

# Attachment 3

82 EERC 162, 705

- 2 -

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Sterling Enterprises, Inc. ) Project No. 8014-000

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

( Issued September 30, 1985 )

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 (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, 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. 3/

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.

- 1/ Sterling Enterprises, Inc., Project No. 8014, filed January 30, 1984.
- 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/ An exemption 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-A-23

Cultural Resources

The Vermont State Historic Preservation Officer (SHPO) states (letter dated March 19, 1985) that the Slack Chimney, listed on the National Register within the Springfield Historic District, must not be adversely affected by the proposed repair and refurbishing of the Slack Dam hydroelectric facility. The Applicant has stated that no disturbance to the chimney would occur and that the debris around the project site, including the area of the chimney, would be removed, thereby improving the visual quality of the site. Adverse effects to the Slack Chimney are unlikely, however, the Exemptee should continue to consult with the SHPO and implement any measures that may become necessary to avoid disturbance to this structure. Article 9 ensures the protection of the historical values of the Slack Chimney.

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. 4/

Pursuant to 18 C.F.R. § 375.314, the Director of the Office of Hydropower Licensing orders:

(A) The Slack Dam Project No. 8014 as described and designated in Sterling Enterprises, Inc.'s application filed on January 30, 1984, 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. 11658 (March 25, 1985), and the following article.

Article 9. Exemptee shall continue to consult and cooperate with the Vermont State Historic Preservation Officer (SHPO) to protect the Slack Chimney component of the Springfield Historic District. Further, Exemptee shall implement any necessary measures recommended by the SHPO to protect and preserve the historical integrity of the Slack Chimney.

(B) This order is final unless appealed to the Commission by any party within 30 days from the issuance date of this order under 18 C.F.R. 385.1902 (1985).

*D. M. Pusateri*  
Kenneth M. Pusateri  
Acting Director, Office  
of Hydropower Licensing

- 4/ Environmental Assessment, Slack Dam Project, FERC Project No. 8014-000, Division of Environmental Analysis, Office of Hydropower Licensing, Federal Energy Regulatory Commission, July 17, 1985. This document is available in the Division of Public Information and in the Commission's public file associated with the proceeding.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission

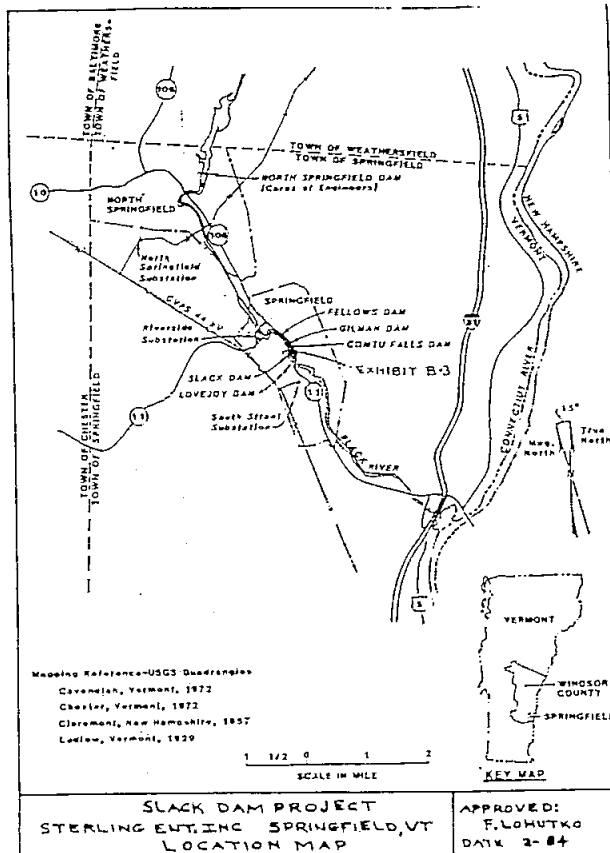
(January 1, 1984)

This 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 (less than 5 MW)
- b. Project No: 8014-000
- c. Date Filed: January 30, 1984
- d. Applicant: Sterling Enterprises, Inc.
- e. Name of Project: Slack Dam
- f. Location: On the Slack River in Windsor County, Vermont
- g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. §§ 2706 and 2708 as amended.
- h. Contact Person: Mr. Flynn Johnson, 24 Main Street, Springfield, Vermont 05156
- i. Contact Date: 1/8/84
- j. Competing Applications: Project No. 8014-000, Part 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
- k. Description of Project: The reconstruction of the Slack River project consists of: (1) the existing 30-foot-high and 42-ft. long concrete gravity Slack Dam with a crest elevation of 1641 feet above sea level; (2) a small impoundment with a surface area of 4.8 acres; (3) an existing intake and 1.5-mile transmission line with a total installed capacity of 2.126,578 kw-hr. Existing facilities are owned by the Applicant.
- l. Purpose of Project: Project energy would be sold to the Central Vermont Public Corporation.
- m. This notice also consists of the following stated paragraphs: A, B, C, and D.
- n. Purpose of Exemption: 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.

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.

Renneth 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 the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or to 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 revoke this exemption if actual construction or any proposed generating facilities has not begun within two years, or has not been completed within four years from the date on which this exemption was granted. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project 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.

(f) Article 6. In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

(g) Article 7. The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

(h) Article 8. Any exempted small hydroelectric power project that utilizes a dam that 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, as it may be amended:

- (1) Section 12.4(b)(1)(i) and (ii), (b)(2)(i) and (iii), (b)(iv), and (b)(v);
- (2) Section 12.4(c);
- (3) Section 12.5;
- (4) Subpart C; and
- (5) 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.

(i) Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.