

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

EXEMPTION

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

Long Lake Energy Corporation	)	Project No. 4356-001
Essex County Industrial Development Agency	)	Project No. 5236-000
New York State Department of Environmental Conservation	)	Project No. 5752-000
International Paper Company	)	Project No. 5760-000
International Paper Company	)	Project No. 5762-000

ORDER REINSTATING EXEMPTIONS AND DENYING APPLICATIONS  
FOR PRELIMINARY PERMIT AND LICENSE

(Issued November 15, 1984)

On June 11, 1982, the Commission inadvertently granted by operation of law exemptions from licensing for the Upper LaChute River Project No. 5760 and the Lower LaChute River Project No. 5762, <sup>1/</sup> which were the subject of applications filed by International Paper Company (IPC) on December 14, 1981. The applications competed with applications for preliminary permit and license filed by Essex County Industrial Development Agency (Essex County) for the LaChute River Project No. 5236, Long Lake Energy Corporation (Long Lake) for the LaChute River Project No. 4356, and New York State Department of Environmental Conservation (New York State Department) for the Ticonderoga Project No. 5752. <sup>2/</sup>

On July 20, 1982, the Commission issued an order vacating the grant of IPC's exemptions. <sup>3/</sup> IPC filed a petition for rehearing of that order, which was denied by order issued August 2, 1983. <sup>4/</sup>

- <sup>1/</sup> The projects would be located on the LaChute River in the Village of Ticonderoga, Essex County, New York.
- <sup>2/</sup> Essex County filed its application for preliminary permit on August 14, 1981. Long Lake and New York State Department filed applications for license on September 21, 1981, and December 14, 1981, respectively.
- <sup>3/</sup> Long Lake Energy Corporation, 20 FERC ¶ 61,058 (1982).
- <sup>4/</sup> Long Lake Energy Corporation, 24 FEPC ¶ 61,177 (1983).

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Project Nos. 4356-001, 5298-001,  
5761-000, 5760-000 and 5762-000

IPC appealed the Commission's August 2 order to the United States Court of Appeals for the District of Columbia Circuit. On June 22, 1984, the court ruled that the Commission had no authority to vacate IPC's exemptions, and ordered the Commission to reinstate the exemptions. 5/

In accordance with the court's ruling, IPC's exemptions for Project Nos. 5760-000 and 5762-000 are reinstated as of the date of this order. Consistent with this action, the applications for permit and license, which are mutually exclusive, must be denied.

The exempted projects will utilize dams which potentially pose a serious threat to life, health, and property. We previously found that the projects should be subject to annual FERC inspections and independent inspections as provided for in 18 C.F.R., Part 12, to ensure adequate treatment of public safety concerns. 6/ Imposition of the dam safety terms and conditions under Part 12 requires modification of the exemptions granted. IPC has agreed to such modification. The exemptions for Project Nos. 5760-000 and 5762-000 shall be modified accordingly. 7/

The Commission orders:

(A) International Paper Company's exemption from licensing for Project No. 5760-000 is reinstated.

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5/ International Paper Company v. FERC, 737 F.2d 1159 (D.C. Cir. 1984).

6/ 24 FERC ¶ 61,177, at 61,420, n. 11.

7/ The District of Columbia Court of Appeals termed these modifications appropriate, inasmuch as IPC knew that the conditions were to be imposed in the original exemptions, would not suffer any prejudice by their inclusion, and agreed to the modifications. See 737 F.2d at 1166, n. 10.

Project Nos. 4356-001, 5236-001,  
5752-000, 5761-000 and 5762-000

(B) International Paper Company's exemption from licensing for Project No. 5761-000 is reinstated.

(C) Essex County Industrial Development Agency's application for preliminary permit for Project No. 5236-000 is denied.

(D) Long Lake Energy Corporation's application for license for Project No. 4356-001 is denied.

(E) New York State Department of Environmental Conservation's application for license for Project No. 5752-000 is denied.

(F) The grants of exemption by operation of law for Project Nos. 5761-000 and 5762-000 are modified to include and be subject to the following special article:

Article 6. Any exempted small hydroelectric power project that utilizes a dam which is more than 33 feet in height above streambed, as defined in 18 C.F.R. 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant high hazard potential, as defined in 33 C.F.R., Part 222, is subject to the following provisions of 18 C.F.R., 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 C.F.R., 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.

By the Commission.

( S E A L )

*Kenneth F. Plumb*

Kenneth F. Plumb,  
Secretary.