

142 FERC ¶ 62,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Freedom Falls, LLC

Project No. 14421-000

ORDER GRANTING EXEMPTION FROM LICENSING
(5 MW OR LESS)

(March 25, 2013)

1. On June 1, 2012, as supplemented on September 28, 2012, and February 27, 2013, Freedom Falls, LLC (Freedom or exemptee) filed an application to exempt its proposed 50-kilowatt (kW) Freedom Falls Hydroelectric Project (Freedom Falls Project or project) from the requirements of Part I of the Federal Power Act (FPA).¹ The project will be located on Sandy Stream in the Town of Freedom, Waldo County, Maine.² The project will not use or occupy any federal facilities or land. As discussed below, I am issuing an exemption from licensing for the project.

BACKGROUND

2. On August 31, 2012, the Commission issued a notice accepting the application.³ The notice established October 30, 2012, as the deadline for filing motions to intervene and comments. On October 16, 2012, the National Marine Fisheries Service (NMFS)

¹ The Commission is authorized to exempt from the licensing requirements of Part I of the FPA small hydroelectric projects with an installed capacity of 5 megawatts or less that use for the generation of electricity either an existing dam (*i.e.*, one in existence on or before July 22, 2005) or a "natural water feature" without the need for any dam or impoundment. *See* sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2705 and 2708 (2006).

² Sandy Stream is a tributary of the Kennebec River, a navigable waterway of the United States. *See* 2 FPC 380, 387 (1941), and 10 FPC 1147, 1257 (1951). Because the project would involve post-1935 construction, be located on a commerce clause waterway, and affect interstate commerce through its connection to an interstate power grid, it is required to be licensed (or exempted from licensing) by the Commission pursuant to section 23(b)(1) of the FPA, *See* 16 U.S.C. § 817 (2006).

³ 77 *Fed. Reg.* 55,206 (September 7, 2012).

filed comments and a timely notice to intervene.⁴ No other comments or motions to intervene were filed in response to the notice.

3. On October 16, 2012, the Commission issued a notice stating that the application was ready for environmental analysis.⁵ The notice established November 15, 2012, as the deadline for filing comments, recommendations, and terms and conditions. On November 15, 2012, Interior filed timely terms and conditions on the proposed project. No other comments or terms and conditions were filed in response to the notice.

4. An Environmental Assessment (EA) was prepared by Commission staff and is being issued concurrently with this order. The EA analyzes the effects of the proposed project and alternatives to it. The EA contains background information, analysis of impacts, and support for the requirements of this exemption from licensing. Based on the record of the proceeding, including the EA, granting an exemption from licensing for the Freedom Falls Project would not constitute a major federal action significantly affecting the quality of the human environment.

5. The comments, recommendations, and terms and conditions have been fully considered in determining whether, and under what conditions, to issue this exemption.

PROJECT DESCRIPTION

6. The Freedom Falls Project will use the water power potential from the existing 90-foot-long, 12-foot-high concrete-capped stone masonry Freedom Falls dam that includes a 25-foot-long overflow spillway.⁶ The dam creates a 1.6-acre impoundment with a normal water surface elevation of 453 feet National Geodetic Vertical Datum (NGVD).

7. In addition to the dam and impoundment, the project includes an existing intake structure equipped with wooden stoplogs and a trashrack with 1-inch clear bar spacing. When the project is operating, water will pass through the intake structure to a new 60.0-foot-long, 2.5-foot-diameter penstock leading to a new 50-kW turbine-generating unit that will be located in an existing 30-foot-long, 20-foot-wide generating room in the

⁴ Under Rule 214 of the Commission's Rules of Practice and Procedure, NMFS became a party to the proceeding upon the timely filing of its notice of intervention. 18 C.F.R. § 385.214(a)(2) (2012).

⁵ 77 *Fed. Reg.* 64,496 (October 22, 2012).

⁶ The Freedom Falls dam was constructed in 1834 to provide mechanical hydropower to a gristmill that was later adapted into a wood turning mill until it ceased operating in the 1960s.

basement of the existing mill building (i.e. powerhouse). Water from the turbine will be discharged into Sandy Stream through an existing 20-foot-long, 15-foot-wide tailrace. Power will be transmitted through an existing 30-foot-long, 240-volt transmission line that connects the generating unit to the regional grid.⁷

8. In addition to the project facilities described above, Freedom proposes to install a gated 15.0-foot-long, 0.5-foot-diameter pipe with a bell mouth collar at the base of the dam below an existing trash sluiceway for downstream passage of American eel. In addition, Freedom proposes to design and construct an upstream passage facility for juvenile American eel in consultation with Interior and Maine Department of Marine Resources (Maine DMR).

