

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Gene M. Peters

Project No. 7577-000

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

( Issued September 25, 1985 )

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

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.

This order is consistent with the Commission's decision in Olympus Energy Corporation, Project No. 6617-000, 26 FERC 461,407 (March 29, 1984), where the Commission indicated that the statutory scheme for exemptions allocates the exclusive responsibility for protecting, as well as analyzing any adverse impacts on, fish and wildlife resources to the fish and wildlife agencies empowered to impose mandatory terms and conditions on exemptions. Thus, the decision on whether to perform an assessment of cumulative environmental impacts on fish and wildlife resources rests with the fish and wildlife agencies. Issuance of an exemption does not interfere with their decision in any case where such agencies have not raised cumulative impacts concerns, or where they, or

1/ Gene M. Peters, Project No. 7577-000, filed on September 2, 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).

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the Commission or its delegate, have included in the exemption an open-ended condition allowing these agencies to add or modify whatever terms they may subsequently determine are necessary and appropriate to mitigate any project impacts, including cumulative, on fish and wildlife. Consequently, it is appropriate to grant the exemption application in this case.

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 2.3/

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.4/

Pursuant to 18 C.F.R. §375.314, the Director of the Office of Hydropower Licensing or Director's designee orders:

(A) Burton Creek Project No. 7577 as described and designated in Gene M. Peters' application filed on September 2, 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. 11658 (March 25, 1985).

(B) This order is final unless appealed to the Commission by any party within 30 days from the issuance date of this order under 18 C.F.R. §385.1902 (1985).

*Kenneth M. Pusateri*  
Kenneth M. Pusateri  
Acting Director, Office of  
Hydropower Licensing

3/ An exemption from licensing granted by this Commission does not serve as any basis for restricting hunting and fishing access to the waterway involved except to the extent required for public safety purposes.

4/ Environmental Assessment, Burton Creek Hydroelectric, FERC Project No. 7577 - Washington, Division of Environmental Analysis, Office of Hydropower Licensing, Federal Energy Regulatory Commission, March 11, 1985. This document is available in the Division of Public Information and in the Commission's public file associated with the proceeding.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission  
(March 15, 1984)

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: Exemption (5 MW or Less)
- b. Project No: 7577-000
- c. Date Filed: September 2, 1983
- d. Applicant: Gene M. Peters
- e. Name of Project: Burton Creek
- f. Location: On Burton Creek, near Packwood, in Lewis County, Washington
- g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. §§2705 and 2708 as amended)
- h. Contact Person: Mr. Calvin Patterson  
Consulting Engineer  
2610 Evergreen Pt. Rd.  
Bellevue, Washington 98004
- i. Comment Date:
- j. Description of Project: APR 3 8 1984

The proposed project would consist of: (1) a wood and concrete intake at elevation 1,640 feet; (2) an 1,830-foot-long, 16-inch-diameter penstock; (3) a powerhouse containing a single generator with a rated capacity of 800 kW and an annual energy production of 3.5 GWh at elevation 1,000 feet; (4) a 530-foot-long, 30-inch-diameter corrugated metal tailrace; and (5) a 620-foot-long, 13.8-kV transmission line to an existing P.U.D. transmission line.

Purpose of Exemption - An exemption, if issued, gives an 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.

- k. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3A

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--- Exemption for Small Hydroelectric Power Project under 5MW Capacity -- Any qualified license or conduit exemption 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 or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption 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 small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

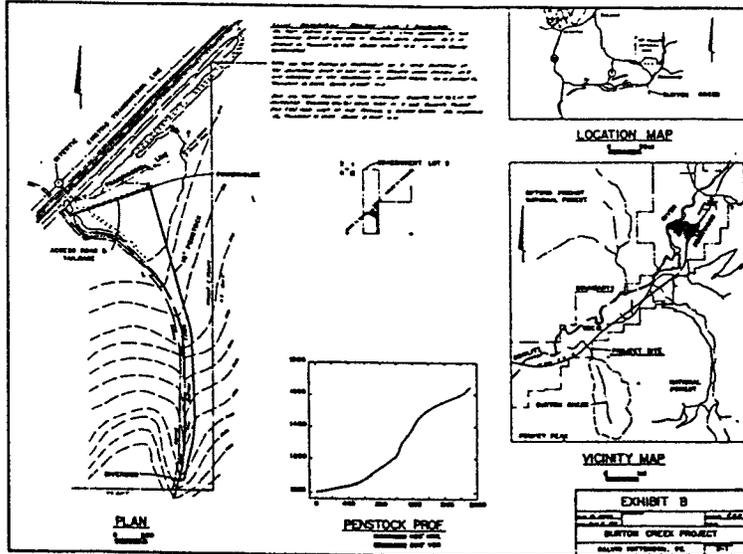
- B. Comments, Protests, or Motions to Intervene - Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all 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 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 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 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, Deputy Director, Project Management, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 205 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 particular application.

A5. Notice of intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

D3a.

**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 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect fish and wildlife resources from other activities within 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 should also file their views and responsibilities. No other formal requests or 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.

Kenneth F. Plumb  
Secretary



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CENTRAL FILES

Attachment  
E-2 Form

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Attachment  
E-2 Form

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§ 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 the United States Fish and Wildlife Service any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or to 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 revoke this exemption if actual construction or 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.

(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.

(f) 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.

(g) 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.

(h) 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 CFR 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 CFR Part 222, is subject to the following provisions of 18 CFR 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 CFR 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.

(i) 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.

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