

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

International Paper Company) Project No. 5760-000

NOTICE OF APPLICATION FOR EXEMPTION FOR SMALL HYDROELECTRIC
POWER PROJECT UNDER 5 MW CAPACITY

(February 25, 1982)

Take notice that on December 14, 1982, the International Paper Company (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. §§2705 and 2708 as amended), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5760) would be located on the La Chute River, in the Village of Ticonderoga, Essex County, New York. Correspondence with the Applicant should be directed to: Mr. Robert McK. Hunziker, 77 West 45th Street, New York, New York 10036.

Project Description - The proposed run-of-the-river project would consist of: (1) the existing masonry "A Mill" Dam, 7 feet high, 114 feet long, with a main central spillway 58 feet long, with three aluminum slide gates; (2) Lake George, with a surface area of 44 square miles and usable storage of 42, 240 acre-feet; (3) a new enclosed 24 by 23-foot reinforced concrete intake structure built into existing retaining wall in the north bank of the head-pond; (4) a new steel penstock, nine feet in diameter, underground for 600 feet from the intake structure, then supported for 1,700 feet by ring girders; (5) a new reinforced concrete powerhouse, 20 by 37 feet, containing one 4,625-kw turbine/generator unit operating under a net head of 124.8 feet; (6) an existing tailrace, 40 feet wide and 330 feet long; (7) a 115-kV transmission line, 5,750 feet long; and (8) appurtenant facilities. The average annual generation of 22.2 million kWh would be sold to the Niagara Mohawk Power Corporation.

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.

Agency Comments - The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the New York State Division of Fish and Wildlife are requested, for the purposes set forth in Section 408 of the Act, to submit 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

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Project No. 5760-000

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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.

Competing Application - Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before APR 16 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 C.F.R. §4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 C.F.R. §4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §1.8 or §1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before APR 16 1982.

Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION 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 F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb
Secretary

LOWER

Project No. 5762-000

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

International Paper Company) Project No. 5762-000

NOTICE OF APPLICATION FOR EXEMPTION FOR SMALL
HYDROELECTRIC POWER PROJECT UNDER 5 MW CAPACITY
(February 25, 1982)

Take notice that on December 14, 1981, International Paper Company (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. §§2705 and 2708 as amended), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project, Project No. 5762, would be located on the LaChute River in the Village of Ticonderoga, Essex County, New York. Correspondence with the Applicant should be directed to: Mr. Robert McK. Hunziker, International Paper Company, 77 West 45th Street, New York, New York 10036.

Project Description - The proposed project would consist of: (1) the existing D Mill Dam, 12 feet high and approximately 250 feet long, with a spillway section 170 feet long; (2) a small pond covering 2.3 acres with negligible storage; (3) a rehabilitated 112-foot long intake structure at the east end of the dam, with six hand-operated wooden gates; (4) a new steel penstock, nine feet in diameter, above-ground for 2,400 feet and buried for 600 feet; (5) a new reinforced concrete powerhouse, 20 by 37 feet, located in the Village of Ticonderoga's Bicentennial Park, containing one new turbine/generator unit rated at 3,485 kW, operating under a design head of 88 feet; (6) a new substation next to the powerhouse; (7) an existing 115-kV transmission line 2,000 feet long; and (8) appurtenant facilities.

The average annual generation of 16.6 million kWh would be sold to the Niagara Mohawk Power Corporation.

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.

Agency Comments - The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the New York Division of Fish and Wildlife are requested, for the purposes set forth in Section 408 of the Act, to submit 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

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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.

Competing Applications - Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before APR 16 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 C.F.R. §4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 C.F.R. §4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §1.8 or §1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before APR 6 1982.

Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION 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 F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

20 FEREC 161,058

Before Commissioners: Georgiana Sheldon, Acting Chairman;
J. David Hughes and A. G. Sousa.

Project Nos. 4356-001, 5236-000, 5752-000,
5760-000 and 5762-000

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 VACATING GRANT BY OPERATION OF LAW OF EXEMPTIONS FROM
LICENSING OF SMALL HYDROELECTRIC PROJECTS OF 5 MEGAWATTS OR LESS

(Issued July 20, 1982)

On December 14, 1981, the International Paper Company filed applications for exemption from licensing of the Upper LaChute River Project (Project No. 5760-000) and the Lower LaChute River Project (Project No. 5762-000), located in the Village of Ticonderoga, Essex County, New York. The exemption applications were accepted for filing by letters dated February 11, 1982 from the Director, Division of Hydropower Licensing.

The applications for exemption compete with license and permit applications filed for the same sites. ^{1/} The normal procedure would be to comparatively evaluate these applications to determine which represents the best proposal(s). An order would be issued to resolve the competition.

