Management, Branch, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 104.1B at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D3a. Agency Comments - The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb
Secretary