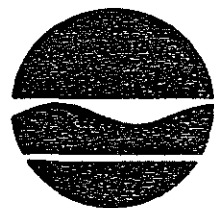


New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233



Henry G. Williams
Commissioner

May 5, 1983

RECEIVED

MAY 10 1983

NYS Dept. of Environmental
Conservation
Division of Regulatory Affairs

The Honorable Kenneth F. Plumb
Secretary
Federal Energy Regulatory Commission
825 North Capitol, NE
Washington, D.C. 20426

RE: COMMENTS -- FERC PROJECT #4402-001
Lawrence R. Taft Application for
Exemption from Licensing for the
Talcville Water Power Project on the
Oswegatchie River, Town of Edwards,
St. Lawrence County, New York

Dear Secretary Plumb:

The New York State Department of Environmental Conservation (DEC)* has reviewed the application of Lawrence R. Taft for exemption from licensing pursuant to Part 106 for the proposed Talcville Water Power Project located on the Oswegatchie River in the Town of Edwards, St. Lawrence County, New York.

DEC has no objection to the issuance of the requested exemption to Mr. Taft for the Talcville Project, with the provision that the proposed project will be constructed, operated and maintained in compliance with terms and conditions stated in the attachment to this letter. These terms and conditions have been established after consultation with the applicant and other interested parties, much of which is documented in the exemption application by Mr. Taft.

You or your staff may contact me at (518) 457-7418 if you have any questions concerning this letter or its attachment or any of DEC's regulatory review and permit requirements.

Very truly yours,

Fred W. Howell
for

Murdock M. MacKenzie
Chief, Federal/State Coordination Section

MMM/FWH:dh

*Division of Regulatory Affairs
Division of Fish and Wildlife
Division of Lands and Forests
Division of Water

cc (w/att.): L. R. Anderson (FERC)
F. Springer (FERC)
L. R. Taft

bcc (w/attach.): E. Miller (DRA)
D. Sheppard (F&W)
B. Zeisel (F&W)
L. Brown (End. Species)
A. Bromberg (Water Q.)
G. Koch (Dam Safety)
F. Dwyer (Flood Mgt.)
C. Morrison (L&F)
R. Vaas (Reg. 6) (2) ✓
A. Smith, ATTN: L. Kuwik (SHPO)
R. Anderson, ATTN: R. Roberts (OPR)
B. Goodale (PSC)
P. Hamilton (USFWS)
J. Henry (COE-Buffalo)
A. N. Miller (EPA-NYC)

bcc (w/o attach.): J. Wilson (Reg. 6)
L. Condra (DRA)
F. Howell (DRA)
E. Horn (F&W)

TERMS AND CONDITIONS RELATED TO ISSUANCE OF PERMITS AND APPROVALS BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC) FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF A SMALL HYDROELECTRIC PROJECT AT TALCVILLE ON THE OSWEGATCHIE RIVER, TOWN OF EDWARDS, ST. LAWRENCE COUNTY, NEW YORK BY LAWRENCE R. TAFT UNDER FEDERAL ENERGY REGULATORY COMMISSION (FERC) PROJECT #4402-001 EXEMPTION FROM LICENSING

The New York State Department of Environmental Conservation has reviewed the application before the Federal Energy Regulatory Commission (FERC) for the above subject project (FERC #4402-001) pursuant to applicable provisions of the New York State Environmental Conservation Law (ECL) including Article 70 (Uniform Procedures Act), Article 8 (Environmental Quality Review Act), Article 15 Title 5 (Protection of Waters), Articles 11 and 13 (Fish and Wildlife Law), Article 9 Title 15 (Protected Plants) and Article 15 Title 27 (State Wild, Scenic and Recreational Rivers Act). Such review has been undertaken in accord with Section 30c of the Federal Power Act and Section 408 of the Federal Energy Security Act, taking into consideration the requirements of Section 401 of the Clean Water Act of 1977 (33 USC 1251 et seq) for water quality certification, of the Fish and Wildlife Coordination Act (16 USC 662) and Endangered Species Act (16 USC 1536) for consultation regarding mitigation and enhancement of fish and wildlife resources, and of the Federal Wild, Scenic and Recreational Rivers Act (16 USC 28) where applicable.

As a result of this review of the proposed project development, briefly described herein, the terms and conditions which should be met prior to issuance of applicable state permits and certifications are stated below. Such terms and conditions may also be incorporated by FERC as part of their conditions for exemption from licensing for this project.

PROJECT DEVELOPMENT

DEC understands the project will be as described in the Notice of Application for license exemption as published by FERC on March 10, 1983. The proposed project will include the following activities:

- (i) reconstruction of the breached Talcville Dam;
- (ii) renovation of an existing 250 KW generator; and
- (iii) replacement of a second generator with new unit rated at 750 KW.

The project will also include a reservoir as described in the Notice of Application, a 135 foot long flume, a wood frame power house, a 1.5 MW 23,000-volt substation and appurtenant facilities.

APPLICABLE PERMITS AND APPROVALS

On the basis of the described project and proposed construction and operation techniques, the following state permits and approvals may be needed from DEC:

1. Water Quality Certification under Section 401 of the Clean Water Act of 1977 if a permit under Section 404 is required from the U.S. Army Corps of Engineers.
2. Stream Protection and Dam Permits under Article 15 Title 5, Protection of Waters.
3. Flood Plain Development Permit under N.Y. State Floodplain Management Regulations (6 NYCRR 500).

