

REF ID: A66584

**Project No. 4402-001**

**Project No. 6996-000**

# ORDER GRANTING EXEMPTION FROM LICENSING OF A

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The Applicant 1/ filed an application for exemption from all or part of Part 1 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/ 3/

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 petitions to intervene that were filed have been considered. No agency has any objection relevant to issuance of this exemption.

Standard Article 2, included in this exemption, requires compliance with any terms and conditions that Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources. The terms and conditions referred to in Article 2 are contained in any letters of comment by these agencies which have been forwarded to the Applicant in conjunction with this exemption.

- 1/ Lawrence R. Taft, Project No. 4402-001, filed on January 24, 1983.
- 2/ Pub. Law 96-294, 94 Stat. 611. Section 408 of the ESA amends inter alia, Sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §§2705 and 2708).
- 3/ Authority to act on this matter is delegated to the Deputy Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 18 C.F.R. §375.308 (1981). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. 385.1902, 47 Fed. Reg. 19047 (1982). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.

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Should the Applicant contest any terms or conditions that were proposed by Federal or State agencies in their letters of comment as being outside the scope of Article 2, the Commission shall determine whether the disputed terms or conditions are outside the scope of Article 2.

Based on the terms and conditions required by Federal and State fish and wildlife agencies, the environmental information in the application for exemption, other public comments, and Staff's independent analysis, issuance of this order is not a major Federal action significantly affecting the quality of the human environment.

#### Competing Applications

Power Resources Development Corporation has filed a competing preliminary permit proposal for the Talcville Water Power Project. Staff reviewed this proposal. Preliminary permit applications are usually speculative in nature and rarely offer substantiated information. Accepted exemption applications are fully developed proposals which are to be put into effect soon after issuance. The Commission's regulations reflect this rebuttal presumption by indicating preference for exemption applications [18 C.F.R. §4.404 (e)(1982)]. See also Order No. 106 (Final Rule on 5 megawatt Exemption), FERC Stat. & Reg. (CCH) ¶130,204 at 31,363 (November 7, 1980). Absent a substantiated showing by the permit applicant that its proposal is superior to that of the exemption proposal, the exemption will be preferred pursuant to Commission regulations. No such showing has been made in this proceeding. The competing permit application is therefore denied.

Each exemption application is reviewed to determine whether the proposal makes adequate use of the water resources at the site, taking into account other considerations such as environmental constraints. The Commission may require modifications to a proposal if it determines them to be necessary to make the development compatible with the public interest, and may request an application upon finding that it is inconsistent with the public interest [18 C.F.R. §4.104 (b)(1982)].

#### It is ordered that:

(A) Talcville Water Power Project No. 4402-001 as described and designated in Lawrence R. Taft's application filed on January 24, 1983, is exempted from all of the requirements of Part I of the Federal Power Act, including licensing, subject to the standard articles in §4.106, of the Commission's regulations attached hereto as Form E-2, 18 C.F.R. §4.106 45 Fed. Reg. 76115 (November 18, 1980).

(B) The application for preliminary permit for Project No. 6996, filed by Power Resources Development Corporation is denied.



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

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application filed with the Commission