9. The proposed project boundary encloses all the project facilities described above and includes approximately 130 feet of Sandy Stream downstream of the dam.

10. Freedom proposes to operate the project in a run-of-river mode, whereby outflow from the project equals inflow at all times, and maintain the impoundment between elevation 452.5 feet (0.5 foot below normal water surface elevation) and 453 feet NGVD (normal water surface elevation). When operating, the project will bypass approximately 50 feet of Sandy Stream. Freedom also proposes to release a minimum flow of 2 cfs through the downstream eel passage facility at night⁸ from August 1 through October 15, and release a minimum flow of 3 cfs or inflow (whichever is less) over the spillway at all other times. These minimum flows will provide continuous flow to the bypassed reach and maintain the aesthetics of the spillway during the day. When the project is not operating, Freedom will release all flow over the spillway and/or through the downstream eel passage facility.

11. The project will be able to use flows between 8 cfs (minimum hydraulic capacity of the project) and 30 cfs (maximum hydraulic capacity of the project) to generate electricity. During the night, from August 1 through October 15, the project will not operate when inflow is less than 10 cfs (the minimum operating capacity of the project plus the downstream eel passage facility flow). At flows between 10 and 32 cfs (the minimum and maximum operating capacities of the project plus the downstream eel passage facility flow), the project will operate, and 2 cfs will be released through the

⁷ The electricity generated by the project will be used by tenants within the rehabilitated mill building, with excess power diverted to the regional grid on a net metering basis.

⁸ Neither Freedom nor Interior, which required the downstream eel passage facility in its section 30(c) conditions, define "night." Therefore, night is defined in this order as the period from sunset to sunrise.

downstream eel passage facility. At flows greater than 32 cfs, the project will operate at its maximum capacity, 2 cfs will be released through the downstream eel passage facility, and all remaining flows will pass over the spillway

12. During the day from August 1 through October 15 and at all times from October 16 through July 31, the project will not operate when inflow is less than 11 cfs (the minimum operating capacity of the project plus the minimum spillway flow). At flows between 11 and 33 cfs (the minimum and maximum operating capacities of the project plus the minimum spillway flow), the project will operate and 3 cfs will be released over the spillway. At flows greater than 33 cfs, the project will operate at its maximum capacity of 30 cfs, and all remaining flow will pass over the spillway.

13. The project will have an estimated average annual generation of 66 megawatt-hours.

FPA SECTION 30(c) CONDITIONS

14. Pursuant to section 405 of Public Utility Regulatory Policies Act (PURPA),⁹ 5-MW exemptions are subject to the requirements of section 30(c) of the FPA,¹⁰ which provides, among other things, that the Commission “shall include in any such exemption . . . such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service, and the State [fish and wildlife] agency each determine are appropriate to prevent loss of, or damage to, such resources” Article 2 of all exemptions requires compliance with the terms and conditions filed by federal and state fish and wildlife agencies to protect fish and wildlife resources.¹¹

15. On November 15, 2012, Interior submitted seven section 30(c) conditions that require the exemptee to: (1) operate the project in a run-of-river mode and maintain the impoundment with no more than a 0.5-foot fluctuation during normal operation; (2) install a permanent intake trashrack with 1-inch or less clear spacing or install trashrack overlays with 1-inch clear spacing from August 1 through October 15 each year;¹² (3) install a gated 0.5-foot-diameter pipe with a bell mouth collar for downstream American eel passage and operate the facility at night from August 1 through October 15 each year; (4) install an upstream fish passage facility for juvenile American eel at the base of the

⁹ 16 U.S.C. § 2705(b) (2006).

¹⁰ 16 U.S.C. § 823a(c) (2006).

¹¹ *See* 18 C.F.R. § 4.106 (2012).

¹² Freedom will use the existing trashrack with 1-inch clear spacing. EA at 14.

project spillway and operate the facility annually from May 15 through August 31; (5) allow the agencies to inspect the project area at any time while the project operates to monitor compliance with the terms and conditions; (6) file with the Commission any additional or altered conditions required by Interior; and (7) incorporate in any conveyance (by lease or sale) of the project, the terms and conditions of the exemption.

