

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

EXEMPTION

Project Nos. 7532-000
& 2659-000

-2-

Before Commissioners: Raymond J. O'Connor, Chairman;
Georgiana Sheldon, J. David Hughes,
A. G. Sousa and Oliver G. Richard III.

Farmers Irrigation District) Project No. 7532-000
Pacific Power and Light Company) Project No. 2659-002

ORDER GRANTING EXEMPTION FROM LICENSING OF A
SMALL HYDROELECTRIC PROJECT OF 5 MEGAWATTS OR LESS
AND APPROVING NON-PROJECT USE OF PROJECT LANDS

(Issued April 6, 1984)

The Applicant ^{1/} 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. ^{2/} The Pacific Power and Light Company filed on August 22, 1983, an application for approval of non-project use of project land for the Powerdale Project No. 2659, to permit the Applicant to utilize Project No. 2659 lands for the development of Project No. 7532. Approval of the application for non-project use of project land, Project No. 2659, will not affect the operation or maintenance of Project No. 2659.

Notice of the applications 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 motions to intervene that were filed have been considered. No agency has any objection relevant to issuance of this exemption.

The Columbia River Inter-Tribal Fish Commission ("CRITFC") has expressed concern about potential cumulative adverse environmental impacts from proposed hydropower development in the Hood River Basin, with particular emphasis on existing and potential anadromous fishery resources.

^{1/} Farmers Irrigation District, Project No. 7532-000, filed August 16, 1983.

^{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).

This order is consistent with the Commission's decision in Olympus Energy Corporation, Project No. 6617-000, 26 FERC ¶ (March 29, 1984), where the Commission indicated that the statutory scheme for exemptions allocates the exclusive responsibility for protecting, as well as analyzing any adverse impacts on, fish and wildlife resources to the fish and wildlife agencies empowered to impose mandatory terms and conditions on exemptions. Thus, the decision on whether to perform an assessment of cumulative environmental impacts on fish and wildlife resources rests with the fish and wildlife agencies. Issuance of an exemption does not interfere with their decision in any case where such agencies have not raised cumulative impacts concerns, or where they, or the Commission or its delegate, have included in the exemption an open-ended condition allowing these agencies to add or modify whatever terms they may subsequently determine are necessary and appropriate to mitigate any project impacts, including cumulative, on fish and wildlife. Consequently, it is appropriate to grant the exemption application in this case.

The proposed project would be located on a river which is part of the Columbia River Basin. The Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §839 et seq. ("Planning Act"), requires that, in their decision-making process, federal agencies responsible for regulating hydro facilities on the Columbia River or its tributaries provide equitable treatment for fish and wildlife with the other purposes for which hydropower facilities are operated. Section 4(h)(11)(A)(i) of the Planning Act. As explained in Olympus Energy Corporation, supra, Congress has established the need for power from projects that qualify for exemption by declaring, in the Energy Security Act, a national policy of reducing America's dependence on imported oil by encouraging small hydroelectric projects. Also, Congress has required the Commission to include in any exemption granted those conditions required by the U.S. Fish and Wildlife Service and the state fish and wildlife agency as necessary for the protection of fish and wildlife resources. Congress has thus built into the exemption program the balancing of energy generation and fish and wildlife resources required by the Planning Act.

The Fish and Wildlife Program, developed pursuant to the Planning Act, requires consolidated review of all proposals for hydroelectric development in a river basin, and requires the assessment of cumulative effects of hydroelectric development on fish and wildlife. Provision 1204 of the Fish and Wildlife Program of the Northwest Power Planning Council. While the Program is not binding on it, the Commission must take it into account, "to the fullest extent practicable," at each relevant stage of the decision-making process. Section 4(h)(11)(A)(ii) of the Planning Act. As we have noted, assessment and mitigation of environmental impacts, site-specific or cumulative, on fish and wildlife resources of projects proposed for exemption are within

the exclusive purview of the fish and wildlife agencies. Our exemption process accommodates these agencies' decisions on these matters. Therefore, there is no conflict between our action here and the provisions of the Planning Act.

The CRITFC argue that the issuance of the exemption and construction of the project would interfere with treaty-protected fishing rights. As found in Olympus Energy Corp., supra, in exemption proceedings it is the exclusive responsibility of the fish and wildlife agencies to evaluate impacts on fish and wildlife resources and to submit terms and conditions to minimize or eliminate impacts to these resources. To the extent that any treaty fishing rights would be affected by an exemption, it is for the U.S. Fish and Wildlife Service to either submit terms and conditions to avoid the impacts or state that the exemption cannot be issued because of unavoidable impacts.

Environmental Considerations

Standard Article 2, included in this exemption, requires the 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.

Federal and State fish and wildlife agencies have set terms and conditions to protect fish and wildlife resources of the project area. Should the Applicant contest any terms or conditions that were proposed by the 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, it is concluded that the issuance of this order is not a major Federal action significantly affecting the quality of the human environment.

