

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern States Power Company) Project No. 9003-000

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

(Issued February 11, 1986)

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 motions 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. 3/

1/ Northern States Power Company, Project No. 9003-000, filed on March 6, 1985.

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/ 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.

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. 4/

The Director orders:

(A) Riverdale Hydro Project No. 9003-000 as described and designated in Northern States Power Company's application filed on March 6, 1985, 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 issued under authority delegated to the Director and is final unless appealed to the Commission under Rule 1902 within 30 days from the date of this order. Failure to file a petition appealing this order to the Commission shall constitute acceptance of this order.

Don Garber

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

4/ Environmental Assessment, Riverdale Hydro Project, FERC Project No. 9003-000, Division of Environmental Analysis, Office of Hydropower Licensing, Federal Energy Regulatory Commission, January 29, 1986. This document is available in the Division of Public Information and in the Commission's public file associated with the proceeding.

§ 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 and 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.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission
(September 5, 1985)

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.: 9003-000
- c. Date Filed: March 6, 1985
- d. Applicant: Northern States Power Company
- e. Name of Project: Riverdale Hydro
- f. Location: Apple River, St. Croix County, Wisconsin
- g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. §§2705 and 2708
- h. Contact Person: Mr. Anthony G. Schuster, Vice President
Northern States Power Company
100 North Barstow Street
P.O. Box B
Eau Claire, WI 54702

- i. Comment Date: **OCT 15 1985**
- j. Description of Project: The project would consist of: (1) an existing concrete gravity dam, 163 feet long and 32 feet high, flanked by 15-foot-high earth dikes on each side, approximately 180 feet long on the left, and 350 feet long on the right side of the dam; (2) an existing reservoir with a surface area of 86 acres and a gross storage capacity of 569 acre-feet; (3) an existing powerhouse integral with the dam, containing 2 generating units with a nameplate capacity of 250 kW each, which would be rewound and upgraded to a total generating capacity of 620 kW; (4) an existing tailrace, approximately 90 feet long; and (5) appurtenant facilities. The estimated average annual generation of 3,610,000 kWh would be used in the applicants interconnected system.
- k. 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 over or develop the project.
- l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

DC-A-13