16. In a letter filed July 31, 2012, Interior requested, that after the project begins operating, Freedom conduct a study to identify the best location for an upstream passage facility for American eel. Interior's 30(c) condition 4, subsequently filed on November 15, 2012, requires Freedom to construct an upstream passage facility at the base of the project spillway and consult with Interior and Maine DMR to determine the design and specific location of the facility. Interior's 30(c) condition 4 does not require a study to determine the location of the fishway. Because the specific location of the upstream passage facility at the spillway will be determined in consultation with Interior and Maine DMR, there is no need to conduct the study requested in Interior's July 31, 2012, letter.

17. The section 30(c) conditions will protect water quality, fisheries, and aquatic habitat in the impoundment and in Sandy Stream downstream of the project.¹³ As discussed below, all of the section 30(c) conditions are set forth in Appendix A of this order and are incorporated into the exemption by ordering paragraph (A).

RECOMMENDATIONS AND OTHER MEASURES

Operation Compliance Monitoring Plan

18. Section 30(c) condition 1 requires Freedom to operate the project in a run-of-river mode and maintain the impoundment between elevations 252.5 feet (0.5 foot below normal water surface elevation) and 253 feet NGVD (normal water surface elevation). In addition, Freedom proposes to release a 2-cfs minimum flow through the downstream eel passage facility at night from August 1 through October 15 and provide a 3-cfs minimum flow over the spillway at all other times (Article 26). The EA finds that operating the project in this manner will maintain and protect environmental resources and recommends that Freedom develop an operation compliance monitoring plan to establish how compliance with these operational measures will be documented and monitored.¹⁴ Therefore, Article 27 requires an operation compliance monitoring plan.

THREATENED AND ENDANGERED SPECIES

¹³ EA at vi.

¹⁴ EA at vi, 13 through 16, and 23.

19. Section 7 of the Endangered Species Act¹⁵ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species. In a letter dated May 30, 2012, included in the exemption application, the U.S. Department of the Interior's Fish and Wildlife Service (FWS) stated that no federally listed, or proposed for listing, threatened or endangered species or critical habitat are known to occur in the project area. Because no threatened or endangered species or critical habitat are known to occur in the project area, Commission staff concludes in the EA that issuing an exemption from licensing will not affect federally listed threatened or endangered species and consultation under section 7 is not needed.¹⁶ No further action under the Endangered Species Act is required.

NATIONAL HISTORIC PRESERVATION ACT

20. Under section 106 of the National Historic Preservation Act¹⁷ and its implementing regulations,¹⁸ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Office (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

21. Freedom Falls dam was originally constructed in 1834 and rebuilt in 1927. The existing mill building was also constructed in 1834 and originally operated as a gristmill using mechanical hydropower from the dam. The gristmill was converted into a wood turning mill in 1894 and operated in this capacity until around 1962. The dam and existing mill building have been unoccupied since the 1960s.

22. In a letter dated August 4, 2011, included in the exemption application, the Maine Historic Preservation Commission (Maine SHPO) recommended that the Commission conclude that the proposed project would have no adverse effect on historic properties, including the existing mill building at Freedom Falls dam. In a letter dated May 11, 2012, included in the exemption application, the Maine SHPO stated that the mill at

¹⁵ 16 U.S.C. § 1536(a) (2006).

¹⁶ EA at 9.

¹⁷ 16 U.S.C § 470 *et seq.* (2006).

¹⁸ 36 C.F.R. Part 800 (2012).

Freedom Falls was entered into the National Register of Historic Places (National Register) on April 19, 2012, by the National Parks Service (NPS) after being nominated for listing by Freedom in August 2011.¹⁹ In the EA, Commission staff conclude that the project will not alter the historic character of existing structures and that issuing an exemption from licensing for the project would have no adverse effect on historic properties, including the existing mill building that Freedom is rehabilitating.²⁰

23. However, the exemptee will occasionally need to implement project modifications not specifically authorized or prohibited by this exemption, and these modifications could affect cultural resources.²¹ Therefore, to ensure that cultural resources are not adversely affected by implementing project modifications, Article 28 requires the exemptee to consult with the Maine SHPO prior to conducting any maintenance activities, land-clearing or land-disturbing activities, or changes to project operation or facilities that do not require Commission approval but could affect cultural resources.

24. While the project will have no adverse effect on known historic properties, cultural resources could be discovered during the course of constructing or operating the project; therefore, Article 29 requires the exemptee to stop work and consult with the Maine SHPO if previously unidentified cultural resources are discovered during project construction or operation.

ADMINISTRATIVE PROVISIONS

25. All projects exempted from licensing under Part I of the FPA are subject to standard terms and conditions. These terms and conditions are included as standard Articles 1 through 9. Special Articles 10 through 29, which provide for administration of the exemption from licensing and dam safety, are also included in this exemption.