The Commission orders:

(A) The Farmers Irrigation District No. 2 Project No. 7532 as described and designated in Farmers Irrigation District's application filed on August 16, 1983, 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 C.F.R. §4.106 45 Fed. Reg. 76115 (November 18, 1980), and the following Special Articles:

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.

Article 7. The Exemptee shall, prior to the commencement of any construction, consult with the Oregon State Historic Preservation Officer (SHPO) to: (1) determine the scope of any necessary cultural resource survey; (2) conduct such a survey; and (3) prepare a report to be filed with the SHPO describing the results of its survey work, providing an assessment of the significance of the cultural resources inventoried, including possible eligibility for the National Register of Historic Places, and setting forth recommendations for the avoidance of, or mitigation of damage to, significant properties at the project. Any necessary mitigation work should be undertaken by the Exemptee in cooperation with the SHPO and in accordance with a schedule and plan negotiated between the Exemptee and the SHPO. The Exemptee shall make available funds in a reasonable amount for any survey and mitigation work as required. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Exemptee shall consult with the SHPO to develop and implement a mitigation plan for the protection of significant archeological or historical resources.

Article 8. 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 12.31(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)(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.

Project Nos. 7532-000
& 2659-002

-5-

(B) The Pacific Power and Light Company is authorized to grant easements to the Farmers Irrigation District for the construction, operation, and maintenance of a hydroelectric project utilizing lands of the Powerdale Project No. 2659.

(C) A copy of the instrument of conveyance shall be filed with the Commission within 60 days.

(D) 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 or of any other date specified in 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. Commissioner Sousa concurred for the reasons to be set forth in his separate statement to the order issued April 6, 1984, in Project No. 4458-002, Middle Fork Irrigation District and Project No. 6645-000, General Energy Development, Inc.

(S E A L)

Lois A. Cashell

Lois D. Cashell,
Acting Secretary.

Project Nos. 7532-000
& 2659-000

ATTACHMENT (A)

- a. Type of Application: Exemption (5MW or Less)
- b. Project No: 7532-000
- c. Date Filed: August 16, 1983
- d. Applicant: Farmers Irrigation District
- e. Name of Project: Farmers Irrigation District Project No. 2
- f. Location: On Farmers Ditch off of the Hood River, near Hood River, in Hood River County, Oregon
- g. Filed Pursuant to: Energy Security Act of 1980, Section 408 16 U.S.C. §§2705 and 2708 as amended
- h. Contact Person: Ladd Henderson, Manager, Farmers Irrigation District, 1185 Tucker Road, Hood River, Oregon 97031
- i. Comment Date: **NOV 21 1983**
- j. Description of Project: The proposed project would consist of: (1) a 6-foot-high concrete diversion and intake structure at elevation 690 feet diverting water from Farmers Ditch; (2) a 6,900-foot-long, 42-inch-diameter steel penstock; (3) a powerhouse containing a generating unit rated at 2,500 kW at a head of 381 feet; (4) a 400-foot-long, 12.5-kV transmission line. The average annual energy generation is estimated to be 13 million kWh.
- k. Purpose of Project: Power would be sold to Pacific Power and Light Company.
- l. This notice also consists of the following standard paragraphs: A1, A9, B, C & D3a
- m. The proposed project would occupy project lands of licensed Project No. 2659. The Licensee does not object, and the Applicant and the Licensee have signed an easement which permits the development of Project No. 7532 on project lands.

Project Nos. 7532-000
& 2659-002

-5-

(B) The Pacific Power and Light Company is authorized to grant easements to the Farmers Irrigation District for the construction, operation, and maintenance of a hydroelectric project utilizing lands of the Powerdale Project No. 2659.

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Project Nos. 7532-000
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- c. Date Filed: August 16, 1983
- d. Applicant: Farmers Irrigation District
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- f. Location: On Farmers Ditch off of the Hood River, near Hood River, in Hood River County, Oregon
- g. Filed Pursuant to: Energy Security Act of 1980, Section 408 16 U.S.C. §§2705 and 2708 as amended
- h. Contact Person: Ladd Henderson, Manager, Farmers Irrigation District, 1185 Tucker Road, Hood River, Oregon 97031
- i. Comment Date: **NOV 21 1983**
- j. Description of Project: The proposed project would consist of: (1) a 6-foot-high concrete diversion and intake structure at elevation 690 feet diverting water from Farmers Ditch; (2) a 6,900-foot-long, 42-inch-diameter steel penstock; (3) a powerhouse containing a generating unit rated at 2,500 kW at a head of 381 feet; (4) a 400-foot-long, 12.5-kV transmission line. The average annual energy generation is estimated to be 13 million kWh.
- k. Purpose of Project: Power would be sold to Pacific Power and Light Company.
- l. This notice also consists of the following standard paragraphs: A1, A9, B, C & D3a
- m. The proposed project would occupy project lands of licensed Project No. 2659. The Licensee does not object, and the Applicant and the Licensee have signed an easement which permits the development of Project No. 7532 on project lands.