An inadvertent error, however, has upset this procedure. Pursuant to Section 4.105(b)(4) of the Commission's regulations, ^{2/} an exemption is granted by operation of law if the Commission has not taken action on the exemption within 120 days after notifying the exemption applicant of the acceptance of its application. The 120-day period

^{1/} The competing applications are:

Project No.	Application	Filing Date
4356-001	License	March 16, 1981
5236-000	Preliminary Permit	August 14, 1981
5752-000	License	December 14, 1981

^{2/} 18 C.F.R. § 4.105(b)(4) (1981).

for action on Project Nos. 5760-000 and 5762-000 expired on June 11, 1982. Obviously, since we have competing license and exemption applications that must be acted on concurrently, the Commission had intended to toll the expiration of the Section 4.105(b)(4) period for Commission action on the exemption applications. Inadvertently, we failed to do so, and exemptions for Project Nos. 5760-000 and 5762-000 were granted. To remedy this situation, the grant of these exemptions should be vacated.

The Commission's authority to vacate the issuance of an exemption is provided by Section 313(a) of the Federal Power Act, 16 U.S.C. § 8251(a) (1976), which is applicable to exemptions issued under Section 408 of the Energy Security Act of 1980, 16 U.S.C. § 2705(d) (Supp. IV 1980). ^{3/} Section 313(a) of the Federal Power Act gives the Commission, upon giving reasonable notice, full authority to modify or set aside, in any manner it deems proper, any order made or issued under the Federal Power Act. ^{4/} In interpreting substantially the same language in §10(d) of the National Labor Relations Act, 29 U.S.C. § 160(d) (1976), the Supreme Court declared that "[t]he purpose of the provision obviously is to afford an opportunity to correct errors or to consider new evidence which would render the order inadequate or unjust," and plainly confers the power to set aside orders in whole or in part. National Labor Relations Board, 304 U.S. 487, 492 (1938) (recognizing NLRB power to vacate fifteen day old order and reconsider the matter). Courts have repeatedly interpreted § 19(a) of the Natural Gas Act, 15 U.S.C. § 717r(a) (1976), which is virtually identical to § 313(a) of the Federal Power Act, ^{5/}

^{3/} Section 313 of the Federal Power Act applies to exemptions issued under Section 408 of the Energy Security Act (Section 405(d) of the Public Utility Regulatory Policies Act (PURPA) due to the relationship of the exemption provisions of PURPA to the licensing provisions of Part I of the Federal Power Act.

^{4/} The Commission retains this power until a party appeals the Commission's order and the record of decision is filed with the court of appeals.

^{5/} The one minor difference between the provisions is immaterial.

License 401

Project Nos. 4636-000, 4636-001, 4908-000, 4908-001, 5800-000,
5923-000, 6368-000

in the same manner. 6/ Indeed, even where they do not possess express statutory authority to modify or set aside decisions, all administrative agencies, absent express statutory prohibition or other circumstances which warrant a prohibition, have an inherent power to reconsider decisions within a short and reasonable time period. 7/ Thus, it is clear that the Commission has ample authority under Section 313(a) of the Act to vacate the issuance of the exemptions for Project Nos. 5760-000 and 5762-000 in this order. 8/

6/ See Placid Oil Co. v. FPC, 483 F.2d 880, 903-04 (5th Cir. 1973); Pan American Petroleum Corp. v. FPC, 322 F.2d 999, 1004 (D.C. Cir. 1963); Florida Economic Advisory Council v. FPC, 251 F.2d 643, 649 (D.C. Cir. 1957). The opportunity to seek rehearing of this order effectively gives the applicants reasonable notice of its vacation, as required by Section 313(a). Cf. NLRB v. Local 349, Bhd. of Util. Workers of New England, Inc., 612 F.2d 598, 603 (1st Cir. 1980) (where modification of order imposed additional and material burdens or removed valuable right, parties should have been given opportunity to be heard through exceptions or otherwise).

7/ See Bookman v. United States, 453 F.2d 1263, 1265 (Ct. Cl. 1972) (comparing Civil Service Commission's inherent authority to reconsider three month old decision with FPC's express statutory authority to modify and set aside its orders); Biddle v. United States, 186 Ct. Cl. 87 (1968).

8/ Furthermore, the power of an administrative agency to correct inadvertent errors and mistakes, independent of express statutory authority to do so, is well recognized. See American Trucking Ass'ns. v. Frisco Transp. Co., 358 U.S. 133, 144-46 (1958) (ICC had authority to correct inadvertent errors contained in certificates of public convenience and necessity issued three years earlier); Stone v. Dugan Bros., 61 A.2d 740, 742 (N.J. Super. Ct. App. Div. 1948) (inadvertent failure to act resulting in order of dismissal could be vacated without express statutory authority). This constitutes an independent justification for this order.