¹⁹ In its August 4, 2011 letter, the Maine SHPO indicated that the existing mill building at Freedom Falls dam meets the criteria of eligibility for listing in the National Register.

²⁰ EA at 21. Rehabilitation of the existing mill building is ongoing. *See* <http://www.millatfreedomfalls.com>.

²¹ Modifications could include replacing broken windows, roof or siding repairs, or general landscaping. EA at 21.

A. Annual Charges

26. The Commission collects annual charges from exemptees for the administration of its hydropower program.²² However, as explained in Article 10, under the regulations currently in effect, projects with an authorized installed capacity of 1,500 kW or less, like this project, will not be assessed an annual charge.

B. Start of Construction

27. Standard Article 3 provides that the Commission may revoke the exemption if actual construction of the project's generating facilities has not begun within two years or has not been completed within four years from the date this exemption is granted. Additionally, Article 11 is included in this exemption and states that the Commission may terminate the exemption if the construction of any other project works described in this exemption has not begun within two years or is not completed within four years of the date this exemption is issued.²³

C. Exhibit F and G Drawings

28. The Commission requires exemptees to file sets of approved project drawings on microfilm and electronic file format. The three Exhibit F drawings (sheets 1, 2, and 3) filed on September 28, 2012, are approved and made part of this exemption. The Exhibit G drawing (sheet 1 of 1) filed on February 27, 2013, is approved and made part of this exemption. The approved Exhibit F and G drawings must be filed in aperture card and electronic file format as required by sections 4.39 and 4.41 of the Commission's regulations (Article 12).²⁴

D. Project Safety

29. Ensuring the safety of all jurisdictional dams is an important public interest function of the Commission. A dam failure could result in loss of life or property damage, and could also result in significant negative environmental effects. In the interest of ensuring the safety of this project, Article 13 is included in this exemption and

²² See 18 C.F.R. § 11.1(b)(2) (2012).

²³ The start-of-construction deadline in standard Article 3 (contained in the attached Form E-2) refers to the project's generating facilities. The deadline in special Article 11 applies to on-the-ground construction of other project facilities.

²⁴ 18 C.F.R. §§ 4.39 and 4.41(g)-(h) (2012).

requires the exemptee to comply with Part 12 of the Commission's regulations, which governs the safety of water power projects and project works.²⁵

E. Operation and Maintenance

30. Ensuring that the exempted project is operated and maintained as required by this exemption is an important public interest function of the Commission. Therefore, Article 14 is included in this exemption and states that if the exemptee causes or allows essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, the Commission will deem it the exemptee's intent to surrender the exemption.

F. Exemptee Liability

31. Section 10(c) of the FPA provides that licensees, and not the United States, are liable for "damages occasioned to the property of others by the construction, maintenance, or operation of the project works . . ." ²⁶ To clarify that exemptees are similarly liable, Article 15 is included in this exemption and states that the exemptee is liable for damages to the property of others.

G. Conservation and Development of Fish and Wildlife Resources

32. Changes in environmental conditions or identification of previously unknown project effects on fish and wildlife resources may warrant changes to project requirements to protect fish and wildlife. Therefore, Article 16 provides that the Commission may on its own motion, or on the recommendation of the Secretaries of the Interior or Commerce or the state fish and wildlife agencies, require the exemptee to construct, maintain, and operate facilities for the conservation and development of fish and wildlife resources.²⁷

H. Project Financing

²⁵ 18 C.F.R. Part 12 (2012). Special Article 13 is broader than standard Article 8 (contained in the attached Form E-2), which essentially is subsumed in special Article 13.

²⁶ 16 U.S.C. § 803(c) (2006).

²⁷ In a letter filed on October 16, 2012, NMFS requested that any exemption order issued for the project include standard Article 2 and a reservation of authority to require fish passage facilities for the project in the future. Standard Article 2 is contained in the attached Form E-2 and special Article 16 has been included to provide the Commission the authority to require any fish passage facilities NMFS may recommend in the future.

33. To ensure that there are sufficient funds available for project construction, operation, and maintenance, Article 17 requires the exemptee to file for Commission approval documentation of project financing for the construction, operation, and maintenance of the project at least 90 days before starting project construction.

I. Property Rights

34. Pursuant to 18 C.F.R. § 4.31(c)(2)(ii), an applicant for exemption is required to demonstrate that, at the time it files its exemption application, it has sufficient rights to any non-federal land and facilities required for the construction and operation of the project. Freedom's application contains documentation that it has the necessary property rights to develop and operate the project. However, because an exemption is issued in perpetuity, Article 18 is included in this exemption and reserves the Commission's authority to revoke the exemption if in the future the exemptee fails to maintain sufficient rights to comply with the terms and conditions of the exemption.