§ 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.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Farmers Irrigation District)	
Small Power Production and Cogeneration Facilities)	Docket No. QF83-401-000
-- Qualifying Status)	

ORDER GRANTING APPLICATION FOR CERTIFICATION
AS A QUALIFYING SMALL POWER PRODUCTION FACILITY

(Issued November 22, 1983)

On August 24, 1983, Farmers Irrigation District, (Applicant) of Hood River, Oregon, filed an application with the Federal Energy Regulatory Commission (Commission) for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. 1/ Notice of the application was published in the Federal Register on September 30, 1983. 2/ No protests or petitions to intervene have been filed.

The 1.65 megawatt hydroelectric facility will be located on the Hood River, in Hood River, Oregon. Applicant owns no other facility which is located within one mile of the proposed facility and which uses the same energy source. The facility thus meets the criteria set out in § 292.204 of the Commission's regulations.

1/ Section 292.207 (b)(5) of the Commission's regulations requires the Commission to issue an order granting or denying an application for qualifying status, tolling the time for issuance of an order, or setting the matter for hearing within 90 days of the filing of the application. Section 375.308(pp) of the Commission's regulations delegates to the Director, Office of Electric Power Regulation (OEPR), the authority to take appropriate action on uncontested applications for qualifying status. 18 C.F.R. § 375.308(pp) (1982).

2/ 48 Fed. Reg. 44887 (1983).

Docket No. QF83-401-000

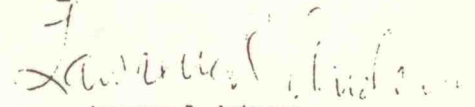
No electric utility, electric utility holding company, or any combination thereof has any ownership interest in the facility. The facility thus satisfies the criteria set forth in § 292.206 of the Commission's regulations.

It is found that:

The small power production facility, as described in the application submitted by Farmers Irrigation District, meets the requirements established in § 292.203(a) of the Commission's regulations regarding qualification as a small power production facility.

It is ordered:

The application for certification of qualifying status filed on August 24, 1983, by Farmers Irrigation District pursuant to § 292.207 of the Commission's regulations and section 3(17)(C) of the Federal Power Act, as amended by section 201 of the Public Utility Regulatory Policies Act of 1978, is hereby granted provided that the facility operates in the manner described in the application. 3/


Lawrence R. Anderson
Director, Office of Electric
Power Regulation

3/ Certification as a qualifying facility serves only to establish eligibility for benefits provided by the Public Utility Regulatory Policies Act of 1978, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement. Certification does not establish any property rights, resolve competing claims for a site, or authorize construction.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

22 FERC 162,127

-2-

Farmers Irrigation District) Project No. 6801-000

ORDER GRANTING EXEMPTION FROM LICENSING FOR
A CONDUIT HYDROELECTRIC PROJECT

(Issued February 1, 1983)

The Applicant 1/ 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 J (1980) implementing Section 30 of the Federal Power Act (Act) for a project as described in the attached public notice. 2/

Notice of the application was published 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.

1/ Farmers Irrigation District, Project No. 6801, filed on October 26, 1982.

2/ 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) FERC Statutes and Regulations #30,238. 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, FERC Statutes and Regulations #29,052 47 Fed. Reg. 19014 (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.

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) FID Project No. 3 (FERC Project No. 6801) as described and designated in the Farmers Irrigation District's application filed on October 26, 1982, is exempted from all of the requirements of Part I of the Federal Power Act, including licensing, subject to the standard articles in §4.94 of the Commission's regulations attached hereto as Form E-1, 18 C.F.R. §4.94 (1981), and the following Special Article:

Article 3. 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 Commission may accept a license application by any qualified license applicant and revoke this exemption if actual construction or development of the 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.

Robert E. Cackowski

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

§4.94 Standard terms and conditions of exemption.

Any exemption granted under § 4.93 for a small conduit hydroelectric facility 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 facility. 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 facility 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.

- a. Type of Application: Conduit Exemption
- b. Project No: 6801-000
- c. Date Filed: October 26, 1982
- d. Applicant: Farmers Irrigation District
- e. Name of Project: FID Project #3
- f. Location: Low Line Ditch in Hood River County, Oregon
- g. Filed Pursuant to: [16 U.S.C. §823(a)]
- h. Contact Person: Mr. Ladd Henderson, Farmers Irrigation District, 1185 Tucker Road, Hood River, Oregon 97031, with a copy to: Mr. Jay R. Bingham, Bingham Engineering, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.
- i. Comment Date: JAN 10 1983
- j. Description of Project: The proposed project would consist of: (1) a diversion structure in the Low Line Ditch; (2) a 30-inch-diameter, 21,500-foot-long penstock; and (3) a powerhouse to contain a turbine-generating unit with a rated capacity of 1.65 MW operating under a head of 646 feet.
- k. This notice also consists of the following standard paragraphs: B and D3b
- l. Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth P. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydro-power Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