Upon further detailing or modification of construction methods or changes in proposed operations, additional DEC permits may be required or modification of permits already issued may be necessary. In addition, certain other federal, state or local government approvals and permits may be required. The applicant should consult with the appropriate agencies in advance of any construction activity.

TERMS AND CONDITIONS

1. Construction and Maintenance Activities

Impacts related to construction and maintenance of the proposed project (e.g. turbidity, pollution from wet concrete, etc.) will be addressed as conditions for applicable state permits as follows:

- (i) The applicant will be required to have all sediments scheduled for removal from the Oswegatchie River analyzed for the presence of heavy metals and toxic substances prior to the initiation of construction or maintenance activities. All sediment shall be disposed of in a DEC-approved manner.
- (ii) The applicant will be required to consult with DEC prior to initiating any action that will result in the interruption to downstream flows, including, in particular, cofferdams and their installation procedures, scheduling and duration.
- (iii) The applicant will minimize the removal of vegetation associated with the construction and maintenance of the project facilities including related transmission lines.
- (iv) The applicant will be required to consult with DEC on maintenance activities, both scheduled and unscheduled, and to obtain DEC approval.

2. Project Operation

The Oswegatchie River at Talcville is currently managed as a mixed cool-water/warmwater fishery. Species of particular interest include northern pike, smallmouth bass, bullheads, pickerel and yellow perch. In order to minimize adverse impacts to this fishery, both above and below the dam, as well as to the wildlife resources and habitats which may be influenced by operation of the project, the project will operate in a run-of-river mode.

- (i) Run-of-river mode shall mean that the instantaneous outflow from the impoundment, consisting of flow through the turbines, leakage and directed releases, including spillage, will equal the instantaneous inflow to the impoundment.

- (ii) A spillage or release of 100 cfs will be required to preserve habitat and maintain water quality within the 195 foot shunted section of the stream. As an alternative, the applicant may operate with a spillage or release in this section of 60 cfs, provided at applicant's cost, studies are undertaken in consultation with the Department of Environmental Conservation to assess the possible need for additional flows to maintain habitat in the shunted section. Additional flows shall then be provided as indicated by such studies.
- (iii) The Department of Environmental Conservation reserves the right to require flow modifications and other alternations in operating mode to make the Talcville Project compatible with any future adjustments in flows resulting from operational changes at the several Niagara Mohawk Power Corporation facilities located upstream. As a condition to the issuance of a 401 Water Quality Certification for these Niagara Mohawk facilities by DEC on November 15, 1978, in conjunction with FERC Project #2713, studies have been required of Niagara Mohawk to determine the feasibility of providing minimum flows or seasonal flows in the Oswegatchie River for enhancement of fisheries, recreational uses, aesthetics and waste assimilative capacity. Subsequent modifications to flow regimes from the Niagara Mohawk facilities should be taken into account at all downstream hydropower facilities through concomitant beneficial flow changes, if warranted.
- (iv) The applicant will operate the proposed development in a manner that will not contravene the established needs of other in-line consumptive and non-consumptive interests.

3. Water Quality

No adverse impacts upon the water quality standards of the Oswegatchie River have been identified with this project. However, DEC reserves the right to require the applicant to implement temporary emergency procedures, if required, to assure the protection of the quality of the water and its biota. DEC also reserves the right to require the applicant to prepare studies, if necessary, to determine the need to abate, within reason, any future impacts upon the water resource that can be directly attributed to the existence and operation of the project.

4. Fish Passage

Current fisheries management objectives for this section of the Oswegatchie do not require facilities for fish passage. However, the Department is currently evaluating the potential for restoration of anadromous salmonids in the Oswegatchie watershed. Therefore, DEC reserves the right to require the applicant to provide passage for fish migration both upstream and downstream, as part of the project cost, if such need is ever identified by the Department. The applicant should consult and cooperate with DEC in designing and operating such facilities should a need for them be established.

5. Endangered Species, Significant Habitats and Wetlands

DEC staff reviewed the available information and has found no endangered species or significant habitats that would be affected by development and operation of this project. Because the Department understands the applicant will not change the level of the reservoir and because the project is to be

operated in a run-of-river mode with no storage and release, no effect is anticipated on wetlands either above the dam or below the tailrace.

6. Dam Safety and Flood Management

Complete dam reconstruction will be necessary at this breached site, subject to current criteria for new dams. Details of such reconstruction including stability of the structure must be cleared with the DEC Dam Safety unit before a Dam Permit can be issued under Article 15 Title 5 (Protection of Waters).

No significant impacts from flooding are anticipated, but the project is located in a flood hazard area. The Town of Edwards is under New York State Floodplain Management Regulations (6 NYCRR 500) as part of the National Flood Insurance Program. Activities in this flood hazard area will require a flood plain development permit from DEC.

7. Recreational Uses

The application indicates on the third page of Exhibit E that there are no recreational uses of the project land and none are planned. This ignores public benefits from streamside fishing and the fishing potentials which could result from a small public parking lot and cartop boat launch. Therefore, consistent with public safety and safe plant operation, the license exemption should require the applicant (i) to maintain access to his property for shoreline public fishing; and (ii) to consult with the regional DEC fisheries management staff regarding design and construction of a parking and boat launch facility to be built and maintained by the applicant as part of project costs.

In addition, DEC supports the other public access and recreational facilities to be provided by the applicant, as suggested in correspondence from the New York State Office of Parks and Recreation (see letter of December 3, 1982 in agency correspondence in application).

May 5, 1983