J. Review of Final Plans and Specifications

35. To ensure the exemptee is constructing and operating a safe and adequate project, Articles 18 through 25 require the exemptee to provide the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Office, for its review and approval: contract plans and specifications, including a soil and sediment control plan; cofferdam construction drawings; as-built drawings; an owner's dam safety program plan; an inflow design flood and hazard classification study; a public safety plan; and project modifications resulting from environmental requirements.

36. The exemptee may not begin any construction until the D2SI – New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized, in writing, the start of construction.

The Director orders:

(A) Effective the date this order is issued, the Freedom Falls Hydroelectric Project is exempted from Part I of the Federal Power Act (FPA), subject to the conditions submitted by the U.S. Department of the Interior under section 30(c) of the FPA, as those conditions are set forth in Appendix A of this order, and the articles specified below.

(B) The project consists of:

(1) All lands, to the extent of the exemptee's interests in these lands, enclosed by the project boundary shown by Exhibit G filed February 27, 2013:

<u>Exhibit G Drawing</u>	<u>FERC No. 14421-</u>	<u>Description</u>
Sheet 1 of 1	1	General Site Plan

(2) The following project works: (1) the existing 90-foot-long, 12-foot-high concrete-capped stone masonry Freedom Falls dam that includes a 25-foot-long overflow spillway with a crest elevation of 452.5 feet National Geodetic Vertical Datum (NGVD); (2) an existing 2.9-foot-long, 6.1-foot-high trash sluiceway equipped with wooden stoplogs; (3) a new 15-foot-long, 0.5-foot-diameter pipe with a bell mouth collar for downstream passage of American eel to be installed at the base of the dam below the trash sluiceway; (4) a new upstream passage facility for American eel; (5) an existing 1.6-acre impoundment with a normal water surface elevation of 453 feet NGVD; (6) an existing 3.7-foot-long, 10.0-foot-high intake structure equipped with wooden stoplogs and a trashrack with 1-inch clear spacing; (7) a new 60.0-foot-long, 2.5-foot-diameter penstock; (8) an existing 30-foot-long, 20-foot-wide generating room within the existing mill building containing a new 50-kW turbine-generating unit; (9) an existing 20-foot-long, 15-foot-wide tailrace; (10) an existing 30-foot-long, 240-volt transmission line connecting the generating room to the regional grid; and (11) appurtenant facilities.

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

Exhibit A: Pages A-1 through A-6, Table 1 on page A-7, and pages A-8 through A-10 filed on September 28, 2012.

Exhibit F: The following Exhibit F drawings filed on September 28, 2012:

<u>Exhibit F Drawing</u>	<u>FERC No. 14421-</u>	<u>Description</u>
Sheet 1 of 3	2	General Site Plan
Sheet 2 of 3	3	General Dam Elevation
Sheet 3 of 3	4	General Sections

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

(C) The Exhibits A, F, and G described above are approved and made part of the exemption.

(D) This exemption is also subject to the articles set forth in Form E-2 entitled Standard Terms and Conditions of Exemption from Licensing, as reproduced at the end of this order, and the following additional articles:

Article 10. Administrative Annual Charges. The exemptee shall pay the United States annual charges, effective as of the start of project construction, as determined in accordance with the provisions of the Commission's regulations in effect from time to time, for the purpose of reimbursing the United States for the cost of administration of the Commission's hydropower program. The authorized installed capacity for that purpose is 50 kilowatts. Under the regulations currently in effect, projects with authorized installed capacities of less than or equal to 1,500 kilowatts will not be assessed an annual charge.

Article 11. Start of Construction. The Commission may terminate this exemption if the actual construction of any project works has not begun within two years or has not been completed within four years from the issuance date of this exemption. If an exemption is terminated under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing for the same project within two years of the termination.

Article 12. Exhibit Drawings. Within 45 days of the date of issuance of this exemption, the exemptee shall file the approved exhibit drawings in aperture card and electronic file formats.

(a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" x 7-3/8") aperture cards. Prior to microfilming, the FERC Project-Drawing Number (i.e., P-14421-1 through P-14421-4) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1, G-1, etc.), Drawing Title, and date of this exemption shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional Office.