Project Nos. 4356-001, 5236-000, 5752-000,
5760-000 and 5762-000

The Commission orders:

(A) The exemption granted by operation of law to the International Paper Company for Project No. 5760-000 on June 11, 1982, is vacated.

(B) The exemption granted by operation of law to the International Paper Company for Project No. 5762-000 on June 11, 1982, is vacated.

(C) 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 Act. The filing of an application for rehearing does not operate as a stay of the effective date of this order, except as specifically ordered by the Commission.

By the Commission.

(S E A L)

Kenneth F. Plumb
Kenneth F. Plumb,
Secretary.

"contract price" and "price under the terms of the existing contract" generally as "the total price paid per MMBtu." Also see NGPA section 105(c). The Commission believes that disregarding the percentage payments component of the sales price in the case of Marathon would be improper. The total contract price, although keyed to the border price as a variable determinant, and even though it sometimes is the same as the border price, is the "price paid under the terms of the existing contract," whether at any given time it happens to be equal to 1.5, 1.2, 1.1 or 1 multiplied by the border price. Consequently, Marathon's argument must be rejected, and the declaratory order which it seeks denied.

IV. Intervention

After due notice of Marathon's petition by publication in the *Federal Register* on June 9, 1981, (46 *Fed. Reg.*, 30529 (1981)) a timely petition to intervene in this proceeding was filed by PacLight. PacLight asserts that as Marathon's customer, it has a direct legal and

economic interest in this proceeding which cannot be represented adequately by any other party. PacLight did not take a position with respect to Marathon's request. PacLight's petition to intervene was granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.

V. The Commission orders:

Marathon's petition for declaratory order in this docket is denied for the reasons set forth above.

Footnotes
 1 Section 1.7 is now found in § 385.207 (Rule 207) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207 (47 *Fed. Reg.*, 19025, May 3, 1982).

2 The notice erroneously stated that Marathon's petition was filed on April 17, 1981.

3 *Declaratory Order, Indicated Producers—Shell Oil Company, et al.*, Docket No. GP82-50, et al., issued January 17, 1983. (22 FERC ¶ 61,013), *reh'g denied*, 24 FERC ¶ 61,004 (1983).

¶ 61,177

- 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 Nos. 5760-000 and 5762-000

Order Denying Rehearing

(Issued August 2, 1983)

Before Commissioners: Georgiana Sheldon, Acting Chairman; J. David Hughes and Oliver G. Richard III.

International Paper Company ("IP") has filed a petition for rehearing of our July 20, 1982 order vacating the grant by operation of law of exemptions from licensing for the proposed Upper LaChute River Project (Project No. 5760-000) and the proposed Lower LaChute River Project (Project No. 5762-000), which would be located in the Village of Ticonderoga, Essex County, New York. IP requests the Commission to reconsider its determination that the Commission had authority to set aside or modify the exemptions granted inadvertently in this proceeding. On September 20, 1982, we granted rehearing of the order for purposes of further consideration.

On the same day that the Commission vacated IP's exemptions, it vacated three exemptions which had been issued by operation of law to three applicants, one of whom was Mary Jane Ruderman Hirschey. The

applications for these three exemptions, which did not compete with one another, had all been filed before the license applications which were mutually exclusive with the exemption applications. Hirschey appealed and the United States Circuit Court of Appeals for the District of Columbia reversed the Commission's order vacating Hirschey's exemption.

The court in *Hirschey* rejected the Commission's invocation of the power of an administrative agency to correct inadvertent errors independent of express statutory authority to do so, because the court determined that Hirschey's application for exemption was automatically granted by virtue of Commission inaction with respect to a purely discretionary matter. This holding turned on the court's reading of 18 C.F.R. § 4.104(e)(2), which states:

If an application for a license and an application for exemption from licensing are each accepted for filing and each propose [sic] to develop a mutually exclusive project, the Commission will favor the application first filed, unless the Commission determines the plans of the subsequent applicant would better develop the water power potential of the affected water resources.

The court construed this rule as making the decision whether to engage in comparative evaluation of competing applications a matter of discretion; hence, failure to perform a comparative evaluation did not make grant of the exemption per se ministerial error. The court concluded that, unless the Commission acts to the contrary, Section 4.104(e)(2) establishes a priority system that automatically results in the granting of the first filed exemption application without any comparative evaluation (emphasis added).

