

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Comtu Falls Corporation and Comtu  
Falls Associates

Project No. 788-101



ORDER ISSUING LICENSE  
(Minor Project)

(Issued July 18, 1986)

Comtu Falls Corporation and Comtu Falls Associates have filed a joint license application under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Comtu Falls Project, located in Windsor County, Vermont, on the Black River. The project would affect the interests of interstate or foreign commerce.

Notice of the application has been published. The motions to intervene that have been granted and the comments filed by agencies and individuals have been fully considered in determining whether to issue this license, as discussed below.

Summary of Findings

The proposed project would consist of an existing concrete dam, a concrete penstock and an existing reinforced concrete powerhouse containing one existing generating unit and one new generating unit.

The project would have an installed capacity of 400 kW and would generate an estimated 1,300,000 kWh annually. A proposed project is potentially feasible so long as its projected levelized cost is less than the long-term levelized incremental energy cost of any utility in the region that can be served by the project. The staff has identified projected incremental energy costs in the region as high as 63.7 mills/kWh. Since the levelized cost of energy from the project is estimated to be 53.0 mills/kWh, the staff is reasonably confident that there will be a market for the project power at a price sufficient to support the project's construction and operation.

The dam is safe and adequate for continued operation. The Commission's New York Regional Office staff inspected the project on March 29, 1984, and did not observe any matters requiring Commission action. The dam is classified as low hazard.

An Environmental Assessment (EA) was issued for this project. Background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment are contained in the EA attached to this order. Issuance of this license is not a major federal action significantly affecting the quality of the human environment.

The Director, Office of Hydropower Licensing, concludes that the project would not conflict with any planned or authorized development, and would be best adapted to comprehensive development of the waterway for beneficial public uses.

The Director orders:

(A) This license is issued to Comtu Falls Corporation and Comtu Falls Associates (licensee) for a period of 40 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Comtu Falls Project. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G:

<u>Exhibit G-</u>	<u>FERC No. 7888-</u>	<u>Showing</u>
1	5	Location Map
2	6	Project Map

(2) Project works consisting of: (a) the 4-foot-high, 128-foot-long concrete gravity Comtu Falls Dam with a crest elevation of 392 feet mean sea level; (b) 2-foot-high flashboards; (c) a small impoundment; (d) an intake structure at the west side of the dam; (e) a 6-foot by 6-foot, 65-foot-long reinforced concrete penstock; (f) a powerhouse with a 250-kW and a 150-kW turbine-generator units; (g) the 600-volt induction generator leads, a 600/4,160-volt, 300-kVA transformer bank, a 2,400-volt synchronous generator lead, a 2,400/4,160-volt, 500-kVA transformer bank, a 20-foot-long, 4,160-volt transmission line; and (h) other appurtenances.

The project works generally described above are more specifically shown and described by the following portions of Exhibits A and F:

<u>Exhibit F</u>	<u>FERC No. 7888-</u>	<u>Showing</u>
1	1	Plan View
2	2	Existing Power Station
3	3	Proposed Powerhouse Addition
4	4	Dam Cross Section

Exhibit A. Page 4 (vii) of the application filed on February 7, 1984.

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project and located within or outside the project boundary, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The Exhibit G described above and those sections of Exhibits A and F in paragraph B above are approved and made part of the license.

(D) The following sections of the Act are waived and excluded from the license for this minor project:

4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act that are waived here; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

(E) This license is subject to the articles set forth in Form L-15, (October 1975), entitled "Terms and Conditions of License for Unconstructed Minor Project Affecting the Interests of Interstate or Foreign Commerce", except Article 15. The license is also subject to the following additional articles:

Article 201. The licensee shall pay the United States the following annual charge, effective the first day of the month in which this license is issued:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 530 horsepower.

Article 202. The licensee shall clear and keep clear to an adequate width all lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which result from maintenance, operation, or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed.

All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, state, and local statutes and regulations.

Article 301. The licensee shall commence construction of project works within two years from the issuance date of the license and shall complete construction of the project within four years from the issuance date of the license.

Article 302. The licensee shall file one copy with the Commission's Regional Director and two copies with the Director, Division of Inspections, of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures, at least 60 days prior to start of construction. The Director, Division of Inspections, may require changes in the plans and specifications to assure a safe and adequate project.

Article 303. The licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the licensee shall file with the Commission's Regional Director and Director, Division of Inspections, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 304. The licensee shall within 90 days of completion of construction file for approval by the Director, Division of Project Management, revised Exhibits A, F, and G to describe and show the project as-built.

Article 401. The licensee shall discharge from the Comtu Falls Project, a continuous minimum flow of 4 cubic feet per second (cfs) over the dam spillway, or inflow to the project, whichever is less. When the flow of the Black River, as measured immediately upstream of the project dam, is less than 44 cfs, the licensee must pass all flow over the dam spillway. These flows may be temporarily modified if required by operating emergencies beyond the control of the licensee and upon mutual agreement among the licensee, the Vermont Agency of Environmental Conservation, and the U.S. Fish and Wildlife Service.

Article 402. Prior to any future construction at the project, the licensee shall consult with the Vermont State Historic Preservation Officer (SHPO) about the need for cultural resources studies or a management plan. Documentation of the nature and extent of consultation, including a cultural resources management

plan, a schedule to conduct any necessary investigations before construction, and a copy of a letter from the SHPO accepting the plan, shall be filed with the Commission 6 months before any construction activity. The licensee shall make funds available in a reasonable amount for any required work. If any previously unrecorded archeological or historic properties are encountered during construction or development of any project works or other facilities at the project, construction activities in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the eligibility of the properties for listing on the National Register of Historic Places, and the licensee shall consult with the SHPO to develop an appropriate plan for avoidance or mitigation. If the licensee and the SHPO cannot agree on the amount of money to be expended for specific project archeological or historical purposes, the Commission reserves the right to require the licensee to conduct, at the licensee's own expense, any such work found necessary.

Article 403. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining

walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certificates or permits have been obtained;

(3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions

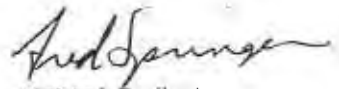
to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(f) This order is issued under authority delegated to the Director and is final unless appealed under Rule 1902 to the Commission by any party within 30 days from the issuance date of this order. Filing an appeal does not stay the effective date of this order or any date specified in this order unless otherwise ordered by the Commission. The licensee's failure to appeal this order shall constitute acceptance of the license.

  
 for  
 Richard T. Hunt  
 Director, Office of  
 Hydropower Licensing