(b) The exemptee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections New York Regional Office. Exhibit F drawings must be segregated from other project exhibits and identified as Critical Energy Infrastructure Information (CEII) material under 18 C.F.R. § 388.113(c) (2012). Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this exemption, and file extension in the following format [P-14421-1 through P-14421-4, G-1, Project Location and Boundary Map, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY – black & white raster file
FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4
RESOLUTION – 300 dpi desired, (200 dpi min)
DRAWING SIZE FORMAT – 24” x 36” (min), 28” x 40” (max)
FILE SIZE – less than 1 MB desired

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points (i.e., latitude and longitude coordinates, or state plane coordinates). The points must be arranged in a triangular format for GIS geo-referencing the project boundary drawing to the polygon data, and must be based on a standard map coordinate system. The spatial reference for the drawing (i.e., map projection, map datum, and units of measurement) must be identified on the drawing and each reference point must be labeled. In addition, each project boundary drawing must be stamped by a registered land surveyor.

(c) The exemptee shall file two separate sets of the project boundary data in a geo-referenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The filing shall include both polygon data and all reference points shown on the individual project boundary drawings. An electronic boundary polygon data file(s) is required for each project development. Depending on the electronic file format, the polygon and point data can be included in a single file with multiple layers. The geo-referenced electronic boundary data file must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) shall include: FERC Project Number, data description, date of this exemption, and file extension in the following format [P-14421, boundary polygon/or point data, MM-DD-YYYY.SHP]. The data must be accompanied by a separate text file describing the spatial reference for the geo-referenced data: map projection used (i.e., UTM, State Plane, Decimal Degrees, etc.), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this exemption, and file extension in the following format [P-14421, project boundary metadata, MM-DD-YYYY.TXT].

Article 13. Part 12 Requirements. This project is subject to Part 12 of the Commission’s regulations, 18 C.F.R. Part 12 (as they may be amended from time to time). For the purposes of applying these provisions of 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.

Article 14. Operation and Maintenance. The Commission may determine that the exemptee has impliedly surrendered this exemption if essential project property is

removed or destroyed or becomes unfit for use, without adequate replacement; or if the project is abandoned or good faith project operation or maintenance is discontinued; or if the exemptee refuses or neglects to comply with the terms of the exemption and the lawful orders of the Commission.

Article 15. Liability. This exemption is subject to the provisions of section 10(c) of the Federal Power Act, 16 U.S.C. § 803(c) (2006). That section provides that the exemptee shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under this exemption; and in no event shall the United States be liable therefore.

Article 16. Conservation and Development of Fish and Wildlife Resources. The exemptee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior, the Secretary of Commerce, or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 17. Documentation of Project Financing. At least 90 days before starting construction, the exemptee shall file with the Commission, for approval, three copies of the exemptee's documentation for the project financing. The documentation must show that the exemptee has acquired the funds, or commitment for funds, necessary to construct the project in accordance with this order. The documentation must include, at a minimum, financial statements, including a balance sheet, income statement, and a statement of actual or estimated cash flows which provide evidence that the exemptee has sufficient assets, credit, and projected revenues to cover project construction, operation, and maintenance expenses, and any other estimated project liabilities and expenses.

The financial statements must be prepared in accordance with generally accepted accounting principles and signed by an independent certified public accountant. The exemptee shall not commence project construction until the filing is approved.

Article 18. Property Rights. The Commission reserves the right to require the exemptee to obtain additional property rights, if such rights become necessary to develop, operate, or maintain the project or to achieve compliance with the terms and conditions of the exemption. The Commission may terminate this exemption if, at any time, the exemptee does not hold sufficient property rights in the land or project works necessary to develop, maintain, and operate the project.

Article 19. Commission's Review of Contract Plans and Specifications. At least

60 days prior to the start of any construction, the exemptee shall submit one copy of its plans and specifications and a supporting design document to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI). The submittal to the D2SI – New York Regional Engineer must also include as part of preconstruction requirements: a Quality Control and Inspection Program, a Temporary Construction Emergency Action Plan, and a Soil Erosion and Sediment Control Plan. The exemptee may not begin any land-disturbing activities until the D2SI – New York Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized the start of construction.

Article 20. Cofferdam Construction. The exemptee 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 are consistent with the approved design. At least 30 days before starting construction of any cofferdams or deep excavations, the exemptee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Director, D2SI) of the approved cofferdam and deep excavation construction drawings and specifications, and the letters of approval.

Article 21. As-built Exhibits. Within 90 days of completion of construction of the facilities authorized by this exemption, the exemptee shall file for Commission approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built. A courtesy copy shall be filed with the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer; the Director, D2SI; and the Director, Division of Hydropower Administration and Compliance.