In the case before us, however, two license applications and one preliminary permit application had been filed before IP's two exemption applications were filed. Thus, the automatic grant procedure governing exemption applications under Section 4.105(b)(4) in this instance comes in direct conflict with the automatic result (absent a comparative evaluation leading to a different outcome) of the first-to-file rule in Section 4.104(e)(2). We believe that the circumstances of the case before us are therefore distinguishable from the facts in the Hirschey case in that it was clearly ministerial error for an exemption to be granted when there were two earlier-filed license applications pending.

Although we recognize the public interest in the predictability of an agency's procedural rules and in repose for its final orders, in seeking to vacate inadvertently granted exemptions we are motivated not by theoretical niceties or even simply by our belief that comparative evaluations should be made of competing applications. In our view, authorization to develop hydroelectric projects, even at existing dams, should not be granted without the appropriate technical and environmental analysis and the inclusion of terms and conditions necessary to mitigate negative impacts and protect the public interest.¹¹ For the reasons discussed, we deny IP's request that its exemptions be reinstated and instruct the staff to proceed with processing all the applications which have been filed in this case.

The Commission orders:

The petition for rehearing filed by International Paper Company is denied.

Footnotes

¹ Long Lake Energy Corporation, et al., 20 FERC ¶ 61,058 (July 20, 1982). The procedural history of this proceeding is detailed in the July 20, 1982 order.

² See 18 C.F.R. § 4.105(b)(4) (1982), whereby an exemption is granted by operation of law if the Commission has not taken action on the exemption within 120 days after notifying the exemption applicant of the acceptance of its application.

³ Hydro Development Group, Inc., et al., 20 FERC ¶ 61,059 (July 20, 1982).

⁴ Mary Jane Rudelmann Hirschey v. F.E.R.C., 701 F.2d 215, 217 (D.C. Cir. 1983).

⁵ Id.

⁶ 20 FERC ¶ 61,129, n. 6.

⁷ In *Heartful Drilling* allowed this interpretation. The rule was intended to codify the Commission's intention to perform a comparative evaluation in all cases involving applications competing for the same site.

⁸ 701 F.2d at 219. By the same token, the first-filed permit applications in Hydro Development Group, Inc., et al., which were filed by two of the applicants which subsequently filed for exemptions (and which are not automatically superseded, see 18 C.F.R. § 4.104(b)), were automatically defeated by the exemption applications pursuant to 18 C.F.R. § 4.105(e)(1).

⁹ Long Lake Energy Corporation, et al., 20 FERC at p. 61,127, n. 1.

¹⁰ See 701 F.2d at 220.

¹¹ For this reason, even if the facts in this case required us to reinstate IP's two exemptions, we would have felt compelled to amend them by including special conditions (as contemplated by 18 C.F.R. § 4.105(b)(6)) to ensure adequate treatment of public safety concerns. Studies conducted by the Commission's staff reveal that the Lake George Outlet Dam, forming part of IP's Project No. 5760, and the Upper Mill Dam, forming part of IP's Project No. 5762, potentially pose a serious threat to life, health, and property. The Lake George Outlet Dam, which impounds a usable storage capacity of 42,400 acre-feet, is located upstream of the City of Ticonderoga, New York. Because the staff classifies the Lake George Outlet Dam as a high-hazard structure, Project No. 5760, if authorized, should be subject to annual FERC inspections and independent inspections as provided for in 18 C.F.R. Part 12. The Upper Mill Dam is located immediately upstream of a significant number of inhabited dwellings. Although the dam impounds a relatively small amount of storage (30 acre-feet), its close proximity to the dwellings is cause for concern because of the potential for significant threat to life and property. Therefore, Project No. 5762, if authorized, should contain similar special conditions.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

EXEMPTION

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

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, 1/ 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. 2/

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

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- 1/ The projects would be located on the LaChute River in the Village of Ticonderoga, Essex County, New York.
 - 2/ 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.
 - 3/ Long Lake Energy Corporation, 20 FERC ¶ 61,058 (1982).
 - 4/ Long Lake Energy Corporation, 24 FERC ¶ 61,177 (1983).

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Project Nos. 4356-001, 5236-000,
5752-000, 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.

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.

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Project Nos. 4356-001, 5236-000,
5752-000, 5760-000 and 5762-000

(B) International Paper Company's exemption from licensing for Project No. 5762-000 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. 5760-000 and 5762-000 are modified to include and be subject to the following special article:

Article 6. This exemption is subject to the following provisions of 18 C.F.R., Part 12:

- (1) Subpart A, Section 12.4; and
- (2) Subparts C, D, and E.

By the Commission.

Secretary