March 15, 1983

Take 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: 5 MW Exemption
- b. Project No: P-4402-901
- c. Date Filed: January 24, 1983
- d. Applicant: Lawrence R. Taft
- e. Name of Project: Talleville Water Power Project
- f. Location: on the Oswegatchie River, in St. Lawrence County, New York
- g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (Act), 16 U.S.C. §§2705 and 2708 as amended
- h. Contact Person: Lawrence R. Taft, 16315 Compendry Road, Central Square, New York 13016, Timothy R. Fallon, 3 Applewood Pointe, Kenosha, New York 14559, and Peter J. Fallon, 28 Monroe Highway, Rochester, New York 14618
- i. Comment Date: April 8, 1983
- j. Competing Application: Project No. 6996-880  
Date Filed: January 22, 1983  
Due Date: April 15, 1983
- k. Description of Project: The proposed project would operate on a run-of-river basis and would consist of: (1) reconstruction of the breached Talleville Dam, an integrated concrete gravity structure which is 14 feet long and 25 feet high, having an 80-foot-long spillway section; (2) an existing concrete having a surface area of 22 acres and a main surface elevation of 631 a-e-l-1 (3) an existing 135-foot-long, 14-foot-wide, 13-foot-high dam; (4) an existing wood frame powerhouse containing two existing generating units. The first will be renovated and have a rated capacity of 250 kW. The second will be replaced by a new unit having a rated capacity of 750 kW for a total rated capacity of 1 MW; (5) an existing 1.5-MV, 23,000-volt substation and (6) approximately 5 MW output would be 5 MW. The energy derived at the proposed project would be sold to Niagara Mohawk Power Corporation. The property contained in the project area is owned by the Gouverneur Tail Company, Inc.

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Project No. 6403-001

1. Purpose of Exemption: An Exemption, if issued, gives the licensee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the licensee from permit or license applicants that would seek to take or develop the project.
2. This notice also consists of the following standard paragraphs: A, B, C, and D.

A.

Exemptions for Small Hydroelectric Power Project under the Capacity -- Any qualified licensee applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a 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 after the specified comment date for the particular application. Applications for preliminary permit will not be accepted. A notice of intent must conform with the requirements of 16 CFR 4.33(b) and (c) (1983). A competing license application must conform with the requirements of 16 CFR 4.33(a) and (d).