Article 22. Owner's Dam Safety Program. Within 90 days of the issuance date of the exemption, the exemptee shall submit to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer, an Owner's Dam Safety Program which at a minimum shall demonstrate a clear acknowledgement of the dam owner's responsibility for the safety of the project, an outline of the roles and responsibilities of the exemptee's dam safety staff, and access of the exemptee's dam safety official to the Chief Executive Officer. For guidance on preparing an owner's dam safety program the exemptee can review the Guidelines for Public Safety at Hydropower Projects on the FERC website.

Article 23. Inflow Design Flood and Hazard Classification Study. Within six months of the issuance date of the exemption, the exemptee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy

to the Commission's Director, D2SI) of an Inflow Design Flood and Hazard Classification study. The study shall be performed according to Chapter 2 of the Commission's Engineering Guidelines. The study shall include: (1) an incremental hazard evaluation to determine the effects on downstream structures in the event of a dam failure; (2) a recommendation for the project's hazard potential classification; (3) a determination of the project's Inflow Design Flood; and (4) an assessment of the adequacy of the project's spillway capacity.

Article 24. Public Safety Plan. Within 60 days from the issuance date of this order, the exemptee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI) of a Public Safety Plan. The plan shall include an evaluation of public safety concerns at the project site and assess the need for the installation of safety devices or other safety measures. The submitted plan shall include a description of all public safety devices and signage, as well as a map showing the location of all public safety measures. For guidance on preparing public safety plans the exemptee can review the Guidelines for Public Safety at Hydropower Projects on the FERC website.

Article 25. Project Modification Resulting From Environmental Requirements. The planning and design of any permanent or temporary modification which may affect the project works or operation shall be coordinated with the Commission's Division of Dam Safety and Inspections (D2SI) – New York Regional Engineer. This includes modifications resulting from environmental requirements of this exemption. The exemptee shall notify the D2SI – New York Regional Engineer of the proposed modifications at the beginning of the planning and design phase. The schedule shall allow sufficient review time for the Commission to ensure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 26. Minimum Flow. The exemptee shall release a minimum flow of 2 cubic foot per second (cfs) or inflow, whichever is less, through the downstream eel passage facility at night (sunset to sunrise) from August 1 to October 15. At all other times, the exemptee shall provide a 3-cfs minimum flow or inflow, whichever is less, over the spillway.

Article 27. Operation Compliance Monitoring Plan. Within 6 months of the issuance date of this order, the exemptee shall file with the Commission, for approval, an operation compliance monitoring plan for the project. The plan shall include, but not be limited to, the following:

(a) a description of how the project will be operated to maintain compliance with the requirements of Interior's section 30(c) condition 1 and Article 26, including run-of-river operation, impoundment operating elevations, and minimum flow releases;

(b) a description of the mechanisms and structures (i.e., type and exact locations of all flow and stage monitoring equipment and gages) to be used for monitoring compliance with the requirements of Interior's section 30(c) condition 1 and Article 26, procedures for maintaining and calibrating monitoring equipment, and protocols for reporting monitoring data to the Commission, U.S. Department of the Interior (Interior), and Maine Department of Inland Fisheries and Wildlife (Maine DIFW); and

(c) an implementation schedule.

The exemptee shall include with the plan, documentation of consultation with Interior and Maine DIFW; copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies; and specific descriptions of how the agencies' comments are accommodated by the plan. The exemptee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the exemptee does not adopt a recommendation, the filing shall include the exemptee's reasons based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan and associated schedule shall not begin until the plan and schedule are approved by the Commission. Upon Commission approval, the exemptee shall implement the plan and schedule, including any changes required by the Commission.

Article 28. Protection of Cultural Resources. Prior to implementing any project modifications not specifically authorized by this exemption, including but not limited to maintenance activities, land-clearing or land-disturbing activities, or changes to project operation or facilities, the exemptee shall consult with the Maine Historic Preservation Commission (Maine SHPO) to determine the effects of the activities and the need for any cultural resource studies or measures. If no studies or measures are needed, the exemptee shall file with the Commission documentation of its consultation with the Maine SHPO.

If a project modification is determined to affect a historic property, the exemptee shall file for Commission approval a historic properties management plan (HPMP) prepared by a qualified cultural resource specialist after consultation with the Maine SHPO. In developing the HPMP, the exemptee shall use the Advisory Council on Historic Preservation and the Commission's *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, dated May 20, 2002. The HPMP shall include the following items: (1) a description of each historic property; (2) a description of the potential effect on each historic property; (3) proposed measures for avoiding or mitigating adverse effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for implementing mitigation and conducting additional studies. The Commission reserves the right to require changes to the HPMP.

