

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Frontier Technology, Inc. ) Project No. 6661-004

ORDER AMENDING EXEMPTION

( Issued December 14, 1984 )

Frontier Technology, Inc. (Exemptee) filed on October 12, 1984, an application for amendment of its exemption for the Falls Creek Project located on Falls Creek within the Willamette National Forest, Linn County, Oregon. 1/

The project, as originally proposed, would use a maximum flow of 16.5 cfs. The project would have an installed capacity of 2.7 MW and would use a 24-inch-diameter penstock tapering to 12 inches. The Exemptee proposes to modify the Falls Creek project by using a maximum flow of 26.4 cfs, increasing the capacity of the project to 4.0 MW, and increasing the penstock diameter to 30 inches tapering to 20 inches. The location of project facilities and the 1 cfs minimum stream flow originally proposed would remain unchanged.

Agency Consultations:

The Oregon Water Resources Department, the Oregon Department of Fish and Wildlife and the U.S. Fish and Wildlife Service have been consulted, and do not object to the proposed modifications.

1/ Authority to act on this matter is delegated to the Director, Office of Hydropower Licensing, under §375.314 of the Commission's regulations, 49 Fed. Reg. 29,369 (1984)(Errata issued July 27, 1984)(to be codified at 18 C.F.R. §375.314). This order may be appealed to the Commission by any party within 30 days of the issuance date of this order 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 date specified in this order, except as specifically directed by the Commission.


Environmental Impacts:

No significant impacts will result from approval of this amendment. Therefore, it is concluded that approval of this application would not constitute a major Federal action significantly affecting the quality of the human environment.

It is ordered that:

The Order Granting Exemption and Denying Competing Permit Application issued March 4, 1983, is amended as follows:

Project Description - The proposed project would consist of: (1) a 5-foot-high, 30-foot-long diversion structure; (2) a 7,380-foot-long, 30-inch varying to 20-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 4,000 kW, operating under a head of 2,250 feet; and (4) appurtenant facilities. The estimated average annual energy output is 14,906,000 kWh.

*for*   
Quentin A. Edson  
Director, Office of  
Hydropower Licensing

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: C. M. Butler III, Chairman;  
Georgiana Sheldon, A. G. Sousa  
and Oliver G. Richard III.

Frontier Technology, Inc. ) Project No. 6661-000  
Mountain West Hydro, Inc. ) Project No. 6691-000

ORDER GRANTING EXEMPTION AND DENYING  
COMPETING PERMIT APPLICATION

(Issued March 4, 1983)

Background

On September 3, 1982, the Frontier Technolgy, Inc. ("FTI") filed an exemption application 1/ for the proposed Falls Creek Project No. 6661, 2/ which consists of a 5 foot-high, 25 foot-long diversion structure; a 7,650 foot-long, 24-inch varying to 12-inch-diameter penstock; and a powerhouse containing a single generating unit with a rated capacity of 2,700 kW, operating under a head of 2,200 feet. FTI estimates that its project will produce an average of 15,298,000 kWh annually.

On September 20, Mountain West Hydro, Inc. ("MWHI") filed a preliminary permit application proposing to develop the same site as FTI's exemption. MWHI's proposal would incorporate a 6 foot-high, 31 foot-long diversion structure; a 30 inch-diameter, 15,920 foot-long penstock; and a powerhouse containing a single generating unit with a rated capacity of 6,400 KW, operating under a head of 2,453 feet. MWHI estimates its project will produce an average of 29,276,000 kWh annually.

1/ FTI's application was filed pursuant to 18 CFR §4.101 et seq. of the Commission's regulations, which implements Section 468 of the Energy Security Act of 1980 ("ESA") (16 U.S.C. §§2705 and 2708 as amended).

2/ The project is proposed on Falls Creek within Williamette National Forest in Linn County, Oregon.

Project Nos. 6661-000,  
6691-000

Both applications subsequently were accepted and noticed 3/, and comments were requested from interested Federal and State agencies. All comments, protests and motions to intervene that were filed in the two proceedings have been considered. No agency has filed an objection to the issuance of either the exemption or the permit.

#### Discussion

The Commission's regulations provide that exemption applications will be favored over competing permit applications. 4/ This rule reflects the rebuttable presumption that preliminary permit applications are usually speculative in nature and rarely offer substantiated information, 5/ whereas accepted exemption applications are fully developed proposals which are to be put into effect soon after issuance. The analysis of competing permit and exemption proposals therefore involves two steps: (1) whether the permit applicant has shown through substantiating information that its proposal is superior to that of the exemption applicant's plans; and (2) whether the exemption application adequately utilizes the water resources of the site, taking into account other considerations such as environmental constraints. If the Commission were to deny the exemption application as being inconsistent with the public interest, it would have the option of issuing the uncontested permit.

3/ The exemption was noticed in accordance with Section 408 of ESA and the regulations implementing that section. The permit was noticed pursuant to Section 4(f) of the Federal Power Act and Section 4.31(c)(2) of the Commission's regulations.

4/ See 18 C.F.R. §4.104(e)(i)(1982); see also Order No. 106 (Final Rule on 5 Megawatt Exemption), FERC Stat. & Reg. (CCH) ¶30,204 at 31,363 (Nov 7, 1980); and Glacier Energy Company, et al., 21 FERC ¶61,209 (Nov. 26, 1982).

5/ See, e.g., The Fluid Energy System, Inc., et al., 20 FERC ¶61,017 (July 8, 1982); Gregory Wilcox, et al., 21 FERC ¶61,132 (Nov. 24, 1982); and Energenics Systems Inc., 21 FERC ¶61,185 (Nov. 26, 1982). Permits are issued so that the permittee can retain priority while studying the feasibility of its proposal and performing the detailed studies necessary to prepare a license application.

Project Nos. 6661-000,  
6691-000

Here, MWHI has not demonstrated that its proposal is superior to that of FTI's exemption. In fact, MWHI's proposal is premised upon unsubstantiated claims, rather than the sort of data which is a prerequisite for demonstrating superiority.

As to the second factor, each exemption application is reviewed to determine whether the proposal makes adequate use of the water resources at the site, taking into account other considerations such as environmental constraints. The Commission may require modifications to a proposal if it determines them to be necessary to make the development compatible with the public interest, and may reject an application upon a finding that it is inconsistent with the public interest. We have examined FTI's exemption proposal and find, based upon a review of the comments and FTI's detailed studies, including studies of the use of the available head and stream flow, that the proposed project adequately uses the flow and fall of the stream. Accordingly, we find that the exemption will be granted, and the permit application will be denied.

With respect to the terms and conditions governing this exemption we note that 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 Frontier Technology, Inc. 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.

Project Nos. 6661-000,  
6691-000

The Commission Orders:

(A) Falls Creek Hydroelectric Project No. 6661, as described and designated in Frontier Technology Inc.'s application filed on September 3, 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 attached hereto as Form E-2, 18 CFR §4.106 (1982), and the Special Article noted below:

Article 6. The construction, operation, and maintenance of the exempt project may be reviewed by the Commission and subjected to further requirements for consistency with the terms and conditions of the regional fish and wildlife program developed pursuant to the Pacific Northwest Electric Power Planning and Conservation Act. Inconsistencies between the regional program and the mandatory conditions under Article 2 will be resolved by the Commission.

(B) The application for preliminary permit for Project No. 6691, filed by Mountain West Hydro, Inc. on September 20, 1982, is denied.

By the Commission.

( S E A L )

*Kenneth F. Plumb*

Kenneth F. Plumb,  
Secretary.

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 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.

(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.