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21 FERC ¶62,394

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
25223 75965

The City of Chicopee and the) Project Nos. 6522-000
Chicopee Municipal Lighting Plant) and 6522-001

ORDER GRANTING EXEMPTION FROM LICENSING OF A
SMALL HYDROELECTRIC PROJECT OF 5 MEGAWATTS OR LESS

(Issued December 8, 1982)

The Applicant 1/ filed an application for exemption from all or part of Part I of the Federal Power Act pursuant to 18 C.F.R. Part 4 Subpart K (1980) implementing in part Section 408 of the Energy Security Act (Act) 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 Act 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/ The City of Chicopee and the Chicopee Municipal Lighting Plant, Project No. 6522-000, and 6522-001, filed July 15, 1982, and amended August 31, 1982.
- 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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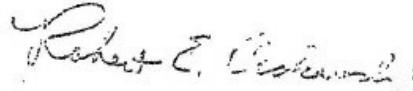
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Should the Applicant contest any terms or conditions that were proposed by Federal or State agencies in their letters of comment as being outside the scope of Article 2, the Commission shall determine whether the disputed terms or conditions are outside 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 affecting the quality of the human environment.

It is ordered that:

(A) Chicopee Project No. 6522 as described and designated in The City of Chicopee and the Chicopee Municipal Lighting Plant's application filed on July 15, 1982, and amended on August 31, 1982, 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).



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

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

The City of Chicopee and the) Project No. 6522-000
Chicopee Municipal Lighting Plant)

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

SEP 9 1983

Take notice that on July 15, 1982, and amended on August 31, 1982, The City of Chicopee and the Chicopee Municipal Lighting Plant (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 No. 6522 would be located on the Chicopee River in the City of Chicopee, Hampden County, Massachusetts. Correspondence with the Applicant should be directed to: Mr. Herve Plasse, Chicopee Municipal Lighting Plant, 725 Front Street, Chicopee, Massachusetts 01013.

Project Description - The proposed project would consist of: (1) an existing dam consisting of a 9.0-foot-high, 256-foot-long masonry spillway with an addition of 17-inch-high flashboards, a 10.4-foot-high, 58-foot-long concrete spillway structure and a gate structure with 3 gates; (2) a 120-acre reservoir with a usable storage capacity of 310 acre-feet at 3 feet of drawdown, at elevation 108.15 feet M.S.L. with flashboards in place; (3) a new powerhouse located near the south dam abutment containing two turbine-generators with a total rated capacity of 2.5 MW; (4) a 280-foot-long, 13.8-kV transmission line; and (5) appurtenant facilities. The dam is owned by the City of Chicopee. The project would generate up to 10,600,000 kWh annually for use of the municipal electric system.

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.

Project No. 6522-000

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Agency Comments - The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Massachusetts Department 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 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 file with the Commission, on or before NOV 4 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. Filing 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 Motions to Intervene - Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 C.F.R. 385.211 or 385.214, 47 Fed. Reg. 19025-26 (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 filed on or before NOV 4 1982.

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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 "MOTION 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 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 motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Secretary

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Attachment
E-2 Form 75971§ 4.166 Standard terms and conditions of exemption from licensing.

Any exemption from licensing granted under this subpart for a small hydelectric 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.

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Attachment
E-2 Form 75972

(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 these 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 these purposes has not been obtained within one year from the date on which this exemption was granted.

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The City of Chicopee and the Chicopee Municipal Lighting
Plant

Project Nos. 6522-000 and 6522-001

FEDERAL ENERGY REGULATORY COMMISSION Office Director

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Order Granting Exemption from Licensing of a Small
Hydroelectric Project of 3 Megawatts or Less

December 8, 1982

PANEL:

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

OPINION:

The Applicant n1 filed an application for exemption from all or part of Part I of the Federal Power Act pursuant to 18 C.F.R. Part 4 Subpart K (1980) implementing in part Section 408 of the Energy Security Act (Act) of 1980 for a project as described in the attached public notice. n2 n3

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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.

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APPENDIX:
Appendix A

Notice of Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

(Issued September 9, 1982)

Take notice that on July 15, 1982, and amended on August 31, 1982, The City of Chicopee and the Chicopee Municipal Lighting Plant (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 No. 6522 would be located on the Chicopee River in the City of Chicopee, Hampden County, Massachusetts. Correspondence with the

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(Note: Remainder of notice omitted in printing.)