The exemptee shall not implement any project modifications, other than those specifically authorized in this exemption, until informed by the Commission that the requirements of this article have been fulfilled.

Article 29. Protection of Undiscovered Cultural Resources. If the exemptee discovers previously unidentified cultural resources during the course of constructing, maintaining, or operating project works or other facilities at the project, the exemptee shall stop all land-clearing and land-disturbing activities in the vicinity of the resource and consult with the Maine Historic Preservation Commission (Maine SHPO) to determine the need for any cultural resource studies or measures. If no studies or measures are needed, the exemptee shall file with the Commission documentation of its consultation with the Maine SHPO.

If a discovered cultural resource is determined to be eligible for the National Register of Historic Places (National Register), the exemptee shall file for Commission approval a historic properties management plan (HPMP) prepared by a qualified cultural resource specialist after consultation with the Maine SHPO. In developing the HPMP, the exemptee shall use the Advisory Council on Historic Preservation and the Commission's *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, dated May 20, 2002. The HPMP shall include the following items: (1) a description of each discovered property that is eligible to be listed in the National Register; (2) a description of the potential effect on each discovered property; (3) proposed measures for avoiding or mitigating adverse effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for implementing mitigation and conducting additional studies. The Commission reserves the right to require changes to the HPMP.

The exemptee shall not resume land-clearing or land-disturbing activities in the vicinity of a cultural resource discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

(E) The exemptee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

Project No. 14421-000

- 19 -

(F) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2012). The filing of a request for rehearing does not operate as a stay of the effective date of this exemption or of any other date specified in this order. The exemptee's failure to file a request for rehearing shall constitute acceptance of this order.

Jeff C. Wright
Director
Office of Energy Projects

Form E-2

FEDERAL ENERGY REGULATORY COMMISSION

Section 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:

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.

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 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.

Article 3. The Commission may revoke this exemption if actual construction of 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.

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.

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 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.

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.

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.

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 C.F.R. § 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 C.F.R. Part 222, is subject to the following provisions of 18 C.F.R. 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 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.

Article 9. 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.

APPENDIX A

Conditions submitted under section 30(c) of the FPA by the U.S. Department of the Interior on November 15, 2012.

1. The project shall be operated in a run-of-river mode with inflow to the project reservoir equal to outflow from the project (turbine and spillage). Impoundment water levels shall be maintained at the normal pond level with no more than 0.5 feet of fluctuation during normal operations.
2. In order to protect downstream migrating adult American eels from entrainment and mortality, the turbine intake structure should be fitted with trash racks having one inch clear spacing between vertical elements. The one inch trash racks may consist of a permanent trash rack structure or trash rack overlays may be used for the period of 1 August through 15 October annually.
3. The Exemptee shall provide a safe and effective passage route for downstream migrating American eels by installing a bypass pipe immediately adjacent to the turbine intake. The bypass shall consist of a gated pipe (minimum diameter six inches) fitted with a bell mouth collar. The pipe opening shall be located close to the bottom of the turbine intake. The pipe should discharge to the stream channel below the dam. This bypass must be operated at night from 1 August through 15 October annually.
4. The Exemptee shall install an upstream fishway for juvenile American eel at the base of the project spillway. The location and design of the fishway should be determined in consultation with the Service and the Maine Department of Marine Resources. The upstream eel fishway should be operated from 15 May through 31 August, annually.
5. The U.S. Fish and Wildlife Service shall be allowed to inspect the project area at any time while the project operates under a license exemption in order to monitor compliance with its terms and conditions.
6. The U.S. Fish and Wildlife Service is reserved the right to revise and add mandatory terms and conditions for this exemption as appropriate to carry out its responsibilities with respect to fish and wildlife resources. Should the Service notify the Exemptee of revised or additional terms and conditions, then the Exemptee shall, within thirty (30) days of receipt, file a copy of these additional terms and conditions with the Federal Energy Regulatory Commission.
7. The Exemptee shall incorporate the aforementioned terms and conditions in any conveyance (by lease, sale or otherwise) of its interests so as to legally assure compliance with said conditions for as long as the project operates under an exemption.

Project No. 14421-000

- 23 -

These conditions are required with the understanding that the Commission likely will want to retain concurrent approval authority over some or all of the plans and actions described above, and the above conditions should not be read as preventing this.

Document Content(s)

Freedom Falls (P-14421) Order.DOC.....1-23