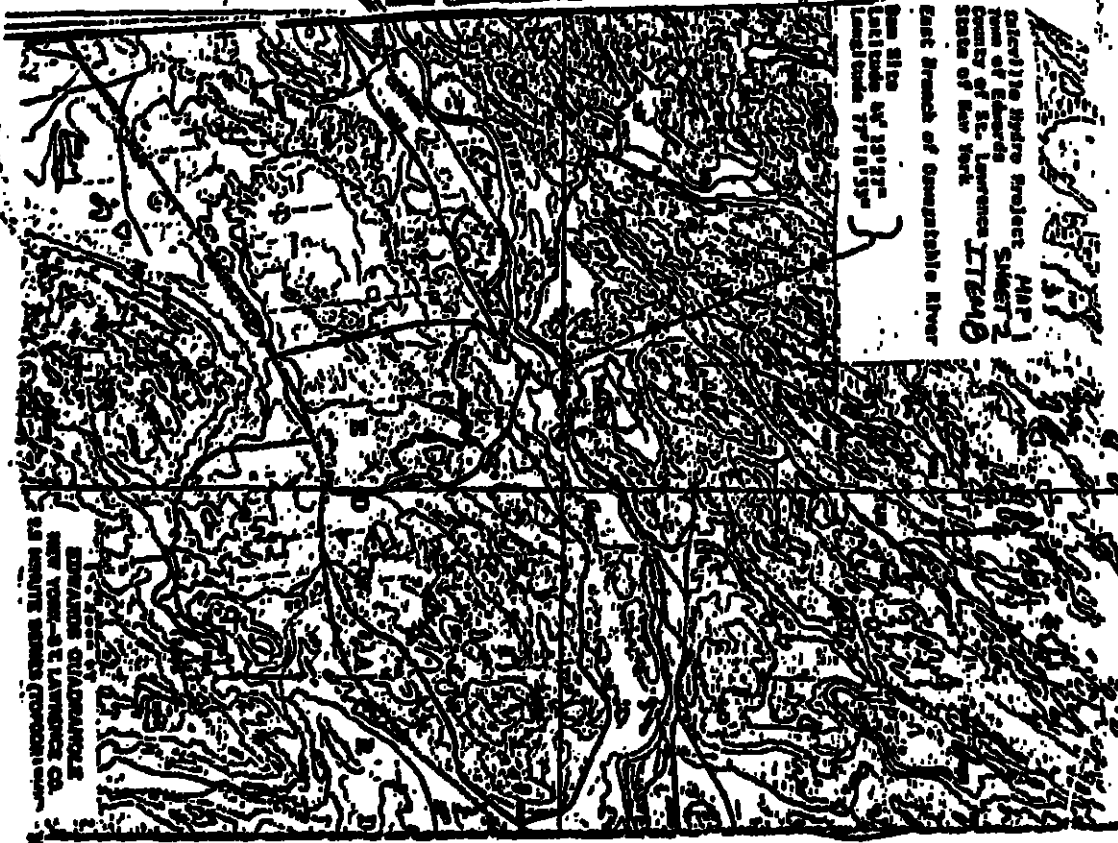
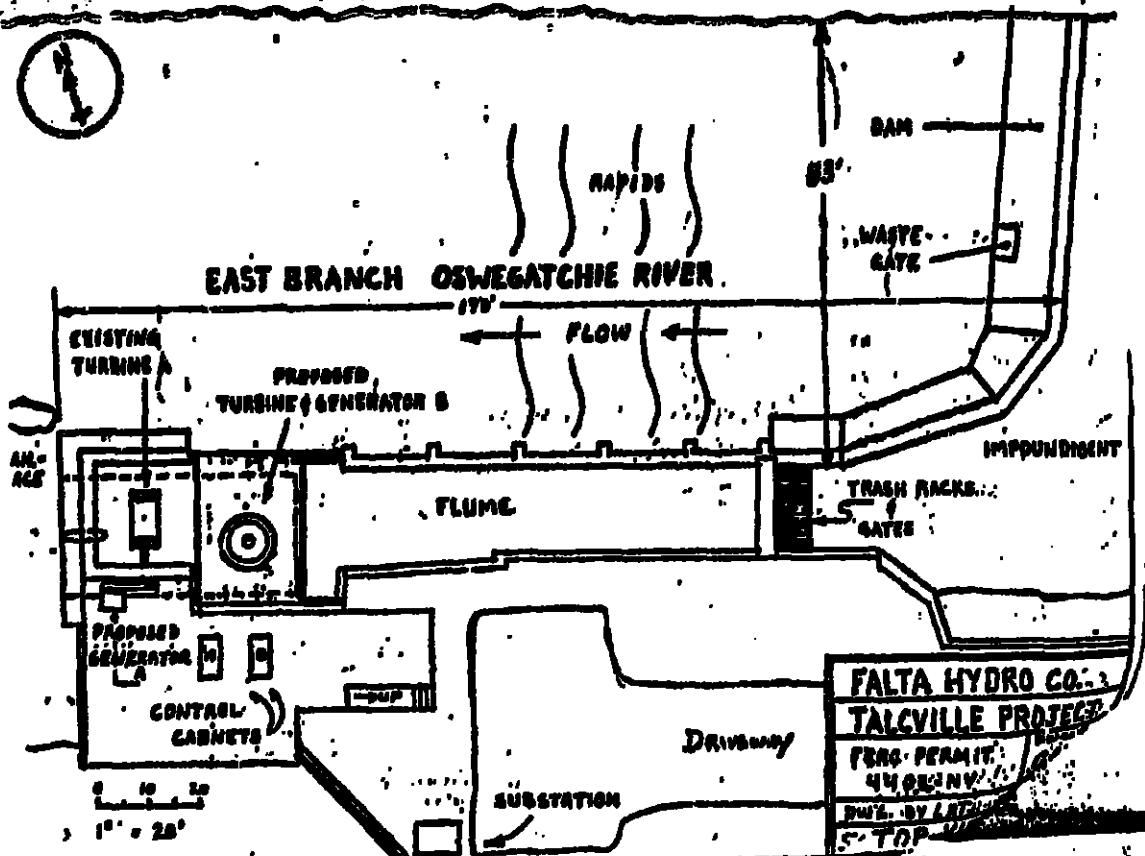
35. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for license, exemption or pre-liminary permit, or notices of intent to file competing applications, will be accepted for filing in response to this notice (see 18 CFR 4.39 to 4.33 or §§4.101 to 4.104 (1982), as appropriate). Any application for license or exemption from licensing, or notices of intent to file a license or an exemption application, must be filed in accordance with the Commission's regulations (see 18 CFR 4.38 to 4.33 or §§4.101 to 4.104 (1982), as appropriate).

36. Comments, protests, or motions to intervene. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the rules of practice and procedure, 18 C.F.R. §§195.218, .219, .220 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

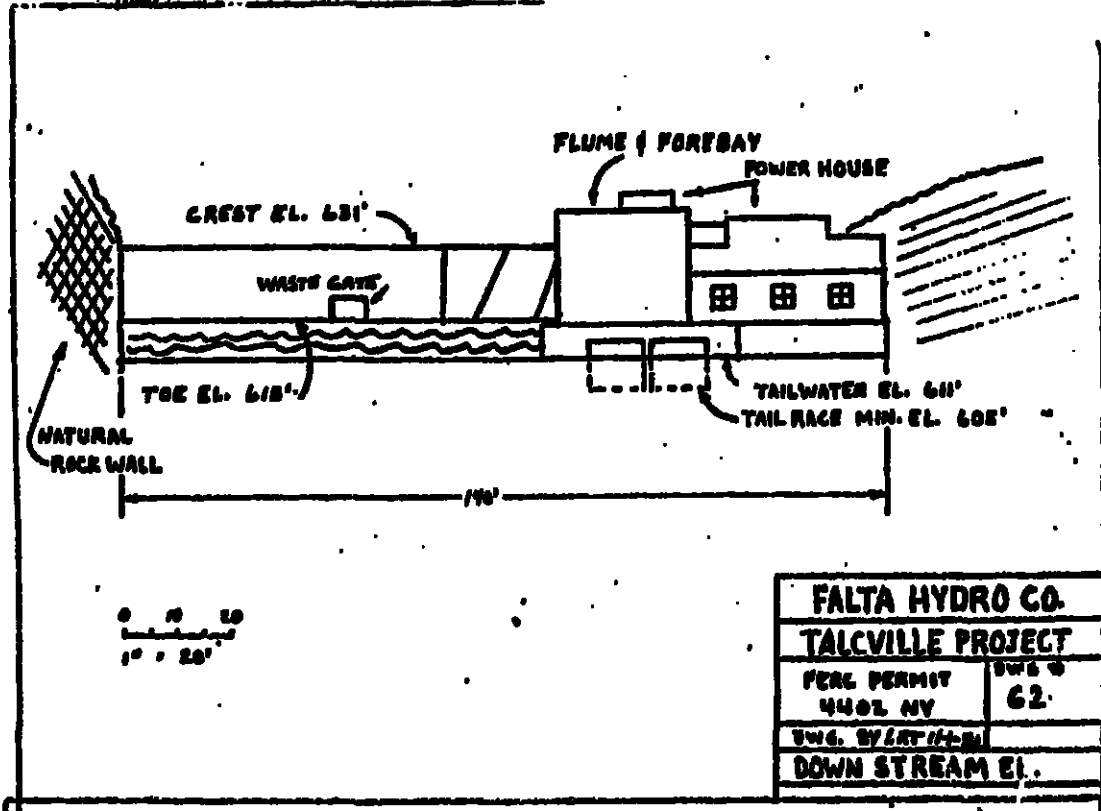
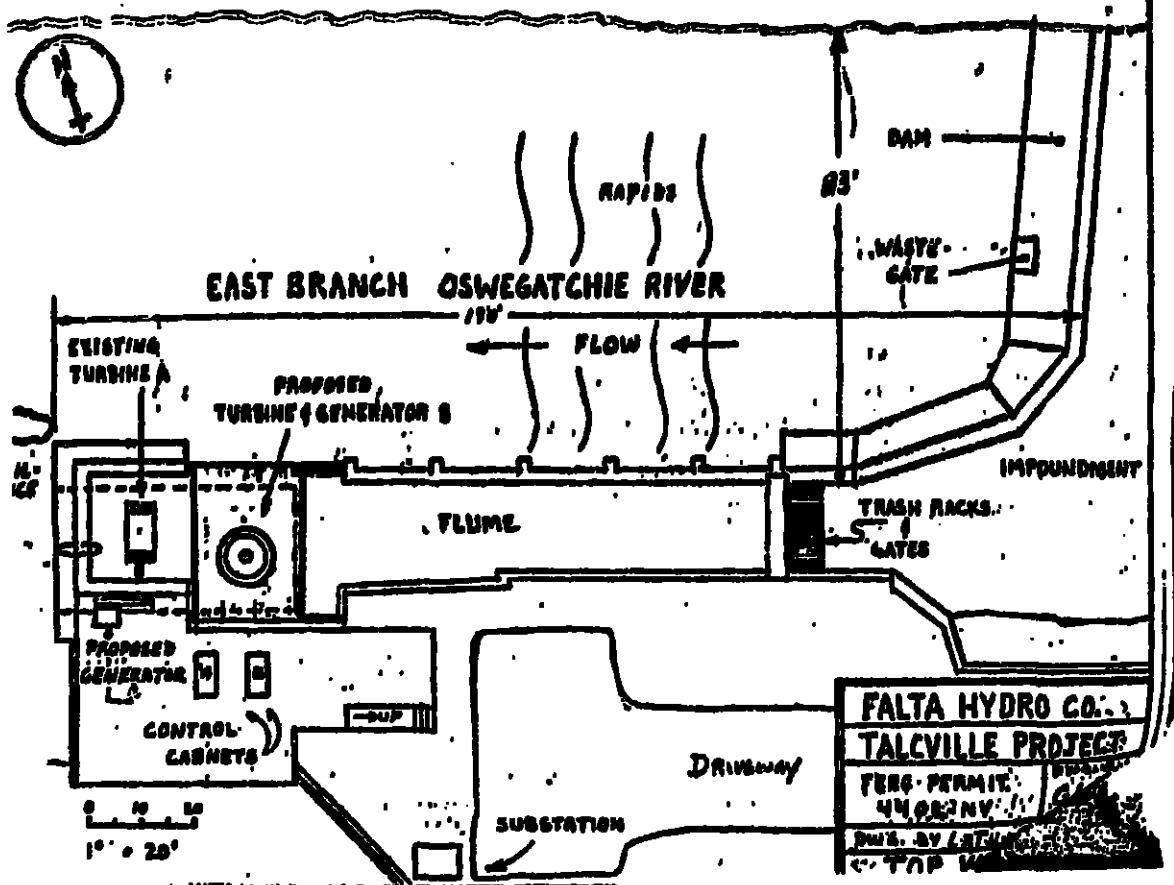
c. Filing and Service of Responsive Documents - Any filings must be made to all capital letters the filing "Comments", "Notice of Intent to File Comments", "Comments Application", "Request for Extension", or "Notice to Intervene". An application, and the project number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations for Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20542. An additional copy must be sent to the Federal Energy Regulatory Commission, Division of Enforcement, Enforcement, Federal Energy Regulatory Commission, Room 2020 at the above address. A copy of any notice of intent, requesting application or notice to intervene must also be served upon each representative of the Applicant specified in the particular application.

d. 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 490 of the Act, to file within 60 days from the date of issuance of this notice appropriate comments 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. 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.

Kenneth 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 any Federal or state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

(c) **Article 3.** The Commission may accept a license application by any qualified license applicant and revoke this exemption if actual construction or development of any proposed generating facilities has not begun within 18 months, or been completed within four years, from the date on which this exemption was granted. If an exemption is revoked, the Commission will not accept a subsequent application for exemption within two years of the revocation.

(d) Article 4. This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

(e) Article 5. This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal land agencies. The Commission may accept a license application by any qualified license applicant and revoke this exemption, if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.